

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Appellate Panel

SC Court of Appeals

Appellate Case No. 2019-001017

Delinzy Grant, Claimant.....Respondent,

v.

Steel Technologies, Employer, and
Zurich American Insurance Co., Carrier.....Appellants.

RECORD ON APPEAL

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INDEX

Order of the Single Commissioner Dated October 2, 2018.....	1-12
Appellate Panel's Decision and Order Dated May 31, 2019.....	13-23
WCC Form 50, Employee's Request for Hearing Dated September 14, 2017.....	24-25
WCC Form 51, Employer's Answer to Request for Hearing Dated June 14, 2018.....	26
APA Submission of the Respondent Dated July 30, 2018.....	27-64
APA Submission of the Appellants Dated August 6, 2018.....	65-102
WCC Form 30, Request for Commission Review, filed by Appellants Dated October 5, 2018.....	103-104
Appellants' Brief to the Full Commission Dated December 14, 2018.....	105-119
Respondent's Brief to the Full Commission Dated January 2, 2019.....	120-128
Transcript of Single Commission Hearing Dated August 14, 2018.....	129-228
Transcript of Full Commission Hearing Dated March 18, 2019.....	229-251
Certificate of Counsel.....	252

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1713493

DELINZY GRANT

EMPLOYEE / CLAIMANT,

vs.

STEEL TECHNOLOGIES

EMPLOYER,

and

ZURICH AMERICAN INSURANCE, CO.

CARRIER,

DEFENDANTS.

DECISION AND ORDER

HEARING:

Held in Isle of Palms, South Carolina on August 14, 2018

APPEARANCES:

Ryan T. LeBlanc, Esquire, on behalf of the Employee/Claimant.

Matthew C. LaFave, Esquire, on behalf of Steel Technologies/Zurich American Insurance, Co./Defendants.

PURPOSE OF HEARING:

To determine issues as set forth on 50/51.

DECISION AND ORDER:

Honorable Commissioner R. Michael Campbell, II

FILED:

October 2, 2018, 2018

STATEMENT OF THE CASE

On September 20, 2017, the Claimant filed a Form 50 – Not requesting a hearing with the South Carolina Workers' Compensation Commission. The Claimant alleged that she had sustained an injury to her low back as a result of the repetitive activities she performed at Steel Technologies.

On March 27, 2018, the Claimant filed a Form 50 – requesting a hearing, alleging the same. The Defendants timely filed a Form 51 on March 6, 2018, denying the claim on two grounds: that the Claimant sustained a repetitive trauma injury as a result of her work and that she failed to provide timely notice in accordance with S.C. Code Ann. § 42-15-20(c). A hearing was set in front of the undersigned Single Commissioner on August 14, 2018 in Isle of Palms, South Carolina. All parties agreed that venue was proper for the above-referenced hearing.

APA SUBMISSIONS AND EXHIBITS

The following APA Submissions and Exhibits were submitted on behalf of the Employee/Claimant:

APA MEDICAL SUBMISSIONS

APA #	PROVIDER	DATED	NO. PAGES	PAGE NOS.
1	Thomas S. Anderson, M.D.	9/20/2016 to 5/10/2018	15	1 – 15
2	Southeastern Spine Institute Medical Treatment	to	17	16 – 32

APA EXHIBIT SUBMISSIONS

EXH.	EXHIBIT	DATED	NO. PAGES	PAGE NOS.
A	Job Description		2	33 – 34

The following APA Submissions and Exhibits were submitted on behalf of the Employer/Defendants:

APA MEDICAL SUBMISSIONS

APA #	PROVIDER	DATED	PAGE NOS.
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3	Emergency Room Physician	September 2016	To be supplemented
4	Dr. Thomas Anderson Southeastern Spine Institute	9/19/2016 to 7/21/2017	35 – 41

APA EXHIBIT SUBMISSIONS

EXH #	PROVIDER	PAGE NOS.
1	Transcript of Claimant's Deposition (taken April 10, 2018) if needed for impeachment purposes	To be supplemented
2	August 19, 2009 work accident documents.	42 – 52
3	Claimant's SCDEW Application.	53 – 56
4	FMLA Questionnaire completed by Dr. Thomas S. Anderson	57 – 60
5	CTL Line Information	61 – 62

TESTIMONY PRESENTED

Delinzy Grant

The Claimant is fifty-three (53) years old. She is married and has two (2) children and four (4) grandchildren. Her previous medical history contains a previous back injury in 2009, a previous knee injury in 2012, and uterus cancer in 2013, of which she is now in remission. As for her back injury, it occurred at Steel Technologies. The Claimant received treatment via medications only. Her injury resolved itself and she did not receive any settlement as a result of her injury.

The Claimant began working at Steel Technologies on March 4, 2004. She was hired as a packager and worked at that position for approximately eight (8) to nine (9) years. As a packager, she would typically work eight (8) hours a day, five (5) days a week. Her job required her to bend down and lift skids from the floor to the carousel. The skids weighed approximately forty (40) to fifty (50) pounds, depending upon the size. The Claimant would lift anywhere

between fifteen (15) to twenty (20) skids per day. Her job would require her to bend and squat on a repetitive basis.

After working on the packaging line, the Claimant worked on the SLEAR line for approximately one (1) to two (2) years. Working on this line would require lifting, bending, squatting, and climbing. The Claimant would have to pick up the skids from the floor and place it on a table, which was approximately knee high. Approximately thirty-five (35) to forty (40) skids were lifted each day. The Claimant worked five (5) days a week. The skids weighed anywhere from thirty-five (35) to fifty (50) pounds. In addition, the SLEAR machine would constantly need fixing, which led to its removal from Steel Technologies, and would require the Claimant to have to climb inside the machine to fix its problems. When not working with skids or coils, the Claimant would have to clean around the area by sweeping and picking up trash on the ground.

The Claimant's next area she worked was on the Cut-To-Length ("CTL") line. She began working on that line somewhere around 2014 or 2015. The Claimant was a machine helper and machine operator. Working on the CTL line, the Claimant would have to lift skids, load the steel into the machine, maintain the integrity of the machine, clean around the area of the machine, and unload the lines and put materials up in finished goods. This would require the Claimant to have to lift, bend, stoop, and squat. When working on the skids, the Claimant would have to lift the skids from the floor to a table, which was approximately knee high. As for the volume of how many skids she would have to lift a day, it could be less than twenty-five (25) skids up to forty-five (45) skids. It depended on the production level. While normally working five (5) days a week, there would be times when she would have to work on Saturdays and work ten (10) to twelve (12) hour days.

When the skids were on the table, the Claimant would have to lift each piece of steel and inspect the steel to make sure it was adequate. This would mean having to turn the piece of steel over on both sides and lean over to inspect, if necessary. The steel weighed anywhere from fifteen (15) to twenty (20) pounds. Housekeeping was required. If the Claimant was not working on the CTL line, due to production being low, Steel Technologies would send her over to the packaging line to work, due to the fact that she had previously worked at that location.

The Claimant began experiencing pain in her low back around end of 2015 to beginning of 2016. It became concerning to her in September of 2016. That is when she went to Southeastern Spine Institute. She treated with Dr. Thomas Anderson. At the time, she did not attribute her injury to her work activities. Instead, she believed her injury was more likely due to her being overweight and/or getting older.

After undergoing conservative treatment, the Claimant elected to undergo fusion surgery to her low back. Her last day of work at Steel Technologies was on June 5, 2017. She went out on Short-Term Disability. She was let go from Steel Technologies on September 5, 2017 due to her not being able to return to work in a timely manner due to her injuries.

On August 21, 2017, she spoke with a short-term disability adjuster. She remembers that day, because that was the same day as the solar eclipse. Her understanding, per that conversation, was that the insurance carrier believed her injuries to be the responsibility of her work environment. At that time, she sought legal counsel to see if this was actually the case. She never reported to any person(s) at Steel Technologies that she believed that her work activities were the cause of her injuries. She was not aware that her repetitive work activities caused her injuries until February of 2018.

David Brown

David Brown is the first shift lead at Steel Technologies. He has worked there since May 30, 2000. As a first shift lead, he is responsible for safety, quality, and making sure the job gets done and gets done correctly.

He was the Claimant's supervisor beginning around 2013, when the Claimant was working on the CTL line. Mr. Brown describes the Claimant as honest, truthful, and a hard worker. He is also familiar with the packaging and SLEAR line as well. Mr. Brown testified that on a packing line, an employee would have to lift anywhere between thirty (30) and forty (40) skids per day and the skids weighed anywhere between thirty (35) and (45) pounds. Inevitably, in order to lift the skids, bending would be required.

While working on the SLEAR line, an employee would have to lift anywhere from twenty-five (25) to thirty (30) skids per day. Those skids would range from thirty-five (35) to fifty (50) pounds.

While working on the CTL line, an employee would be expected to lift anywhere from sixteen (16) to sometimes more than twenty (20) skids per day. In addition, the employees would have to lift the sheets to inspect them and those sheets would weigh anywhere from ten (10) to twenty (20) pounds each.

If there is no work on the CTL, the employee would ask the employee to help clean the facility and/or work on other lines such as the packaging line.

The Claimant never reported that her back injury was due to her work activities to Mr. Brown. Furthermore, Mr. Brown never modified the Claimant's work activities once she developed back pain. Mr. Brown does agree that the physical requirements, as listed in Steel Technologies form for a CTL operator is accurate, including the employees ability to bend,

stoop, twist, reach, climb onto a forklift, climb stairs, and lift up to fifty (50) pounds, as well as, be on their feet for an extended period of time.

He does not recall what product was being produced on the CTL line in 2017.

MEDICAL EVIDENCE

The Claimant initially went to Southeastern Spine Institute on September 20, 2016. She treated with Dr. Thomas Anderson. The Claimant presented with right-sided back and right lower extremity pain and numbness. The Claimant indicated to the doctor that over the past several years, she has had intermittent back and right lower extremity pain, but that her symptoms have worsened over the last several weeks. She did not sustain any acute injury.

After undergoing epidural steroid injections with little result, the Claimant opted to undergo a right L4-L5 posterior lumbar interbody fusion surgery on June 8, 2017. She was unable to go back to work after the surgery. Currently, the Claimant has been recommended additional epidural steroid injections at the L5-S1 level.

On February 21, 2018, Dr. Thomas Anderson completed a questionnaire regarding the Claimant's low back injury. Dr. Anderson opined, to a reasonable degree of medical certainty, it was more likely than not, that the repetitive activities of the Claimant's job as a Mechanic Operator directly caused the injury she sustained to her lumbar spine. He further opined that all of the treatment she received was causally-related to her injury and was done to lessen her disability.

NON-MEDICAL EVIDENCE

The Claimant submitted a document from Steel Technologies which outlines the summary of primary duties and responsibilities of a CTL Operator. In addition, the report also

stated the knowledge, skills, and abilities a CTL Operator must possess, as well as their education, work experience, and the physical requirements the job requires.

The Defendants provided a daily production report for the month of May 2017 and a production report of the amount of weight the CTL line processed for the months in 2016 and 2017.

FINDINGS OF FACT

1. Claimant alleges a repetitive trauma injury to her low-back and right lower extremity (due to radiculopathy) arising out of and in the course and scope of her employment.
2. Claimant underwent various evaluations and treatments for her alleged work-related injury. Most notably with Dr. Thomas Anderson at Southeastern Spine Institute.
3. On 05/11/2017, in FMLA documentation, treating physician, Dr. Thomas S. Anderson of the Southeastern Spine Institute, opined Claimant is unable to perform any of her job functions due to her condition and is unable to work. In addition, Dr. Anderson opined Claimant will be incapacitated from 06/08/2017 to 09/08/2017 and will need to attend follow-up treatment appointments or work part-time or on a reduced schedule, which is medically necessary due to her condition. (Defendants' pgs. 58-60).
4. On 07/21/2017, on a post-surgery Progress Report of Illness Form, Dr. Anderson opined Claimant cannot work. (Defendants' p. 41)
5. On 08/31/2017, in his medical notes at a follow-up appointment, Dr. Anderson opines he would see Claimant back in two months and she's not ready to return to work at this point. (Claimant's p. 9)
6. On 11/01/2017, in his medical notes at a follow-up appointment, Dr. Anderson notes Claimant has now lost her job. (Claimant's p. 10)

7. On 02/21/2018, in a questionnaire for the Claimant, Dr. Anderson opined to a reasonable degree of medical certainty that the repetitive activities claimant performs as a mechanic operator directly caused the injury she sustained to her lumbar spine, as well as, aggravated, exacerbated, and/or worsened her lumbar spine. In addition, Dr. Anderson further opined to a reasonable degree of medical certainty that the medical treatment he recommended and performed, with regards to Claimant's low back injury, was medically necessary to lessen her disability and that Claimant is not at MMI. He also noted he would continue to treat Claimant. (Claimant's pgs. 13-14) (Drafting party to detail questionnaire.).
8. On 08/14/2018, at the hearing before the undersigned Commissioner, Claimant testified regarding her condition, the treatment she has received, the job duties she performed, the symptoms she continues to have and that she did not report an injury to her employer because she did not realize her condition was work-related until advised by Dr. Anderson.
9. Based on a preponderance of the evidence, particularly the unrefuted medical opinions of Dr. Anderson, the Claimant's testimony, and the description of Claimant's job duties, I hereby find Claimant has met her burden of proof that she sustained a compensable repetitive trauma injury to her low back and right lower extremity (due to radicular complaints only), arising out of and in the course and scope of her employment.
10. Furthermore, based on the date of Dr. Anderson's questionnaire, 02/21/2018, which is the first record of Claimant's condition being work-related, and the filing date of Claimant's Form 50, 09/20/2017, I hereby find Claimant has satisfied the notice standard pursuant to 42-15-20 (C).

11. Therefore, I hereby find Claimant is not at MMI.
12. A determination of permanency is premature at this time.
13. Claimant is entitled to all past causally-related medical treatment and out-of-pocket expenses.
14. Claimant is entitled to an evaluation and all causally-related medical treatment, if recommended, by a physician of the Defendants' choosing with a specialty to the back.
15. Defendants' chosen specialist is to be provided with all prior, causally-related medical records.
16. Claimant is entitled to an award of TTD from 06/08/2017 to present and continuing.
17. All other issues are held in abeyance at this time.

CONCLUSIONS OF LAW

Accordingly, as provided in Section 42-17-40, South Carolina Code of Laws, 1976, as amended, it is the determination of the undersigned Commissioner as follows:

1. Under Section 42-1-172, the Claimant sustained a compensable injury due to the repetitive activities of her job, arising out of the course and scope of her employment to her low back and her right lower extremity. Her right lower extremity is only an affected body part due to radicular complaints stemming from the low back.
2. Under Section 42-1-40, the Claimant's average weekly wage is \$872.67, with a corresponding compensation rate of \$581.81.
3. Under Regulation 67-503, the Claimant is entitled to temporary, total disability benefits from June 8, 2017 to present and continuing.
4. Under Section 42-17-30, the Defendants are ordered to choose a specialist to treat the Claimant's low back and right lower extremity injuries. The Defendants will pay for all

causally-related medical treatment and reimburse the Claimant for any out-of-pocket expenses for the same. The Defendants will provide said treatment under the accordance of Section 42-15-60 until the Claimant achieves MMI.

ORDER

Based on the above Findings of Fact and Conclusions of Law, it is hereby,

ORDERED, ADJUDGED, AND DECREED, that the Claimant, Delinzy Grant, sustained a compensable, work-related injury to her low back and right lower extremity on June 5, 2017; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Defendant, Steel Technologies, will provide an evaluation for the Claimant with a physician of their choosing. The Defendant will also be responsible for any and all past and future causally-related medical treatment. Defendants will also reimburse the Claimant for any causally-related out-of-pocket expenses she incurred for her treatment; and it is further

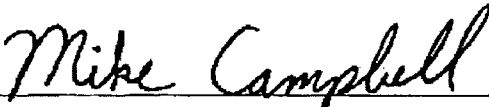
ORDERED, ADJUDGED, AND DECREED, that the Claimant's, Delinzy Grant, average weekly wage is \$872.67 with a corresponding compensation rate of \$581.81; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Claimant is entitled to temporary total disability benefits from June 8, 2017 to present and continuing.

No hearing costs are assessed in this matter.

AND IT IS SO ORDERED!

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Commissioner Mike Campbell

Columbia, SC
Dated: October 2, 2018

CERTIFICATE OF SERVICE

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

October 2, 2018

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1713493

DELINZY GRANT

EMPLOYEE / CLAIMANT,

vs.

STEEL TECHNOLOGIES

EMPLOYER,

and

ZURICH AMERICAN INSURANCE, CO.

CARRIER,

DEFENDANTS.

**APPELLATE PANEL'S
DECISION AND ORDER**

HEARING:

Appellate Panel review held in Columbia, South Carolina on March 18, 2019, per notices timely and properly served on all parties of interest

APPEARANCES:

Ryan T. LeBlanc, Esquire, on behalf of the Employee/Claimant/Respondent

Matthew C. LaFave, Esquire, on behalf of Steel Technologies/Zurich American Insurance, Co./Defendants/Appellants.

PURPOSE OF HEARING:

To determine issues as set forth on Forms 50/51 and Form 30.

DECISION AND ORDER:

Honorable Commissioner T. Scott Beck, Chair, Honorable Melody L. James, and Honorable Avery B. Wilkerson, Jr.

FILED:

May 31, 2019

STATEMENT OF THE CASE

On September 20, 2017, the Claimant filed a Form 50 – Not requesting a hearing with the South Carolina Workers' Compensation Commission. The Claimant alleged that she had sustained an injury to her low back as a result of the repetitive activities she performed at Steel Technologies.

On March 27, 2018, the Claimant filed a Form 50 – requesting a hearing, alleging the same. The Defendants timely filed a Form 51 on March 6, 2018, denying the claim on two grounds: that the Claimant sustained a repetitive trauma injury as a result of her work and that she failed to provide timely notice in accordance with S.C. Code Ann. § 42-15-20(c). A hearing was set in front of the undersigned Single Commissioner on August 14, 2018 in Isle of Palms, South Carolina. All parties agreed that venue was proper for the above-referenced hearing.

On October 2, 2018, the Single Commissioner issued a Decision and Order stating the following:

FINDINGS OF FACT

1. Claimant alleges a repetitive trauma injury to her low-back and right lower extremity (due to radiculopathy) arising out of and in the course and scope of her employment.
2. Claimant underwent various evaluations and treatments for her alleged work-related injury. Most notably with Dr. Thomas Anderson at Southeastern Spine Institute.
3. On 05/11/2017, in FMLA documentation, treating physician, Dr. Thomas S. Anderson of the Southeastern Spine Institute, opined Claimant is unable to perform any of her job functions due to her condition and is unable to work. In addition, Dr. Anderson opined Claimant will be incapacitated from 06/08/2017 to 09/08/2017 and will need to attend

follow-up treatment appointments or work part-time or on a reduced schedule, which is medically necessary due to her condition. (Defendants' pgs. 58-60).

4. On 07/21/2017, on a post-surgery Progress Report of Illness Form, Dr. Anderson opined Claimant cannot work. (Defendants' p. 41)
5. On 08/31/2017, in his medical notes at a follow-up appointment, Dr. Anderson opines he would see Claimant back in two months and she's not ready to return to work at this point. (Claimant's p. 9)
6. On 11/01/2017, in his medical notes at a follow-up appointment, Dr. Anderson notes Claimant has now lost her job. (Claimant's p. 10)
7. On 02/21/2018, in a questionnaire for the Claimant, Dr. Anderson opined to a reasonable degree of medical certainty that the repetitive activities claimant performs as a mechanic operator directly caused the injury she sustained to her lumbar spine, as well as, aggravated, exacerbated, and/or worsened her lumbar spine. In addition, Dr. Anderson further opined to a reasonable degree of medical certainty that the medical treatment he recommended and performed, with regards to Claimant's low back injury, was medically necessary to lessen her disability and that Claimant is not at MMI. He also noted he would continue to treat Claimant. (Claimant's pgs. 13-14) (Drafting party to detail questionnaire.)
8. On 08/14/2018, at the hearing before the undersigned Commissioner, Claimant testified regarding her condition, the treatment she has received, the job duties she performed, the symptoms she continues to have and that she did not report an injury to her employer because she did not realize her condition was work-related until advised by Dr. Anderson.

9. Based on a preponderance of the evidence, particularly the unrefuted medical opinions of Dr. Anderson, the Claimant's testimony, and the description of Claimant's job duties, I hereby find Claimant has met her burden of proof that she sustained a compensable repetitive trauma injury to her low back and right lower extremity (due to radicular complaints only), arising out of and in the course and scope of her employment.
10. Furthermore, based on the date of Dr. Anderson's questionnaire, 02/21/2018, which is the first record of Claimant's condition being work-related, and the filing date of Claimant's Form 50, 09/20/2017, I hereby find Claimant has satisfied the notice standard pursuant to 42-15-20 (C).
11. Therefore, I hereby find Claimant is not at MMI.
12. A determination of permanency is premature at this time.
13. Claimant is entitled to all past causally-related medical treatment and out-of-pocket expenses.
14. Claimant is entitled to an evaluation and all causally-related medical treatment, if recommended, by a physician of the Defendants' choosing with a specialty to the back.
15. Defendants' chosen specialist is to be provided with all prior, causally-related medical records.
16. Claimant is entitled to an award of TTD from 06/08/2017 to present and continuing.
17. All other issues are held in abeyance at this time.

CONCLUSIONS OF LAW

Accordingly, as provided in Section 42-17-40, South Carolina Code of Laws, 1976, as amended, it is the determination of the undersigned Commissioner as follows:

1. Under Section 42-1-172, the Claimant sustained a compensable injury due to the repetitive activities of her job, arising out of the course and scope of her employment to her low back and her right lower extremity. Her right lower extremity is only an affected body part due to radicular complaints stemming from the low back.
2. Under Section 42-1-40, the Claimant's average weekly wage is \$872.67, with a corresponding compensation rate of \$581.81.
3. Under Regulation 67-503, the Claimant is entitled to temporary, total disability benefits from June 8, 2017 to present and continuing.
4. Under Section 42-17-30, the Defendants are ordered to choose a specialist to treat the Claimant's low back and right lower extremity injuries. The Defendants will pay for all causally-related medical treatment and reimburse the Claimant for any out-of-pocket expenses for the same. The Defendants will provide said treatment under the accordance of Section 42-15-60 until the Claimant achieves MMI.

ORDER

Based on the above Findings of Fact and Conclusions of Law, it is hereby,

ORDERED, ADJUDGED, AND DECREED, that the Claimant, Delinzy Grant, sustained a compensable, work-related injury to her low back and right lower extremity on June 5, 2017; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Defendant, Steel Technologies, will provide an evaluation for the Claimant with a physician of their choosing. The Defendant will also be responsible for any and all past and future causally-related medical treatment. Defendants will also reimburse the Claimant for any causally-related out-of-pocket expenses she incurred for her treatment; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Claimant's, Delinzy Grant, average weekly wage is \$872.67 with a corresponding compensation rate of \$581.81; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Claimant is entitled to temporary total disability benefits from June 8, 2017 to present and continuing.

No hearing costs are assessed in this matter.

AND IT IS SO ORDERED!

Within the statutory period, the Defendants filed a Form 30 Application for Review in this case, setting forth their grounds for appeal on October 5, 2018. On appeal, the Defendants respectfully submitted the following:

1. Whether or not Claimant sustained a compensable repetitive trauma injury in accordance with SC Code Ann. § 42-1-172?
2. Whether or not Claimant's notice to Defendants of a repetitive trauma injury was timely pursuant to SC Code Ann § 42-15-20(c).

In Appellate review, the panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1985) review the award and weigh evidence as presented at the initial hearing, and if good grounds be shown, therefore, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the Hearing Commissioner.

Based upon a review of the foregoing, and after full consideration of the evidence in the records and the parties' respective arguments, the panel **AFFIRMED** the findings of the Single Commissioner.

Accordingly, the Hearing Commissioner's October 2, 2018 Decision and Order is AFFIRMED. The Appellate Panel enters the following Findings of Fact and Conclusions of Law on its own:

FINDINGS OF FACT

1. Claimant alleges a repetitive trauma injury to her low-back and right lower extremity (due to radiculopathy) arising out of and in the course and scope of her employment.
2. Claimant underwent various evaluations and treatments for her alleged work-related injury. Most notably with Dr. Thomas Anderson at Southeastern Spine Institute.
3. On 05/11/2017, in FMLA documentation, treating physician, Dr. Thomas S. Anderson of the Southeastern Spine Institute, opined Claimant is unable to perform any of her job functions due to her condition and is unable to work. In addition, Dr. Anderson opined Claimant will be incapacitated from 06/08/2017 to 09/08/2017 and will need to attend follow-up treatment appointments or work part-time or on a reduced schedule, which is medically necessary due to her condition. (Defendants' pgs. 58-60).
4. On 07/21/2017, on a post-surgery Progress Report of Illness Form, Dr. Anderson opined Claimant cannot work. (Defendants' p. 41)
5. On 08/31/2017, in his medical notes at a follow-up appointment, Dr. Anderson opines he would see Claimant back in two months and she's not ready to return to work at this point. (Claimant's p. 9)
6. On 11/01/2017, in his medical notes at a follow-up appointment, Dr. Anderson notes Claimant has now lost her job. (Claimant's p. 10)
7. On 02/21/2018, in a questionnaire for the Claimant, Dr. Anderson opined to a reasonable degree of medical certainty that the repetitive activities claimant performs as a mechanic operator directly caused the injury she sustained to her lumbar spine, as well as,

aggravated, exacerbated, and/or worsened her lumbar spine. In addition, Dr. Anderson further opined to a reasonable degree of medical certainty that the medical treatment he recommended and performed, with regards to Claimant's low back injury, was medically necessary to lessen her disability and that Claimant is not at MMI. He also noted he would continue to treat Claimant. (Claimant's pgs. 13-14) (Drafting party to detail questionnaire.)

8. On 08/14/2018, at the hearing before the undersigned Commissioner, Claimant testified regarding her condition, the treatment she has received, the job duties she performed, the symptoms she continues to have and that she did not report an injury to her employer because she did not realize her condition was work-related until advised by Dr. Anderson.
9. Based on a preponderance of the evidence, particularly the unrefuted medical opinions of Dr. Anderson, the Claimant's testimony, and the description of Claimant's job duties, we hereby find Claimant has met her burden of proof that she sustained a compensable repetitive trauma injury to her low back and right lower extremity (due to radicular complaints only), arising out of and in the course and scope of her employment.
10. Furthermore, based on the date of Dr. Anderson's questionnaire, 02/21/2018, which is the first record of Claimant's condition being work-related, and the filing date of Claimant's Form 50, 09/20/2017, we hereby find Claimant has satisfied the notice standard pursuant to 42-15-20 (C).
11. Therefore, we hereby find Claimant is not at MMI.
12. A determination of permanency is premature at this time.

13. Claimant is entitled to all past causally-related medical treatment and out-of-pocket expenses.
14. Claimant is entitled to an evaluation and all causally-related medical treatment, if recommended, by a physician of the Defendants' choosing with a specialty to the back.
15. Defendants' chosen specialist is to be provided with all prior, causally-related medical records.
16. Claimant is entitled to an award of TTD from 06/08/2017 to present and continuing.
17. All other issues are held in abeyance at this time.

CONCLUSIONS OF LAW

Accordingly, as provided in Section 42-17-40, South Carolina Code of Laws, 1976, as amended, it is the determination of the undersigned Commissioner as follows:

1. Under Section 42-1-172, the Claimant sustained a compensable injury due to the repetitive activities of her job, arising out of the course and scope of her employment to her low back and her right lower extremity. Her right lower extremity is only an affected body part due to radicular complaints stemming from the low back.
2. Under Section 42-1-40, the Claimant's average weekly wage is \$872.67, with a corresponding compensation rate of \$581.81.
3. Under Regulation 67-503, the Claimant is entitled to temporary, total disability benefits from June 8, 2017 to present and continuing.
4. Under Section 42-17-30, the Defendants are ordered to choose a specialist to treat the Claimant's low back and right lower extremity injuries. The Defendants will pay for all causally-related medical treatment and reimburse the Claimant for any out-of-pocket

expenses for the same. The Defendants will provide said treatment under the accordance of Section 42-15-60 until the Claimant achieves MMI.

ORDER

Based on the above Findings of Fact and Conclusions of Law, it is hereby,

ORDERED, ADJUDGED, AND DECREED, that the Claimant, Delinzy Grant, sustained a compensable, work-related injury to her low back and right lower extremity on June 5, 2017; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Defendant, Steel Technologies, will provide an evaluation for the Claimant with a physician of their choosing. The Defendant will also be responsible for any and all past and future causally-related medical treatment. Defendants will also reimburse the Claimant for any causally-related out-of-pocket expenses she incurred for her treatment; and it is further

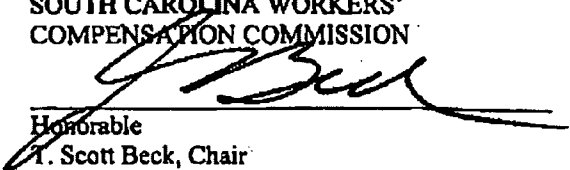
ORDERED, ADJUDGED, AND DECREED, that the Claimant's, Delinzy Grant, average weekly wage is \$872.67 with a corresponding compensation rate of \$581.81; and it is further

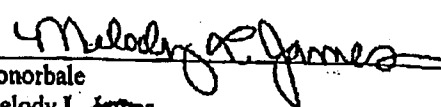
ORDERED, ADJUDGED, AND DECREED, that the Claimant is entitled to temporary total disability benefits from June 8, 2017 to present and continuing.

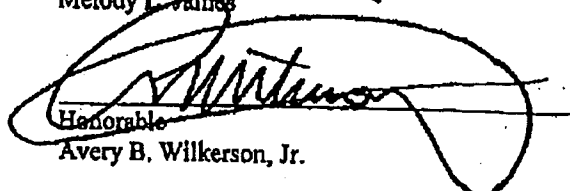
No hearing costs are assessed in this matter.

AND IT IS SO ORDERED!

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Honorable
T. Scott Beck, Chair


Honorable
Melody L. James


Honorable
Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

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

By Eugenia Hollmon on May 31, 2019

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5675 www.wcc.sc.gov



WCC File #: Pending
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Delinzy Grant SSN: 248-29-6460 Employer's Name: Steel Technologies
Address: 2430 Richardson Drive Address: 1220 S. Steel Circle
City: North Charleston State: SC Zip: 29406 City: Huger State: SC Zip: 29450
Home Phone: (843) 478-0443 Work Phone: _____ Insurance Carrier: Zurich American Insurance Company
Preparer's Name: Ryan T. LeBlanc Law Firm: Joye Law Firm, L.L.P. Preparer's Phone #: (843) 554-3100

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

Date of Injury or Illness: 6/5/2017

☒ Injury ☐ Illness ☒ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to her back, right lower extremity (Part(s) of Body Injured) on 6/5/2017 (Month/Day/Year) in Berkeley county, state of South Carolina.
Body part(s) affected are: back, right lower extremity

2. Briefly describe how the accident occurred. Claimant sustained an injury due to repetitive activities at work.

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

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

5. At the time of the injury the claimant was performing services arising out of and in the course of employment.

6. Notice of the accidental injury was given to the Employer on 09/14/2017 (Month/Day/Year) in the following manner: Verbal

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

☒ (a) medical examination and treatment for: back, right lower extremity

☒ (b) additional medical examination and treatment for: back

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: TBD

☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability: ☐ Total ☐ Partial

☐ (2) Specific Disability: ☐ Total ☐ Partial

☐ (3) Wage Loss

☒ 9a. ☒ A determination of permanent disability is premature at this time.

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

10a. At the time of the injury, the Claimant was paid weekly wages of \$ Form 20 requested, and demands accounting of days worked and wages earned as provided by law.

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

11. Further grounds or unusual aspects of claim: Lump sum award and Utica-Mohawk structuring of disability award sought; and to provide all applicable benefits under the Act.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Southeastern Spine Institute, LLC, 1106 Chuck Dawley Blvd. Ste. 200, Mt. Pleasant, SC 29464

11b. To the best of your knowledge, did you have any prior permanent disability?
If yes, describe:

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

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

14. Estimated time needed for hearing:

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

☐ **Mediation**

☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.

☐ b. Mediation is required pursuant to Reg. 67-1802.

☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to (see attached certificate of service), by ☒ first class postage ☐ certified mail ☐ personal service.

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

Preparer's Signature: [Signature] Attorney: heblanc@joyelawfirm.com September 14, 2017
Title: _____ Email: _____ Date: _____

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 7/13

50

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

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE: Pending

Delinzy Grant,
Employee/Claimant,
vs.
Steel Technologies,
Employer,
and
Zurich American Insurance Company,
Carrier,
Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 14, 2017, I mailed the original of the Form 50 – Employee's Notice of Claim to:

Sonji Spann, Director of Claims
S.C. Workers' Compensation Commission
1333 Main Street
P. O. Box 1715
Columbia, SC 29202

With a copy to:

Zurich American Insurance Company
P.O. Box 968084
Schaumburg, IL 60196-8080

☒ VIA FIRST CLASS MAIL
☐ VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

by placing a copy of said documents in the United States Mail with sufficient postage thereon.



Erin Rojas
Case Manager to Ryan T. LeBlanc



WCC File #: **1713493**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Delinzy Grant SSN: 248-29-6460 Employer's Name: Steel Technologies
Address: 2430 Richardson Drive Address: 1220 S. Steel Circle
City: North Charleston State: SC Zip: 29406 City: Huger State: SC Zip: 29450
Home Phone: (843) 478-0443 Work Phone: () Insurance Carrier: Zurich American Insurance Company
Date of Injury: 6/5/2017
Preparer's Name: Matthew C. LaFave Law Firm: Crowe LaFave, LLC Preparer's Phone #: (803) 724-5727

Date of Injury or Illness: **6/5/2017**

Estimated time for hearing: **1 hour**

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Claimant has presented no evidence in support of a compensable repetitive trauma injury. Defendants also deny this claim due to notice issues.
2. It is **Admitted** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:

3. It is **Admitted** the relationship of employer and employee existed at the time in question. The reasons for denial are:

4. It is **Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
Claimant has presented no evidence in support of her having been injured while engaging in repetitive work related activities.
5. It is **Denied** notice of injury was given the employer. The reasons for denial are:
S.C. Code Ann. § 42-15-20(C).
6. It is **Denied** the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
Claimant has presented no evidence in support of a compensable repetitive trauma injury. Defendants also deny this claim due to notice issues.
7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :
Claimant has presented no evidence in support of a compensable repetitive trauma injury. Defendants also deny this claim due to notice issues.
8. It is **Denied** the employee is permanently disabled. The reasons for denial are:
Claimant has presented no evidence in support of a compensable repetitive trauma injury. Defendants also deny this claim due to notice issues.
9. It is **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ To be determined applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
S.C. Code Ann. §§ 42-1-172, 42-9-10, 42-9-20, 42-9-30, 42-9-35, 42-15-20, and 42-515-60. Defendants also plead subsequent independent and Intervening accident.

☐ **Mediation**

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to **Ryan T. LeBlanc, Esq., Joye Law Firm**
Address **P.O. Box 62888, North Charleston, SC 29419-2888** on the **14th** day of **June** 2018, by:

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

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

Preparer's Signature

Attorney for the Defendants
Title

matt@crowelafave.com
Email

SCWCC
June 14, 2018
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 07/15

51

Employer's Answer to Request for Hearing

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1713493

Delinzy Grant

Employee,
Claimant,

v.

Steel Technologies

Employer,

and

Zurich American Insurance Company,
Carrier,
Defendants.

**NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS DIRECT
EVIDENCE ON BEHALF OF
CLAIMANT
DELINZY GRANT**

TO: THE HONORABLE R. MICHAEL CAMPBELL, II, COMMISSIONER, SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, AND MATTHEW LAFAVE, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

PLEASE TAKE NOTICE THAT the undersigned attorney pursuant to the provisions of the South Carolina Workers' Compensation Act and Section 1-23-330, Code of Laws of South Carolina, 1976, as amended, herewith submit(s) the following written medical reports, copies which are attached hereto, as direct evidence on behalf of the Claimant:

APA MEDICAL SUBMISSIONS

APA #	PROVIDER	DATED	NO. PAGES	PAGE NOS.
1	Thomas S. Anderson, M.D.	9/20/2016 to 5/10/2018	15	1 - 15
2	Southeastern Spine Institute Medical Treatment	to	17	16 - 32

APA EXHIBIT SUBMISSIONS

EXH.	EXHIBIT	DATED	NO. PAGES	PAGE NOS.
A	Job Description		2	33 - 34

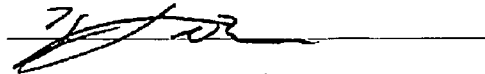
YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any physicians; whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, will be provided to the South Carolina Workers' Compensation Commission for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant:
Claimant, Delinzy Grant

JOYE LAW FIRM, L.L.P.

BY:

A handwritten signature in black ink, appearing to read "R. LeBlanc", is written over a horizontal line.

Ryan T. LeBlanc, Esquire
5861 Rivers Avenue
North Charleston, SC 29406

Charleston, SC
July 30, 2018

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE: 1713493

Delinzy Grant,

Employee/Claimant,

vs.

Steel Technologies,

Employer,

and

Zurich American Insurance Company,
Carrier,

Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 30, 2018, I served an electronic copy of the Form 58 and Notice of Witnesses and Written Medical Reports to be introduced as Direct Evidence to:

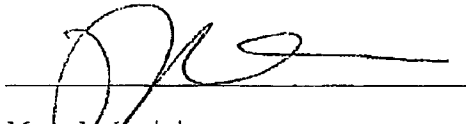
Honorable R. Michael Campbell, II
S. C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

With an electronic copy to:

matt@crowelafave.com
Matthew LaFave, Esquire
Crowe LaFave LLC
Post Office Box 1149
Columbia, SC 29202-1481

☐ VIA FIRST CLASS MAIL
☒ VIA ELECTRONIC MAIL (per Commission)
☐ VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

by placing a copy of said documents in the United States Mail with sufficient postage thereon.



Marcy M. Huckabee
Case Manager to Ryan T. LeBlanc

APA SUBMISSIONS

Re: Delinzy Grant v. Steel Technologies
WCC#: 1713493
DOI: 6/5/2017

DATE: 8/14/2018
TIME: 10:00 am
LOCATION: Isle of Palms City Hall
COMMISSIONER: R. Michael Campbell, II
DEFENSE: Matthew LaFave, Esquire

APA MEDICAL SUBMISSIONS

APA #	PROVIDER	DATED	NO. PAGES	PAGE NOS.
1	Thomas S. Anderson, M.D.	9/20/2016 to 5/10/2018	15	1 - 15
2	Southeastern Spine Institute Medical Treatment	to	17	16 - 32

APA EXHIBIT SUBMISSIONS

EXH.	EXHIBIT	DATED	NO. PAGES	PAGE NOS.
A	Job Description		2	33 - 34



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Patient Name: Delinzy S Grant

Encounter Date: 9/20/2016

Date of Birth: 10/1/1964

Account Number: 948100

Chief Complaint: Back and right leg pain

History of Present Illness: Ms. Smalls is a pleasant 51-year-old female with complaints of right-sided back and right lower extremity pain and numbness. She reports an injury approximately 9 years ago at her job causing current symptoms. The symptoms acutely were resolved with rest and medications. Over the past several years she has had intermittent back and right lower extremity pain. Her symptoms have worsened over the last several weeks without acute injury. She describes a constant pain in the low back and worsens throughout the day. She has burning and stabbing pains in the right buttock as well as a constant numbness in the right hamstring. She also has constant numbness to the great toes bilaterally. Her pain was so severe she was evaluated in the emergency department 2 weeks ago. She was given an intramuscular steroid injection, muscle relaxers and anti-inflammatories. She has not undergone lumbar MRI scan or completed formal physical therapy. She has been complaining home stretching regimen for the past several weeks without benefit.

She has 75% back and 25% leg pain. Aggravating factors include: Standing, rising from seated, walking, lying on her stomach or bending forward. Relieving factors include: Sitting, leaning forward, lying on her side or back. Her pain is a 6 out of 10 daily.

Past Medical History: Hypertension 401.9 (401.9), uterine cancer

Past Surgical History: left knee arthroscopy, hysterectomy

Current Medications: ibuprofen 800 mg tablet Oral, nabumetone 500 mg tablet Oral, lisinopril 20 mg-hydrochlorothiazide 25 mg tablet Oral, cyclobenzaprine 10 mg tablet Oral

Drug Allergies: No known allergies

Family History: arthritis, hypertension, diabetes, cancer

Personal and Social History: She is employed at Steel Technologies for the past 13 years as a machine operator. She denies history of blood transfusion, EtOH or tobacco use.

Review of Systems: A 15 point ROS was obtained with the patient. Pertinent positives are for: asthma; swelling of the knees and as per HPI. She denies fever, chills, shortness of breath, chest pains.

Physical Examination: Eye Exam:

She has no hemorrhages, exudates, or edema.

DIGITALLY SIGNED Thomas S. Anderson, MD
9/23/2016

1 of 2

P1

Patient Name: Grant, Delinzy S
Account number: 948100
DOB: 10/1/1964
Encounter Date: 9/20/2016

Cardiovascular Exam:

She has palpable peripheral pulses, a regular rate and rhythm, and no significant peripheral edema

Musculoskeletal Exam:

She has 5 out of 5 strength in the bilateral deltoids, triceps, biceps, wrist extensors, wrist flexors, and hand Intrinsic.
There is 5 out of 5 strength in the bilateral hip flexors, hip extensors, knee flexors, knee extensors, dorsiflexors, extensor hallucis longus, and plantar flexors.
She has normal muscular tone and muscular bulk. There are no abnormal muscle movements.
She has a nonantalgic gait and station.

Neurologic Exam:

She is awake, alert, and oriented to person place and time.
The cranial nerves II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII appear intact.
She has normal reflexes at the bilateral biceps, triceps, She has a diminished right patellar DTR and normal left. Normal at the bilateral ankles.
Positive straight leg raise on the right.
There is no Hoffman sign. There is no Clonus.
Her coordination is intact.
Her sensory exam is also intact.

Imaging Orders: 4 views of the cervical spine were ordered, obtained and interpreted from an orthopedic standpoint. 4 views of the lumbosacral spine were ordered, obtained and interpreted from an orthopedic standpoint.

Imaging Findings: She has a grade 1 spondylolisthesis at L4-5 on standing plain films that worsens slightly with flexion. She has cervical spondylosis as well.

Diagnosis Codes:

M47.892 Other spondylosis, cervical region
M43.16 Spondylolisthesis, lumbar region

Impression: She has a significant spondylolisthesis at L4-5. She needs to have this further evaluated with an MRI scan of the lumbar spine. We will see her back for review of the study and further treatment planning.

Treatment Plan: Lumbar epidural steroid injection was ordered. An MRI of the lumbar spine was ordered. The scan will need to include 3-D reformations to evaluate for any potential extraforaminal herniations as well as anticipation of injection therapy or surgical intervention. The patient is to return when the result of MRI is available.

DIGITALLY SIGNED Thomas S. Anderson, MD
9/23/2016

2 of 2
P2



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Patient Name: Delinzy S Grant

Encounter Date: 9/20/2016

Date of Birth: 10/1/1964

Account Number: 948100

Ms. Smalls was seen after completion of lumbar MRI scan. She is a new patient with complaints of back and right lower extremity pain. Her plain films showed a grade 2 spondylolisthesis at L4-5.

Her lumbar MRI scan is fairly normal with the exception of L4-5 and L5-S1 where she has degeneration. It appears that her spondylolisthesis does reduce in the recumbent position at L4-5. At this level she has severe bilateral foraminal stenosis, right greater than left.

I have recommended proceeding with right L4-L5 LESI after today's visit. She will complete the injection and return to the office in 2-3 weeks to see how she has progressed.

Kimsey Cooper-PA-C

Electronically signed by: Kimsey Cooper, PA-C
Date: 9/20/2016

DIGITALLY SIGNED Kimsey Cooper, PA-C
9/20/2016

1 of 1
P3



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Patient Name: Delinzy S Grant

Encounter Date: 12/14/2016

Date of Birth: 10/1/1964

Account Number: 948100

The patient returns for a visit after her right L4-5 lumbar epidural steroid injection. It did seem to help her right side, however, her left back is hurting her significantly. I reviewed her MRI scan. She has an unstable spondylolisthesis at L4-5 that reduces in recumbency. She has lateral recess stenosis and some foraminal stenosis at this level. She also has some degenerative disc disease at L5-S1.

Musculoskeletal Exam:

She has 5 out of 5 strength in the bilateral deltoids, triceps, biceps, wrist extensors, wrist flexors, and hand intrinsics. There is 5 out of 5 strength in the bilateral hip flexors, hip extensors, knee flexors, knee extensors, dorsiflexors, extensor hallucis longus, and plantar flexors.

She has normal muscular tone and muscular bulk. There are no abnormal muscle movements.

She has a normal gait and station.

Diagnosis Codes:

M47.892 Other spondylosis, cervical region

M43.16 Spondylolisthesis, lumbar region

Impression: She does have significantly splayed facet joints at the L4-5 level. I think she may benefit from facet joint injections. I will see her back in several weeks for further assessment and treatment planning.

Treatment Plan: Facet Joint/Lumbar injection was ordered. Patient to return in 3-4 weeks for follow up.

Thomas S. Anderson, MD

DIGITALLY SIGNED Thomas S. Anderson, MD
12/14/2016

1 of 1
P4



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Patient Name: Delinzy S Grant

Encounter Date: 3/2/2017

Date of Birth: 10/1/1964

Account Number: 948100

CC: Follow-up injection

HPI: Ms. Smalls returns to the office for follow-up. She was last seen in December with ongoing complaints of axial back pain. She is undergone bilateral L4-5 facet injections which provided approximately 2 months relief. Injection made her pain tolerable with the addition of tramadol. She has continued to work full time which includes lifting of greater than 75 pounds on a regular basis. She does have "good days and bad days" and this is unchanged after the injections. She feels that the facet injections helped more than the LESL.

Her MRI scan and plain films from September were reviewed and discussed. She has an unstable spondylolisthesis which is grade 1 at L4-5. This reduces in the recumbent position. She does have bilateral foraminal stenosis at this level.

Musculoskeletal Exam:

There is 5 out of 5 strength in the bilateral hip flexors, hip extensors, knee flexors, knee extensors, dorsiflexors, extensor hallucis longus, and plantar flexors.

She has normal-muscular tone and muscular bulk. There are no abnormal muscle movements.

She has an antalgic gait and station.

Diagnosis Codes:

M43.16 Spondylolisthesis, lumbar region

Treatment Plan: I had a long discussion with Ms. Smalls today about treatment options. She is a surgical candidate should she wish to pursue fusion at L4-5 given grade 1 spondylolisthesis. She also did well with bilateral facet injections and would make a good candidate for rhizotomy. She is wishing to avoid both of these options for the time being and would like to proceed with repeat facet injections. Should she continue to receive great benefit from facet injections I urged she consider rhizotomy. I will give her an information handout for this today. I have also refilled her tramadol. She will return in 2 months. Facet Joint/Lumbar injection was ordered. The patient was given Necessity/Excuse Form. The patient was given Necessity/Excuse Form. The patient is instructed to call us if pain persists or get worse. Patient to return in 2 months for follow up.

Clinical Quality Reporting:

A discussion about weight loss was held with the patient today. An exercise regimen was recommended and encouraged.

Kimsey Cooper, PA-C

DIGITALLY SIGNED Kimsey Cooper, PA-C
3/2/2017

1 of 1
P5



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Patient Name: Delinzy S Grant

Encounter Date: 4/27/2017

Date of Birth: 10/1/1964

Account Number: 948100

She's had injections done with mixed results. She is tired of her pain and would like to consider surgery.

Musculoskeletal Exam:

She has 5 out of 5 strength in the bilateral deltoids, triceps, biceps, wrist extensors, wrist flexors, and hand intrinsics. There is 5 out of 5 strength in the bilateral hip flexors, hip extensors, knee flexors, knee extensors, dorsiflexors, extensor hallucis longus, and plantar flexors.

She has normal muscular tone and muscular bulk. There are no abnormal muscle movements.

She has an antalgic gait.

Diagnosis Codes:

M43.16 Spondylolisthesis, lumbar region

M48.06 Spinal stenosis, lumbar region

Impression: She has a near grade 2 spondylolisthesis at L4-5 with significant movement on flexion extension as well as reduction with recumbency. She has some stenosis as well. She is a good candidate for a minimally invasive fusion. We discussed the risks of surgery as well as the recovery process. She indicated a full understanding and a desire to proceed.

Treatment Plan: Recommending operative intervention in the form of posterior lumbar spine arthrodesis. Also recommending the continuation of physical therapy and medication through the date of the surgery to promote optimal post-operative rehabilitation. The patient understands they may not have immediate or dramatic relief, but there is reason to be hopeful for clinical improvement with postoperative rehabilitation. The patient understands the risks include but are not limited to bleeding, infection, nerve damage, worsening pain, no relief of pain, need for further procedures and need for further surgery and hospitalization. The patient understands the surgery is designed to minimize symptoms, but is not necessarily designed to alter their state of disability. Also given Delinzy's history, physical exam and diagnostic imaging, I do feel Delinzy would benefit from a custom fitted prefabricated LSO. As each patient's body habitus is unique, the orthosis will be adjusted to provide an individualized fit leading to optimal control thus facilitating the most effective results. An additional frontal corset low profile front panel has been ordered to be utilized during activities such as prolonged sitting. The orthosis will help reduce her pain by restricting mobility of the trunk as well as supporting spinal muscles. This will also provide increased lumbosacral stability which will reduce stress to the spinal structures and thereby aid in reducing her pain.

Thomas S. Anderson, MD

DIGITALLY SIGNED Thomas S. Anderson, MD
4/27/2017

1 of 1
P6



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Patient Name: Delinzy S Grant

Encounter Date: 6/22/2017

Date of Birth: 10/1/1964

Account Number: 948100

CC: First postop

HPI: Ms. Smalls returns to the office 2 weeks status post right L4-L5 posterior lumbar interbody fusion. Her operation was completed on 6/8/2017 by Dr. Thomas Anderson secondary to spondylolisthesis.

She is complaining of some soreness and pain in the back. She has not been as ambulatory as recommended but has worn her brace as instructed. She reports constipation secondary to narcotic use. She is taking 2 tablets of oxycodone every 4 hours. Ms. Smalls completed her postoperative antibiotics and denies fever, chills, shortness of breath, chest pain.

AP and lateral lumbar films were obtained today. These were compared to her preoperative films. She has had reduction of her spondylolisthesis with proper placement of an interbody spacer and pedicle screws at L4-5.

Physical exam: She is ambulatory with a slow, antalgic gait using a walker for assistance. She has no pedal edema. Pulses palpable. Her lumbar incision was inspected and is clean, dry and intact. No erythema, hematoma or exudates.

Precautions, restrictions, red flag symptoms and wound care were discussed. I will give her samples of Movantik for opioid-induced constipation. I will refill her medications. She is a candidate for a bone growth stimulator which will be discussed today. I would like to see her back in 4 weeks' time. She knows to contact the office sooner with concerns.

Imaging Orders:

X-rays of the lumbosacral spine were ordered, obtained and interpreted from an orthopedic standpoint.

Diagnosis Codes:

Z47.89 Encounter for other orthopedic aftercare

Treatment Plan: The patient was given sample of Movantik 25mg. A bone growth stimulator was prescribed and appropriate use instruction provided. The patient is instructed to call us if pain persists or get worse. Patient to return in 4 weeks for follow up.

Kimsey Cooper, PA-C

DIGITALLY SIGNED Kimsey Cooper, PA-C
6/22/2017

1 of 1
P7



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Patient Name: Delinzy S Grant

Encounter Date: 7/20/2017

Date of Birth: 10/1/1964

Account Number: 948100

Ms. Smalls returns to the office for follow-up. She is 6 weeks status post right L4-L5 posterior lumbar interbody fusion completed on 6/8/2017. She has improved since her last visit and has complaints of axial back pain. She denies any lower extremity pain, numbness or weakness.

She has continued to ambulate daily.

Imaging: AP and lateral lumbar films are updated today and reviewed. Dr. Anderson reviewed these with me.

Precautions, restrictions, red flag symptoms were reviewed. I'll refill her medications and asked that she remain in her brace. We will see her back in 6 weeks' time for follow-up. She was advised to contact me immediately with any change in symptoms.

Imaging Orders:

X-rays of the lumbosacral spine were ordered, obtained and interpreted from an orthopedic standpoint.

Diagnosis Codes:

M54.5 Low back pain

Treatment Plan: A work status report was created and given to the patient. The patient is instructed to call us if pain persists or get worse. Patient to return in 6 weeks for follow up.

Kimsey Cooper, PA-C

DIGITALLY SIGNED Kimsey Cooper, PA-C
7/20/2017

1 of 1
P8



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Patient Name: Delinzy S Grant

Encounter Date: 8/31/2017

Date of Birth: 10/1/1964

Account Number: 948100

The patient returns for a visit. She has good days and bad days. She thinks her back is worse on rainy days. She feels pretty good otherwise.

Musculoskeletal Exam:

She has 5 out of 5 strength in the bilateral deltoids, triceps, biceps, wrist extensors, wrist flexors, and hand intrinsics. There is 5 out of 5 strength in the bilateral hip flexors, hip extensors, knee flexors, knee extensors, dorsiflexors, extensor hallucis longus, and plantar flexors.

She has normal muscular tone and muscular bulk. There are no abnormal muscle movements.

She has a normal gait and station.

I reviewed her x-rays from today. She's had no further recurrence of her spondylolisthesis. Everything looks solid and stable compared with her prior x-ray.

Imaging Orders:

X-rays of the lumbosacral spine were ordered, obtained and interpreted from an orthopedic standpoint.

Diagnosis Codes:

M54.5 Low back pain

M43.16 Spondylolisthesis, lumbar region

M48.06 Spinal stenosis, lumbar region

Impression: We are in a refill her pain medication. I like to see her back in 2 months. She's not ready to return to work at this point.

Treatment Plan: The patient was given Necessity/Excuse Form. Patient to return in 2 months for follow up.

Thomas S. Anderson, MD

DIGITALLY SIGNED Thomas S. Anderson, MD
8/31/2017

1 of 1
P9



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Patient Name: Delinzy S Grant

Encounter Date: 11/1/2017

Date of Birth: 10/1/1964

Account Number: 948100

Ms. Smalls returns to the office for a two-month follow-up. She is status post L4-L5 posterior lumbar interbody fusion completed on 6/9/2017. She has improved after surgery in regards to her lower extremity complaints. She denies any further lower extremity pain or numbness. She does continue to suffer from back pain that is constant but worsens with certain activities and "cold weather." She is taking oxycodone on average 2-3 times per day. Unfortunately, she has now lost her job.

Imaging: AP and lateral lumbar films were obtained. These are compared to all previous images.

On physical exam she is ambulatory with a slow gait. She is significantly tender over the bilateral SI joints. She is more tender on the right than the left. She has no focal muscle deficits to the lower extremities. Her incisions are healed.

I would like her to begin to wean out of her brace at this point. She is 5 months status post lumbar fusion. She could consider SI joint injections in the future should she continue to have pain in the SI joint region. It is possible she is suffering from sacroiliitis. I will refill her medications. We'll obtain a urine drug screen and have her follow up in 8 weeks.

Diagnosis Codes:

M54.5 Low back pain

Treatment Plan: Patient to return in 8 weeks for follow up. The patient is instructed to call us if pain persists or get worse.

Kimsey Cooper, PA-C

DIGITALLY SIGNED Kimsey Cooper, PA-C
11/1/2017

1 of 1
P10



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Patient Name: Delinzy S Grant

Encounter Date: 1/24/2018

Date of Birth: 10/1/1964

Account Number: 948100

She is status post L4-5 posterior lumbar interbody fusion in June. Overall she is doing okay. She slipped on the ice when it was slowed and aggravated her back. Her pain levels are a 7.5 out of 10 currently.

Musculoskeletal Exam:

She has 5 out of 5 strength in the bilateral deltoids, triceps, biceps, wrist extensors, wrist flexors, and hand intrinsics. There is 5 out of 5 strength in the bilateral hip flexors, hip extensors, knee flexors, knee extensors, dorsiflexors, extensor hallucis longus, and plantar flexors. She has normal muscular tone and muscular bulk. There are no abnormal muscle movements. She has a normal gait and station.

Her x-rays look stable. She is having good bone growth anterior to her interbody spacer. Her spondylolisthesis has not shifted any further.

Imaging Orders:

X-rays of the lumbosacral spine were ordered, obtained and interpreted from an orthopedic standpoint.

Diagnosis Codes:

M47.897 Other spondylosis, lumbosacral region

Impression: She has a stable appearing x-ray. She is fusing. We will refill her medications including muscle relaxers and I will see her back in 6-8 weeks.

Treatment Plan: Patient to return in 8 weeks for follow up.

Thomas S. Anderson, MD

DIGITALLY SIGNED Thomas S. Anderson, MD
1/24/2018

1 of 1
P11

Re: Client: Delinzy Smalls Grant
SSN: 248-29-6460
DOB: 10/01/1964
D/A: 06/05/2017

TO WHOM IT MAY CONCERN:

I have evaluated and treated Ms. Delinzy Smalls Grant with regards to her low back injury and have been asked to respond to the following questions:

Ms. Grant has treated for a number of years regarding low back problems. Approximately nine (9) years ago, she had an injury at work which caused problems to her low back. Those symptoms resolved themselves. Over the years, she has had intermittent low back and right lower extremity pain. However, these symptoms were never as severe in pain and frequency as they were around September of 2016.

The primary question regarding this questionnaire is to determine whether Ms. Grant's low back problems are the result of age, repetitive activities she performs at work, or some other reason as to the cause.

Ms. Grant has worked at Steel Technologies since March 1, 2004. She has held the position of a Machine Operator the vast majority of those 13 plus years. Her physical job requirements are specified by Steel Technology as follows:

- Able to stand and walk for extended periods of time
- Able to bend, stoop, twist, reach, climb onto forklift, and climb stairs as needed
- Able to operate an overhead crane and/or forklift as needed
- Able to communicate effectively
- Able to clearly understand instructions or directions given by co-workers or manager. Able to respond to emergency evacuation notices, and general paging announcements over the PA system.
- Able to lift 50 pounds
- Able to work around heavy machinery at all times

On September 20, 2016, Ms. Grant's MRI showed moderate to severe spondylosis at L4-L5 with a moderate probability of nerve root compression. At first, she was treated with a lumbar epidural injection and then a facet joint injection.

On April 27, 2017, with no significant relief from the injections, upon your recommendation, Ms. Grant elected to undergo surgery.

On June 8, 2017, you performed a Right L4-L5 posterior lumbar interbody fusion with right-sided pedicle screw instrumentation.

On July 20, 2017, you indicated that Ms. Grant was unable to return to work. On August 31, 2017, you indicated the same, but did mention that you would see in her two (2) months. On November 1, 2017, you did not address her work restrictions as Ms. Grant indicated to you that she had lost her job.

1. In your professional opinion, to a reasonable degree of medical certainty, do you believe it is more likely than not, that the repetitive activities Ms. Grant performs as a Mechanic Operator directly caused the injury she sustained to her lumbar spine?

YES ☒ NO ☐ CAN'T COMMENT ☐

2. In your professional opinion, to a reasonable degree of medical certainty, do you believe it is more likely than not, that the repetitive activities Ms. Grant performs as a Mechanic Operator aggravated, exacerbated, and/or worsened her lumbar spine?

YES ☒ NO ☐ CAN'T COMMENT ☐

3. If "yes" to questions #1 and/or #2 above, in your professional opinion, to a reasonable degree of medical certainty, were all of the medical treatment you recommended and performed with regards to Ms. Grant's low back injury, medically necessary to lessen her disability? (If the answer is "No" please indicate which medical treatment was not medically necessary to lessen her disability.)

YES ☒ NO ☐ CAN'T COMMENT ☐

4. In your professional opinion, to a reasonable degree of medical certainty, what work restrictions would you have placed on Ms. Grant, as a result of her low back injury, as of November 1, 2017?

5. In your professional opinion, to a reasonable degree of medical certainty, is Ms. Grant at maximum medical improvement (MMI) for her low back injury?

YES ☐ NO ☒ CAN'T COMMENT ☐

6. If "yes" to question #5 above, what would be your diagnosis of Ms. Grant as a result of her lumbar spine injury? (Please note that your answer will be to a reasonable degree of medical certainty).

7. If "yes" to question #5 above, what impairment rating would you assign to her lumbar spine? (Please note that your answer will be to a reasonable degree of medical certainty).

Impairment Rating: _____% (whole person) or (lumbar spine)

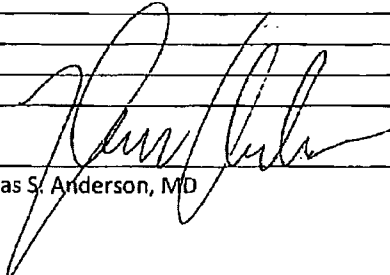
8. If "yes" to question #5 above, what permanent restrictions would you assign Ms. Grant as a result of her low back injury? (Please note that your answer will be to a reasonable degree of medical certainty).

9. If "yes" to question #5 above, what future medical treatment do you believe Ms. Grant will need to lessen her disability to her low back injury? Please note that I am seeking medical treatment where you believe there is a greater than fifty (50%) percent likelihood that Ms. Grant will need said treatment in the future. (Please note that your answer will be to a reasonable degree of medical certainty).

10. If there are any comments you wish to add, which was not included in this questionnaire, please do so below. (Please note that any comments you make will be to a reasonable degree of medical certainty).

I continue to treat this patient and
will be able to answer more of
these questions at a later date

Date: 2/21/18, 2018


Thomas S. Anderson, MD



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Patient Name: Delinzy S Grant

Encounter Date: 5/10/2018

Date of Birth: 10/1/1964

Account Number: 948100

The patient returns for a visit. Overall she is improved from her surgery. She lists her pain level is a 7 today. This waxes and wanes.

Musculoskeletal Exam:

She has 5 out of 5 strength in the bilateral deltoids, triceps, biceps, wrist extensors, wrist flexors, and hand intrinsic. There is 5 out of 5 strength in the bilateral hip flexors, hip extensors, knee flexors, knee extensors, dorsiflexors, extensor hallucis longus, and plantar flexors.

She has normal muscular tone and muscular bulk. There are no abnormal muscle movements.

She has a normal gait and station.

Her x-rays are stable.

Imaging Orders:

X-rays of the lumbosacral spine were ordered, obtained and interpreted from an orthopedic standpoint.

Diagnosis Codes:

M43.16 Spondylolisthesis, lumbar region

M48.06 Spinal stenosis, lumbar region

Impression: She has done reasonably well from a fusion. She would like to try an injection at L5-S1. She does have some degenerative change at this level as well. I will also refill her pain medication.

Treatment Plan: Lumbar epidural steroid injection under fluoroscopic guidance was ordered. Patient to return in 3 months for follow up.

Thomas S. Anderson, MD

ELECTRONICALLY SIGNED BY Thomas S. Anderson,
MD Thomas S. Anderson, MD
5/10/2018

1 of 1

P15

Southeastern Spine Institute ASC

Mt. Pleasant - Chuck Dawley

Patient: Smalls, Delinzy
ID#: 948100
DOB: 10/01/1964

Date: September 20, 2016

Surgeon: German Levin, M.D.

Preoperative Diagnosis:

1. Lumbar degenerative disc disease with radiculopathy.
2. Lumbar radiculopathy.

Procedure: L4-L5 Lumbar Interlaminar epidural injection

Description of procedure:

After informed consent was obtained, patient was escorted to the procedure room and placed prone on a fluoroscopy table. Vital signs including blood pressure, pulse and O₂ saturation were monitored prior, during and after the procedure. Conscious sedation was obtained utilizing IV Versed. The lumbar area was prepped and draped in a usual sterile fashion using Betadine or chlorhexidine. 1 cc of 1% lidocaine was used for local anesthesia at each level. Under fluoroscopic guidance, a 17-gauge, 5 inch Tuohy spinal needle was introduced under direct fluoroscopic guidance using paramedian approach towards interlaminar space and incrementally advanced until loss of resistance to preservative free normal saline was noted. Aspiration was negative for blood or CSF. Under live fluoroscopy, 2 cc of nonionic contrast was injected showing correct epidural spread without vascular uptake. Then, after negative aspiration for blood or CSP, injection was performed with a mixture of 2 cc of 1% lidocaine and 80 mg of Depo-Medrol without any complications. Needle was then removed and Band-Aid was applied.

There were no complications noted during or immediately after the procedure. The patient tolerated the procedure well and was transferred to the recovery room on the stretcher in a stable condition. Patient was then discharged home with a driver and with a follow up appointment to the clinic.

German Levin, M.D.

GL/jbb
T: 09/23/2016

CC: German Levin, M.D.

09/03/2016
GL Lumbar interlaminar epidural injection

Southeastern Spine Institute ASC
Mt. Pleasant – Chuck Dawley

Patient: Smalls, Delinzy Date: December 14, 2016
ID # 948100
DOB: 10/01/1964

Physician: John F. Johnson, M.D.

Preoperative Diagnosis: Lumbar spondylosis.
Postoperative Diagnosis: Lumbar spondylosis.

Operation : 1. Bilateral L4-5 Facet Injection

Procedure Note:

After informed consent was obtained from the patient and IV was placed, the patient was positioned prone on the fluoroscopy table. Conscious sedation was obtained using IV Versed. Under fluoroscopy, the appropriate site of injection was identified and the overlying skin marked. The area was prepped and draped in the usual sterile fashion. Skin and subcutaneous tissue were anesthetized with 1% Lidocaine.

A 3.5 inch, 22 gauge spinal needle was advanced under fluoroscopy to each facet. Correct needle positioning was confirmed under fluoroscopy. Aspiration was negative for blood and CSF. Then a solution of 1 cc normal saline and 40 mg methylprednisolone was injected into each facet in equally divided doses.

Vital signs were monitored including blood pressure, pulse, and O₂ saturation prior to, during and after the procedure. The patient tolerated the procedure well without complications and was discharged without incident.

John F. Johnson, M. D.

JFJ/jbb
T: 12/27/2016

CC: John F. Johnson, M.D.

Revised 03/24/2015
Facet Injection(s)

Southeastern Spine Institute ASC
Mt. Pleasant – Chuck Dawley

Patient: Smalls, Delinzy
ID#: 948100
DOB: 10/01/1964

Date: March 2, 2017

Surgeon: German Levin, M.D.

Preoperative Diagnosis:

1. Lumbar Spondylosis.
2. Facet Joint Mediated Pain

Procedure: Bilateral L4-5 Lumbar Facet Joints Injection

Description of procedure:

After informed consent was obtained the patient was escorted to the procedure room and placed prone on a fluoroscopy table. Vital signs including blood pressure, pulse and O₂ saturation were monitored prior, during and after the procedure. Conscious sedation was obtained using IV Versed. The lumbar area was prepped and draped in a usual sterile fashion using Betadine or chlorhexidine. 1 cc of 1% lidocaine was used for local anesthesia at each level. Under fluoroscopic guidance a 22-gauge, 3.5 inch spinal needle was advanced towards targeted facet joints one at the time. AP and lateral radiographs were obtained to confirm proper needle position. Under live fluoroscopic imaging, 0.3 cc of contrast was injected in each joint one at the time outlining the confines of facet joint and no vascular uptake. Then after negative aspiration for blood or CSF, injection was performed with mixture of 1 cc of 1% lidocaine and 20 mg of Depo-Medrol at each level without any complications. Needles were then removed and Band-Aids were applied.

There were no complications noted during or immediately after the procedure. The patient tolerated the procedure well and was transferred to the recovery room on the stretcher in a stable condition. Patient was then discharged home with a driver and with a follow up appointment to the clinic.

German Levin, M.D.

GL/jbb
T: 03/06/2017

CC: German Levin, M.D.

03/03/2016
GL, Lumbar Facet Joints Injection

East Cooper Medical Center
2000 Hospital Drive
Mount Pleasant, SC 29464
(843) 881-0100

Operative Report

Patient Name: SMALLS, DELINZY D THOMAS S ANDERSON, M.D.
MRN: 5674112ECH DOR: 10/01/1964
ACCT: 21428800ECH Pt. Class: D

DATE OF SURGERY: 06/08/2017.

ATTENDING PHYSICIAN: Thomas Anderson, M.D.

PREOPERATIVE DIAGNOSES: L4-L5 spondylolisthesis.

POSTOPERATIVE DIAGNOSES: L4-L5 spondylolisthesis.

PROCEDURE PERFORMED: Right L4-L5 posterior lumbar interbody fusion with right-sided pedicle screw instrumentation.

SURGEON: Thomas Anderson, M.D.

ASSISTANT: Carter.

ANESTHESIA: General endotracheal.

ESTIMATED BLOOD LOSS: 50 mL.

COMPLICATIONS: None.

INDICATIONS: The patient is a 52-year-old female with a grade II spondylolisthesis at L4-L5. She failed conservative therapy and elected to have this treated operatively.

PROCEDURE IN DETAIL: After informed consent was obtained, the patient was taken to the operating room where she was intubated and anesthetized. IV antibiotics were administered. She was turned into the prone position on the laminectomy rolls and positioned for surgery. All pressure points were checked and padded. The skin of the back was prepped and draped in the usual sterile fashion. Intraoperative fluoroscopy was used throughout the procedure to assist with level localization and implantation of hardware. Intraoperative neuro monitoring was used throughout the procedure without significant changes. A time-out procedure was performed. A 3-cm skin incision was made 5 cm off the midline on the patient's right side. Bleeding was controlled using electrocautery. The subcutaneous tissues were dissected until the lumbar fascia was encountered. This was incised and the paraspinal muscles were divided. A tube retractor was placed over the L4-L5 facet joint on the patient's right side. Confirmatory x-rays were taken. A laminotomy and complete medial facetectomy was performed at L4-L5 on the right. The ligamentum flavum was opened. The operating microscope was draped and

Page 1 of 2

East Cooper Medical Center

Patient Name: SMALLS, DEJINZY D
MRN: 5674112ECH

THOMAS S ANDERSON, M.D.
ACCT: 21428800ECH

brought into the field. The thecal sac and traversing nerve root were carefully retracted medially. The disk space was incised and cleaned of disk material using various scraping instruments. The disk space was then filled with a combination of autologous bone and demineralized bone matrix. An expandable interbody cage was then impacted into the disk space and expanded with good distraction of the endplate and partial reduction of the spondylolisthesis. The tube retractor was removed. A Wiltse approach was made to the transverse processes of L4 and L5. Pedicle screws were placed along with an intervening locking titanium rod. The wound was irrigated with saline laterally. The incision was closed in a standard fashion. All counts were reported as correct at the end of the case. The patient tolerated the procedure well and was transferred to the recovery area in stable condition.

THOMAS S. ANDERSON, M.D.
DATE: _____ TIME: _____

SPKR:TSA DD: 06/12/2017 16:13 EDT DT: 06/12/2017 19:23 EDT
JOB#: 10822665 MT#: F1
DOCUMENT#: 21960156
R:

PAGE 3 OF 2

P20

East Cooper Medical Center

2000 Hospital Drive
Mount Pleasant, SC 29464
(843) 881-0100

History and Physical

Patient Name:	SMALLS, DELINZY D	THOMAS S ANDERSON, M.D.
MRN:	5674112ECH	ADM: 06/08/2017
ACCT:	21428800ECH	Pt. Class: P
DOB:	10/01/1964	Room / Bed:

CHIEF COMPLAINT: Back and right lower extremity pain.

HISTORY OF PRESENT ILLNESS: Ms. Smalls is a pleasant 52-year-old female with complaints of right-sided back and right lower extremity pain and right lower extremity numbness. She reports an injury approximately 9 years ago at her job causing her current symptoms. The symptoms acutely were resolved with rest and medications. Over the last several years, she has had intermittent back and right lower extremity pain. Her symptoms have worsened over the last several months without acute injury. She describes a constant pain in the low back that worsens throughout the day. She has burning and stabbing pain into the right buttock as well as a constant numbness in the right hamstring. She has constant numbness to the great toes bilaterally. Her pain was so severe, she has been evaluated in the Emergency Department several times. She has been a patient at our practice in 9/2016. She has undergone a multitude of epidural steroid injections as well as facet injections. These injections worked well for her, but were temporary. She has been completing a home stretching regimen for the past several months without benefit. She describes 75% back and 25% leg pain. Aggravating factors include standing, rising from seated, walking, lying on her stomach or bending forward. Relieving factors include sitting, leaning forward, lying on her side or back. Her pain is 6/10 daily.

PAST MEDICAL HISTORY: Hypertension, uterine cancer.

PAST SURGICAL HISTORY: Left knee arthroscopy, hysterectomy.

CURRENT MEDICATIONS:

1. Ibuprofen 800 mg.
2. Nabumetone 500 mg.
3. Lisinopril 20 mg/hydrochlorothiazide 25 mg.
4. Cyclobenzaprine 10 mg.

DRUG ALLERGIES: No known drug allergies.

FAMILY HISTORY: Arthritis, hypertension, diabetes, cancer.

PERSONAL AND SOCIAL HISTORY: She is employed at steel technologies and has been so for the past 13 years as a machine operator. She denies history of blood transfusion, alcohol or tobacco use.

REVIEW OF SYSTEMS: A 15-point review of systems was obtained with the patient. Pertinent positives are for asthma, swelling of the knees and as per HPI. She denies general or constitutional symptoms.

East Cooper Medical Center

Patient Name: SMALLS, DELINZY D THOMAS S ANDERSON, M.D.
MRN: 5674112ECH ACCT: 21428800ECH

PHYSICAL EXAMINATION:

GENERAL: Ms. Smalls is a 52-year-old female, pleasant, well appearing, alert and oriented x3 with an appropriate affect, afebrile.

HEENT: Pupils are equal, round, reactive to light. Extraocular muscles are intact bilaterally. There are no pharyngeal erythema or exudates.

NECK: Supple. No masses or thyromegaly. No JVD.

CARDIOVASCULAR: Reveals a regular rate and rhythm. No murmurs, rubs or gallops.

LUNGS: Clear to auscultation bilaterally. No rhonchi, rales or wheezing.

ABDOMEN: Soft, nontender, nondistended, no hepatosplenomegaly. Normoactive bowel sounds.

MUSCULOSKELETAL: She has 5/5 strength in the bilateral deltoids, triceps, biceps, wrist extensors, wrist flexors and hand intrinsic. There is 5/5 strength in the bilateral hip flexors, hip extensors, knee flexors, knee extensors, dorsiflexors, extensor hallucis longus and plantar flexors. She has normal muscular tone and muscular bulk. There are no abnormal muscle movements. She has an antalgic gait.

NEUROLOGIC: Cranial nerves II-XII are grossly intact. She has normal reflexes at the bilateral biceps, triceps. She has diminished right patellar deep tendon reflex and normal left. She has normal reflexes at the bilateral ankles. Positive straight leg raise on the right. No Hoffmann sign or clonus.

IMAGING:

1. X-rays of the lumbar spine show a near grade II spondylolisthesis at L4-L5 with significant movement on flexion and extension.
2. Lumbar MRI scan shows a spondylolisthesis at L4-L5 that reduces in recumbency. She has severe bilateral foraminal stenosis, right greater than left at this level as well.

PLAN: Ms. Smalls is recommended for L4-L5 posterior lumbar interbody fusion from the right. She has evidence of a grade II spondylolisthesis that is unstable on flexion, extension and reduces in recumbency. She has ongoing back and right lower extremity pain that has not responded to conservative treatment including medication, therapy and injections. The risks, benefits and potential complications of the procedure were discussed and she wishes to proceed.

East Cooper Medical Center

Patient Name:
MRN:

SMALLS, DELINZY D
5674112ECH

THOMAS S ANDERSON, M.D.
ACCT: 21428800ECH

THOMAS S ANDERSON, M.D.

Dictated by KIMSEY COOPER, PAC

SPKR: KC DD: 06/05/2017 16:29 EDT DT: 06/05/2017 22:17 EDT

JOB#: 10790826 MT#: FI

DOCUMENT#: 21902764

R:

East Cooper Medical Center

2000 Hospital Drive
Mount Pleasant, SC 29464
(843) 881-0100

Discharge Summary

Patient Name:	SMALLS, DELINZY D	THOMAS S ANDERSON, M.D.
MRN:	5674112ECH	ADM: 06/08/2017
ACCT:	21428800ECH	DIS: 06/10/2017
DOB:	10/01/1964	

DATE OF ADMISSION:

DATE OF DISCHARGE:

HISTORY OF PRESENT ILLNESS: Ms. Smalls is a 52-year-old female with a grade II spondylolisthesis at L4-L5. She failed conservative therapy and elected to have this treated operatively.

HOSPITAL COURSE: Ms. Smalls was admitted to East Cooper Medical Center on 6/8/2017. On that date, she underwent an L4-L5 posterior lumbar interbody fusion with right-sided pedicle screw fixation. Her operation was completed by Dr. Thomas Anderson. The patient tolerated the procedure well. She has expected low back pain. She was weaned from the PCA pump to oral medications. She was seen by physical therapy, occupational therapy and the hospitalist. On 6/10/2017, she passed PT and OT goals and was felt medically stationary for discharge by the hospitalist. She was discharged home on 6/10/2017.

Please refer to the hospital records for more detailed information regarding her hospitalization and procedure.

THOMAS S ANDERSON, M.D.

Dictated by KIMSEY COOPER, PAC

DATE: _____ TIME: _____

SPKR:KC DD: 07/28/2017 13:45 EDT DT: 07/28/2017 14:01 EDT

JOB#: 11053727 MT#: F1

DOCUMENT#: 23185588

R:

East Cooper Medical Center

2000 Hospital Drive
Mount Pleasant, SC 29464
(843) 881-0100

Consultation

Patient Name: SMALLS, DELINZY D BRIAN R WHIRRETT, M.D.
MRN: 5674112ECH DOB: 10/01/1964
ACCT: 21428800ECH Pt. Class: 1

DATE OF CONSULTATION: 06/09/17.

REQUESTING PHYSICIAN: Thomas Anderson, M.D.

ATTENDING PHYSICIAN: Brian Whirrett, M.D.

REASON FOR CONSULTATION: Assessment and recommendations of hypertension and asthma.

HISTORY OF PRESENT ILLNESS: Ms. Smalls is a pleasant 52-year-old female who presented to East Cooper Medical Center yesterday with the chief complaint of back and right lower extremity pain. She is currently status post an L4 through L5 TLIF. For full details, please see Dr. Anderson's H&P.

Patient endorses a history of hypertension, asthma and uterine cancer. She states her asthma is very well controlled. She uses a rescue inhaler as needed, which she states is maybe once a month. She has more problems in the wintertime. Currently, postoperatively, she denies any respiratory complaints. No shortness of breath or wheezing. She has gotten out of bed into the chair with nursing. She denies any lightheadedness or dizziness with that. She does endorse some nausea and vomiting this morning after receiving a steroid injection. She has been able to tolerate p.o. and is drinking lots of fluids. She denies any current nausea. She denies any chest pain, abdominal pain, vomiting or diarrhea. She has had positive status postoperatively. She denies any history of heart disease, strokes, blood clots or bleeding disorders.

REVIEW OF SYSTEMS: A 10-point review of systems was obtained and is negative unless what is noted in the HPI.

PAST MEDICAL HISTORY:

1. Hypertension.
2. Asthma.
3. Uterine cancer.

PAST SURGICAL HISTORY: She has had total hysterectomy and a right knee scope.

SOCIAL HISTORY: She denies any alcohol or tobacco. She is married.

FAMILY HISTORY: Includes arthritis, hypertension, diabetes and cancer.

East Cooper Medical Center

Patient Name: SMALLS, DELINZY D
MRN: 5674112ECH

BRIAN R WHIRRETT, M.D.
ACCT: 21428800ECH

ALLERGIES: She has no known drug allergies.

HOME MEDICATIONS:

1. Albuterol 2 puffs b.i.d. p.r.n. wheezing.
2. ICTZ/lisinopril 25/20 in the morning.
3. Oxycodone 10 mg q.3 p.r.n. pain.

PHYSICAL EXAMINATION:

VITAL SIGNS: Temperature is 97.7, pulse 74, respirations 16, blood pressure 100/53, and O2 sat is 99% on room air.

GENERAL: Awake, alert, no acute distress. Obese.

HEENT: Head: atraumatic, normocephalic; eyes: EOML, normal conjunctiva/sclera; nose: nares patent without discharge; oropharynx: normal dentition, moist mucous membranes.

NECK: Supple, no masses or swelling.

CARDIOVASCULAR: Regular rate and rhythm, normal heart sounds.

PULMONARY: Clear to auscultation bilaterally, aerating well, no distress.

GASTROINTESTINAL: Soft, non-tender, normal bowel sounds.

EXTREMITIES: Moves all, no peripheral edema, dorsalis pedis pulses 2+ bilaterally.

NEURO: Alert, oriented x3, no focal deficits.

SKIN: Warm, dry, intact, no gross abnormalities.

LABORATORY DATA: White count 5, hemoglobin 12.9, hematocrit 37.3, and platelets 197. Sodium 139, potassium 2.9, BUN 11, creatinine 0.8, and glucose 102.

DIAGNOSTIC DATA: 12-lead EKG reviewed by me shows normal sinus rhythm.

ASSESSMENT AND RECOMMENDATIONS:

1. Benign essential hypertension with low blood pressure postoperatively. We will continue her home medications with hold parameters. She was not orthostatic today upon standing. We will monitor closely. Encouraged up slowly with physical therapy.
2. Mild intermittent asthma. This appears very well controlled. She uses her rescue inhaler rarely. We will make DuoNebis available to her while she is hospitalized. Encouraged aggressive incentive spirometry.
3. Hypokalemia. Preop labs reveal a potassium of 2.9. This was repeated this morning along with the magnesium level. We will replete if necessary.
4. Low back pain. She is currently status post T1,IF of L4 through L5 with Dr. Anderson. We defer postop care, deep venous thrombosis prophylaxis and pain management to Southeastern Spine.

I personally saw and evaluated the patient and agree with the history and plan outlined by the physician assistant.

BRIAN R WHIRRETT, M.D.

Page 3

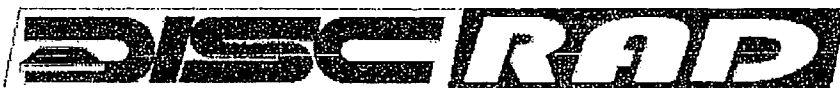
East Cooper Medical Center

Patient Name: SMALLS, DELINZY D
MRN: 5674112ECH

BRIAN R WHIRRETT, M.D.
ACCT: 21428800ECH

Dictated by RENEE M. MARTIN, PA
DATE: _ _ _ TIME: _ _

SPKR:RMM DD: 06/09/2017 10:42 EDT DT: 06/09/2017 13:58 EDT
JOB#: 9152613 MTF: FI
DOCUMENT#: 21935833
R:



Richard C. Holgate, M.D.

The Southeastern Spine Institute
1106 Chuck Dawley Blvd.
Mount Pleasant, SC 29464
843-849-1551

FINAL REPORT

Patient: **Delinzy Smalls** Exam Date: **9/20/2016**
Patient Phone: -- Exam Name: Lumbar
SSN: 248-29-6460 Modality: MRI
Patient #: 948100 Referring Doctor: Anderson, Thomas
Clinical F/51 WITH RIGHT LOW BACK AND LEG PAIN FOR THREE TO FOUR WEEKS. NO RECENT
Information: TRAUMA. HT-5'5" WT-250 LBS.

TECHNIQUE: The patient is examined on the High Field GE Horizon LX High Speed MR System. A phased array coil is used to obtain high resolution images of the lumbar spine. **SERIES:** 1) COR, T1, SE, 7 mm; 2) SAG, Proton, FSE, 3 mm; 3) AX, Oblique, Proton, T2, FSE, 3 mm; 4) AX, T1, SE, 5 mm; 5) AX, Proton, FSE, 4 mm.; **ADDITIONAL SEQUENCES:** 1) MR myelotomography. **3D REFORMATIONS:** 1) COR-OBL, T2FSE/FS, 20mm MIPS. 2) SAG-OBL reformations both right and left.

OVERVIEW: Overview of the lumbar spine shows normal bony alignment and normal marrow signal apart from Modic changes with no evidence of a congenital anomaly of the spine. Images of the hips, sacroiliac joints, piriformis muscles and proximal sciatic nerves reveal no abnormality.

THORACIC SPINE: Views of the distal thoracic spine show a normal spinal cord and conus medullaris, normal vertebrae and mild or moderate noncompressive spondylosis.

INTERVERTEBRAL DISCS:
L1-2, L2-3, L3-4, L5-S1. Mild noncompressive spondylosis.

L4-5. Severe facet arthropathy and a mild bulge of disc with moderate to moderately severe bilateral lateral recess stenosis.

3D REFORMATIONS AND MYELOTOMOGRAPHY: MR myelotomography is a 3D sequence which displays the distribution of cerebral spinal fluid within the lumbar subarachnoid space and simulates an x-ray myelogram without spinal injection. Multiple oblique projections were performed and confirm the findings above.

Opinion: MRI of the lumbar spine including 3D myelotomographic images and multiplanar reformations shows moderate to severe spondylosis at L4-5 with a moderate probability of nerve root compression.

Patient: Delinzy Smalls
Patient #: 948100
Exam Name: Lumbar
Exam Date: 9/20/2016

Richard C. Holgate, MD

DISC Radiologists
1341C Old Georgetown Road - Mount Pleasant, SC 29464
(843) 884-8095 - (800) 898-1294 - Fax (843) 856-7312



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

Date: 4/20/2017

To Whom It May Concern:

Please be advised that Delinzy Smalls is/has been under my orthopedic care.

- She came to our office today, 4/20/17 at 9:00am. She may return to work on 4/20/17.

Electronically signed by: Thomas S. Anderson, MD
Date: 4/20/2017

PARTIAL MEDICAL FACTS1. Approximate date condition commenced: 9/20/16Probable duration of condition: TBD

Mark below as applicable:

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

☐ No ☒ Yes. If so, dates of admission:6/8/17

Date(s) you treated the patient for condition:

9/20/16, 12/14/16, 3/2/17, 4/27/17Will the patient need to have treatment visits at least twice per year due to the condition? ☐ No ☒ Yes.Was medication, other than over-the-counter medication, prescribed? ☐ No ☒ Yes.

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

☒ No ☐ Yes. If so, state the nature of such treatments and expected duration of treatment:2. Is the medical condition pregnancy? ☒ No ☐ Yes. If so, expected delivery date: _____

3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition? ☐ No ☒ Yes.

If so, identify the job functions the employee is unable to perform:

Patient is unable to work

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

M43.16 - Spondyloisthesis, lumbarM48.06 - Spinal stenosis, lumbar

PART B: AMOUNT OF LEAVE NEEDED

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? ☐ No ☒ Yes.

If so, estimate the beginning and ending dates for the period of incapacity: 6/8/17 - 9/8/17

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? ☐ No ☒ Yes.

If so, are the treatments or the reduced number of hours of work medically necessary?
☐ No ☒ Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Monthly post operative appointments

Estimate the part-time or reduced work schedule the employee needs, if any:

0 hour(s) per day; 0 days per week from 6/8/17 through 9/8/17

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? ☐ No ☒ Yes.

Is it medically necessary for the employee to be absent from work during the flare-ups?
☐ No ☒ Yes. If so, explain:

Flare ups will require additional office visits

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: 1-2 times per week(s) month(s)

Duration: hours or 1-2 day(s) per episode

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

Date

Form WH-380-E Revised May 2015



Steel Technologies

Job Title: Cut-to-Length Operator
Division/Department: Operations
Reporting Relationship: Production Supervisor
Location of Job: Berkeley
Work Schedule: To be determined based on shifts needs
Overtime as required

Summary of Primary Duties and Responsibilities:

- Follow all safety requirements
- Operate forklift
- Operate crane
- Operate controls on the plasma machine
- Record data
- Use banding equipment
- Use tape measures and micrometers to measure and check the dimensions of the steel
- Set up of the plasma machine
- Retrieve coils to be run on the plasma machine
- Retrieve steel samples for the lab
- Load and unload the plasma machine
- Maintain a clean and neat work area
- Work as directed by supervision
- Work as directed by the plasma operator
- Process steel in accordance with and in tolerance to the production

Knowledge, Skills, Abilities:

- Demonstrated ability to perform the complete operational tasks of CTL line to ensure compliance with customer specifications and production requirements.
- Demonstrated ability to use tape measures, Rockwell tester, micrometers and calipers.
- Basic mathematics - addition, subtraction, multiplication, and division.
- Basic reading and writing skills with ability to understand and comply with production instructions.
- Demonstrated ability to follow all safety requirements of the equipment (J.S.A.) and OSHA standards.
- Perform each essential duty satisfactorily.
- **Language Skills:** Ability to read and interpret documents such as safety rules, operating and procedure manuals. Ability to write routine reports and

correspondence. Ability to communicate effectively with peers and management of the organization

- **Mathematical Skills:** Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals.
- **Reasoning Ability:** Ability to apply common sense understanding to carry out detailed but uninvolved written or oral instructions. Ability to deal with problems involving a concrete variable in standardizing situations.

•
Education, prior work experience, and specialized skills and knowledge:

- High school diploma or general education degree (GED); or three to six months' related experience and/or training; or equivalent combination of education and experience.

Physical Requirements:

- Able to stand and walk for extended periods of time
- Able to bend, stoop, twist, reach, climb onto forklift, and climb stairs as needed
- Able to operate an overhead crane and/or forklift as needed
- Able to communicate effectively
- Able to clearly understand instructions or directions given by co-workers or manager. Able to respond to emergency evacuation notices, and general paging announcements over the PA system.
- Able to lift 50 pounds
- Able to work around heavy machinery at all times

BEFORE THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION
WCC No.: 1713493

Delinzy Grant,)
)
Employee,)
)
Claimant,)
v.)
)
Steel Technologies,)
)
Employer,)
)
and)
)
Zurich American Insurance Company,)
)
Carrier.)
)
Defendants.)
_____)

**NOTICE OF WITNESSES AND
EXHIBITS TO BE INTRODUCED
AS DIRECT EVIDENCE ON
BEHALF OF THE DEFENDANTS**

TO: THE HONORABLE R. MICHAEL CAMPBELL, II, SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND RYAN T. LEBLANC, CLAIMANT'S COUNSEL.

YOU ARE HEREBY NOTIFIED THAT the Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submit the following medical reports and exhibits as direct evidence on behalf of the Defendants, to wit:

	Doctor	Organization	Dates	Pages
APA(3)	Emergency Room Physician	Emergency Room	September 2016	To be Supplemented
APA(4)	Dr. Thomas S. Anderson	Southeastern Spine Institute	September 19, 2016 – July 21, 2017	35-41

	Exhibits	Pages
#1	Transcript of Claimant's Deposition (taken April 10, 2018) if needed for impeachment purposes.	To be Supplemented
#2	August 19, 2009 work accident documents.	42-52
#3	Claimant's SCDEW Application.	53-56
#4	FMLA Questionnaire completed by Dr. Thomas S. Anderson	57-60
#5	CTL Line Information	61-62

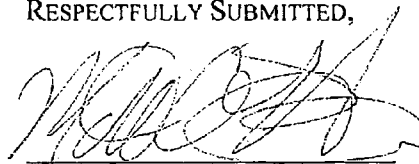
YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any witness for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants:

Mark Lyons – Plant Manager – Company Representative
David Brown – Shift Lead

Any and all witnesses named by the Claimant.

RESPECTFULLY SUBMITTED,



Matthew C. LaFave
CROWE LAFAVE, LLC
Post Office Box 1149
Columbia, SC 29202
Phone: 803.724.5727
Facsimile: 803.724.5728
matt@crowelafave.com
ATTORNEY FOR DEFENDANTS

This 6th Day of August 2018
Columbia, South Carolina

APA 3

APA 4

Name Delinzy, Smalls / Grant

Use the body diagram below to indicate the location of any of the 5 sensations listed. Mark the areas on the drawings with the symbol that best describes the sensation that you feel.

NP 9/20/16

*give step

=====
O O O O O
X X X X X
/ / / / /
^ ^ ^ ^ ^

Numbness
Pins and needles
Burning Pain
Stabbing Pain
Aching Pain

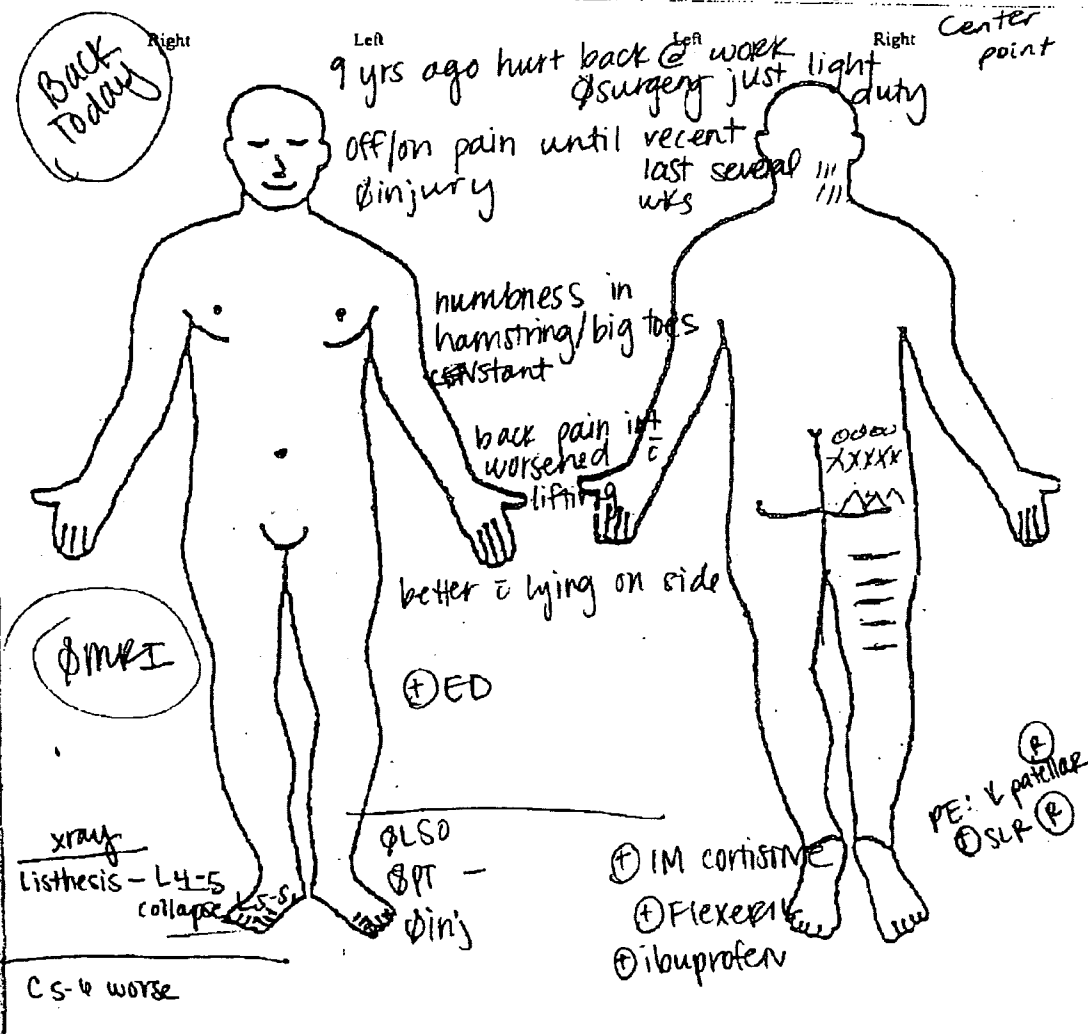
Ht. - 5'5
Wt - 250
P - 5.5
Age - 51

From - Al Charleston

Rx - Walmart

FRONT

BACK



Name Deliny Smalls

(1) Who referred you to us?

husband

(2) Who is your primary care physician?

(3) Briefly describe the details of your injury or the initial onset of your symptoms:

(4) How long have the symptoms been present?

About 3 to 4 weeks

(5) Please provide the following information:

If this was a work injury or a motor vehicle accident: _____

Please briefly describe the accident/injury: _____

Were you taken to the hospital?

Yes ☒ No

Were you hospitalized?

Yes ☒ No

What physicians (or other) healthcare professionals who have treated you for this injury to date?

ER

(6) How would you compare your pain ratio (circle one)

FOR BACK AND LEG PAIN ONLY

1 = 100% back pain and 0% leg pain

② = 75% back pain and 25% leg pain

3 = 50% back pain and 50% leg pain

4 = 25% back pain and 75% leg pain

5 = 0% back pain and 100% leg pain

FOR NECK AND ARM PAIN ONLY

① = 100% neck pain and 0% arm pain

2 = 75% neck pain and 25% arm pain

3 = 50% neck pain and 50% arm pain

4 = 25% neck pain and 75% arm pain

5 = 0% neck pain and 100% arm pain

Name Delany Snells

(7) Put a check mark next to the activities which change the nature of your pain:

	Aggravates	Relieves
1. Sitting		☒
2. Standing	☒	
3. Rising from sitting	☒	
4. Leaning forward (Brushing teeth)		☒
5. Walking	☒	
6. Lying on your side		☒
7. Lying on your back		☒
8. Lying on your stomach	☒	
9. Driving		
10. Coughing/sneezing		
11. Bending forward	☒	

(8) Please circle the number that best applies to your usual level of pain.

0 = No pain

10 = Pain as bad as it can be

0 1 2 3 4 5 (6) 7 8 9 10

(9) What makes your pain better?

sitting

(10) What makes your pain worse?

bending

(11) Circle the tests that have been performed thus far:

X-ray CT-Scan Myelogram MRI EMG Bone Density Study

If so, when ?

(12) Circle the treatment that you have had so far:

Back Brace Nerve Block Physical Therapy Chiropractic

TENS Unit

Other:

(13) List all major illnesses (glaucoma, diabetes, high blood pressure, heart attack, etc.) or injuries (concussion, etc.):

high blood pressure, cancer, vertigo

(14) Past surgeries including neck or back?

Knee surgery, Hysterectomy

(15) List any medications you currently take: Lisinopril/HCTZ 20-25mg

(16) Do you have allergies to any medications? YES ☒ NO
If YES, list the medications: _____

(17) Family History of: (Please Circle)

- | | | |
|--|--|-----------------------------------|
| ☒ 1- Arthritis | ☒ 5- Diabetes | 9- Tuberculosis |
| 2- Back Pain | 6- Glaucoma | 10- Other Inheritable Diseases |
| 3- Neck Pain | ☒ 7- Cancer | 11- Blood Transfusion - yes or no |
| ☒ 4- Hypertension | 8- Stroke | |
| Other _____ | | |

(18) Social History

Have you ever had a blood transfusion? YES ☒ NO

Do you drink alcohol YES ☒ NO If YES, how much? _____

Do you presently smoke?... YES ☒ NO If YES, how many packs per day? _____
How many years? _____

Are you a past smoker?..... YES ☒ NO If YES, how many packs per day? _____
How many years? _____

1- If you have been off work this year, how much time have you lost?

- | | |
|-------------------|--|
| 1- Unknown | 2- About 1 day |
| 3- About 3 days | ☒ 4- About a week |
| 5- About 1 month | 6- About 3 months |
| 7- About 6 months | 8- About 6 months to a year |

(19) Are you (circle one)

- | | | |
|---------------|--|--------------|
| 1- Unemployed | ☒ 2- Employed | 3- Homemaker |
| 4- Student | 5- Retired | |

(20) If you selected "1" or "2", please answer the following questions:

(21) To help us better understand the physical stresses during your work day, please tell us what type of job you do.

Job Description:

Machine operator - standing lifting

Employer:

Steel Technologies

Name Deliray Smalls Grant

- (22) Do you currently have any problems in the following areas? If YES, please provide additional information.

	YES	NO	Details
Eyes (poor vision, eye pain, tearing, redness, etc.)	yes		
General / constitutional (fever, heat stroke, weight loss, weight gain, unusually tired)	yes		
Ears, nose, throat (hard of hearing, stuffy nose, earache, cough, dry mouth, etc.)		NO	
Cardiovascular (high bp, racing pulse, etc.)	yes		
Respiratory (congestion, wheezing, short of breath, etc.)	yes		Asthma
Gastrointestinal (stomach upset, diarrhea, constipation, hernia, ulcers, etc.)		NO	
Genital, kidney, bladder (painful urination, frequent urination, impotence, yellow jaundice, etc.)		NO	
Females are you pregnant? Nursing?		NO	
Muscles, bones, joints (joint pain, stiffness, swelling, cramps, arthritis, etc.)	yes		swelling
Skin (pimples, warts, growths, rash, etc.)		NO	
Neurological (numbness, headache, seizures, paralysis, etc.)	yes		my feet
Psychiatric (anxiety, depression, insomnia)		NO	
Endocrine (diabetes, hypothyroid, etc.)		NO	
Blood / lymph (bleeding, cholesterolemia, anemia, problems related to blood transfusion, etc.)		NO	
Allergic / immunologic (sneezing, swelling, redness, itching, hives, lupus, etc.)		NO	

- (23) If you want to make any additional comments please do so below and on the back of this page.

Patient Signature Deliray Smalls Grant Date 9-19-16

SSI PRE-SURGICAL SURVEY

Problem Area: ☐ Neck

☒ Back

SYMPTOM FINDINGS: (Please check all that apply)

☐ Pain, numbness, or the feeling of "pins and needles" or "falling asleep" in neck, shoulder or arm

☒ Pain, numbness or the feeling of "pins and needles" or "falling asleep" in legs.

☒ Symptom made worse with walking

☒ Symptom improved with leaning forward

☒ Weakness in arm or leg

☐ Both arms ☐ right arm ☐ left arm

☐ Both legs ☒ right leg ☐ left leg

☒ Unsteady while walking

☒ Loss of bowel or bladder control?

☒ Current symptoms noted above interfere with my activities of daily living

hard to work @ steel plant, lifting, hard to do housework
Please describe: walking, standing, sitting

☒ Inability to bend: ☒ Yes ☐ No

Please describe: Painful

Treatments that you have tried: (Please check all that apply)

☐ Physical Therapy (PT) or Home Exercise Program When did you try: _____

☐ PT session/Home Exercise Program tried for _____ weeks (please indicate how long)

☐ Could not tolerate PT or Home Exercise Program

☒ Modified activity level to see if this would help with symptoms. Was this successful Yes ___ No ☒

☒ Modified activity for 6 years - worsened over past 6 months
_____ weeks (please indicate when and for how long)

☒ Have taken medications such as Aspirin, Tylenol or other anti-inflammatory agents (Celebrex, Mobic, Naproxen, Other Excedrin) (please indicate the ones you have tried)

☒ Took medication for at least 3 weeks

☐ Could not tolerate medications

☒ Continued to have pain/other symptoms after trying treatments noted above.

Patient name: Delinzy Smalls MR#: 948100

Date: 4/27/17

40



1106 Chuck Dawley Blvd., Suite 200 ■ Mt. Pleasant, SC 29464

STATUS / PROGRESS REPORT OF ILLNESS / INJURY

Date: 7/21/2017

Employee Name: Delinzy Smalls

DOB: 10/1/1964

Physician: Thomas Anderson

Work Related? ☐ Yes ☒ No ☐ Indeterminate at this time

Work Status

- | | |
|---|---|
| ☒ Cannot work | ☐ Return to work with modified duties |
| ☐ Return to work immediately | ☐ Modified duties effective until return visit |
| ☐ Released from office | ☐ These restrictions are permanent |
| ☐ PPI assessed | ☐ Do not return to work until: |

Work Restrictions

Upper Extremity ☐ Right ☐ Left

- ☐ No use of affected extremity
- ☐ No firm gripping
- ☐ Must wear sling/cast
- ☐ No awkward wrist position
- ☐ No lifting over lbs.
- ☐ No repetitive motion
- ☐ No vibratory tools
- ☐ No overhead work (above shoulder)
- ☐ No commercial driving

Lower Extremity ☐ Right ☐ Left

- ☐ Seated work only/mainly
- ☐ No squatting/kneeling/twisting
- ☐ No climbing stairs/ladders
- ☐ No prolonged standing or walking
- ☐ Work with brace/cast
- ☐ No lifting over lbs.
- ☐ Elevate when possible/continuous
- ☐ Crutches/cane/walker
- ☐ No twisting, pushing, pulling

Other Appropriate Duties / Comments:

If no job is available with the stated modified duties, consider Delinzy Smalls to be off work.

Special Instructions:

Work status will be re evaluated at patient's next appointment on 8/31/17

Electronically signed by: Thomas S. Anderson, MD

Date: 7/21/2017

41

Exhibit 1

Exhibit 2

back injury
Disposition Form

TIME IN: 8:02 am
TIME OUT: _____

549-B Longpoint Road
Mt. Pleasant, S.C. 29464
tel. 843-971-5837 fx 843-971-5883

Name Delaney Smalls S.S.# 248-29-6460
Employer Steel Technologies X Occupation Warehouse
Home Address 2638 Bennett Road Home Tel. 478-0445
Sex F Marital Status 3 Age 44 Birth Date 10-1-64 Business Tel. 334-3999
Date & Time of Injury Aug 19, 2009 First Exam 8/28/09 @ 8:02 AM/PM.
Allergy? ☒ No ☐ Yes What? _____

Is there history of: ☐ Diabetes ☐ Heart Trouble ☐ Ulcer ☐ Back Trouble ☐ Arthritis
☒ High Blood Pressure ☒ Asthma

While lifting a box - felt start moving heavier pellets + hurting
State of Last Tetanus Immunization? 2006 Are You Pregnant? NO

Is Patient on any medication now? ☐ No ☒ Yes
Have you previously been seen at _____ ☒ No ☐ Yes

History of Injury On Aug 19 was working got pin in my side kept on
swelling at the end of the day there was a pain coming
down my left leg.

Location of Pain: Lower Back

Tenderness: Just L.S. area

Deep Tendon Reflexes: WNL

Heel-Toe Walk: WNL

Right Lateral Bend: OK

Left Lateral Bend: flex

Spinal Motion:

Flex 45° until fingertips come within _____ inches of floor. Reversal of normal lordotic curve _____

Diagnosis: Lumbar Herniation - Impingement

Treatment: medication + manual adjustment AS - follow 8/22
physical therapy -

Work Status: ☐ Regular Work ☒ Light Work ☐ Sedentary Work ☐ Resume regular duty as tolerated
Restrictions: ☐ Not to lift, push or pull over _____ pounds. ☐ Weight bearing as tolerated
☐ Ground level work. ☐ Bending & Stopping only as tolerated.

Comments: Limit lifting to 25#

Date of Next Visit: 10/1/09

I hereby authorize Coastal Occupational Medicine to speak to the insurance carrier on my behalf.

M.D.

42

HealthPoint, LLC
549B Longpoint Rd. - Mt. Pleasant, SC 29464
Ph: (843)971.5882, Fax: (843)971.5851

Donor Name: Delinzy Smalls Date: 8/28/09
SSN: 248 29 6460 Company Name: Steel Techn.
Sent By: _____ Ph #: _____ Fax: _____

Reason for Test: () Pre-Employment () Random () Reasonable Suspicion ☒ Other
Temperature within range: ☒ Yes () No Lot #: Donomocn Exp. Date: 12/2010

Results: () Positive ☒ Negative () Sent to Lab
____ Cocaine
____ Opiates
____ PCP
____ Marijuana
____ Amphetamines

Donor Signature: Delinzy Smalls

Witness Signature: M. S. Wright

Results: () Faxed () Phoned

INDUSTRIAL ACCIDENT INVESTIGATION REPORT

ACCIDENT DATE: 8-19-08

ACCIDENT TIME: 11:00

Facility: Berkeley	Telephone No: 843-336-3999
--------------------	----------------------------

Address: 1220 south steel circle huger sc 29450

Accident Address (if different from above):

Investigator: David Brown	Telephone No.: 843-860-4860
---------------------------	-----------------------------

EMPLOYEE INFORMATION

Name: Delinzy Smalls	Sex: ☐ M ☒ F	Age: 44
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Home Address: 2638 Bennett yard road north charleston sc 29405

Department: Packageing	Job Title: Packager
------------------------	---------------------

Employment Status: Full Time ☒ Part Time ☐ Temporary ☐ Other

Length of Employment: 5 years 5 months	Current Position: Packager
--	----------------------------

INJURY INFORMATION

Person Reported To: David Brown	Date Reported: 8-19-08
Was Report Delayed? ☐ Yes ☒ No	If Yes, Why?

44

Scheduled Shift Time From: 5:00am To: 3:00pm

Nature of Injury and Body Part: Lower Back

Employees Task or Activity at Time of Accident: putting skids on the carrisell

List any tools, equipment, structures, or fixtures that were involved: Wood skids

Personal Protective Equipment Employee was wearing (check all that apply):
Safety Glasses ☒ Arm Guards ☒ Safety Shoes ☒ Gloves ☒ Other

Working Alone ☐ **Assigned Area** ☐ **Supervised** ☐ **Non-Supervised** ☐

SEVERITY OF INJURY

- ☐ Fatality
- ☐ Lost work Days
- ☒ Restricted Duty
- ☐ Medical treatment
- ☐ First Aid
- ☐ Near Miss
- ☐ Other

If other specify:

Name and address of Hospital or Clinic: St. Francis Hospital
2095 Henry Tecklenburg Drive charleston sc 29414

Name of Physician: Frederick Warner

45

List Witnesses and Other Employees in Area (record statements on separate form)

Name: none	Telephone No.:
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Name: none	Telephone No.:
-------------------	-----------------------

Name: none	Telephone No.:
-------------------	-----------------------

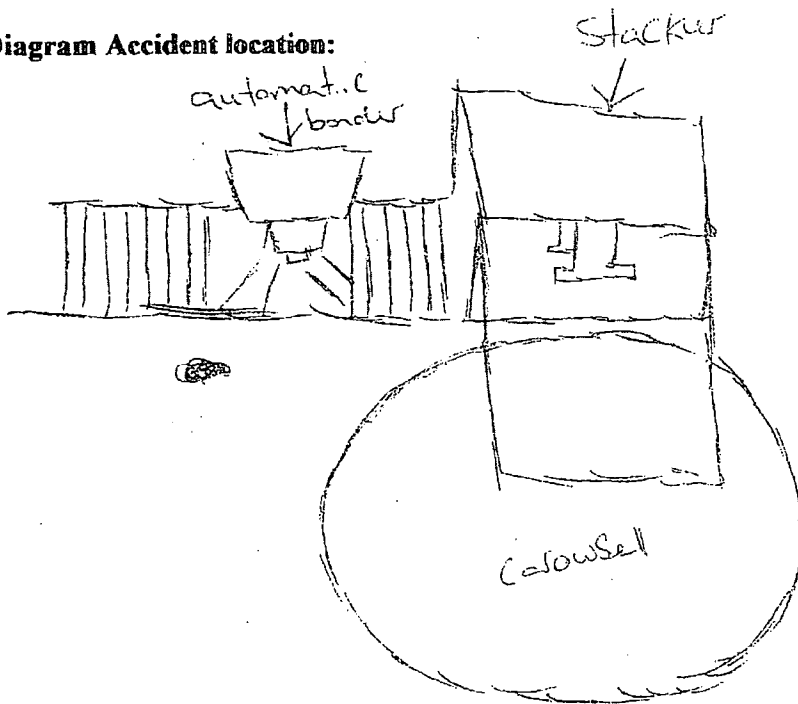
ACCIDENT SCENE INFORMATION

Specific Location: Packageing area at the carrisell

Describe How the Accident Occurred: On Wednesday August 19, 2009, employee was working in packaging at the automatic bander area. That area consist of putting skids on the carrisell table, and banding the cuts of steel off of the banding line and placing them on the skids with the automatic stacker unit. Well she started her shift at 5:00am, and around 11:00am after putting a skid on the table she noticed a pain in her lower side. She kept on working and when her supervisor came in her area she told him that her side was hurting. He asked her if she needed some medicine from the medicine cabinet, and she said she had already taken some excdrin. As the day progressed she said that the pain continued and asked to take a vacation day for the 20th because she was still sore and she thought that if she took an extra day off to rest her body, the soreness would go away because she thought that she was just sore from picking up skids and putting them on the table. Her supervisor checked on it and aproved her for the day off. The next day on her day off the pain was still there and so she went to the emergancy room and the doctor told her that she had muscle spasm's in her lower back, and that she could come back to work

on restricted dutie.

Diagram Accident location:



Skid area

47

List Root Cause(s) of Accident and Contributing Factors:

- 1.
- 2.
- 3.
- 4.
- 5.

Corrective Actions

Identify the factors that can be corrected to prevent a reoccurrence of this type of accident. Indicate the target date for completion of the corrective action, and actual date of completion.

Corrective Action	Target Date	Actual Date
1. Hold meeting with the plant letting them know what happened and go over proper lifting procedures.	Next safety meeting	8/24/09
2. Make sure employee and every one knows to keep skids as close to the carowsel as possible.	Next safety meeting	8/24/09
3. Make sure that when they have to lift one of our special made skids that usually is heavier to make sure they get help from some one in there area, to take away from to much stress on one's body.	Next safety meeting	8/24/09
4. Discussed proper investigation of complaint to supervisors (MD)	9-1-09	9-1-09

5.		
----	--	--

SUMMARY – Include comments that would promote a safe workplace environment and reduce an accidents potential in the future based on review of the Root Causes and implementation of Corrective Actions.

Based on the investigation, we are going to have a meeting with all employees letting them know what happened, and go over proper lifting procedures, and observe while they are working and lifting to make sure they are following these procedures. Also going to get the employees to keep the skids as close as they can to there area so that they do not have to carry them far. The idea is to get them close enough to where they can just slide them off rather than picking them up all of the time. Granted there will be times where employees have no choice but to bend over and get the skid, and that is where proper lifting comes into play. Also there are special skids that we have to build for certain customers, and they are usually heavier than the regular skids. Make sure they are getting help from fellow coworkers, rather than putting all that stress on ones body.

Accident Investigation Report Prepared by:

<i>David Bran</i>	9-9-09
Signature	Date

49

Super Visor	
Title	Dept.

Accident Investigation Report Reviewed by Plant Manager:

Mark Lyons	9-9-09
Signature	Date

Steel Technologies / MI-Tech Steel

EMPLOYEE STATEMENT

Employee Name: Delinzy Smalls Date: August 25, 2009

Department: Packaging

Home Address: 2638 Bennett + yard Road

Home Phone: (843) 478-0443

Injured Employee Name: Delinzy Smalls

Date of Incident: August 19, 2009

Employee Statement as to how accident occurred including precisely what he or she was doing just prior to the incident and after the incident:

On Wednesday August 19 around 11 o'clock.
I was putting skids on the table. At
this time I noticed that I had a
pain in my lower side. I kept on
working and when David Brown came
in the area. I told him that my
side was hurting. And that I took
something for it well as the day
progressed the pain continued. At
this point I asked to use a vacation
day. Because I was really hurting.
And I did not think it was getting
any better. David told me he would
have to check to see if I had

51

Steel Technologies / MI-Tech Steel

EMPLOYEE STATEMENT

Employee Name: Delinzy Smalls Date: August 25, 2009

Department: Packaging

Home Address: 2638 Bennett + yard Road

Home Phone: (843) 478-0443

Injured Employee Name: Delinzy Smalls

Date of Incident: August 19, 2009

Employee Statement as to how accident occurred including precisely what he or she was doing just prior to the incident and after the incident:

any vacation days. David came back
and told me I only had one. I asked
to use it. Because at this point
the pain was going down my
left leg. I thought that if I got
some rest that I would be okay. But
by the next day the pain was still
there. At this point I went to the
hospital. And was told that I had
hurt my lower back.

Delinzy Smalls
Delinzy Smalls

Exhibit 3

Personal Information

Claimant Id: [REDACTED]
Date of Birth: [REDACTED] Other Last Name Used (1):
First Name: DELINZY Other Last Name Used (2):
Last Name: SMALLS Other Last Name Used (3):
Middle Initial: D Gender: Female
Suffix: Mothers Maiden Name:

Address Information

Country: USA
Mailing Address, if different from residential: 2430 RICHARDSON DR Mailing Address City: North Charleston
Mailing Address State: South Carolina Mailing Address Zip: 29406
Residential Address Country: USA
Residential Address: 2430 RICHARDSON DR Residential Address City: North Charleston
Residential Address State: South Carolina Residential Address Zip: 29406
Closest Employment Services Office: Charleston Commuter:

Contact Information

Primary Phone: 843-478-0443 Ext: Alternate Phone: Ext:
Cell Phone: 843-437-0320 Fax Number:
E-mail Address: delinzy143@gmail.com Preferred Contact Method: E-mail

Demographic Information

Education Level: 12 - HIGH SCHOOL DIPLOMA Disabled: No
Do you need an interpreter: No Veteran: No
Race: Black/African American U.S. Citizen: Yes
Ethnicity: Not Hispanic or Latino Alien Registration Number:
Preferred Language: English

Eligibility

Indicate from what location you are filing your claim Home
Have you applied for or are you receiving benefits from any state or federal programs? No

Employment Questions

Has all of your employment been in another state since 03/22/2016 No
Has any of your employment been in another state since 03/22/2016 No
Have you served in the Military since 03/22/2016 No
Are you currently in the State of SC
Have you been employed as a civilian by the Federal Government since 09/22/2015 No
Have you worked for a school or educational institution since 03/22/2016 No
Have you worked for a professional athletics organization since 03/22/2016 No
Are you a Longshoreman who has been assigned work by a Longshoreman union since No

53

03/22/2016

Are you an elected official No

Employability Questions

Are you currently self-employed or do you earn income on a commission basis No

Do you have plans to become self-employed or earn income on a commission basis No

Are you currently able to look for, accept, and perform full time work for which you have training or experience No

Are you currently enrolled in school or in training No

Are you available only for part-time work No

Have you filed a claim in the past year for worker's compensation due to a work related injury No

Employers - Regular

Employer Name	Address	Dates of Employment	Type of Employment
STEEL TECHNOLOGIES LLC, DBASTEEL TECHNOLOGIES LLC	15415 SHELBYVILLE RD LOUISVILLE 40245	03/01/2004-09/05/2017	Full Time

Separation - Regular

Employer Name STEEL TECHNOLOGIES LLC, DBASTEEL TECHNOLOGIES LLC

Reason employment ended: I was fired, terminated, or discharged from the job.

If Quit or Discharge select the reason why: General Reasons

Will you be returning to work for this employer No

If yes, please enter your return to work date:

State where work was performed: South Carolina

City where work was performed: huger, sc

Primary Occupation with this employer:

Are you an owner, corporate officer, or stakeholder of this employer? No

What were your total earnings with this employer from 45000.0

Other Separation

Are you currently receiving workers' compensation workers compensation for a job related injury or illness? No

Are you or will you receive pension or retirement pay (other than Social Security)? No

Are you or will you receive vacation pay, severance pay, military accrued leave pay or other separation pay? No

If you are eligible to receive benefits, would you like Federal Income Tax withheld from your benefits? No

If you are eligible to receive benefits, would you like State Income Tax withheld from your benefits? No

Do you have a definite return to work date or will start a new job for an employer you have not told us about? No

If yes, what is the name of the employer?

If yes, what is your return to work or start date?

Preferred Payment Method Direct Deposit

Benefits Payment Method

54

Work Search

What is your lowest Rate of Pay you will accept for the type of work you are seeking? \$16.00 per Hour

Are tool, licenses, or permits required for the work you are seeking No

If yes, do you have the required tools, licenses, or permits to perform the work you are seeking

Military/Veteran Information

Are you a veteran? No

Is your spouse a veteran? No

Is your spouse a veteran killed in active duty? No

Is your spouse a deceased veteran who had a total disability? No

Is your spouse a service member who is a MIA or POW? No

Is your spouse a veteran who had a total (100%) disability rating from the VA?

Were you awarded any campaign badges, ribbons or decorations?

If yes, please mention

Have you worked on a farm? No

Did you earn at least half of your last 12 months income on a farm?

Were you employed all year on a farm?

Did you travel to work?

Did you work at least 25 days on a farm?

Have you worked in a food processing plant? No

Did you earn at least half of your last 12 months income in food processing?

Were you employed all year in food processing?

Did you travel to work?

Did you work at least 25 days in food processing?

Do you have a valid driver's license? Yes

Driver's license class D Regular Operator License

Commercial driver's license classes None

Commercial driver's license restrictions None

Job Eligibility Counties

Select upto 6 counties where you are willing to work:

BERKELEY

CHARLESTON

DORCHESTER

Job Eligibility Experience

Are you willing to look for other types of work?

Primary Choice

Kinds of Jobs Seeking / ONET?: Machinists

Years of experience: 02

Years of Training:

Secondary Choice

55

Kinds of Jobs Seeking / ONET?:

Packers and Packagers, Hand

Years of experience:

02

Years of Training:

Last Job Information

How much did you earn on your last job?:

17.5

Unit of pay:

Hour

Travel Miles:

6-10

Location

Are you willing to relocate?:

No

Are you willing to travel at least the same distance as you last traveled to your last job?:

Yes

Your transportation methods:

Automobile

Availability Start Date Immediately?

No

Are you willing to accept at least the last amount you earned on your last job?:

Yes

Does a lack of childcare or dependent care affect your ability to work?:

No

Job and Availability Schedule

Available Time (Start Time - End Time)

Available Days

4:30 - 15:00

Monday

Tuesday

Wednesday

Thursday

Friday

Are you willing to work the same hours/shifts/days you worked on your last job?

Yes

56

Exhibit 4

**Certification of Health Care Provider for
Employee's Serious Health Condition
(Family and Medical Leave Act)**

U.S. Department of Labor
Wage and Hour Division



OMB Control Number: 1235-0003
Expires: 3/31/2018

Section I - For Completion by Employer

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: Steel Technologies Stacy Niazgoda - HR

Employee's job title: CTL Operator Regular work schedule: M-F 8 Hours per day

Employee's essential job functions: Operate heavy machinery at Steel Manufacture Facility

Check if job description is attached: ☒

Section II - For Completion by the Employee

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b).

Your name: Delinzy Smalls

First

Middle

Last

Section III - For Completion by the Health Care Provider

INSTRUCTIONS to the HEALTH CARE PROVIDER: Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b). Please be sure to sign the form on the last page.

Provider's name and business address: The Southeastern Spine Institute

Type of practice / Medical specialty: Spinal Services

Telephone: (877) 978-2995 Fax: (843) 849-1551 ext 288

PART A - MEDICAL FACTS

1. Approximate date condition commenced:

9/20/16

Probable duration of condition:

TBD

Mark below as applicable:

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

No ☒ Yes. If so, dates of admission:6/8/17

Date(s) you treated the patient for condition:

9/20/16, 12/14/16, 3/2/17, 4/27/17Will the patient need to have treatment visits at least twice per year due to the condition? No ☒ Yes.Was medication, other than over-the-counter medication, prescribed? No ☒ Yes.

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

☒ No Yes. If so, state the nature of such treatments and expected duration of treatment:2. Is the medical condition pregnancy? ☒ No Yes. If so, expected delivery date:

3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition? No ☒ Yes.

If so, identify the job functions the employee is unable to perform:

Patient is unable to work

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

M43.16 - Spondylolisthesis, lumbarM48.06 - Spinal stenosis, lumbarPer Nora at Dr's office - Delinzy is scheduled for back surgery on 06/08/2017. They typically write patients off for 3 months for this type of surgery. LMWernert 6/1/17

ESTIMATE AMOUNT OF LEAVE NEEDED

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? ☐ No ☒ Yes.

If so, estimate the beginning and ending dates for the period of incapacity: 6/8/17 - 9/8/17

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? ☐ No ☒ Yes.

If so, are the treatments or the reduced number of hours of work medically necessary?
☐ No ☒ Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Monthly post operative appointments

Estimate the part-time or reduced work schedule the employee needs, if any:

0 hour(s) per day; 0 days per week from 6/8/17 through 9/8/17

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? ☐ No ☒ Yes.

Is it medically necessary for the employee to be absent from work during the flare-ups?
☐ No ☒ Yes. If so, explain:

Flare ups will require additional office visits

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: 1-2 times per week(s) (month(s))

Duration: hours or 1-2 day(s) per episode

ADDITIONAL INFORMATION: IF YOU HAVE QUESTIONS, PLEASE CALL 1-800-4-A-ADDISON AT 1-800-422-3369

1 1 1

Signature of Health Care Provider

Date _____

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.300. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.**

Exhibit 5

Skids per day on 60 CTL

May-17	
1-May	9
2-May	13
3-May	18
4-May	22
5-May	13
8-May	15
9-May	17
10-May	22
11-May	22
12-May	13
15-May	22
16-May	21
19-May	13
22-May	14
24-May	12
30-May	5
Average	16

61

2017	
60" CTL	
Jan	1,633,504 lbs
Feb	918,756 lbs
Mar	1,185,268 lbs
Apr	733,826 lbs
May	1,210,865 lbs
Jun	1,581,536 lbs
Jul	1,127,234 lbs
Aug	333,077 lbs
Sep	645,399 lbs
Oct	940,010 lbs
Nov	658,109 lbs
Dec	1,628,661 lbs

1st shift ran 1320 hrs

2ns shift ran 890 hrs

2016	
60" CTL	
Jan	1,146,794 lbs
Feb	2,631,877 lbs
Mar	2,637,700 lbs
Apr	1,666,587 lbs
May	1,095,693 lbs
Jun	1,091,069 lbs
Jul	159,751 lbs
Aug	0 lbs
Sep	934,226 lbs
Oct	1,957,764 lbs
Nov	1,346,523 lbs
Dec	1,565,059 lbs

1st shift ran 1565 hrs

2ns shift ran 804 hrs

62

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. File No. 1713493

Delinzy Grant,)
Claimant,)
v.)
Steel Technologies,)
Employer,)
and)
Zurich American Insurance Company,)
Carrier,)
Defendants.)

CERTIFICATE OF SERVICE

I, Denise M. Brockwell, paralegal for Crowe LaFave, LLC, do hereby certify that I have served the **WCC Form 58 – Pre-Hearing Brief and the Notice of Witnesses and Exhibits to be Introduced as Direct Evidence on Behalf of the Defendants**, by electronic mail and by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows:

Ryan T. LeBlanc, Esquire
Joye Law Firm
P.O. Box 62888
North Charleston, SC 29419-2888


Denise M. Brockwell
Paralegal

August 6, 2018



WCC File #: **1713493**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Delinzy Grant SSN: 248 - 29 - 6460 Employer's Name: Steel Technologies
Address: 2430 Richardson Drive Address: 1220 S. Steel Circle
City: North Charleston State: SC Zip: 29406 City: Huger State: SC Zip: 29450
Home Phone: (843) 478 - 0443 Work Phone: () - Insurance Carrier: Zurich American Insurance Company
Preparer's Name: Matthew C. LaFave Law Firm: Crowe LaFave, LLC Preparer's Phone #: (803) 724 - 5727

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ Employer (check one) Date of Injury or Illness: 6/5/2017

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).

Whether or not Claimant sustained a compensable repetitive trauma injury in accordance with SC Code Ann. § 42-1-172.

Whether or not Claimant's notice to Defendants of a repetitive trauma injury was timely pursuant to SC Code Ann § 42-15-20(c).

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

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Ryan T. LeBlanc, Esq., Joye Law Firm
Address PO Box 62888, North Charleston, SC 29419-2888 on the 5th day of October 2018, by X first class postage


Preparer's Signature

Attorney for Defendants
Title

matt@crowelafave.com
Email

October 5, 2018
Date

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

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-705 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. File No. 1713493

Delinzy Grant,)
Claimant,)
v.)
Steel Technologies,)
Employer,)
and)
Zurich American Insurance Company,)
Carrier,)
Defendants.)

CERTIFICATE OF SERVICE

I, Denise M. Brockwell, paralegal for Crowe LaFave, LLC, do hereby certify that I have served the **WCC Form 30 – Request for Commission Review**, by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows:

Ryan T. LeBlanc, Esquire
Joye Law Firm
P.O. Box 62888
North Charleston, SC 29419-2888


Denise M. Brockwell
Paralegal

October 5, 2018

CCWCC

10/09/2018

JUDICIAL

BEFORE THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION
WCC No.: 1713493

Delinzy Grant,)
)
Employee,)
)
Claimant,)
v.)
)
Steel Technologies,)
)
Employer,)
)
and)
)
Zurich American Insurance Company,)
)
Carrier.)
)
Defendants.)
_____)

**APPELLANTS' BRIEF TO THE
FULL COMMISSION**

STATEMENT OF THE CASE

Delinzy Grant (hereinafter "Respondent") filed a Form 50, filing a claim, on September 18, 2017 alleging a repetitive trauma injury to her back and right lower extremity sustained as a result of purported repetitive activities at work. Respondent further alleged she verbally notified her employer on September 14, 2017. Respondent subsequently filed a Form 50, Request for Hearing on February 27, 2018 and another on June 4, 2018, wherein the substantive allegations remained as claimed in the original Form 50.

Steel Technologies and Zurich America Insurance Company (hereinafter "Appellants"), in each Form 51, Employer's Answer to Request for Hearing, denied the claim challenging the sufficiency of Respondent's evidence to establish a compensable repetitive trauma injury under S.C. Code Ann. § 42-1-172. Appellants raised, as a further defense, Respondent's failure to timely notify her employer in accordance with the requirements of S.C. Code Ann. § 42-15-

20(c). Appellants maintain that they, due to Respondents failure to carry her burden of proof, are not obligated to pay any benefits to or on behalf of Respondent.

Commissioner Campbell held a hearing in the matter on August 14, 2018. The Single Commissioner issued an order finding Claimant satisfied her burden of proof establishing a compensable repetitive trauma injury. The Single Commissioner further found Claimant, in compliance with S.C. Code Ann. § 42-15-20(c), timely notified her employer of a repetitive trauma injury.

ISSUES ON APPEAL

- I. Did the Single Commissioner err in finding Claimant satisfied the requirements of S.C. Code Ann. § 42-1-172 to prove a compensable repetitive trauma injury.
- II. Did the Single Commissioner err in finding Claimant, in compliance with S.C. Code Ann. § 42-15-20(c), timely notified her employer of a repetitive trauma injury.

FACTS

Direct Examination of Respondent

Respondent began her employment with Appellant/Employer on March 4, 2004 in packaging. Respondent testified that her employment in the packaging department lasted approximately eight to nine years. The role of a packager included banding coils, packaging skids to be sent to finished goods, housekeeping, operation of a forklift and place finished goods in the warehouse. Respondent further testified that in working as a packager she worked primarily five (5) days per week for eight (8) hours. Physically, Respondent testified that she had to lift skids, weighing between forty (40) to fifty (50) pounds depending on size, placing them on a carousel approximately three (3) feet high.

Following her employment in packaging Respondent transitioned to her role to work as a machine helper on the slear machine. In this role Respondent was tasked with loading skids on the machine, loading coils onto the pull cart and help the steel through the machine. Additionally, Respondent was responsible for handling maintenance inside the slear machine.

Respondent, in this role was again working five (5) to six (6) days per week for eight (8) hours per day. According to Respondent's testimony she would lift "maybe 35, maybe 40" skids per day depending "on how many coils you ran per day." (*Hearing Transcript, P. 25, ll. 5-6*). The number of skids per coil was indicated to be ten (10) "or sometimes you might get a little less or maybe a little more." (*Hearing Transcript, P. 25, ll. 7-9*). However, Respondent had previously testified that the slear machine "ran about three (3) coils a day." (*Hearing Transcript, P. 24, ll. 4-5*). The skids for the slear machine were estimated by Respondent to weigh "anywhere from 35 pound to 45/50 pounds." (*Hearing Transcript, P. 26, ll. 9-10*). Finally, Respondent indicated that her role as a machine operator on the slear machine included housekeeping tasks such as sweeping the floor, cleaning up oil spills and wiping down the machinery.

Respondent next transitioned to the CTL line in 2014 or 2015 as a machine helper though she later became a machine operator. This was the position Respondent held as of her last date of employment. Respondent indicated that she would, on the CTL lines, load skids which she reported varied in size noting they "could be 25, 30 pounds up towards 45, 50 pounds." (*Hearing Transcript P. 28, ll. 15-16*). The skids would have to be lifted onto a carousel that was approximately knee height. Respondent testified the number of skids lifted on a day would range depending on the material they were running. On a given day, Respondent claimed, they would do up to 25, 30, 40, 45 [skids]" though noting some days less. (*Hearing Transcript P. 29, ll. 2-4*). Aside from lifting the skids onto the carousel Respondent stated they would also have to inspect the first sheet of material by lifting it up to check for pitting or other damage. Once the first sheet was checked she would "go back up to the platform, watch the steel go in there, and ... when it's finished ... come back down ... lift your ... last sheet up, check for measurements, make sure there's no pitting or any damage ... [then] send it down the line." (*Hearing Transcript P. 30-31, ll. 22-25 & 1-6*). Respondent, as CTL machine operator, was again responsible for housekeeping activities around her machine as well as operation of a forklift. Respondent acknowledged that

there were months where the CTL line was slow, which would result in her working in a variety of other areas within the plant, including working as a forklift driver or filling in on other lines.

Respondent testified that she began having back pain "probably at the end of 2015." (*Hearing Transcript P. 36, ll. 2-3*). Despite the problems commencing in 2015 she stated that she did not seek treatment until September of 2016 when she saw Dr. Anderson at Southeastern Spine Institute at the suggestion of her husband. Respondent testified that she initially attributed the problems, as of September 2016, to weight gain and her aging. However, she testified that she also attributed the problems to "just doing my job that I normally did," noting "I go there, I do the job, and you go home sore." (*Hearing Transcript P. 36, ll. 20-23*). Respondent then contended that a conversation with a short-term disability adjuster, on or about August 21, 2017, led to her believing there was a potential that her work activities caused the problems to her back though this was still never discussed with or addressed by her treating doctor. In fact, Respondent openly admitted that she never, before or after August 21, 2017, told a supervisor at Respondent/Employer, that she believed her work activities were the cause or potential cause of her back pain.

Cross-Examination of Respondent

Respondent, during cross-examination, provided greater clarity on the specifics of the positions she held during her tenure of employment. As a packager, Respondent testified that she was tasked with banding coils, putting skids on the line, tagging skids as they moved down the line, tagging banding coils in the floor and general housekeeping. Although having testified that the packaging line ran between 40 and 80 skids per day she acknowledged she was not the only employee on the line and lifted maybe 15 to 20 skids. Respondent eventually moved, still in packaging, from the role of a packager to a coordinator though she could not recall when the transition occurred. As a coordinator the amount of lifting was lessened. Respondent further

admitted that she did not always, in lifting skids, have to bend over to pick the skid up off the floor, as they were stacked.

Respondent testified to being supervised by David Brown in August of 2009 though she could not recall her specific position at the time. It was acknowledged that Respondent interacted with Mr. Brown about back problems she was having at work in August of 2009. In fact, the report acknowledged back and leg pain, which she related to lifting skids as was reflected in the written statement prepared and signed by Respondent. (*Hearing Transcript, P. 48, ll 1-3*).

Respondent later transferred to the clear line, which she indicated had three or four employees when she transferred. Respondent testified that of the 25 to 40 skids per day she would, at the beginning when she was training to become an operator, would lift "probably 20." (*Hearing Transcript P. 40, ll. 20-24*). When Respondent transitioned to the CTL line she was one of two employees to work that line on her shift. It was the responsibility of both employees on the line to lift skids and Respondent testified there would never be an occasion where someone on the line would not have to lift any skids. The skids were stacked, as was the case in packaging, near the carousel to be picked up and placed on the line.

Respondent eventually acknowledged that she never reported to anyone at her employer, starting on September 9, 2016 that her back pain was bad when she was lifting skids. However, she affirmed that her back pain would eventually get to be bad when lifting skids at work, which she testified coincided with "when I finally made the choice -- well, made the choice to go see Dr. Anderson." Respondent affirmed that she knew in September of 2016 that when she was lifting skids she was experiencing an increase in her back pain yet she did not report this to anyone at Appellant/Employer.

Direct Examination of David Brown

Mr. Brown began his employment with Appellant/Employer on May 30, 2000. His title, as of the date of the hearing, was first shift shift lead, which is a role he has held since 2006. Mr.

Brown is tasked with, in part; safety, quality and making sure production is getting done. He supervises all departments except for maintenance and shipping. During his time as first shift lead Mr. Brown has had supervisory responsibility over Respondent. Mr. Brown also testified specifically as to the lifting required on each of the lines Respondent has worked on. On the CTL line, where Respondent was working when she began receiving medical attention in September of 2016 Mr. Brown testified that the line, on average, would run approximately 16 to 20 skids. Aside from lifting the skids Mr. Brown testified that the only other lifting a CTL line operator would be tasked with is lifting one sheet to inspect it for quality. However, Mr. Brown clearly noted that the CTL line typically functions with two employees, and operator and helper, with the helper traditionally doing more of the lifting.

Additionally, Mr. Brown testified to an interaction he had with Respondent in August of 2009. Mr. Brown testified that Respondent reported to him that her back was hurting, which she attributed to picking up skids. (*Hearing Transcript P. 87, ll. 2-9*). At no time between September of 2016 until her last day in June of 2017 did Respondent report that her back was hurting from lifting skids nor did he ever have to modify her job in any way.

Cross-Examination of David Brown

Mr. Brown was presented and asked to review a job description for the CTL operator. In that description Mr. Brown reviewed the physical requirements, which he identified as being accurate representations of what is expected in that role.

Redirect Examination of David Brown

Mr. Brown affirmed that, as to the job description, there is no requirement that the CTL operator perform any particular activity in a repetitive manner. It was acknowledged that the job inarguably has parts of it that are physical in nature, which would include the lifting.

ARGUMENT

I. The single commissioner erred in finding that Claimant satisfied the requirements of S.C. Code Ann. § 42-1-172 establishing a compensable repetitive trauma injury.

A repetitive trauma injury under the Workers' Compensation Act is governed by S.C. Code Ann. § 42-1-172. Specifically, such an injury is defined as "injury, which is gradual in onset and caused by the cumulative effects of repetitive traumatic events." The repetitive trauma statute further notes "[a]n injury is not considered a compensable repetitive trauma injury unless ... a causal connection ... is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury." In *Schurlknight v. City of North Charleston*, 352 S.C. 175, 178, 574 S.E.2d 194, 195 (2002), our supreme court held repetitive trauma injuries have a gradual onset caused by the cumulative effect of repetitive traumatic events or "mini-accidents." *Rhame v. Charleston County School Dist.*, 415 S.C. 162, 168, 781 S.E.2d 151, 154 (Ct.App. 2015). The court noted, "it is difficult to determine the date an accident occurs in a repetitive trauma case because there is no definite time of injury." *Id.*

Respondent's claim for repetitive trauma injury fails because Claimant failed to present evidence of any repetitive activities undertaken in her employment. Respondent, in the instant case, describes a variety of activities she has been responsible for in each of her positions during her employment with Appellant/Employer. The apparent focal point by Respondent centers on the lifting she has been required to perform. However, the testimony proffered at the hearing on the single commissioner hearing regarding the lifting activities does not rise to the level of a repetitive activity. It is irrefutable that a CTL operator, such as Appellant was as of her last date of employment, is a physical job and requires her to lift during her shift. However, the mere existence of physical requirements, as alluded to be Appellant, is insufficient to show an activity was repetitive in nature.

It is well settled in South Carolina that “[w]hen a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and this court has no right to impose another meaning.” *Peake v. South Carolina Dept. of Motor Vehicles*, 375 S.C. 589, 598, 654 S.E.2d 284, 289 (Ct.App. 2007); (see also *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 525, 642 S.E.2d 751, 754 (2007); *Vaughn v. Bernhardt*, 345 S.C. 196, 198, 547 S.E.2d 869, 870 (2001)). Moreover, “the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” *Id.*; (quoting *Mun. Ass’n of South Carolina v. AT&T of Commc’n of Southern States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004); see also *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994) (“In determining the meaning of a statute, the terms used therein must be taken in their **ordinary** and popular **meaning**.”).

In the case at bar it appears clear from the record that Respondent contends the “repetitive” lifting activities she was required to perform in the regular duties of her employment were the cause of her back issues. Therefore, in accordance with well-settled precedent the analysis of this statute requires affording the term “repetitive activities” its ordinary and popular meaning. The term repetitive is customarily understood to be something occurring regularly, frequently, or over and over again. As indicated throughout the transcript Respondent describes a wide array of tasks that she undertakes during the carrying out of her regular duties of employment. Certainly some of Respondent’s tasks require lifting. However, it is acknowledge by Respondent that there are a number of other tasks she performs that do not involve lifting. Moreover, her direct supervisor, David Brown, provided even greater insight into just how little lifting would be done by a CTL operator as he described the actions performed once the skid is lifted onto the carousel, which require no lifting, and the activities performed once the top sheet is checked for quality, which also require no lifting. Furthermore, Mr. Brown testified that the

CTL line is staffed with two employees and no one employee is required to do all of the lifting required on the line. Therefore, the evidence presented in this case, while it reflects a component of lifting, does not reflect any repetitive activities as required by S.C. Code Ann. § 42-1-172.

To further underscore the Respondent's failure to present sufficient evidence to satisfy the burden of proof imposed upon her by S.C. Code Ann. § 42-1-172 Appellant directs this Court to the questionnaire completed by Dr. Thomas Anderson. The opinion of Dr. Anderson appears predicated on nothing more than his receipt and review of the physical requirements of Respondent's job description. The job description provided to Dr. Anderson was the same as was reviewed by David Brown at the hearing. Pertinent to this analysis it is noted that one must be "able to lift 50 points." There is no frequency with which one must lift 50 pounds included on the job description. Dr. Anderson's opinion does not reference a review of any other materials regarding Respondent's employment thus the entire basis for his conclusion lies with a job description that provides minimal insight about the daily activities undertaken by Respondent. Confusingly, Dr. Anderson had this job description in his possession for nearly one (1) year but never felt it necessary to modify Respondent's job duties or even recommend she lift less weight at work. Likewise, Dr. Anderson never arrived at any conclusions relative to the purported interplay between Respondent's condition and her employment until he was asked to respond to the questionnaire despite Respondent having testified to informing him in September of 2016 about the type of work she does for Appellant/Employer. This report signed by Dr. Anderson is also directly in contradiction to a status/progress report of illness/injury electronically signed by him on July 21 2017 noting the issues was not work related.

Finally, Dr. Anderson concludes "more likely than not, that the repetitive activities Ms. Grant performs as a Mechanic [sic] Operator directly caused the injury she sustained to her lumbar spine." However, the foregoing conclusion Dr. Anderson underscores the glaring deficiency in an attempt at compliance with S.C. Code Ann. § 42-1-172(D). There is nothing in

the report/opinion from Dr. Anderson that identifies what "repetitive activities" he believes Respondent performed in her employment. It defies logic to understand how one could conclude repetitive activities have caused an injury but not identify what repetitive activity(ies) that employee was engaged in.

Finally, the Single Commissioner's Decision and Order is deficient itself in one key particular area. S.C. Code Ann. § 42-1-172(C) states:

[a]n injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.

The Decision and Order only includes, as can be most closely approximated to the above requirement, a finding of fact that states "[b]ased on a preponderance of the evidence ... I hereby find Claimant has met her burden of proof that she sustained a compensable repetitive trauma injury to her low back and right lower extremity, arising out of and in the course and scope of her employment." While this finding of fact does reference, erroneously, unrefuted medical opinions of Dr. Anderson it does not meet the requirement of the foregoing statute and alone warrants reversal.

II. The single commissioner erred in finding that Claimant satisfied the requirements of S.C. Code Ann. 42-15-20(c) and provided her employer timely notice of a repetitive trauma claim.

Appellants also challenged the compensability of this claim pursuant to a contention that Respondent failed to timely notify Respondents of an alleged repetitive trauma injury as required by S.C. Code Ann. § 42-15-20(C). The foregoing statute states that when an employee suffers a repetitive trauma injury:

[N]otice must be given by the employee within ninety days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the [Workers' Compensation C]ommission for not giving timely notice, and the commission is satisfied that the employer has not been unduly prejudiced thereby.

S.C. Code Ann. § 42-15-20(C) (Supp.2010). The notice requirement in repetitive trauma claims is an area of great dispute and litigation. However, in 2011 the Court of Appeals took up this issue in *King v. International Knife and Saw-Florence*. In *King*, the employer argued that its employee, who acknowledge long-term arm ache, which he attributed to swinging hammers to hammer saw blades, failed to notify them timely. The employer specifically took the position that the employee could have discovered he had a compensable condition “a couple of years” prior to when he made his claim. 395 S.C. 437, 718 S.E.2d 227 (Ct.App. 2011).

In the present case Respondent takes the position that she did not know her condition was compensable until either it was eluded to be a short-term disability adjuster on August 21, 2017 or Dr. Anderson completed the medical questionnaire in February of 2018. This position is flatly unsupported by the evidence in the record. First and foremost, Respondent produced no documentation or other evidence from the short-term disability carrier calling into question the potential connection between her condition for which she was on disability and her employment. In fact, Respondent did not even produce any documentation to establish why she was on short-term disability. Any testimony Respondent attempted to proffer to that extent was contemporaneously objected to as hearsay. Regardless of the hearsay element Respondent testified that she still, even after that alleged conversation, failed to discuss the possibility of a compensable repetitive trauma injury with her employer despite speaking with human resources just a few days later.

It is inarguable that Dr. Anderson provided an opinion that Claimant’s injury was a result of repetitive activities performed by Respondent, which would likely satisfy S.C. Code Ann. § 42-15-20(c), but only in part. The notice requirement has two separate components. First, an injured worker must provide notice of a repetitive trauma injury within ninety (90) days of the date they discovered the condition was compensable. However, the statute also requires an injured worker to exercise due diligence in attempting to determine if the condition is

compensable. Respondent, as evidenced by the absence of any corresponding finding in the Decision and Order failed to present evidence that she exercised due diligence. Appellants directly argued that Respondent failed to exercise due diligence as required by the statute and she failed to present any evidence showing otherwise. Therefore, based solely on the failure to exercise due diligence Respondent should have been found to have not complied with S.C. Code Ann. § 42-15-20(c) resulting in a denial of her claim. She was under the care and treatment of Dr. Anderson for nine (9) months before her surgery, eleven (11) months before her purported conversation with the short-term disability adjuster, and an absurd seventeen (17) months before the questionnaire was completed. Despite being under Dr. Anderson's care for all that time Respondent presented no evidence showing any undertaking by her to determine the possible cause of her back and leg problems. The failure by Respondent to exercise due diligence is fatal to her claim.

In the case at bar Respondent was simply allowed to put her hands up and claim she provided notice when someone else told her the condition was a result of her employment. The statute does not permit such dilatory conduct by an injured worker nor does it obligate an injured worker to only notify his/her employer after a doctor renders a conclusion on causation. Regardless of the timing of Dr. Anderson's conclusion Respondent's claim fails to meet the requirements of S.C. Code Ann. § 42-15-20(c) by her own testimony. First and foremost, it was established in the record that Respondent had a previous instance where she was, during her employment, experiencing low back and leg pain in August of 2009. The record establishes, inarguably, that Respondent even then believed the issues were related to "lifting skids." Respondent, despite her best efforts at the hearing did not identify this as a solitary occurrence but rather noted it was generally related to lifting. Respondent arrived at this conclusion within a matter of a day. However, Respondent now expects this Commission to believe she was unable to the same conclusion in September of 2016, attributing her condition to the same issue, until

she was advised such by a doctor seventeen (17) months later. Furthermore, and most egregious, Respondent clearly testified on multiple occasions that she knew her back pain would get worse when she was lifting skids yet she did not notify her employer. The following is merely one example of an admission by Respondent that must result in her claim being barred for failure to provide timely notice:

Q: But you never reported to anyone at Steel Technologies, starting on September 9th of 2016, that when you were lifting skids your back pain was bad.

A: No.

Q: Was your back pain bad when you would lift skids at work?

A: It got to be eventually, yes.

Q: And -- and when was the eventually that it got to be?

A: When I finally made the choice -- well, made the choice to go see Dr. Anderson.

...

Q: So you knew in September of 2016 that when you were lifting skids, your back pain was hurting you?

A: Yes.

...

Q: And you never said to anyone at Steel Technologies, hey when I'm lifting these skids, my back pain is getting worse. Is that correct?

A: No.

(Hearing Transcript P. 62-64, ll. 5-16, 23-25, 1, 24-25, and 1-3). Appellants do not refute that Dr. Anderson did not provide any opinion on causation until February 21, 2018; however the statute does not simply permit an employee to wait for such a conclusion. The statute requires notice be given within ninety (90) days of the date an employee discovered, or through the exercise of reasonable diligence could discover the condition was compensable.

The case is replete with evidence tending to show that Respondent knew her condition was compensable as far back as September of 2016. Moreover, it is admitted by Respondent that, notice was not given to Appellants until September 14, 2017 when she first filed her Form 50, Employee's Notice of Claim. Therefore, based on the obvious admissions of Respondent she failed to provide timely notice and her claim must be denied.

CONCLUSION

For the foregoing reasons, the decision of the Single Commissioner Should be reversed with an Order entered finding that Respondent failed to establish a compensable repetitive trauma injury and/or failed to provide timely notice.

RESPECTFULLY SUBMITTED,



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ATTORNEY FOR DEFENDANTS

This 14th Day of December 2018
Columbia, South Carolina

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. File No. 1713493

Delinzy Grant,)
Claimant,)
v.)
Steel Technologies,)
Employer,)
and)
Zurich American Insurance Company,)
Carrier,)
Defendants.)

CERTIFICATE OF SERVICE

I, Denise M. Brockwell, paralegal for Crowe LaFave, LLC, do hereby certify that I have served the **Appellant's Brief to the Full Commission**, by electronic mail and by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows:

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Denise M. Brockwell
Paralegal

December 17, 2018

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1713493

DELINZY GRANT

EMPLOYEE / CLAIMANT,

vs.

STEEL TECHNOLOGIES

EMPLOYER,

and

ZURICH AMERICAN INSURANCE, CO.

CARRIER,

DEFENDANTS.

**RESPONDENTS' BRIEF TO THE FULL
COMMISSION**

STATEMENT OF THE CASE

The Claimant alleged that she sustained an injury to her low back and right lower extremity as a result of the repetitive activities she performed at her job. The Claimant filed a Form 50 – Requesting a Hearing on June 4, 2018. The Defendants timely filed a Form 51 denying that the Claimant sustained a work injury and consequently, is entitled to any benefits under the Workers' Compensation Act.

A hearing was set in front of the Single Commissioner on August 13, 2018. On October 2, 2018, the Single Commissioner ordered that the Claimant sustained an injury to her low back and right lower extremity as a direct result of the repetitive activities of her job. He further ordered that the Claimant is entitled to temporary, total disability ("TTD") benefits from June 8, 2017 to present and continuing and that the Defendants will be responsible for all causally-

related medical treatment and reimburse the Claimant for any out-of-pocket expenses for the same.

On October 5, 2018, the Defendants filed a Form 30. The Defendants are appealing the Single Commissioner's decision that the Claimant sustained a compensable repetitive trauma injury and that notice of her injury was timely made to her employer.

ARGUMENT

I. THE SINGLE COMMISSIONER DID NOT ERR WHEN HE HELD THAT THE CLAIMANT SUSTAINED A COMPENSABLE WORK-RELATED INJURY TO HER LOW BACK AS A DIRECT RESULT OF THE REPETITIVE ACTIVITIES OF HER EMPLOYMENT.

The South Carolina Workers' Compensation Act defines a repetitive trauma injury as "an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events." SC Code § 42-1-172(A). In order for such an injury to be deemed compensable, a "finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury." *Id.* at 42-1-172(B).

It is clear, in the matter at hand, that not just a preponderance of the evidence proves the Claimant's argument, but all of the evidence does so. The Claimant performed a variety of repetitive activities during her thirteen (13) years working at Steel Technologies. It is the cumulative effects of her job which has caused the injury to her low back. SC Code § 42-1-172(A) (a repetitive trauma injury is caused by the "cumulative effects of repetitive traumatic events.").

A. Steel Technologies has held out that the Claimant's job is repetitive in nature.

The Claimant has worked at Steel Technologies for over thirteen (13) years. Hrg. Trs., p. 18 (Claimant began working at Steel on March 4, 2004 and stopped working on June 5, 2017).

She worked as a packager for approximately eight (8) to nine (9) years. Id. at 19. She worked as a cut-to-length ("CTL") operator for the last two (2) – three (3) years working at Steel Technologies. Id. at 27.

Working as a CTL operator, the Claimant would typically work five (5) days/week, with some weeks involving a sixth day. Id. at 29. These days would last anywhere between eight (8) hours to twelve (12) hours long. Id.

Steel Technologies created a document outlining the responsibilities, expectations, aptitude, and physical requirements of a CTL operator. (EXH A, ps. 33-34). Steel Technologies states that physically, a CTL operator is required to:

- Able to stand and walk for extended periods of time
 - Able to bend, stoop, twist, reach, climb onto forklift, and climb stairs as needed
 - Able to operate an overhead crane and/or forklift as needed
 - Able to communicate effectively
 - Able to clearly understand instructions or directions given by co-workers or manager.
- Able to respond to emergency evacuation notices, and general paging announcements over the PA system.
- Able to lift 50 pounds
 - Able to work around heavy machinery at all times

Id. at 34.

David Brown, witness for the Defense and the first-shift lead, testified that the physical requirements, as described by Steel Technologies, were all accurate. Hrg. Trs., ps. 96-97. In addition, David Brown testified that a CTL Operator, would have to bend and lift sixteen (16) to twenty (20) skids per day and sometimes more. Id. at 80. Each skid contains one hundred (100)

to two hundred (200) steel sheets. Id. These sheets weigh anywhere from five (5) to fifteen (15) pounds. Id. at 81. The CTL Operator would have to lift each sheet and inspect it. Id.

David Brown also stated that when there was little to no production on the CTL line, the Claimant would return to work as a packager just as she did for the eight (8) to nine (9) years prior to working on the CTL line. Id. at 94-95. Claimant would be expected to lift anywhere from thirty (30) to forty (40) skids a day. Id. at 78. These skids weigh anywhere from thirty-five (35) to forty-five (45) pounds. Id. The CTL Operator would have to bend down and lift each skid. Id. at 78-79.

Steel Technologies has recognized that the Claimant's job, whether that be a packager, a SLEAR operator or a CTL Operator is repetitive in nature, especially when we are looking at the physical activities of bending and lifting. Coupled with the fact that the Claimant was expected to be on her feet the vast majority of the day, she had little chance to sit and rest.

B. The Claimant has testified that her career at Steel Technologies has required repetitive activities.

The Claimant has worked as a packager, a SLEAR line operator and a CTL operator during her tenure at Steel Technologies. Id. at 18-19, 22, 27. The physical requirements associated with working on each job are very similar: lifting, bending, stooping, and squatting. Id. at 20, 25, 26-28. As a packager, the Claimant would have to bend and lift the skids off of the floor more than when she was working as a CTL operator. Id. at 18, 29. Each day varies with regards to the amount of bending and lifting. Id. at 29. Some days would require twenty (20) times the Claimant would have to bend and lift a skid from the floor. Id. Some days may require up to forty-five (45) times the Claimant would have to bend a lift a skid off from the floor. Id.

Most days, the number of times the Claimant would have to bend and lift a skid off from the floor would be somewhere in between twenty (20) and forty-five (45).

Defense says this bending and lifting would not constitute a repetitive activity. Claimant disagrees. The Act looks for the cumulative effects of a person's job on their injury. SC Code § 42-1-172(A). Here is a list of how many times the Claimant would have had to bend and lift skids, which could weigh anywhere from thirty-five (35) to forty-five (45) pounds. Hrg. Trs., p. 78.

- 20 times/day – 433 times/month – 5,200 times/year – 67,600 times over 13 years
- 30 times/day – 650 times/month – 7,800 times/year – 101,400 times over 13 years
- 40 times/day – 866 times/month – 10,400 times/year – 135,200 times over 13 years

That does not even take into account the times where the Claimant would have to lift the number of sheets and inspect them, nor does it take into account the times that the Claimant would have to climb into the machine to fix it or clean up around the machine when needed.

One person who believes that the activities the Claimant performed at Steel Technologies were not only repetitive, but also the direct cause of the injury she has sustained to her low back is Dr. Thomas Anderson. (APA 1, ps. 12-14). Dr. Anderson has opined, to a reasonable degree of medical certainty, that the repetitive activities the Claimant performed at Steel Technologies, directly caused the injury to her low back. Id. Dr. Anderson's opinions as to the cause of the Claimant's injury is the only medical evidence in the record which addresses said issue. There is no evidence which either dispels Dr. Anderson's opinion.

Based on the preponderance of the evidence, it is clear that the Claimant has engaged in repetitive activities during her thirteen (13) year career at Steel technologies and these activities

directly caused the injury she has sustained to her low back and right lower extremity. There is no evidence to refute this claim, but more importantly, all of the evidence supports this claim. Consequently, the Single Commissioner did not err when he held that the Claimant did sustain an injury to her low back as a result of the repetitive activities of her job.

II. THE SINGLE COMMISSIONER DID NOT ERR WHEN HE HELD THAT THE CLAIMANT TIMELY GAVE HER EMPLOYER NOTICE OF HER WORK INJURY.

An injured worker has ninety (90) days to report a repetitive trauma injury to his/her employer from once they either knew their injury was the cause of their job or by exercising reasonable diligence would have known the repetitive activities of their job was the cause of their injury. SC Code § 42-15-20 (C). In the case at hand, the Claimant gave proper notice to her employer when she reasonably thought that her repetitive activities might be the primary cause of her low back injury.

The Claimant is an honest, truthful, hard working person. Hrg. Trs., p. 88. Those are the words of David Brown, witness for the Defense, and Claimant's supervisor for over ten (10) years, when characterizing the Claimant. The Claimant states that she never told her supervisors that her work was either the direct cause of her injury or possibly was the direct cause of her injury. *Id.* at 41. She attributed her back pain to getting older and primarily gaining weight. *Id.* at 36-37.

Since treating for her back injury in mid-September of 2016, not once do her medical records reflect that her problems are due to her job. In fact, the records simply indicate that her low back pain has waxed and waned over the years, but have worsened to the point she seeks medical treatment in September of 2016. (APA 1, p. 1).

When the Claimant initially went out of work in June of 2017, she applied for and received short-term disability benefits. Hrg. Trs. p. 38. It wasn't until August 21, 2017, after she spoke with the short-term disability adjuster, that her injury may be work-related. Id. She remembers August 21, 2017 specifically because that was the date of the solar eclipse. Id. at 39.

Even after being told that the repetitive activities of her job may be the cause of her injury, she still did not know. She sought legal counsel to determine if there was any validity to the short-term disability adjuster's theory. Id. at 41. She did not want to report a claim that was frivolous and put her job in jeopardy. Id.

A Form 50 – not requesting a hearing, was sent by the Claimant's attorney on September 14, 2017 to the employer and South Carolina Workers' Compensation Commission. At this time, notice was first given to the employer that the Claimant was alleging a workers' compensation claim. It wasn't until February 21, 2018, when Dr. Anderson completed a questionnaire stating that her repetitive work activities caused the injury to her low back did the Claimant reasonably believe that her work activities were the cause of her injury. (APA 1, ps. 12-14).

Defense makes the argument that the repetitive activities of the Claimant's job could not be the cause of her low back injuries because Dr. Anderson never altered her work restrictions since she began treating with the doctor. While that argument is not demonstrative of whether a claim is compensable or not under the Act, it does support the Claimant's theory that she did not know, or would not have known, that her job was the cause of her back injury.

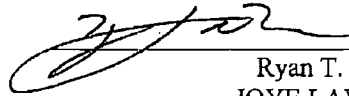
The Single Commissioner weighed all of the facts and found that the notice was timely given. Furthermore, since treatment was consistent and ongoing by the Claimant, the employer

would have not been unduly prejudiced by the Claimant not reporting her work injury immediately. SC Code § 42-15-20 (C).

CONCLUSION

The Single Commissioner did not err when he found that the Claimant sustained a compensable injury to her low back as a direct result of the repetitive activities, she has performed over the thirteen (13) years at her job. All of the evidence supports this finding. Furthermore, based on the facts of this case, the Claimant did timely notify her employer of her potential work-related injury. In addition, any gap in notifying the employer did not result in the employer being unduly prejudiced.

RESPECTFULLY SUBMITTED,



Ryan T. LeBlanc
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ATTORNEY FOR CLAIMANT

This 2nd day of January 2019
North Charleston, South Carolina

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE: 1713493

Delinzy Grant,

Employee/Claimant,

vs.

Steel Technologies,

Employer,

and

Zurich American Insurance Company,
Carrier,

Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 2, 2019, I served an electronic copy of the Respondents' Brief to:

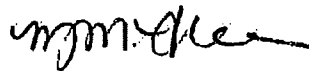
Amy Bracy, Judicial Director
S.C. Workers' Compensation Commission
1333 Main Street
P. O. Box 1715
Columbia, SC 29202

With an electronic copy to:

matt@crowelafave.com
Matthew LaFave, Esquire
Crowe LaFave LLC
Post Office Box 1149
Columbia, SC 29202-1481

☐ VIA FIRST CLASS MAIL
☐ VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED
☒ VIA ELECTRONIC MAIL

by placing a copy of said documents in the United States Mail with sufficient postage thereon.



Marcy M. Huckabee
Case Manager to Ryan T. LeBlanc

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1713493

Delinzy Grant,)
)
Employee/Claimant,)
)
v.)
)
Steel Technologies,)
)
Employer,)
)
and)
)
Zurich American Insurance,)
)
Carrier/Defendant.)
-----)

COMMISSION HEARING

Tuesday, August 14, 2018
11:09 a.m. - 12:55 p.m.

The Commission Hearing was heard before Commissioner Michael Campbell, at Isle of Palms City Hall, 1207 Palm Boulevard, Isle of Palms, South Carolina, on the 14th day of August, 2018, before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES**Matthew C. LaFave, Esquire**

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 Columbia, South Carolina 29201
 Attorney for the Carrier

Ryan T. LeBlanc, Esquire

Joye Law Firm, LLP
 5861 Rivers Avenue
 Charleston, South Carolina 29405
 Attorney for the Employer

Also present:

Delinzy Grant
 Mark Lyons
 David Brown

INDEX**PAGE****CALL TO ORDER:**

COMMISSIONER CAMPBELL. 4

POSITION STATEMENTS:

MR. LEBLANC. 6

MR. LAFAVE. 8

RESPONSE:

MR. LEBLANC. 11

MR. LAFAVE. 12

MS. GRANT:

MR. LEBLANC. . . DIRECT EXAMINATION. 15

MR. LAFAVE. . . CROSS-EXAMINATION. 43

MR. LEBLANC. . . REDIRECT EXAMINATION. 73

MR. BROWN:

MR. LAFAVE. . . DIRECT EXAMINATION. 75

MR. LEBLANC. . . CROSS-EXAMINATION. 88

MR. LAFAVE. . . REDIRECT EXAMINATION. 97

Certificate 101

EXHIBITS

(No Exhibits were marked at this hearing.)



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STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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CALL TO ORDER:

COMMISSIONER CAMPBELL: Today's hearing date is August 14, 2018. This is Workers' Compensation Case File Number 1713493. The Claimant is -- is it Delinzy?

MS. GRANT: Yes, it is.

COMMISSIONER CAMPBELL: I like that name. Delinzy Grant, who is represented by Ryan T. LeBlanc. The Employer is Steel Technologies. The Carrier is Zurich American Insurance Company, represented by Matthew C. LaFave. The date of accident is June 5th, 2017. It was an average weekly wage of \$872.67 with a corresponding compensation rate of \$581.81. APAs have been submitted. Are there any objections to APAs, jurisdiction, venue, or any other items?

MR. LEBLANC: I would just raise an objection, Commissioner, to Defendant's Exhibit 5, pages 61 and 62, as their conclusion -- as to one, relevancy, and two, as to certification of them actually stating what they represent.

COMMISSIONER CAMPBELL: Okay. And I'll let you respond to the objection.

MR. LAFAVE: Sure. Thank you, Commissioner. As to those particular two pages, it's clear at the



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1 top of it that the first one, page 61, deals
2 with the average number of skids per day on the
3 CTL line. We have a witness here who will
4 testify that was the line Ms. Grant was
5 operating and when she was a CTL helper and CTL
6 operator and that that's the accurate
7 indication as to the average number of skids
8 lifted. We're here, obviously, over a
9 repetitive trauma claim. This goes directly to
10 the issue of whether or not lifting was
11 repetitive activity and capsulated within her
12 job as a CTL, either helper or operator. Page
13 62 simply backs up that data showing the -- the
14 pounds of steel that were passing through the
15 CTL line, which will correlate to the average
16 number of skids that are run on that particular
17 line. Again, I have witnesses here who will
18 validate and authenticate and do whatever needs
19 to be done with regard to those particular
20 records and obviously can be cross-examined on
21 them, as well.

22 **COMMISSIONER CAMPBELL:** Okay. And that's -- and as
23 we discussed as a part of our prehearing
24 conference, I will allow those submissions in
25 and will give them the proper weight that I



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1 feel like they deserve. Any -- any further
2 objections? Okay.

3 **MR. LAFAVE:** Not from the Defense ---

4 **COMMISSIONER CAMPBELL:** All right.

5 **MR. LAFAVE:** --- Your Honor.

6 **COMMISSIONER CAMPBELL:** Without further objection,
7 the Commission file becomes a part of the
8 record with exception of self-serving
9 declarations and unstipulated medical reports.
10 And, Mr. LeBlanc, we are here today on your
11 Form 50, so if you would, please put your
12 position on the record and let us know exactly
13 what you're seeking here today, sir.

14 **POSITION STATEMENT BY MR. LEBLANC:**

15 **MR. LEBLANC:** Thank you, Commissioner. We are here
16 today because we contend that Ms. Grant has
17 sustained a compensable work related injury to
18 her low back as a result of the repetitive
19 activities she performed at her job at Steel
20 Technologies. Her last date of injury is June
21 5th, 2017, as that is the last date of the
22 injured's exposure. We contend that the
23 activities that she performed during her 13
24 years working at Steel Technologies is the
25 cause of this. The medical evidence supports



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1 this, as well as, I believe, the opinion of
2 Steel Technologies and their job description of
3 her job, at least the cut to length operator
4 job, supports this, as well as Ms. Grant's
5 testimony. We also seek for continued or TTD
6 benefits from June 5th, 2017, as she was
7 written out of work due to a fusion surgery
8 that Dr. Thomas Anderson performed and has not
9 been back to work since and is not at maximum
10 medical improvement at this time. Furthermore,
11 Ms. Grant has, while she has sought employment
12 during this time, she has not been able to
13 obtain employment and consequently has not
14 received any income during this time. And we
15 also ask for any causally related medical
16 treatment in the past, as well as in the future
17 to be the responsibility of the Defendants.
18 And I understand that the -- the Defendants,
19 Commissioner, had the right to choose the
20 treating physician and control the medical
21 care. However, the Commissioner does have the
22 right on denied cases to choose the authorized
23 treating physician going forward. We would ask
24 that that continue to be Dr. Anderson simply
25 because he's been treating her for over a year,



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1 almost two years now. And we would appreciate
2 his opinion and, you know, throughout this
3 whole entire time and his treatment. And that
4 would be it.

5 COMMISSIONER CAMPBELL: Okay. All right. Mr.
6 LaFave?

7 POSITION STATEMENT BY MR. LAFAVE:

8 MR. LAFAVE: Thank you, Commissioner. It's the
9 position of Steel Technologies and its Carrier
10 that while Ms. Grant's job does have certain
11 physical requirements and that is what's
12 indicated in the job description, not that it's
13 a repetitive activity, her job is physical in
14 nature. There is lifting, there is bending,
15 certainly, but none of these aspects of her job
16 are repetitive in nature. Under 42-11-72, in
17 order to qualify for repetitive trauma injury,
18 you must show that the job has repetitive
19 activities, not simply enough to show that the
20 job is physical and that you believe that there
21 might be some correlation between the physical
22 elements of your job and an injury. You have
23 to show that there are repetitive activities.

24 The other issue here, Commissioner, and we
25 believe one of the more predominant basis for



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1 denying this case is 42-15-20, subsection ©,
2 which, as you know, requires under a repetitive
3 trauma claim to notify the employer within 90
4 days from the date you knew or with the
5 exercise of reasonable diligence could have
6 discovered you had a compensable condition.
7 Compensability being dictated by either the
8 need for and/or entitlement to medical benefits
9 treatment or the entitled -- the entitlement to
10 compensation in the form of temporary total
11 disability benefits. It's our position, Your
12 Honor, that that clock, that 90 day clock,
13 started when Ms. Grant first returned to get
14 medical treatment, September 9th of 2016. It
15 cannot be understated, she continued to work in
16 this job that she now contends was repetitive
17 in nature and caused her back problem for 38
18 weeks and 4 days. Nearly 10 full months and
19 she wants the Commissioner, she needs the
20 Commissioner to believe that she could not have
21 figured out through the exercise of reasonable
22 diligence that it was the job that was causing
23 her back problems. It wasn't until a February
24 of 2018 questionnaire that was signed off on by
25 Dr. Anderson when he says, yes, the physical



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1 aspects of the job, the repetitive activities,
2 of which there are none, caused her back
3 problems. The same Dr. Anderson who on July
4 21st, 2017 gave her an out of work excuse that
5 clearly states this is not work related. Dr.
6 Anderson was aware of some of the aspects of
7 her job, referenced March 21st, 2017, some of
8 the lifting requirements. At no point in time
9 from when he first saw her in September of 2016
10 until he took her out of work three days, Your
11 Honor, before the surgery. She worked up until
12 June 5th of 2017, has surgery June 8th of 2017.
13 In order to believe that she exercised
14 reasonable diligence, you would have to find
15 that she couldn't have figured out in those 10
16 months that this job that she's able to do, no
17 restrictions, no modifications, up until three
18 days before spinal surgery, is the cause of her
19 entire problem. And we just think that that's
20 illogical, especially in light of 2009 when Ms.
21 Grant reported to David Brown, who's here to
22 testify, that she was having back and lower leg
23 pain. In fact, took the next day off, had to
24 go get medical treatment in 2009, references it
25 throughout her medical treatment with



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1 Southeastern Spine. In 2009, in August, she
2 reports to Mr. Brown that her back and lower
3 leg are hurting and she believes it's from
4 lifting skids. But yet, seven years later,
5 she's able to do this for 10 months and she
6 can't figure that out until somebody else tells
7 her it's work related. And we just think that
8 that's illogical and runs afoul of 42-15-200.
9 She has to exercise reasonable diligence, just
10 can't throw her hands up and say, well, I
11 didn't know until somebody told me. Thank you.

12 COMMISSIONER CAMPBELL: Okay. All right. Anything
13 in response?

14 RESPONSE BY MR. LEBLANC:

15 MR. LEBLANC: I'll respond just to a couple bits. I
16 believe Mr. LaFave not only proves our point as
17 to why Ms. Grant wouldn't have reasonably
18 known. Again, being able to do the job as she
19 did and continued to do throughout her
20 treatment and the job actually causing the
21 injury are two completely different things.
22 And so, I think it's reasonable to assume that
23 someone's actually doing her job and doing it
24 as effectively and admirably as Ms. Grant had
25 been doing. That would again lend credence to



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1 the fact that she does not know that her job is
2 the cause of the problem. In fact, no one knew
3 that the job was the cause of the problem until
4 Dr. Anderson himself opined that the job was
5 the cause of the problem back in February of
6 2018. With that said, Notice was timely met
7 because the first time that Ms. Grant, and she
8 will testify to this, knew or -- I shouldn't
9 say knew -- had reason to believe that the job
10 was the cause of the problem was her
11 understanding at that time on August 21st that
12 this job may be the problem. And Form 50 was
13 filed on September 14th, certainly within the
14 90 day restriction or 90 day time line. So
15 again, Notice was met and her repetitive
16 activities, as I've gone into great detail in
17 her prehearing conference, I'm not gonna berate
18 the point again here on the record, but we'll
19 go through that again during testimony, but her
20 repetitive activities have obviously caused the
21 problems to her low back that she has sustained
22 starting in 2015, '16 and even up to today.

23 COMMISSIONER CAMPBELL: Okay. Matt, anything more
24 at this time?

25 RESPONSE BY MR. LAFAVE:



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1 **MR. LAFAVE:** Just real briefly, Your Honor. The
2 issue, again, comes back to it -- it can't be
3 both. It can't be the job caused it, but I was
4 physically able to continue to do the job for
5 10 months. It defies logic that one could do
6 a job that's causing progressively worsening
7 back problems up until the point to you
8 eventually needing a spinal fusion. You did
9 that job for ten months without restrictions,
10 without limitations, and it caused the back
11 problems to continue to get worse, yet you
12 didn't know until somebody else mentioned it to
13 you. It -- it -- again, you can't have it --
14 we talked about this in the prehearing
15 conference, you can't have it both ways. You
16 can't say, yeah, I was able to do this job and
17 I didn't know. I couldn't figure it out that
18 it was the cause of my back problems, but I
19 couldn't figure it out because I was able to do
20 the job. It -- it -- you can't have it both
21 ways.

22 **COMMISSIONER CAMPBELL:** Okay. All right.

23 **MR. LEBLANC:** I'll - one last point.

24 **COMMISSIONER CAMPBELL:** Okay.

25 **MR. LEBLANC:** Mr. LaFave keeps talking about medical



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1 problems and the physical capabilities that a
2 body can actually withstand and sustain. That
3 is a question for the doctor, not for us
4 lawyers. We don't know the biological
5 functions of a particular individual. Dr.
6 Anderson is more qualified than anyone here at
7 this table today and his opinion is what it is
8 and it's in the APAs.

9 **COMMISSIONER CAMPBELL:** Okay. All right. And, Ms.
10 Grant, before we get started, I have a couple
11 of quick things to run through with you. If
12 you would, please speak up, speak clearly for
13 us. It's important that we all hear your
14 responses to the questions, but most
15 importantly, that this nice lady here to my
16 left get them for the record. If you're asked
17 a yes or no question, please give us a verbal
18 yes or no answer. You can shake your head yes
19 or no like I do all the time, just make sure
20 you please accompany that with a verbal yes or
21 no answer. And try and stay away from things
22 like uh-huh and huh-uh just because that can be
23 easily misunderstood on the record. So, if you
24 could help us out with that, we'd appreciate
25 it. Okay?



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1 MS. GRANT: Okay.

2 COMMISSIONER CAMPBELL: Please raise your right hand.

3 MS. GRANT: (Complies.)

4 COMMISSIONER CAMPBELL: Do you swear and affirm that
5 the testimony you are about to give is the
6 truth, the whole truth and nothing but the
7 truth?

8 MS. GRANT: I do.

9 COMMISSIONER CAMPBELL: Okay. You can put your hand
10 down.

11 MS. GRANT: (Complies.)

12 COMMISSIONER CAMPBELL: Please state and spell your
13 name for the record, ma'am.

14 MS. GRANT: My name's Delinzy Grant. That's D-E-L-
15 I-N-Z-Y, Grant, G-R-A-N-T.

16 COMMISSIONER CAMPBELL: Okay, thank you, Ms. Grant.
17 Mr. LeBlanc, your witness.

18 DELINZY GRANT, having been duly sworn, testifies as
19 follows:

20 MS. GRANT - DIRECT EXAMINATION BY MR. LEBLANC:

21 MR. LEBLANC: Thank you, Commissioner. Good
22 morning, Ms. Grant.

23 A: Good morning.

24 Q: Ms. Grant, what is your date of birth?

25 A: 10/1/64.



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1 Q: And that makes you how old?
2 A: 53.
3 Q: Are you married?
4 A: Yes.
5 Q: Who is your husband?
6 A: Derek Grant.
7 Q: How long have you been married?
8 A: Three years.
9 Q: Do you have any children?
10 A: Yes.
11 Q: And what are their ages?
12 A: 33 and 26.
13 Q: Do any of them live with you?
14 A: My 26 year old daughter and my 33 year old
15 daughter is now single.
16 Q: Okay. Do you have any grandchildren?
17 A: I do.
18 Q: How many?
19 A: Four.
20 Q: And what are their ages? .
21 A: 11, 6, 4 and 3.
22 Q: Do your grandchildren live with you?
23 A: Yes, they do.
24 Q: Okay. We're here today, Ms. Grant, in regards
25 to a back injury that you sustained. Have you



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1 ever had prior to say 2015 any back issues in
2 the past?

3 A: No.

4 Q: Okay. Do you recall in 2009 injuring yourself
5 at Steel Technologies and injuring your low
6 back at that time?

7 A: Yes.

8 Q: Okay. And did you get treatment for those
9 injuries?

10 A: Yes.

11 Q: And did you get treatment for approximately
12 about a month?

13 A: Yes.

14 Q: Were they in the form of medications and
15 therapy?

16 A: No therapy. I took like Ibuprofen and light
17 duty at work.

18 Q: Okay. Did the problems with your low back
19 resolve after a month?

20 A: I would say yes.

21 Q: Did you receive any settlement as a result of
22 that workers' compensation injury?

23 A: No.

24 Q: I understand you've also had some prior health
25 issues in the form of cancer. Is that correct,



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1 ma'am?

2 A: Yes.

3 Q: When were you diagnosed with cancer?

4 A: 2013.

5 Q: What type of cancer?

6 A: Uterus cancer.

7 Q: Did you have a hysterectomy?

8 A: I did.

9 Q: Are you in remission?

10 A: I am.

11 Q: Very good. Have you also undergone a knee

12 surgery?

13 A: I have.

14 Q: To which knee?

15 A: My right knee.

16 Q: And when was that?

17 A: About 2012.

18 Q: Were you able to continue doing your job at

19 Steel Technologies just by the knee surgery?

20 A: Yes.

21 Q: When did you begin working at Steel

22 Technologies?

23 A: March the 4th, 2004.

24 Q: And at that time, what were you hired to do?

25 A: Packaging.



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- 1 Q: How long did you work as a packager?
- 2 A: About eight, nine years.
- 3 Q: Tell me what you had to do as a packager.
- 4 A: We'd band coils that came down the line. We
- 5 packaged the skids up to go under finished
- 6 goods. We did housekeeping. We banded coils
- 7 that were on the floor. Eventually, I learned
- 8 to drive the forklift and I would help put
- 9 finished goods up into the warehouse.
- 10 Q: We'll get into the details of that. How many
- 11 days a week did you typically work when you
- 12 working as a packager?
- 13 A: Five to six days sometimes.
- 14 Q: Okay. Was it primarily five days a week?
- 15 A: Yes.
- 16 Q: And were there eight hour days?
- 17 A: Yes.
- 18 Q: Were there sometimes ten hour days?
- 19 A: Not when I was in packaging, no.
- 20 Q: Let's talk about the banding the coils and
- 21 lifting the skids. Tell me what are skids?
- 22 A: They're like two runners with two flat boards
- 23 across the top. They look like a checkered
- 24 pattern. You would set the coil that come down
- 25 the line on top of them -- on top of a



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- 1 carousel.
- 2 Q: So, you would have to physically lift the skid
3 from the floor onto the carousel?
- 4 A: Yes.
- 5 Q: And the carousel, if memory serves me correct
6 in your deposition, was right about your knee
7 height?
- 8 A: Three feet high, came about to my knee.
- 9 Q: And do you know approximately how heavy those
10 skids were that you lifted?
- 11 A: 40 to -- 40 to -- 45 to maybe 50 pounds,
12 depending on the size.
- 13 Q: And when you were packaging, how many skids
14 would you lift a day approximately.
- 15 A: When I was in the packaging department,
16 anywhere from 40 to it could be up towards
17 almost 80 a day.
- 18 Q: What -- when you had to band coils, what did
19 that entail?
- 20 A: You would take a metal band and you would put
21 it around the coil in three spaces -- three
22 areas to secure it from unraveling, because
23 it'd roll up into a coil and you would actually
24 put bands around it. When it came down the
25 line, it came with one belly band around it.



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1 And you would put three bands around it to
2 secure it from coming unraveled and then we
3 would take it down a line, set it on top of the
4 coil and send it down another line to be banded
5 to the skid.

6 Q: How would you go about achieving that activity
7 or that job?

8 A: Well, that, it came down the line and you would
9 pick it up with a -- it's -- it's a machine
10 that goes in the middle of it. It picks it up,
11 grabs it, bring it out, set it down on the coil
12 -- excuse me, on the skid. And from there the
13 next person would take it down the line and
14 they would band it on the end, tag it up, put
15 paper on it and would go on to finished goods.

16 Q: And these coils are fairly heavy, is that ---

17 A: Some are heavy and some are lighter. Yes..

18 Q: Did -- were these banding -- did you have to
19 lift these coils at all?

20 A: Not those coils. No.

21 Q: Did you have to bend and squat at your job as
22 a packager?

23 A: Yes.

24 Q: And did you have to lift skids, as well?

25 A: Yes.



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1 Q: And after about eight or nine years as a
2 packager, what was your next job at Steel
3 Technologies?

4 A: I went on to the Slear.

5 Q: And how long did you work on the Slear?

6 A: About a year now. Almost two years.

7 Q: All right. And just for the record, slear is
8 spelled S-L-E-A-R? Is that correct?

9 A: Yes.

10 Q: Okay. And is this a particular machine?

11 A: Yes, it is.

12 Q: All right. What did you do on the slear?

13 A: I was a machine helper.

14 Q: And what would you have to do as a machine
15 helper?

16 A: We would -- we would lower -- load skids into
17 the machine, help load the coil onto the pull
18 cart, help with the steel through the machine.
19 Sometimes you would have to climb in the
20 machine to change out papers in there. You
21 would band on a table, the skid, once it came
22 out and put it up in finished goods. If we
23 didn't have a fork lift driver that day or
24 whatever we did housekeeping around there for
25 time.



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- 1 Q: Did you also work on a computer?
- 2 A: Yes.
- 3 Q: I didn't ask this. My apologies. When you
- 4 were packaging, did you stand the vast majority
- 5 of the day?
- 6 A: Yes.
- 7 Q: And when you worked on the Slear line, did you
- 8 stand the vast majority of the day?
- 9 A: Yes.
- 10 Q: When you worked on the Slear line, were you
- 11 working five to six days a week, as well?
- 12 A: Yes.
- 13 Q: Were you working just eight hour days during
- 14 that time or were there other times as well?
- 15 A: On a Slear, I believe it was only eight hours
- 16 a day then too.
- 17 Q: Let's talk about you said that you were helping
- 18 loading coils.
- 19 A: Uh-huh.
- 20 Q: Is that a yes?
- 21 A: Yes.
- 22 Q: Okay.
- 23 A: I'm sorry.
- 24 Q: It's quite all right. How heavy were these
- 25 coils?



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1 A: I think they were like 45,000 pounds, 35,000
2 pounds.

3 Q: Were you loading about three or four a day?

4 A: On the Slear, it ran about three coils a day.

5 Q: And did you use the machine in order to load
6 those coils?

7 A: Yes.

8 Q: There's nothing physical that you could do to
9 load those coils, correct?

10 A: No.

11 Q: Okay. You'd indicated that you had to maintain
12 the Slear machine?

13 A: Yes.

14 Q: What would you have to do in order to do that?

15 A: Sometimes you would have to climb inside the
16 machine and change out the paperwork or the
17 cardboard that we used in the machine to keep
18 from scratches being made on the steel. We
19 would tape it down to the platform -- to the
20 platform that they have on the inside of it so
21 when the steel ran across it it didn't scratch
22 the steel. And basically that's all we did
23 inside the machine on that.

24 Q: You had to drive a forklift?

25 A: Yes.



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- 1 Q: And did you have to lift skids?
- 2 A: Yes.
- 3 Q: How many skids would you lift a day
- 4 approximately?
- 5 A: On a Slear, about maybe 35, maybe 40. It
- 6 depends on how many coils you ran per day. And
- 7 coils you got ten skids per coil or sometimes
- 8 you might get a little less or maybe a little
- 9 more.
- 10 Q: And is -- the Slear machine or where the skids
- 11 are located is similar to the packaging where
- 12 you would -- the skids would be on the floor
- 13 and then you would have to lift the skids onto
- 14 a table of some sort that was approximately
- 15 knee height?
- 16 A: It was probably -- yes. It was probably knee
- 17 high.
- 18 Q: Okay. Did anything after the Slear line, did
- 19 anything go on top of those skids?
- 20 A: Just paper. After we checked for scratches and
- 21 you paper it out, send it down the line, band
- 22 it up, it would be removed off the line.
- 23 Q: Approximately how heavy were those skids?
- 24 A: Well, it depends on the amount of sheets you
- 25 had on the skid. We had a formula that we



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1 would use to determine the weight of the skid.
2 Sometimes the skid could weigh like 3,000
3 pounds or 1,000 pounds. It just depends on the
4 amount of material that was on the skid.

5 Q: How heavy was the skid prior to any material
6 getting on it when it was on the ground and you
7 had to lift it up onto the table?

8 A: Depending on the size of the skid that we were
9 using, anywhere from 35 pounds to maybe 45/50
10 pounds.

11 Q: You also indicated that you did some
12 housekeeping work?

13 A: Yes, we did.

14 Q: What is the housekeeping work?

15 A: We had to keep around the machine clean, make
16 sure oil -- there were no oil spills on the
17 floor. Sweep. Wipe down any machinery that
18 had oil spills on them. Make sure your skids
19 were stacked neatly and they weren't just
20 spewed all over the place. And just keep the
21 area clean at all times.

22 Q: Did that require, as well, bending and
23 squatting at times?

24 A: It would, yes.

25 Q: And in order to lift the skids, would you have



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1 to bend and stoop and squat?

2 A: Yes.

3 Q: Your next job was working on the CTL line, is

4 that correct?

5 A: Yes.

6 Q: And does CTL mean cut to length?

7 A: It does.

8 Q: Do you recall approximately when you started

9 working on that line?

10 A: About 2014, '15.

11 Q: And when you were working on the CTL line, were

12 you a -- a machine helper?

13 A: Yes.

14 Q: Were you also a machine operator?

15 A: I became, yes.

16 Q: Is there really any difference between a

17 machine helper and a machine operator?

18 A: Some would say yes and some would say no.

19 You're basically doing the same job. In the

20 beginning, we had a helper, which we -- they

21 later made us learn how to run a machine, so we

22 had two operators on a machine. And you did

23 basically almost the same job. You would help

24 lift the skids, you would help load the steel

25 in the machine, you would help maintain the



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1 machine and keep the area clean or you would
2 either be able to unload the lines and put
3 stuff up in the finished goods.

4 Q: Why did you work at the CTL line when you were
5 working in the Slear line? What was the reason
6 for the transfer?

7 A: They removed -- they got rid of the machine.

8 Q: The Slear machine?

9 A: Yes.

10 Q: So, in the CTL line, you would load skids?

11 A: Yes. .

12 Q: And how heavy were those skids?

13 A: Depends, once again, on the material, the size,
14 the cut of steel you were using sometimes.
15 Once again, it could be 25, 30 pounds up
16 towards 45, 50 pounds. We had plastic skids
17 and wooden skids also that we would use.

18 Q: And just like in the packaging line and then
19 the Slear line, would you have to lift the
20 skids from the floor onto a table that was
21 approximately knee height?

22 A: Yes.

23 Q: And approximately how many skids a day would
24 you say you lifted?

25 A: Depends on the material that you were running



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1 because we didn't always run the same material
2 always down that line. Some days you could --
3 you can do up to 25, 30, 40, 45, depends on the
4 material. Some days less. Just depends on the
5 production that you're running or how much work
6 you had on a machine at the time.

7 Q: Were you first shift or second shift?

8 A: First shift.

9 Q: And how many days a week would you work at --
10 as a CTL line machine operator?

11 A: Five days. Some Saturdays. Whenever
12 production was heavy, we would work on the
13 weekends.

14 Q: Did you work eight hour days only?

15 A: When I was on the Slear, we were working 10,
16 sometimes 12 hours.

17 Q: When you were on the CTL line?

18 A: CTL line, excuse me.

19 Q: Okay. So, on the CTL line, there were times
20 when you were working 10 hours, as well as 12
21 hours?

22 A: Yes.

23 Q: And that's a day?

24 A: Yes.

25 Q: Did you have to load coil as well on the CTL



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1 line?

2 A: Yes.

3 Q: And did you use the machine in order to do
4 that?

5 A: Yes.

6 Q: When the skids are placed on the table, are
7 there sheets of steel that are on top of the
8 skids?

9 A: Yes, there are.

10 Q: And did you have to inspect the sheets of
11 steel?

12 A: When the first sheet comes out you have to
13 inspect it. So you have to lift it up, check
14 for any pitting, any damages to the steel and
15 make sure it's -- it's good. You check for
16 your measurements and you put it down back on
17 the table. Once that's in, you would go up a
18 plat -- onto a platform that would come through
19 and fall on the -- on the skid. You would get
20 it in there where it would fall neatly, then
21 you would go back to your machine, cut it on,
22 start the steel running, you would go back up
23 the platform, watch the steel go in there, and
24 when that come back down, you -- when it's
25 finished, you would come back down, roll it



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1 out, lift your -- your -- your last sheet up,
2 check for measurements, you make sure there's
3 no pitting or any damage to the steel, no bad
4 edges, and once you're done with that top
5 sheet, you put that back down, send it down the
6 line to the persons at the end of the line
7 that's gonna band it, put paper on it, and then
8 you would print out your tag, give it to them,
9 they would tag it out and a fork lift would
10 either come and get it or you go off the line.

11 Q: How heavy were these steel sheets that you
12 would have to lift?

13 A: Maybe 40 pounds. 29, 30 pounds.

14 Q: So, sometimes it'd be less than that as well?

15 A: Yeah.

16 Q: Maybe around ---

17 A: Depends on the gage of steel.

18 Q: --- 15 or 20 pounds?

19 A: Sometimes it would take two people to lift it.
20 Sometimes you can do it by yourself.

21 Q: Were there times where the sheet of steel would
22 be so heavy that you would have to have a
23 helper lift the sheet with you?

24 A: Yes.

25 Q: And when you lifted the sheet, was it at a



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1 horizontal plane initially and you'd have to
2 lift it to a vertical plane in order to inspect
3 it?

4 A: Yes.

5 Q: And then you'd have to put it back down on its
6 horizontal plane again?

7 A: Yes.

8 Q: Did you do computer work ---

9 A: I did.

10 Q: --- on the CTL line? Did you have to stand the
11 vast majority of the day working as a CTL
12 machine operator?

13 A: Yes.

14 Q: Did you have to do housekeeping work?

15 A: Yes.

16 Q: Was the housekeeping work as a CTL line the
17 same as a Slear?

18 A: Pretty much. You would sweep up the area, make
19 sure there was no trash in the area. Make sure
20 your skids are stacked. Make sure your
21 material is at -- at -- where you need to be
22 at, where you can go on to the next thing and
23 start your next production or wipe down any oil
24 or grease that's on the floor.

25 Q: Did you also operate a fork lift?



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1 A: I did.

2 Q: Did you ever have to physically lift any of the
3 boxes or objects that you were trying to pick
4 up with the fork lift?

5 A: At times you would have to, yes.

6 Q: But would they be rare in nature?

7 A: Boxes of clips is what we call what we used on
8 the band -- to secure the steel. They could
9 weigh about 20 pounds, 25 pounds maybe, a box
10 of clips. Banding material, we would lift that
11 to put it in the housing to use to band the
12 sheets together. You would do -- you would do
13 lifting above the material besides just the
14 steel, yes.

15 MR. LEBLANC: Permission to approach the witness?

16 COMMISSIONER CAMPBELL: Sure.

17 Q: Ms. Grant, were you working on the CTL line in
18 August 2016?

19 A: I was.

20 MR. LEBLANC: This is page 62 of Defendant's APA.

21 COMMISSIONER CAMPBELL: Okay, thank you.

22 Q: Based on the Defendant's assessment with this
23 Exhibit, it indicates that there was zero
24 pounds of steel running through the CTL in
25 August. Can you see that?



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- 1 A: Yes.
- 2 Q: If you weren't working on the CTL line and yet
- 3 you were working in August of 2016, and the CTL
- 4 isn't producing any steel, what were you doing?
- 5 A: I would go in a different department.
- 6 Q: And what department would that be?
- 7 A: They would normally send me to packaging.
- 8 Q: The first job that you had had?
- 9 A: Yes.
- 10 Q: And would you do the same jobs as the packager
- 11 that you had done for the past eight, nine
- 12 years?
- 13 A: Yes, I would go back on the line and help
- 14 package the steel ---
- 15 Q: Is there ---
- 16 A: --- on the line.
- 17 Q: Is there anything else that you did?
- 18 A: Forklift driver, forklift.
- 19 Q: And if there were times that there wasn't much
- 20 material to be worked upon on the CTL line,
- 21 would you work in the packaging department as
- 22 well?
- 23 A: Yes.
- 24 Q: Not just in August of 2016, but in other months
- 25 as well? Is that ---



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1 A: Yes.

2 Q: So, if the CTL was slow, and there wasn't much
3 that needed to be put out, you weren't just
4 standing there all day, you were actually
5 working on the packaging line?

6 MR. LAFAVE: Objection. Leading the witness.

7 COMMISSIONER CAMPBELL: Okay. Can you rephrase the
8 question, please?

9 MR. LEBLANC: I'd be more than happy to.

10 COMMISSIONER CAMPBELL: Thank you.

11 Q: When you weren't on the CTL line, would you be
12 working in other departments?

13 A: Yes.

14 Q: And that wouldn't just be August of 2016?

15 A: No. If someone called out and they didn't have
16 somebody to work in that area, there's been
17 times when they shut our line down because what
18 we had was not as important as what they wanted
19 to get out on another line and we would go, or
20 I would go, and work in another department to
21 cover for somebody else.

22 Q: You've had back problems for some time. Do you
23 recall, Ms. Grant, when you first started to
24 develop -- to develop back problems that would
25 be pertinent to the surgery that you required



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1 in 2017?

2 A: I think I started noticing I was having
3 problems probably at the end of 2015. It just
4 continued out through the year.

5 Q: Did you go see Dr. Anderson at Southeastern
6 Spine Institute?

7 A: In 2016, I did.

8 Q: And was that in September of 2016?

9 A: Yes.

10 Q: And why did you go see specifically Dr.
11 Anderson at Southeastern Spine Institute?

12 A: My husband suggested it. He had went there
13 previously and he thought I would probably --
14 could help me because I kept saying my back was
15 hurting me and it wasn't getting any relief
16 just taking over the counter medication for it.

17 Q: What did you attribute the problems with your
18 back, say as of September of 2016, to?

19 A: In my mind, I would say I gained weight
20 throughout the years and getting up in age and
21 just doing my job that I normally did, you
22 know, I figured I go there, I do the job, and
23 you go home sore. You get back up the next
24 day, you do it again. So, I just thought as I
25 got older weight played a part of it. But I



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1 thought my weight played a major part of it.

2 Q: And your age?

3 A: Yes.

4 Q: Just getting older?

5 A: Yeah.

6 Q: Did you at any time talk with Dr. Anderson

7 indicating the problems that you were having

8 with your back being the cause of your -- your

9 repetitive activities on your job?

10 A: No.

11 Q: On June 5th -- or was June 5th, 2017 the last

12 date that you worked at Steel Technologies?

13 A: Yes.

14 Q: And per the medical records, shortly thereafter

15 you underwent fusion surgery?

16 A: Yes.

17 Q: Have you been back to work at Steel

18 Technologies since?

19 A: No.

20 Q: Are you still employed at Steel Technologies?

21 A: No.

22 Q: Do you know the date that you were let go from

23 Steel Technologies?

24 A: September the 5th.

25 Q: And do you know the reason that Steel



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1 Technologies gave you as to why they are
2 dismissing you from their employment?

3 A: I was told by the HR that if I got better, I
4 would be able to come back to work or they
5 would extend a courtesy to see if there was a
6 position that would be available for me when
7 and if I was able to come back to work. So, I
8 don't know what their reasoning would be or --
9 I'm sorry. They just felt that I had run out
10 of my time as far as the amount of time that
11 was up, I guess. That the amount of time that
12 I had for when you got on leave for surgery or
13 whatever and I don't know. I can't say for
14 sure why they decided to let me go at that
15 time.

16 Q: Did you go on short-term disability benefits?

17 A: I did.

18 Q: Did you ever talk with the short-term
19 disability adjuster?

20 A: I did.

21 Q: When was the first time that you were informed
22 or believed potentially that the problems with
23 your low back were due to your work activities?

24 A: August the 21st.

25 Q: And why that date?



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1 A: I remember it because it was the solar eclipse
2 that day. They gave me a call and told me that
3 they ---
4 MR. LAFAVE: Objection.
5 COMMISSIONER CAMPBELL: Okay.
6 MR. LEBLANC: I'll -- I'll say this. And we'll --
7 I'll -- I'll rephrase the question.
8 COMMISSIONER CAMPBELL: Okay.
9 MR. LEBLANC: Because I understand it's hearsay.
10 She can't say what somebody else said.
11 COMMISSIONER CAMPBELL: Well, if -- if she's
12 testifying as to what a supervisor told her,
13 she can testify to that. But if it's not -- if
14 it's anybody else, she can't testify to that.
15 MR. LEBLANC: It's a short-term disability adjuster.
16 COMMISSIONER CAMPBELL: Okay, okay. I'm sorry. All
17 right.
18 MR. LEBLANC: And we ---
19 COMMISSIONER CAMPBELL: All right. I -- I
20 misunderstood. Okay, that's fine.
21 MR. LEBLANC: No, no. That's quite all right.
22 COMMISSIONER CAMPBELL: That ---
23 Q: Did you talk with the short-term disability
24 adjuster on August 21st about your short term
25 disability benefits?



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1 A: I did.

2 Q: Was it your understanding after that
3 conversation with that adjuster that there was
4 the potential that your work activities caused
5 the problems to your back?

6 A: I did.

7 Q: What did you do next?

8 A: I had a doctor's appointment that was coming up
9 and I went to my doctor's appointment and I --
10 I thought I would be able to go back to work.
11 I thought he was going to be able to release me
12 to go back to work at the time since they told
13 me that on the 21st. I think my appointment
14 was on the 31st of August. And at that time,
15 I thought Dr. Anderson was gonna release me and
16 I would be able to go back to work, but when I
17 got there he said he wasn't ready to release me
18 yet and on September the 5th they terminated
19 me.

20 Q: Did you seek legal counsel after you spoke with
21 the adjuster?

22 A: I did.

23 Q: And what was your purpose for seeking legal
24 counsel?

25 A: I didn't know if there was any validity to what



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1 was said to me through the adjuster and wanted
2 to know if there possibly could be a workers'
3 comp case or whatever. I just didn't know. I
4 just wanted to know what my option was or what
5 -- what -- I didn't want to lose my job. So,
6 I -- I just thought maybe I needed to talk to
7 an attorney at that time because I didn't know
8 if I -- I would be able to go back to work.

9 Q: Did you ever inform a supervisor at Steel
10 Technologies that you believed that your work
11 activities were the cause -- or the potential
12 cause of your problems after August 21st?

13 A: No.

14 Q: Did you ever inform the supervisor that your
15 work activities were the potential cause of
16 your back problems before August 21st, 2017?

17 A: No.

18 Q: Did you ever contact anyone at HR at Steel
19 Technologies with regard to the potential
20 possibility that your repetitive work
21 activities were the cause of your back
22 problems?

23 A: No.

24 Q: Since your surgery, have you been able to find
25 any employment?



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1 A: No.

2 Q: Have you looked for jobs?

3 A: I have.

4 Q: Have you been -- have you received any

5 responses from those inquiries?

6 A: No.

7 Q: Are you still looking for a job?

8 A: Yes.

9 Q: Are you still treating with Dr. Anderson?

10 A: I am.

11 Q: When was the last time you saw Dr. Anderson?

12 A: Just a second. I saw him back in the first of

13 -- first part of July.

14 Q: Do you have a follow-up appointment scheduled

15 with Dr. Anderson?

16 A: I do.

17 Q: And do you know the date?

18 A: It would be the end of September.

19 Q: Have you received any income whatsoever since

20 you've been out of work on June 5th of 2017?

21 A: Besides short-term disability, I received some

22 unemployment benefits.

23 Q: Do you know the time frame which you received

24 the unemployment benefits?

25 A: From like January to around February.



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1 Q: Of 2018?

2 A: Yes.

3 MR. LEBLANC: No further questions, Your Honor.

4 COMMISSIONER CAMPBELL: Okay. And real quick. I
5 will only go off the record for just a second.

6 (Off the Record)

7 COMMISSIONER CAMPBELL: Mr. LaFave, your witness.

8 MS. GRANT - CROSS-EXAMINATION BY MR. LAFAVE:

9 MR. LAFAVE: Thank you, Commissioner.

10 Q: Ms. Grant, good morning. How are you?

11 A: Good morning.

12 Q: When you started in the packaging line in 2004,
13 you said you worked there for 8, 9 years?

14 A: Yes.

15 Q: How many employees were on that packaging line
16 that you particularly worked on?

17 A: About three -- three.

18 Q: What was your title?

19 A: I started off just as a packager on the line.

20 Q: Okay. And how long were you just a packager on
21 the line?

22 A: I'm not sure how many years I was there as a
23 packager and then I became a coordinator.

24 Q: Okay. Well, let's talk about your
25 responsibilities as a packager. What types of



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1 things did you handle day in and day out as a
2 packager?

3 A: We band the coil that came down the line,
4 putting skids on the line, tagging the skids as
5 it went down the line, tagging -- banding coils
6 on the floor, housekeeping.

7 Q: You testified earlier that the packaging line
8 ran anywhere between 40 and 80 skids per day.
9 Is that right?

10 A: Most on busy days, yes, it did.

11 Q: Okay. And as a packager, how many of those
12 were you personally responsible for lifting by
13 yourself?

14 A: I can't say for sure how many by myself because
15 if nobody was available, you did what you have
16 to do to get the skid on to keep the line
17 moving. So, I would say maybe sometime I
18 lifted maybe 15, 20.

19 Q: Okay. So, of the 40 to 80 that the line did,
20 you were not lifting even half of those. Is
21 that accurate?

22 A: Not every day, no.

23 Q: Okay. All right. When you moved up to your
24 next position in the packaging department, you
25 said you were a coordinator?



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- 1 A: Yes, I did.
- 2 Q: All right. How much lifting did you have to do
3 as a coordinator?
- 4 A: I still had to lift -- help get skids on the
5 line to keep the line going. So, we went down
6 from three people to actually two people on the
7 line at one time. It was just two of us in the
8 packaging department and if that person's
9 banding, I would stop, print tags, go put skids
10 on to keep them going, go back to my position,
11 band on the opposite end of them, send stuff
12 down the line.
- 13 Q: Where are the skids in relation to where they
14 end up on the line?
- 15 A: They are directly in front of the skid -- the
16 carousel.
- 17 Q: So, you don't have to pick the skid up and
18 carry it a distance?
- 19 A: Sometimes you did if the forklift driver wasn't
20 there to move it forward for you, you would
21 have to pick it up and maybe walk about two,
22 three feet with it and put it on the line.
- 23 Q: Are the skids stacked on the floor?
- 24 A: Some are and sometimes you would have to bend
25 down over to get the ones from the bottom.



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- 1 Q: So, is it possible that there were times that
2 you were lifting skids that you do not have to
3 bend over to pick one up?
- 4 A: You're still lifting off of a stack and you're
5 turning to put it on the carousel.
- 6 Q: I understand that. But my question to you is
7 are there occasions where you don't actually
8 have to bend over to pick up the skid to
9 transfer it from a stack onto the line?
- 10 A: On some occasions.
- 11 Q: Okay, so not every time that you pick up the
12 skid requires you to bend over, pick it up off
13 the floor, and set it up on the three foot
14 carousel.
- 15 A: Not always.
- 16 Q: Okay. All right. How long did you do the job
17 as a coordinator in the packaging department?
- 18 A: Two, three years. I'm not sure how long I was
19 a coordinator there.
- 20 Q: Were you a coordinator on the packaging line in
21 August of 2009?
- 22 A: I'm not sure. I'm not sure that -- I'm not
23 sure that date I was still the coordinator at
24 that time.
- 25 Q: Okay. Did you go to a different position in

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1 the packaging line before you left to work the
2 Slear machine?

3 A: I did.

4 Q: What was your next position in packaging?

5 A: I went back on the banding line.

6 Q: Okay, on the banding line do you lift more or
7 less than you were lifting as a coordinator?

8 A: More.

9 Q: Okay. And you don't recall what position you
10 held in packaging in 2009 in August?

11 A: No, because I know I was a packager. I became
12 coordinator and then I went back on the
13 packaging line.

14 Q: Okay.

15 A: The banding line.

16 Q: All right. And David Brown, what was his
17 position? Do you know? In August of 2009?

18 A: I mean, he may have been a supervisor by then,
19 I'm not sure.

20 Q: Okay. Did you report to him in August of 2009?

21 A: Yes.

22 Q: Okay. Do you recall interacting with him about
23 having some back problems while you were at
24 work in August of 2009?

25 A: I did.



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1 Q: Okay. And you reported to him that you were
2 having back and leg pain. Is that right?

3 A: I did.

4 Q: Okay. And isn't it true that in August of
5 2009, you reported to Mr. Brown that you felt
6 the problem was related to lifting skids?

7 A: I did.

8 Q: Okay. And you don't know whether or not a
9 workers' comp claim was actually filed as a
10 result of that, do you?

11 A: I never signed any papers for any of that.

12 Q: You didn't sign any papers?

13 A: I -- I never filled out any papers for
14 workmans' comp is what I'm saying.

15 Q: Did you fill out a statement?

16 A: I filled out -- they made us fill out a form of
17 what happened or how I felt that -- I said my
18 back was hurt or injured at the time.

19 Q: Okay. And you related that to lifting skids?

20 A: I did.

21 Q: Okay. And you signed a statement to that
22 affect?

23 A: I had lifted a skid and I believe I lifted it
24 and I turned to put it on the carousel and I
25 felt a pain run down my back, my back of my



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1 leg. Yes.

2 Q: Okay. Now, what your -- what your testimony is
3 now, are you saying that you reported lifting
4 one particular skid?

5 A: I didn't lift the skids that whole day, so I
6 can't say exactly -- the exact time it
7 happened. All I know is I had a pain that ran
8 down my leg that day. And I said it to David
9 that my leg was hurting because I believe I was
10 lifting skids and my -- there's a pain running
11 down my leg. Yes.

12 Q: Okay. So, you, in 2009, matched up your back
13 pain to lifting skids in a statement that you
14 wrote and you signed, correct?

15 A: Yeah.

16 Q: Okay. When you went to the steel line, how
17 many employees were on that line?

18 A: Three, four.

19 Q: Okay. And you testified just a few minutes ago
20 that line ran about 25 to 40 skids per day.
21 How many of those would you have personally
22 been responsible for lifting?

23 A: Being I was training to become operator at that
24 time, probably 20.

25 Q: Okay. Would you say that the helper lifts more



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- 1 skids than an operator?
- 2 A: Not always, no.
- 3 Q: Okay. What would be the exception to that --
- 4 that an operator would lift more than a helper?
- 5 A: Depends on the operator. You have some
- 6 operators that don't want to lift and then you
- 7 have some operators that believe in helping out
- 8 their crew to get the job done.
- 9 Q: Okay. Where do you fall in that category?
- 10 A: I do what I have to do to get the job done,
- 11 because what was required of us at the time.
- 12 Q: Is the operator typically the more senior
- 13 person on the line?
- 14 A: I would say, no. Because you have some
- 15 operators that didn't have as much seniority as
- 16 others.
- 17 Q: Okay. When you were the operator on the line,
- 18 were you the more senior of the two employees?
- 19 A: No.
- 20 Q: Okay. You transitioned to the CTL line you
- 21 said in 2014 or 2015. Is that right?
- 22 A: Yes.
- 23 Q: How many employees on that line?
- 24 A: On a CTL line?
- 25 Q: Yes, ma'am.



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1 A: Two.

2 Q: Okay. Were two employees on that line the

3 whole time you were there?

4 A: Yes.

5 Q: Okay. When you transitioned first into the CTL

6 line, you were an operator or a helper?

7 A: A helper.

8 Q: Okay. How long did you remain as a helper?

9 A: About two years or better.

10 Q: Two years? If you started on the line in 2015,

11 your employment ended -- your last day ---

12 A: So ---

13 Q: --- was June 5th of 2017?

14 A: So about a year, year and a half.

15 Q: Okay. And you testified that you'd lift at

16 sometime 25 to 45 skids on the CTL line. How

17 many would you be responsible for lifting?

18 A: Once again, depends on where the operator was

19 at. If they were in back of the machine

20 loading the machine, you would start lifting,

21 putting your skids in to get there. And if

22 they went down the platform to stop the machine

23 or do something at the computer, you would put

24 the next skid on and get it put in the machine,

25 get them ready to start cutting their first



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1 one. It really always depends on where the
2 operator was at or who was in need of where
3 they needed to be at the time. Sometime I
4 would leave from the end of the line and get
5 the next skid in, plus the other girl was doing
6 the computer work.

7 Q: How long were you an operator?

8 A: I think about a year and a half.

9 Q: Okay.

10 A: I'm not sure.

11 Q: So, as an operator, would you say you lifted
12 more or less skids than when you were the
13 helper on the CTL line?

14 A: It think that we did equally because I tried to
15 help out the person that was working with me.

16 Q: Okay. Is it accurate then to say that you were
17 not the only person lifting skids on the CTL
18 line?

19 A: No, I wasn't the only person.

20 Q: Are there days as a CTL operator where you
21 would have to do no lifting?

22 A: No.

23 Q: Is it -- is it possible that you could have the
24 helper do all the lifting?

25 A: It's possible if you -- if you are that person



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1 and you want to do that. Yes, you could. Or
2 you would -- I mean some people would try that,
3 but that was never my character.

4 Q: The skids on the CTL line, where were they in
5 relation to the ---

6 A: In the front of the line.

7 Q: --- carousel? How -- would you ever have to
8 lift and carry them from one area to put them
9 on the line?

10 A: Sometimes we would.

11 Q: Okay. The same distance, roughly two feet?

12 A: Yes.

13 Q: As was the case in the packaging department,
14 are there occasions where the skids are stacked
15 up to where you're not having to bend over and
16 pick up from the floor?

17 A: Yes.

18 Q: Okay. So, not all the lifting in that
19 department requires bending, as well. Correct?

20 A: Not always.

21 Q: How long time-wise does it take you to pick up
22 a skid and place it where it needs to go on the
23 line?

24 A: Depends on how heavy it is. If you pick it up,
25 you pick it up and you turn around and pick up



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- 1 two sets and put it on the table.
- 2 Q: How much time does that take up out of your
- 3 day?
- 4 A: Maybe three minutes or so. I don't know. I
- 5 never timed myself.
- 6 Q: Okay. What about lifting the sheets that you
- 7 talked about to check for scratches and
- 8 pitting, how long does it take to lift one of
- 9 those?
- 10 A: Once again, I can't say a specific time or how
- 11 long it took to lift it up. You just lift it
- 12 up, checked it, put it down.
- 13 Q: Are you having to bend when you lift the sheets
- 14 up?
- 15 A: No. You're standing on a low platform.
- 16 Q: If you would, give us an idea, rough estimate,
- 17 how many minutes you would say out of the 8 to
- 18 10 hour shift you actually spend lifting?
- 19 A: A 10 hour day, I would say you're lifting all
- 20 day because with every skid you're lifting.
- 21 Q: Okay.
- 22 A: You're lifting steel to check for your
- 23 flatness, you're checking for your pitting,
- 24 you're checking for your measurements. So,
- 25 you're constantly lifting on every skid to



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1 check and you're lifting a skid to put on.
2 Once again, I can't say I lifted 40 all day
3 long. I sometime lift 10, sometime I lift 15,
4 sometime I lift more than that.

5 Q: So, there's not necessarily any consistency on
6 a daily basis as to how much lifting you do.
7 Is that fair?

8 A: I'd lift all day.

9 Q: Right. My question to you is there's no
10 consistency. Some days you just said you lift
11 10, some days you'll lift 40. There's
12 variations ---,

13 A: There is, it varies.

14 Q: --- on how much.

15 A: Yes, it does.

16 Q: Okay.

17 A: It varies.

18 Q: What are you doing then once you put the skid
19 on and the coil is placed on the skid, what are
20 you doing as a CTL operator?

21 A: Well, sheets of -- when we were on the CTL
22 line, you're working with sheets.

23 Q: Okay.

24 A: Once you get the sheet on the -- the first
25 sheet on, you're -- it's in the machine, then



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1 you're watching it fall into place until it's
2 completed. You come down the platform, you go
3 cut your machine off, run out your tag, you
4 roll it out, send it down the line.

5 Q: But none of that activity requires any lifting?

6 A: I ----

7 Q: Watching it roll down, printing out your tag,
8 placing the tag, rolling it down. None of it
9 requires any lifting, does it?

10 A: Once you roll it out of the machine, yes, you
11 lift out your last sheet to check for your
12 measurement. You check to make sure the
13 material is good. If it's good, you send it
14 down the line. If there's something bad on it,
15 sometimes you would have to take sheets off of
16 that skid. If you find a bad one in there and
17 it -- if sometime the machine would misfire and
18 give you a short sheet, sometime you would have
19 to pull sheets on top of that to get to your
20 short sheet and get it out of that stack.

21 Q: But you weren't the only one doing that lifting
22 either, were you?

23 A: Not always, no.

24 Q: Okay. You had an operator or a helper that was
25 also doing some of the lifting. Correct?



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- 1 A: Correct.
- 2 Q: Okay. Let's talk about September 9th, 2016.
- 3 You went to the Emergency Room that day. Isn't
- 4 that right?
- 5 A: Yes.
- 6 Q: St. Francis Hospital?
- 7 A: Yes.
- 8 Q: What prompted you to go to the Emergency Room
- 9 that day?
- 10 A: Probably some pain in my back or I'm not sure.
- 11 Q: Okay. Did you work at all that day?
- 12 A: I'm not sure what day it was. I don't know.
- 13 Q: Okay. But you don't remember whether or not
- 14 you worked before you went to the Emergency
- 15 Room?
- 16 A: No. If you tell me what day it is, I could
- 17 probably tell if I worked it ---
- 18 Q: Okay.
- 19 A: --- or not.
- 20 Q: It looks like according to the record we have
- 21 that says Friday.
- 22 A: Friday, I may have probably worked.
- 23 Q: Okay. But you don't know for sure?
- 24 A: It could have been while we were on -- we had
- 25 a schedule we would work four days, twelve hour



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1 shifts and it might have been the day that I
2 was off. I'm not sure.

3 Q: All right. But you were having back pain on
4 September 9th, 2016, correct?

5 A: Uh-huh.

6 Q: Is that a yes?

7 A: Yes.

8 Q: You were also having pain that was going down
9 into your leg as well, correct?

10 A: Possibly.

11 Q: Okay. Well, when you went to Southeastern
12 Spine, were you having back and leg pain?

13 A: Yes.

14 Q: Okay. And we've already established that back
15 in 2009, while you were working for Steel
16 Technologies, you also had some back and leg
17 pain, is that right?

18 A: Right.

19 Q: Okay. And you didn't say anything to Dr.
20 Anderson about what your job was in 2016?

21 A: He asked me where I worked at.

22 Q: Did you recall talking to him and having a
23 discussion about what you did?

24 A: The type of work I did?

25 Q: Yes, ma'am.



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- 1 A: I told him I was a machine operator.
- 2 Q: Did you talk to him about lifting?
- 3 A: I don't recall them asking me if I did any
- 4 lifting.
- 5 Q: Okay. Do you recall indicating what caused
- 6 your problems to get worse versus what caused
- 7 your problems to get better?
- 8 A: No.
- 9 Q: Okay. Do you recall filling out forms when you
- 10 initially reported to Southeastern Spine?
- 11 A: Yes.
- 12 Q: Okay. And on those forms, were you required to
- 13 indicate what caused your problems to get worse
- 14 and what caused your problems to get better?
- 15 A: Can you repeat that?
- 16 Q: Sure. On those forms that you filled out at
- 17 Southeastern Spine, do you recall indicating to
- 18 them what caused your problems to get worse
- 19 versus what caused your problems to get better?
- 20 A: Yes, probably.
- 21 Q: Okay. If I show you what the form indicates,
- 22 would you recognize the form?
- 23 A: I believe I would.
- 24 Q: Okay.
- 25 MR. LAFAVE: Commissioner, if I may approach?



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- 1 COMMISSIONER CAMPBELL: Sure.
- 2 Q: Let's see page, Ms. Grant, 35. Do you recall
- 3 filling this form out?
- 4 A: A form like that, yes.
- 5 Q: Okay. Do you recall seeing here in the middle?
- 6 See that there (indicating)?
- 7 A: Uh-huh.
- 8 Q: What does that indicate as your back pain gets
- 9 worsened with what?
- 10 A: Lifting.
- 11 Q: Okay. And here on page 37, you were also asked
- 12 again what makes your pain better and what
- 13 makes your pain worse. And what did you
- 14 indicate for worse?
- 15 A: Bending.
- 16 Q: Okay. Were you bending at work?
- 17 A: Yes.
- 18 Q: Were you lifting at work?
- 19 A: Yes.
- 20 Q: Did you lift more at work than you would at
- 21 home?
- 22 A: Not always, because I have things at home I do.
- 23 Q: Okay.
- 24 A: Probably do more bending at work, yes.
- 25 Q: Okay. It never occurred to you that the



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1 lifting that you were doing at work was making
2 your pain worse?

3 A: No, because if I'm home and I'm doing my
4 housework or whatever around my house, then I'm
5 bending, it's hurting still. So, like I said,
6 I -- in my mind, I'm thinking as I get older,
7 these things are something that just happen
8 with age. No, 53 is not that old, but I've
9 gained a lot of weight throughout the years.
10 I wasn't as physically active as I used to be,
11 you know. So, I just said in my mind I'm
12 getting older. I can't do things that I used
13 to do when I was younger.

14 Q: Okay. Would you agree with me that you
15 testified just a minute ago you would get up,
16 go do your job, and you would go home sore.

17 A: Yes.

18 Q: Okay. Were you more sore on the days that you
19 worked than on the days you didn't work?

20 A: Not always. Some days it would hurt at home
21 doing things around the house.

22 Q: Okay. But so your testimony here today is that
23 you didn't feel back pain worse when you were
24 lifting?

25 A: Yes. When you're -- when you're lifting, you



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1 do have the pain. But to say that it only
2 happened when I was at work, it didn't only
3 happen when I was at work, because even when I
4 was at home I was in pain still.

5 Q: Okay. And I -- and I understand that. But you
6 never reported to anyone at Steel Technologies,
7 starting on September 9th of 2016, that when
8 you were lifting skids your back pain was bad.

9 A: No.

10 Q: Was your back pain bad when you would lift
11 skids at work?

12 A: It got to be eventually, yes.

13 Q: And -- and when was that eventually that it got
14 to be?

15 A: When I finally made the choice -- well, made
16 the choice to go see Dr. Anderson.

17 Q: Okay. And that was in September of 2016?

18 A: Uh-huh.

19 Q: And that's a yes.

20 A: Yes.

21 Q: So, you ---

22 A: I'm sorry.

23 Q: So you knew in September of 2016 that when you
24 were lifting skids, your back pain was hurting
25 you?



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1 A: Yes.

2 Q: And you didn't report that to anyone at Steel
3 Technologies at that point?

4 A: I didn't think of it as being -- in my mind, I
5 did not think of it as being something that was
6 caused just by work. I thought it was just
7 from, as I said before, getting up in age.

8 Q: But my question to you is you knew in September
9 of 2016 when you went to Dr. Anderson that you
10 were having increasing back pain when you were
11 lifting the skids at work and you didn't report
12 it to anyone at Steel Technologies. Is that
13 correct?

14 MR. LEBLANC: Object to the form of the question.
15 He's never ever said lifting skids at work.

16 COMMISSIONER CAMPBELL: Can you rephrase the
17 question?

18 MR. LAFAVE: I'd be happy to.

19 COMMISSIONER CAMPBELL: Okay.

20 Q: You just testified a minute ago that you
21 noticed when you were lifting skids, your back
22 pain increased. Is that right?

23 A: Yes.

24 Q: And you never said to anyone at Steel
25 Technologies, hey, when I'm lifting these



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1 skids, my back pain is getting worse. Is that
2 correct?

3 A: No.

4 Q: Okay. And you worked for Steel Technologies
5 from September 9th, 2016 to June 5th of 2017 --
6 -

7 A: Uh-huh.

8 Q: --- correct? At no point in time did you ever
9 tell them, hey, I'm lifting these skids and my
10 back pain is getting worse, did you?

11 A: I don't know if I can say this or not. But
12 there's been times when we've all said these
13 skids are heavy and I'm tired of lifting them.
14 So, if -- if that's what you're asking, we have
15 all said these things are heavy and we're tired
16 of lifting them.

17 Q: Okay.

18 A: I ---

19 Q: But -- go ahead. Sorry.

20 A: So, when I say that only the lifting at work
21 was the problem, I lift things at home and it
22 was a problem.

23 Q: But Ms. Grant, that's not the question that I'm
24 asking.

25 A: Okay.



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- 1 Q: The question that I've asked you is ---
- 2 A: No, I did not report to anyone that I was
- 3 having problems with my back from lifting.
- 4 Q: Okay. But you knew that you were having
- 5 problems with your back from lifting skids at
- 6 work?
- 7 A: Yes.
- 8 Q: Okay. And you continued to do that job until
- 9 June 5th of 2017?
- 10 A: Yes, I had a job to do.
- 11 Q: And you didn't have any restrictions put on you
- 12 by any doctors that you were seeing?
- 13 A: No.
- 14 Q: Okay. June 5th of 2017 was your last day at
- 15 work?
- 16 A: Yes.
- 17 Q: The decision was made for you to have surgery
- 18 in April of 2017. Is that right?
- 19 A: I'm not sure exactly, but it could have been
- 20 around April.
- 21 Q: Okay.
- 22 A: Yes.
- 23 Q: You made the decision to have surgery well
- 24 before you left your work with Steel
- 25 Technologies?



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- 1 A: Yes.
- 2 Q: Okay. And even during that period, you never
- 3 had any modifications made to your job, did
- 4 you?
- 5 A: No, I didn't.
- 6 Q: Did you still do the lifting?
- 7 A: I did.
- 8 Q: Okay. Did you lift fewer skids during that
- 9 period?
- 10 A: No.
- 11 Q: Okay. You had surgery just three days after
- 12 you went out of work, is that right?
- 13 A: I did.
- 14 Q: On June 8th of 2017?
- 15 A: I did.
- 16 Q: You were in communication during that period of
- 17 time with Human Resources at the plant. Is
- 18 that right?
- 19 A: Yes.
- 20 Q: And that was Stacy Niezgoda?
- 21 A: Yes.
- 22 Q: Okay. What was the purpose of your
- 23 conversations with Stacy?
- 24 A: I would check in with her weekly to let her
- 25 know how my doctor's visits went.



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- 1 Q: Okay.
- 2 A: Just to let her know how I was progressing.
- 3 Q: Okay. And we talked just a minute ago and you
- 4 answered some questions for your attorney about
- 5 a conversation that you had with somebody in
- 6 short-term disability, is that right?
- 7 A: Yes.
- 8 Q: August 21st, I think, was the date that you
- 9 gave.
- 10 A: Yes.
- 11 Q: And your employment did not end with Steel
- 12 Technologies until September 5th.
- 13 A: Yes.
- 14 Q: Correct? Were you in communication with Stacy
- 15 at all from August 21st until September 5th?
- 16 A: I spoke with her on August the 31st.
- 17 Q: Okay.
- 18 A: And she told me that my time had ran out and --
- 19 for my -- my FMLA time had ran out. And that
- 20 she would give me a call back when they decided
- 21 what they were gonna do with me.
- 22 Q: And you didn't, during that conversation,
- 23 inquire of Stacy anything to do with workers'
- 24 comp or pursuing workers' comp, did you?
- 25 A: No.



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- 1 Q: Okay. But you could have, couldn't you?
- 2 A: I didn't think about it at the time, no.
- 3 Q: What were you -- you just testified that
- 4 somebody suggested on August 21st that it was
- 5 work related.
- 6 A: Yes.
- 7 Q: And you didn't say anything to Stacy just ten
- 8 days later?
- 9 A: Because I didn't think I -- once again, they
- 10 said that to me, but I didn't know if it was
- 11 work related or not. I didn't know.
- 12 Q: But you didn't ask Stacy to look into it, did
- 13 you?
- 14 A: No, I didn't.
- 15 Q: And you could have?
- 16 A: I possibly could have, but at the time I was
- 17 more concerned about keeping my job.
- 18 Q: Well, didn't you just say that you had a
- 19 conversation with her about your FMLA running
- 20 out, your job ending?
- 21 A: Yes. She said that the FMLA had ran out is
- 22 what she told me. And she said that she would
- 23 get back to me when they decided what they were
- 24 going to do. And that's all she said to me.
- 25 Q: Well, if you thought your FMLA was running out



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1 and you were gonna lose your job, what harm
2 would have come from asking her about workers'
3 comp?

4 A: I didn't know. I didn't know.

5 Q: You just ---

6 A: I didn't know to ask Stacy those questions.

7 Q: Did you go through training when you were hired
8 at Steel Technologies?

9 A: What type of training are you referring to?

10 Q: Just general training do's and don't's as an
11 employee of Steel Technologies?

12 A: Yes.

13 Q: Did some of your training include what to do if
14 you get injured on the job?

15 A: In 2004, I don't know if I did or not.

16 Q: Okay. Were there ever any refresher courses
17 during your time at Steel Technologies about
18 reporting work related accidents?

19 A: Maybe. Yes.

20 Q: Did they ever teach you to report aches and
21 pains no matter how small they may seem?

22 A: No.

23 Q: Okay. But you reported to David Brown in
24 August of 2009 that your back was hurting and
25 your leg was hurting and you thought it was



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1 from lifting skids, correct?

2 A: Yes.

3 Q: And you knew the same thing in September of

4 2016 and did not report it, correct?

5 A: Because I didn't know it to be work related.

6 Q: That's not my question. My question to you was

7 in August of 2009, you reported to David Brown

8 that your back and leg were bothering you and

9 you believed it was from lifting skids,

10 correct?

11 A: Yes.

12 Q: And you that same thing in September of 2016,

13 but did not report it to anyone, correct?

14 A: I did not think it was work related. I thought

15 it was just me getting older and I was having

16 aches and pains.

17 Q: And I understand that, but my question to you

18 is you didn't report it in September ---

19 **MR. LEBLANC:** Objection, Your Honor. Asked and

20 answered. I mean, she's -- she's ---

21 **MR. LAFAVE:** She's not answering the question, Your

22 Honor.

23 **MR. LEBLANC:** She's absolutely answered the question.

24 She said -- she said I did not report a work

25 related injury because I did not believe it to



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1 be a work related injury. That's the answer.

2 **MR. LAFAVE:** That's not my question. My question is
3 did you report to anyone that lifting skids was
4 causing your back problems in 2016, the same as
5 you did in August of 2009? And she's answering
6 ---

7 **MR. LEBLANC:** Well, then I would ---

8 **MR. LAFAVE:** --- I didn't think it was work related.

9 **MR. LEBLANC:** I would ---

10 **MR. LAFAVE:** That's not an answer to the question.

11 **MR. LEBLANC:** On that question, I would object to
12 the form of the question because the 2009 --
13 he's trying to equate the 2009 injury to 2016
14 injury. The 2009 injury is she's lifting a
15 skid and feeling a pain more than acute type
16 injury. This is 2016, a repetitive motion
17 trauma injury and that's a totally different
18 type of accident, if you say, Commissioner, if
19 you will. So that -- I mean, I would object to
20 the form of that question.

21 **COMMISSIONER CAMPBELL:** Okay. I'll let you respond.

22 **MR. LAFAVE:** I'll -- I'll -- I'll rephrase the
23 question ---

24 **COMMISSIONER CAMPBELL:** Okay.

25 **MR. LAFAVE:** --- entirely then and clarify ---



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1 COMMISSIONER CAMPBELL: Okay.

2 MR. LAFAVE: --- this. Ms. Grant, I'm gonna show
3 you what's marked as page 51 of our APA
4 submissions and I'm gonna ask you if you
5 recognize this as your employee statement that
6 you made in August of 2009? Do you recognize
7 that statement? If you'll look at page 52, is
8 that your signature on the second page?

9 A: It is.

10 Q: Okay. And I'm gonna ask you here if you would
11 for the record, just so that we're all on the
12 same page, from the beginning of line 2 to
13 right here where the period is at the middle
14 part of line 4. You see that period there?

15 A: Yes.

16 Q: Will you read that for the Commissioner?

17 A: I said I was putting the skid on the line on
18 the table and at that time I noticed I had a
19 pain in my lower side -- on my lower side.

20 Q: Okay. Does that say skid or skids with an "s"?

21 A: Skids.

22 Q: Okay. So, it's not just a reference to lifting
23 one skid, is it? It's a reference to lifting
24 skids. Is that accurate?

25 A: Yes.



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1 Q: Okay. And you testified earlier that in
2 September of 2016, you felt pain getting worse
3 when lifting skids at work, correct?

4 A: Yes.

5 Q: And you never told anyone at work that you felt
6 pain getting worse when you were lifting the
7 skids?

8 A: No.

9 Q: Okay.

10 MR. LAFAVE: Nothing further, Commissioner.

11 COMMISSIONER CAMPBELL: Okay. Mr. LeBlanc?

12 MS. GRANT - REDIRECT EXAMINATION BY MR. LEBLANC:

13 Q: Ms. Grant, knowing that lifting bothers you, is
14 something that you agreed with, correct?
15 Lifting a skid or lifting anything would bother
16 you, is that correct?

17 A: Yes.

18 Q: But you never knew the cause of the reason as
19 to why the lifting was bothering you?

20 A: No.

21 MR. LEBLANC: No further questions.

22 COMMISSIONER CAMPBELL: Okay.

23 MR. LAFAVE: No further questions, Your Honor.

24 COMMISSIONER CAMPBELL: Anything more? Okay.

25 Ma'am. Thank you for your testimony. You may



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1 step down and if you want to go and have a seat
2 next to your counsel.

3 **MS. GRANT:** Okay.

4 **COMMISSIONER CAMPBELL:** And Mr. LeBlanc, do you have
5 any other witnesses?

6 **MR. LEBLANC:** Commissioner, I will reserve the right
7 if it's all right to bring Ms. Grant back up
8 just for rebuttal ---

9 **COMMISSIONER CAMPBELL:** Sure.

10 **MR. LEBLANC:** --- purposes only, but other than
11 that, the Claimant rests.

12 **COMMISSIONER CAMPBELL:** Okay. Mr. LaFave, do you
13 have a witness you care to call at this time?

14 **MR. LAFAVE:** I do. If I can call David Brown,
15 Commissioner.

16 **COMMISSIONER CAMPBELL:** Okay.

17 **MR. LEBLANC:** Commissioner, would it be all right to
18 take a 2 minute break?

19 **COMMISSIONER CAMPBELL:** Sure. Absolutely.

20 **MR. LEBLANC:** I appreciate that.

21 (Off the Record)

22 **COMMISSIONER CAMPBELL:** And I sort of have a couple
23 of quick instructions for you. If you would,
24 please speak up -- speak clearly for us so that
25 we all hear your responses to the questions.



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1 If you're asked a yes or no question, please
2 give us a verbal yes or no answer and try and
3 stay away from things like uh-huh and huh-uh
4 just because that can be easily misunderstood
5 on the record. Okay?

6 MR. BROWN: (Nods head.)

7 COMMISSIONER CAMPBELL: Please raise your right hand.

8 MR. BROWN: (Complies.)

9 COMMISSIONER CAMPBELL: Do you swear and affirm the
10 testimony you are about to give is the truth,
11 the whole truth and nothing but the truth?

12 MR. BROWN: Yes, sir.

13 MR. CAMPBELL: Okay, you can put you hand down.
14 Please state and spell your name for the
15 record, sir.

16 MR. BROWN: David Elliott Brown. D-A-V-I-D, E-L-L-
17 I-O-T-T- B-R-O-W-N.

18 COMMISSIONER CAMPBELL: Okay, thank you, sir. Mr.
19 LaFave, your witness.

20 DAVID BROWN, having been duly sworn, testifies as
21 follows:

22 MR. BROWN - DIRECT EXAMINATION BY MR. LAFAVE:

23 Q: Thank you, Commissioner. David, who is your
24 current employer? Who is your current
25 employer?



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- 1 A: Steel Technologies.
- 2 Q: When were you hired?
- 3 A: May 30th, 2000.
- 4 Q: All right. What's your current title?
- 5 A: First shift shift lead.
- 6 Q: How long have you been a first shift shift
- 7 lead?
- 8 A: 2006.
- 9 Q: As a first-shift shift lead, did you have
- 10 supervisor responsibilities over Delinzy Grant?
- 11 A: Yes, I did.
- 12 Q: What are your responsibilities as the shift
- 13 lead for first shift?
- 14 A: I'm responsible for safety, quality, make sure
- 15 production's getting done, the employees, make
- 16 sure they're doing their jobs correctly.
- 17 Q: Do you oversee any particular department or
- 18 line?
- 19 A: On my first shift I'm pretty much over the
- 20 departments except for maintenance and
- 21 shipping.
- 22 Q: Okay. So, would you be over packaging?
- 23 A: Yes.
- 24 Q: When the plant had the Slear line, were you
- 25 over the Slear line, as well?



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- 1 A: Yes.
- 2 Q: Okay. And you were over the CTL line, as well.
- 3 Is that right?
- 4 A: (Nods head.)
- 5 Q: Okay. So, is it safe to say as the shift lead,
- 6 you've been Ms. Grant's supervisor since 2006?
- 7 A: No, not the whole time since 2006.
- 8 Q: Okay. When did you become her supervisor for
- 9 the whole time?
- 10 A: Probably around -- I want to say around 2013,
- 11 I believe.
- 12 Q: Okay. And what line was she on, do you
- 13 remember?
- 14 A: At that particular time, I believe she was on
- 15 the -- I think she was on CTL -- it might have
- 16 been Slear.
- 17 Q: Okay. All right. Give us an idea of the
- 18 number of skids that run through the packaging
- 19 line that somebody in that area would lift on
- 20 a given day.
- 21 A: Oh, which packaging line? On CTL?
- 22 Q: Well, Ms. Grant testified that she worked in
- 23 packaging for about 8 or 9 years.
- 24 A: Okay.
- 25 Q: Before she went to Slear, before she went to



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- 1 CTL. So, on that particular area, how many
2 skids would somebody be responsible for
3 lifting?
- 4 A: That packaging line, about 30 to 40 skids.
- 5 Q: Per day?
- 6 A: Yeah, per day.
- 7 Q: Okay. And is one person solely responsible for
8 lifting all 30 to 40 skids?
- 9 A: One person in an area -- there's two people in
10 that area, so there is two people that actually
11 do lift, but there is one main person that does
12 the majority in that particular area.
- 13 Q: Okay. Would that have been the case if we go
14 back to 2012, 2013 time frame?
- 15 A: Yes.
- 16 Q: Okay. All right. How much do those skids
17 weigh on average?
- 18 A: Those particular skids, 35 to 45 pounds.
- 19 Q: How are those skids placed in relation to the
20 line that they're eventually being placed on?
- 21 A: They're placed to the carousel -- we have them
22 stacked up closer to the carousel. And if
23 they're farther away then a forklift will move
24 them closer.
- 25 Q: Okay. Does the person who lifts those have to



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- 1 bend down to lift every single skid?
- 2 A: They would eventually, but from the start, no.
- 3 Q: Okay. How far are they stacked from the start?
- 4 A: From the start, they're probably -- some of
- 5 them could be shorter height from the start.
- 6 Q: And in that case would they just transfer them
- 7 from the top, right straight over the carousel
- 8 line without having to bend?
- 9 A: Okay, yeah.
- 10 Q: Okay. All right. What about the Slear line
- 11 when that was in the facility, how many skids
- 12 were running through that line?
- 13 A: That one would be probably from 25 to 30,
- 14 somewhere around there.
- 15 Q: Okay. What about the weight of those?
- 16 A: Those -- those could range probably from 35 to
- 17 maybe 50 pounds. It just depends.
- 18 Q: Okay. How many people work on the Slear line
- 19 or worked on the slear line?
- 20 A: I think it was three.
- 21 Q: Okay. Would it be the same where you would
- 22 have one main person doing the majority of the
- 23 lifting?
- 24 A: Yeah, but -- yes.
- 25 Q: Okay. All right. What about the CTL line,



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- 1 does the plant still have the CTL machine?
- 2 A: Yes.
- 3 Q: Okay. How many skids on an average run through
- 4 the CTL machine per day?
- 5 A: 16 to 20.
- 6 Q: Okay. Are there days where it's more than 20?
- 7 A: There -- very few.
- 8 Q: Okay. If it's ever running more than 20, what
- 9 -- give us an idea of the most that you know of
- 10 the CTL line running on a given day?
- 11 A: The most that I know of is probably between 20
- 12 to 30 skids, and that on a record breaking day.
- 13 Q: Okay. And is that just based on the pounds of
- 14 steel that are running through that line?
- 15 A: Yes.
- 16 Q: Okay. How is the steel position when it comes
- 17 to be placed on the skid? Is it a coil, is it
- 18 sheets?
- 19 A: When it's on the skid, it's sheets getting
- 20 placed on the skid.
- 21 Q: How many sheets per skid?
- 22 A: It ranges, it varies. You can have 100 pieces,
- 23 you can have 200 pieces. It just depends.
- 24 Q: Okay. All right. Other than lifting the
- 25 skids, is there any other lifting that



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- 1 somebody's gonna do on the CTL line?
- 2 A: You mean like a crow bar hanging there and
- 3 stuff like tools stuff, but other than that
- 4 it's mainly the skids.
- 5 Q: Okay. Do they every have to lift sheets? Do
- 6 they ever have to lift the steel sheets?
- 7 A: They do. They lift them on when the skid's
- 8 done, they usually lift one sheet up to pick it
- 9 up to see if it's got scratches or inspect it
- 10 for quality.
- 11 Q: Okay. Is that the only other time that they're
- 12 gonna do any lifting from the point where they
- 13 put the skid on the line until it's ready for
- 14 banding?
- 15 A: Yes.
- 16 Q: Okay. How much does one of those sheets weigh
- 17 on average?
- 18 A: Probably from around, I would say, 10 to 20,
- 19 but probably it could be five pounds. It just
- 20 -- it's a variety of ranges.
- 21 Q: Does it depend on the gage of the steel?
- 22 A: It does.
- 23 Q: Okay. Is it always the same person that lifts
- 24 the skid as is the person that checks the top
- 25 sheet?



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- 1 A: That kind of varies, as well.
- 2 Q: Okay. How many people work the CTL line?
- 3 A: Two.
- 4 Q: Okay, an operator and a helper? Is that right?
- 5 A: Uh-huh.
- 6 Q: Does the lifting typically fall more to one
- 7 person than the other?
- 8 A: I would say yes.
- 9 Q: Okay. Who does the lifting typically fall more
- 10 towards?
- 11 A: A lot of times the helper does more of the
- 12 lifting. But the operator if he does, it just
- 13 depends on the operator.
- 14 Q: Okay. Are there ever any days where there is
- 15 no lifting on the CTL line?
- 16 A: Yes.
- 17 Q: Okay. Tell me what would happen on a given day
- 18 where there's no lifting required on the CTL
- 19 line, what to the helper or the operator do?
- 20 A: Well, it could be if the operator just has the
- 21 helper lifting that day or it could be the
- 22 machine's down.
- 23 Q: Okay. If the machine's down, what does Steel
- 24 Technologies assign for the helper and the
- 25 operator to do on that particular day?



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- 1 A: Cleaning around the machine.
- 2 Q: Okay. And what does the cleaning entail?
- 3 A: Just cleaning up the area if anything is
- 4 unorganized. Things of that nature. Wiping
- 5 down machines.
- 6 Q: Okay. Give me an idea or give the Commissioner
- 7 an idea, if you would, the process you -- the
- 8 skid gets placed on the line. Walk me through
- 9 how much time it takes from that point until
- 10 that skid ends and everything's getting banded
- 11 up?
- 12 A: From running it or just from bringing it out --
- 13 -
- 14 Q: From -- from the time the skid gets placed on
- 15 the line.
- 16 A: Okay.
- 17 Q: How long does it take to run it through that
- 18 process?
- 19 A: Once they put the skid on the line, it probably
- 20 takes 15 to 20 minutes for the skid to fill up
- 21 if it isn't a slow running machine, and then
- 22 probably a minute, half a minute to bring the
- 23 skid to the conveyor line, and maybe a couple
- 24 seconds to get it down, and then the banding
- 25 part of that would take -- that's when they do



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1 the sheet inspection. When they get it down to
2 the end, the banding part would take, depends
3 on who's manning, but it could take from three
4 to four minutes. And then that's pretty much
5 -- and then they put the tags on.

6 Q: And the tags indicate what?

7 A: The tag and the finished good tag shows which
8 production it came from, the size of the
9 material, the weight and things of that nature.

10 Q: Okay. All right. Have you ever had to run any
11 of the reports that show how many skids are run
12 on a particular line?

13 A: Yes, sir.

14 Q: All right. If I showed you one of the reports
15 that we've submitted, would you be able to
16 identify it and recognize it for what it is?

17 A: I would.

18 Q: All right. Let me show you what's noted as
19 page 61. Can you tell the Commissioner what
20 that reflects?

21 A: This is the production report that reflects how
22 many skid they ran per day.

23 Q: Okay. And is that for a particular month and
24 year?

25 A: It is.



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- 1 Q: Okay. And how many on average are run through
2 that CTL line for the month of May of 2017?
- 3 A: By this paper here, probably about 20.
- 4 Q: Okay. And from your experience as the shift
5 lead for the first shift, is that typical, is
6 it standard for that line?
- 7 A: This is -- this is pretty standard.
- 8 Q: Okay. All right. I'm gonna show you what's
9 noted as page 62. Can you identify that, as
10 well?
- 11 A: Yes. Yes, sir.
- 12 Q: Okay. And what is that?
- 13 A: This is the pounds produced.
- 14 Q: Okay.
- 15 A: The monthly pounds produced in 2016, 2017.
- 16 Q: And does that typically correlate to the number
17 of skids that are run on a particular line?
- 18 A: It's added up from how much they run. Yes,
19 sir.
- 20 Q: Okay. Is there an average that you can tell
21 from looking at that as to how many skids would
22 go through the CTL line over the course of 2016
23 or 2017 on a given day?
- 24 A: Just by -- just by saying it's probably the
25 close to the same as what you showed me.



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- 1 Q: Okay. All right. Now, it was noted earlier
2 today that 2016 in August there's a zero.
- 3 A: Uh-huh.
- 4 Q: Do you know why that would show a zero for that
5 particular month?
- 6 A: The machine was down for low production or it
7 -- any kind of maintenance. More than likely
8 it was probably low production, did not need
9 that machine to run that long.
- 10 Q: Okay. And the month before that it was just
11 over a hundred and some thousand, is that
12 right?
- 13 A: Yes, sir.
- 14 Q: What are your CTL operator and helpers doing
15 for those two particular months of low
16 production?
- 17 A: If we have months to where we have low
18 production that way, we will -- you can only do
19 so much cleaning, so we have them do other
20 things in the area, in the plant.
- 21 Q: Okay. And that'd be assigned to a different
22 line?
- 23 A: It will.
- 24 Q: Okay. All right. Do you recall an interaction
25 with Ms. Grant from August 2009?



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- 1 A: Yes, sir.
- 2 Q: Okay. . What did she report to you in August of
- 3 2009?
- 4 A: That her -- her back was hurting.
- 5 Q: Okay. What did she attribute that problem to?
- 6 A: Picking up skids.
- 7 Q: Okay. Did she identify any specific accident
- 8 to you in 2009?
- 9 A: Other than just lifting skids, no.
- 10 Q: Let me -- let me maybe rephrase the question to
- 11 make sure we're clear. Did she identify a
- 12 particular skid that she lifted or twisting or
- 13 popping or anything like that?
- 14 A: No.
- 15 Q: Okay. Did Ms. Grant ever tell you from
- 16 September of 2016 until her last day in June
- 17 2017 that her back was hurting and she thought
- 18 it was from lifting skids?
- 19 A: No.
- 20 Q: Okay. Do you recall ever having to modify or
- 21 change or restrict her job in any way from
- 22 September of '16 to June of 2017?
- 23 A: No.
- 24 Q: Okay. I have no further questions.
- 25 COMMISSIONER CAMPBELL: Okay. Mr. LeBlanc?



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1 MR. BROWN - CROSS-EXAMINATION BY MR. LEBLANC:

2 MR. LEBLANC: Thank you, Commissioner.

3 Q: Do you know a gentleman by the name of James
4 Slidell (sic)?

5 A: Yes, sir.

6 Q: All right. Wasn't he the supervisor of the
7 Slear machine during that time and not you?

8 A: James Slidell (sic)? Yes.

9 Q: Okay. So, you weren't the supervisor, as you
10 previously testified?

11 A: Well, I was the supervisor. He was just the
12 main supervisor.

13 Q: He was the main supervisor. How long have you
14 known Ms. Grant?

15 A: As long as she's been working with Steel Tech.

16 Q: You find her to be an honest person?

17 A: I do.

18 Q: You find her to be truthful?

19 A: I do.

20 Q: A hard worker? Is she a hard worker?

21 A: Yes.

22 Q: In May of 2017 on the CTL line, what were you
23 all producing, what specifically were you
24 producing?

25 A: I have no idea. I ---



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1 Q: Were -- were -- what you were producing on the
2 CTL line in May of 2017, didn't it have
3 something to do with bars or steel bars or
4 something to that extent?

5 A: I'm not certain.

6 Q: You don't know what y'all were producing on
7 that line in May of 2017?

8 A: Not that particular day. I don't know.

9 Q: I'm not asking a particular day. I'm asking a
10 particular month. What were y'all producing on
11 that CTL line in May of 2017?

12 A: I don't remember.

13 Q: So, you don't remember what you were producing
14 in May of 2017, but you remembered everything
15 that happened back in August of 2009 when you
16 had a conversation with Ms. Grant?

17 A: We had to run a report.

18 Q: You don't remember -- do you -- are there
19 particular types of things that a CTL produces
20 from month to month to month?

21 A: There is different materials.

22 Q: Okay. Mr. Crowe -- I'm sorry, Mr. LaFave, my
23 apologies. Mr. LaFave has provided again,
24 Exhibit 5, page 61, which has to deal with
25 production in May of 2017. Do you know where



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1 that report comes from?

2 A: The production report?

3 Q: Yes, sir.

4 A: Yes. It comes from the operator, then it goes
5 to the shift lead.

6 Q: And do you have that production report in
7 April?

8 A: (Nods head.)

9 Q: Do you believe that you have this same report
10 in the month of April 2017?

11 A: The one from May?

12 Q: My apologies. I'll re-ask the question. I'm
13 in possession right now of the production
14 report in May of 2017 on the -- on the CTL line
15 and you said that this production report comes
16 from the operator. Correct?

17 A: Yeah.

18 Q: All right. Do you believe that that operator
19 has the April 2017 production report?

20 A: If they're running that particular machine
21 because we, you know, they switch over, so she
22 may not have or it may be another operator.

23 Q: Okay. And do you think it's likely that Steel
24 Technologies has the production report in March
25 of 2017?



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1 A: It's -- we keep those records, but we also, you
2 know, it kind of -- once -- usually what
3 happens is, I think, in 2017, if it's April,
4 those -- they kind of get, you know, they -- we
5 don't keep them all the time.

6 Q: Okay. So, you only keep May of 2017, right?

7 A: No, they kind of just keep moving back.

8 Q: But you had said earlier that the type of
9 production on this May of 2017 report, which
10 was the last month before Ms. Grant was out for
11 surgery, it is typical for the CTL production
12 line, is that correct? Was that your
13 testimony?

14 A: Yes, that was.

15 Q: Yet, you had indicated that the production line
16 produces things differently every single month.
17 Isn't that right?

18 A: I did.

19 Q: So, would it be fair to say that the production
20 level and the production amount would be
21 different every single month?

22 A: It can be, yes.

23 Q: In fact, looking at, again, Exhibit 5, page 62
24 ...

25 MR. LEBLANC: Permission to approach the witness?



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1 COMMISSIONER CAMPBELL: Go ahead.

2 Q: The amount of weight differentiates in steel
3 every single month, does it not?

4 A: Yes.

5 Q: So, the difference in steel means that there is
6 a difference in the production amount, isn't
7 that correct?

8 A: Yes.

9 Q: Commissioner, I'm just gonna throw it out
10 there, and I mentioned in the prehearing
11 conference, but I'm gonna say your intention to
12 Davis v By-Pass Auto Parts and the failure of
13 the defense to produce material evidence that
14 would ---

15 MR. LAFAVE: Your Honor, I'm gonna -- I'm gonna
16 object to this. He's got a witness that can
17 testify. He's already lodged this issue. This
18 is not proper for cross-examination.

19 COMMISSIONER CAMPBELL: What -- what is it that
20 you're wanting to do?

21 MR. LEBLANC: All I'm saying, Commissioner, is, and
22 you can weigh this issue later on, you don't
23 have to make a ruling at all right now. I'm
24 not asking for the -- the Exhibits to be
25 stricken from the record at all. All I'm --



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1 you've already made that objection and you've
2 allowed it, so I've -- I'm moving on. All I'm
3 saying is given the evidence and nature and the
4 fact that in this particular case that the
5 defense has shown from 2016 and 2017 the amount
6 of weights in steel weights that have been
7 produced. Yes, they only show one month in May
8 of 2017, which is not an accurate
9 representation of what may have happened in
10 April or March of 2017, or even '16 or anything
11 of that nature, because everything varies.
12 That those reports, you can as a Commissioner
13 take the assumption that, in fact, that would
14 be showing that it's -- that Ms. Grant's
15 production level and her work were much more
16 than what is shown in May of 2017, because
17 anything that they don't produce you can assume
18 that it's adverse to their interest. That's
19 all I'm bringing out. And you can make that
20 decision ---

21 **COMMISSIONER CAMPBELL:** Okay. And your point's noted
22 for the record.

23 **MR. LEBLANC:** Thank you.

24 **COMMISSIONER CAMPBELL:** Anything more, Mr. LaFave?

25 **MR. LAFAVE:** Just other than the fact that it's



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1 entirely improper to make an -- an argument
2 while he's on cross-examination of a witness.
3 He's got a witness here. The witness can
4 testify to the report. The reports are what
5 they are. There was never a subpoena ---

6 **COMMISSIONER CAMPBELL:** And that -- and that's noted
7 for the -- for the record, so let's move on,
8 okay.

9 **MR. LAFAVE:** That's fine.

10 **Q:** If production levels are down, is Ms. Grant
11 only cleaning a machine or cleaning around the
12 area for that particular period of time?

13 **A:** It depends on what is going on that particular
14 day.

15 **Q:** All right. Give me some examples of what she
16 would be doing outside of cleaning around the
17 machine?

18 **A:** If whatever she's trained on in the past before
19 she became operator, we'd have her go back to
20 the position, if need. Like, if we needed help
21 in packaging, she would go back to packaging.
22 Or if we needed help in forklift driving
23 because she drives a forklift, we'd get her
24 back on forklift.

25 **Q:** So, as you had indicated that because the Slear



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1 machine didn't exist anymore, it was repurposed
2 for the CTL machine.

3 A: Right.

4 Q: And because Ms. Grant has some experience or
5 has a lot of experience in packaging, it's
6 likely she would go back to packaging, is that
7 correct?

8 A: Yes.

9 Q: Okay. And you had stated, I believe your
10 testimony that, you know, with regard to
11 packaging, somebody's lifting or at least there
12 were maybe a couple of people lifting skids
13 that are about 30 to 40 skids a day. Is that
14 correct?

15 A: Yes.

16 Q: And one person may do the majority, but it just
17 kind of depends on the staff that's working the
18 area, is that fair to say?

19 A: Uh-huh.

20 Q: Okay. And those skids are roughly 35 to 45
21 pounds, correct?

22 A: Yes.

23 Q: All right.

24 MR. LEBLANC: Commissioner, again, permission to
25 approach the witness?



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1 COMMISSIONER CAMPBELL: Certainly.

2 MR. LEBLANC: Thank you. I'm gonna direct your
3 attention to Claimant Exhibit A, page 33 and
4 34.

5 COMMISSIONER CAMPBELL: Okay.

6 Q: This, Mr. Brown, is a job description of a cut
7 to length operator. And do you remember me
8 taking your deposition?

9 A: Yes.

10 Q: Okay. I asked you this same exact thing, so
11 I'm gonna just, you know, essentially just kind
12 of ask you the same questions. I asked you if
13 you could please read all the job duties and
14 responsibilities ---

15 A: Yes.

16 Q: --- and physical requirements, specifically, of
17 this job as a cut to length operator. I would
18 ask that you just read or at least read to
19 yourself the physical requirements of a cut to
20 length operator.

21 A: Yes, sir.

22 Q: And tell me when you're done reading.

23 A: Okay.

24 Q: And is there anything that is specified in
25 those responsibilities that are incorrect?



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- 1 A: No, sir.
- 2 Q: Everything is accurate?
- 3 A: Yes, sir.
- 4 MR. LEBLANC: No further questions, Your Honor.
- 5 COMMISSIONER CAMPBELL: Okay. Mr. LaFave?
- 6 MR. BROWN - REDIRECT EXAMINATION BY MR. LAFAVE:
- 7 MR. LAFAVE: Just briefly, Commissioner.
- 8 Q: David, you were asked about these two reports.
- 9 Do you know if those reports are kept every
- 10 single time, every single month, the production
- 11 report?
- 12 A: Yes, they are kept.
- 13 Q: Okay. I'm gonna show you page 62. Obviously,
- 14 the report on the number of skids comes from
- 15 May of 2017, correct?
- 16 A: Yes.
- 17 Q: Okay. And you have here the date on 2017 and
- 18 '16 for that particular line, is that right?
- 19 A: Yes.
- 20 Q: Does the weight of steel typically correlate to
- 21 the number of skids that are run on a
- 22 particular line?
- 23 A: Yes.
- 24 Q: Okay. So, if we looked at April, which here
- 25 indicates just over 73,000 pounds of steel ---



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- 1 A: Uh-huh.
- 2 Q: --- would you say that there were more or less
- 3 skids that were run on the CTL line in April?
- 4 A: I'd say less.
- 5 Q: Okay. And is that because of the number of
- 6 pounds?
- 7 A: Yes.
- 8 Q: Okay. So, is it accurate then that in working
- 9 back once where there was more steel per pound
- 10 ---
- 11 A: Uh-huh.
- 12 Q: --- it was likely to be more skids?
- 13 A: Yes.
- 14 Q: Is there any way to determine a certain number
- 15 of pounds that go on a skid?
- 16 A: By the shop instruction, yeah.
- 17 Q: Okay. But looking at that report, you can't
- 18 determine, for example, January where there's
- 19 1.6 million pounds ---
- 20 A: Right.
- 21 Q: --- you can't say that that means there were
- 22 400 skids that ran through that line?
- 23 A: No.
- 24 Q: Okay. All right. The job description that you
- 25 just saw, that you testified that it was



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1 accurate and correct?

2 A: Yes.

3 Q: Okay. Does that say anything on there about
4 having to do any particular activity in a
5 repetitive manner?

6 A: No.

7 Q: Okay. But it's accurate as far as the physical
8 requirements?

9 A: Yes.

10 Q: Is it a physical job?

11 A: Parts of it, yes.

12 Q: Okay. And those parts, lifting, things of that
13 nature?

14 A: Yes.

15 Q: No further questions.

16 COMMISSIONER CAMPBELL: Okay, Mr. LeBlanc?

17 MR. LEBLANC: No further questions, Your Honor.

18 COMMISSIONER CAMPBELL: Okay. Sir, you can step
19 down. Thank you. I appreciate you being here.
20 We appreciate your testimony. Any additional
21 witnesses to call?

22 MR. LAFAVE: That's it, Commissioner.

23 COMMISSIONER CAMPBELL: Okay. All right. Well,
24 there being nothing further, then that
25 concludes today's proceeding. Thank you,



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1 everybody for being here.

2 (There being nothing further, the hearing concluded
3 at 12:55 p.m.)

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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1713493

Delinzy Grant,)
)
Claimant,)
)
v.)
)
Steel Technologies,)
)
Employer,)
)
and)
)
Zurich American Insurance,)
)
Carrier/Defendants.)
-----)

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FULL COMMISSION HEARING

Monday, March 18, 2019
1:36 p.m. - 1:58 p.m.

The Full Commission Hearing was heard before Commissioners T. Scott Beck, Melody L. James and Avery B. Wilkerson, Jr., Chair, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 18th day of March, 2019, before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina.



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INDEX

<u>CALL TO ORDER:</u>	<u>PAGE</u>
COURT REPORTER	3
 <u>APPELLANT/EMPLOYER/CARRIER'S ARGUMENT:</u>	
MR. LaFAVE	3
 <u>CLAIMANT'S/RESPONDENT'S ARGUMENT:</u>	
MR. LeBLANC	11
 <u>APPELLANT/EMPLOYER/CARRIER'S REPLY:</u>	
MR. LaFAVE	19
Certificate	23

EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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CALL TO ORDER:

COURT REPORTER: Today is Monday, March 18th, 2018.

This is South Carolina Workers' Compensation case number 1713493. This is the case of Delinzy Grant, Claimant, versus Steel Technologies, the Employer, and Zurich American Insurance, the Carrier. The Appellant is the Defendant, represented by Matthew LaFave. The Respondent is represented by Ryan LeBlanc. Each side is allowed ten minutes for oral argument and the Appellant three minutes in reply. You are requested to argue the grounds of exception and stay within the record.

CHAIR: Mr. LaFave?

APPELLANT/EMPLOYER/CARRIER'S ARGUMENT

MR. LaFAVE: Thank you, Commissioner. Good afternoon, Commissioners, Matt LaFave on behalf of Steel Technologies and Zurich American Insurance Company. I am the appellant in this case. This matter stems from an alleged Repetitive Trauma claim involving employee, Delinzy Grant, who at the time of the alleged claim was working as what we refer to as a cut-to-line operator. She was operating a machine within our steel plant down in Huger, South



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1 Carolina. She had been a number of different
2 positions during her tenure at Steel
3 Technologies, but as of the time of this
4 accident and applicable to this claim she was
5 a CTL operator. She was running a line. There
6 were two employees on the line. As I
7 mentioned, this case is governed by 42-1-172
8 being a Repetitive trauma claim. It's a unique
9 claim in a sense, Ms. Grant openly acknowledges
10 and admits that she started receiving medical
11 treatment for low back and leg pain September
12 9th, 2016. There is no notification admitted
13 by her to the employer of any problems with her
14 back, any problems with her leg, any relation
15 to her claim -- or to her employment or the
16 conditions under which she performs her job
17 until she files her first Form 50. First Form
18 50 simply says that she is bringing a claim,
19 the nature of the claim is that she has been
20 injured as a result of the repetitive
21 activities of her job; not a single reference
22 to what those Repetitive Activities are, just
23 generically states Ras. Fast forward to
24 February 27th of 2018, second Form 50 is filed,
25 same claim, Repetitive Activities. No



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1 repetitive lifting, bending, nothing like that,
2 she just says Repetitive Activities. Again,
3 the same thing holds true for the third and
4 final Form 50 that was filed June 4th of 2018.
5 On her 42-1-172 a claimant is required to show
6 that their injury is a result of the cumulative
7 effects of RTtic events, Repetitive Activities.
8 In this case, again, there's no evidence that's
9 been submitted by the claimant as the moving
10 party as to what the specific Repetitive
11 Activities are. She testified that she lifts
12 what we refer to in the plant as skids,
13 essentially they're just large pallets upon
14 which steel is stacked. Also, as a product --
15 or a result of her job she also has to lift
16 sheets of steel just to make sure there's no
17 imperfections as it moves on down the line.
18 She'll also occasionally have to bend to pick
19 up some of these skids to set them on a
20 carousel. Her initial testimony, which was
21 later contradicted by her testimony on cross-
22 examination, well she lifts about 40 or so
23 skids a day. However, on cross-examination she
24 acknowledged that she also has a helper on this
25 line; some days she may only lift 10 to 15



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1 skids in a 10 hour shift. We also called David
2 Brown, who was her supervisor at the time, Mr.
3 Brown even put in a piece of evidence that
4 shows the high on that line during her tenure
5 was 16 skids in one day. Which, what that
6 means is, the most that she would have had to
7 have lifted on a given day would have been 16
8 skids, and that's if she had run the line by
9 herself with no helper. The other issue is she
10 said she had to bend over to pick these up,
11 said she had to bend down about knee high to
12 pick them up and move them to the carousel.
13 Again, that was later contradicted by evidence
14 and testimony that the skids were often
15 stacked, and sometimes she would just slide one
16 skid, turn, slide it straight on to the
17 carousel without having to bend at all. The
18 only evidence they've presented about causation
19 in this case is a questionnaire by Dr. Anderson
20 of Southeastern Spine, which Dr. Anderson's
21 testimony is as generic as the pleadings. He
22 simply says I believe within a reasonable
23 degree of medical certainty the repetitive
24 events or the Repetitive Activities of her job
25 caused her back and leg pain. And the problem



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1 with that opinion, as it's a questionnaire,
2 which it's just simply, here's the
3 questionnaire, check yes or no. There's
4 nothing in that questionnaire that gives a
5 clear indication of what Repetitive Activities
6 he believes caused her problem. All they've
7 done is presented the physical requirements of
8 a CTL operator. And it stands to reason that
9 this is a physical job: they do have to lift,
10 they do have to bend, they're not seated, it's
11 not sedentary; but a physical job or hard work
12 is not repetitive. Just because someone has a
13 physical job does not mean it is a Repetitive
14 trauma injury. So we do not believe that
15 they've satisfied the requirements of 42-1-172,
16 establishing specifically that she has any
17 repetitive activities. And if she does, what
18 specific repetitive activities led to her back
19 and leg injuries? The other part of our appeal
20 is based on the notice requirement of 42-15-
21 20(C). This, as the Commission is no doubt
22 intimately aware, deals with Repetitive trauma
23 claims specifically. It says you have 90 days
24 from the date the claimant discovered or, and
25 the key in this case is, or could have



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1 discovered by exercising reasonable diligence,
2 the condition is compensable. In this case,
3 again, under King versus International Knife
4 and Saw, a condition becomes compensable when
5 someone either starts treating, for which they
6 would be entitled to benefits under the act, or
7 begins missing time for which they would be
8 entitled to benefits under the act. In this
9 case, by the evidence, by her own admission,
10 she began receiving treatment for her back and
11 leg in September of 2016 but does not notify
12 the employer of any issue or any problem or any
13 connection to her employment until her initial
14 Form 50 in September 2017, which is admitted by
15 them on the record. Therefore, we're well
16 beyond the 90 days, in fact we're a year
17 removed from the date of her first treatment
18 before any notification or indication is given
19 to the employer that she believes this
20 condition's compensable. Beyond that, even if
21 you would take at face value her position that
22 she didn't know, she didn't know that this was
23 related, well that's also refuted by the
24 evidence. This is a lady who actually in 2009
25 had put her employer, and specifically David



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1 Brown, the manager who testified at the
2 hearing, that she believed in 2009 -- a
3 condition which was resolved by her admission
4 -- that she believed her back and leg problem
5 that she was having then was a result of
6 lifting skids. She tried to kind of sidestep
7 that and say, well I believed it was as a
8 result of lifting a skid, but in the evidence
9 in the record is the statement written out by
10 David Brown that she signs where she clearly
11 says, I think it's from lifting skids, plural.
12 Which means generically generally she thinks
13 lifting skids caused in 2009 her back problems.
14 The reason that that's an issue for her notice
15 requirement is then she says, in -- she
16 continued to work until June of 2017 when she
17 was taken out just three days before her
18 surgery. No modifications to her job, no
19 missed time, but she says she didn't know, she
20 couldn't figure it out, and her testimony was,
21 until Dr. Anderson told her it was related.
22 Even if you take her testimony in the light
23 most favorable to her and say all right, well
24 you didn't know, you didn't -- you never
25 discovered until Dr. Anderson said it, 42-15-



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1 20© requires her as a claimant if bringing a
2 repetitive trauma claim, to exercise reasonable
3 diligence to try and determine what the
4 condition is a result of. And in this case she
5 put in no evidence of any efforts to determine
6 what it was a result of. She simply put her
7 hands up in the air and told the Commissioner
8 that she didn't know and she couldn't possibly
9 have figured it out until Dr. Anderson told
10 her. However, the statute and the law that
11 controls this case requires her to exercise
12 reasonable diligence to figure it out, to
13 determine, is this condition compensable. And
14 we believe that the evidence of a preexisting
15 issue with lifting skids with her back and leg
16 from 2009 should have led her more closely in
17 time to a conclusion that this is most likely
18 compensable where she would have given timely
19 notice within 90 days. Again, in this case the
20 employer has a full year before they're ever
21 even told. By the time that we get notice that
22 she believe it's related, in the form of her
23 Form 50, she's been out of work for three
24 months. She's already had surgery. We haven't
25 had an opportunity to do any investigation.



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1 And that's one of the main reasons for this
2 notice statute, so we believe her failure,
3 number one to discover that it was related, but
4 number two, to either exercise reasonable
5 diligence or in this case present any evidence
6 that she did exercise reasonable diligence runs
7 afoul of 42-15-20©, and therefore her claim,
8 even if the Commission finds, includes
9 repetitive activities in her job -- which we
10 don't believe is in the evidence -- she still
11 should be barred under 42-15 subsection C
12 because she did not provide timely notice
13 within the 90 days as required by the King
14 versus International Knife and Saw case.

15 CHAIR: Any questions? Thank you.

16 MR. LaFAVE: Thank you.

17 CHAIR: You'll have three minutes in reply. Mr.
18 LeBlanc, your ten minutes.

19 CLAIMANT/RESPONDENT'S ARGUMENT:

20 MR. LeBLANC: May it please the Commission. The
21 single Commissioner didn't err when he found
22 that the claimant, Ms. Delinzy Grant, suffered
23 a compensable work-related injury due to the
24 Repetitive Activities of her job to her low
25 back and in her right leg due to radiculopathy.



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1 And the reason why is, if you look at 42-1-172,
2 I'm not going to recite the statute, y'all know
3 it, but we've satisfied what the statute asks
4 for, which is a qualified, licensed, medical
5 physician stating to a reasonable degree of
6 medical certainty that the repetitive
7 activities that Ms. Grant performed at Steel
8 Technologies for 13 years directly caused and
9 even aggravated, exacerbated a preexisting
10 condition. There is no evidence to refute
11 anything other than that. The job description
12 that was given to Dr. Anderson which he opined
13 on testimony came exactly from Steel
14 Technologies. They held out that these were
15 the physical requirements of that job. On
16 testimony David Brown said exactly every single
17 one on Exhibit A, pages 33 and 34, every single
18 physical requirement is accurate as to what a
19 cut to line operator performs that being Ms.
20 Grant's job. Furthermore, I know that Mr.
21 LaFave here is throwing out numbers and
22 repetitive activities, quite frankly number are
23 -- again it doesn't define whether something is
24 repetitive or not. Something repetitive is if
25 you do something more than once. You know, if



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1 you take a criminal personal and they get
2 arrested for a crime and they do it twice
3 they're a repeat offender. If I'm talking to
4 my three year old daughter and I'm telling her,
5 you know, she's cutting out of line and I say
6 don't make me repeat myself again I'm not
7 saying that because I -- she's done it 50 times
8 over. No, it's because I'm telling her she's
9 doing the wrong thing and I'm doing it over.
10 This lady lifted ---

11 **COMMISSIONER BECK:** You don't believe that that's
12 the intent of the statute is doing it more than
13 one time qualifies as repetitive do you, Mr.
14 LeBlanc?

15 **MR. LeBLANC:** I wouldn't say doing it more than one
16 time, no, Your Honor. I think you've got to
17 take into consideration a whole vast array of
18 what she's doing. This lady worked for 13
19 years, not 13 days, 13 weeks, 13 months. 13
20 years. This is what we're basing it off of.
21 She's lifting -- and again she -- her testimony
22 was not contradicted at all. She -- David
23 Brown had indicated yes, these cut to line
24 operators would have to lift 30 to 40 skids a
25 day. That's what he said. She had indicated



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1 yeah, there were at times when I'd have to lift
2 30 to 40. There were sometimes where I'd have
3 to lift 16 to 20. There were times when she
4 would also have to lift a skid which was on the
5 dolly to lift it up this way instead of just
6 bending it knee-high length. There were many
7 of times where she's lifted and based on the
8 evidence that Steel Technologies has held
9 itself out as that this in fact are the
10 activities that she does and you look at the
11 cumulative effect over 13 years. Dr. Anderson
12 opined to a reasonable degree of medical
13 certainty that this is the cause of the
14 accident.

15 MR. BECK: Let me ask you a question, did the
16 Hearing Commissioner find her job to be
17 repetitive?

18 MR. LeBLANC: Yes, he did.

19 MR. BECK: Where? In the ---

20 MR. LeBLANC: Well he found that the activities that
21 she had done to be repetitive in nature in the
22 Order, Commissioner. That's what he had found.
23 And based on the repetitive activities of her
24 job that is why he rendered his opinion coupled
25 with the fact that Dr. Anderson opined in the



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1 manner in which he did.

2 I mean, I've done the numbers here too on the

3 brief and, I mean, when you're looking at it

4 16, 20 times a day may not seem like a lot to

5 you but when you combine it over months, years,

6 over the entire span we're looking at north of

7 60,000, 80,000, 100,000 times that she's doing

8 this. The 2009 incident had nothing to do

9 with repetitive motion trauma. She indicated

10 that she had an injury. She immediately

11 notified Mr. Brown. Her symptoms resolved in

12 one month's time and she continued working for

13 seven years until 2016, 2017 when she started

14 to develop problems with her back. She had no

15 idea what in fact where these activities -- or

16 why her injuries were -- where they were coming

17 from. She thought, she testified honestly and

18 truthfully that they were primarily from being

19 old or gaining weight. That's what she

20 thought. She had battled cancer in the past and

21 this is what she had thought. And it wasn't

22 until August 21st of 2017 when she's already

23 filed a short term disability form, she's

24 already believing -- no where in the medical

25 records does she indicate that this is work-



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1 related at all. And it was on that date -- and
2 she remembers that date because that was when
3 the solar eclipse occurred -- is that the short
4 term disability adjuster had indicated to her,
5 you know what, we kind of think this is a work
6 injury. And she didn't want to ruffle any
7 feathers with her employer. She'd been there
8 for 13 years. She had no idea whatsoever. So
9 she goes and she tries to figure it out. Now
10 if you want to take a reasonable time there are
11 two ways I can look at it. One is from August
12 21st of 2017. That would be reasonable. A
13 Form 50 giving notice of repetitive motion
14 trauma injury was filed by us on September 14th
15 of 2017. So notice was timely met during that
16 time. Furthermore, Commissioner Campbell had
17 found that notice was timely met when in fact
18 Commissioner -- or when Dr. Anderson had opined
19 that this was in fact related. Well notice was
20 already given prior to that. I mean, Mr.
21 LaFave knows we entered in -- we filed a 50,
22 then we filed for a hearing. We entered into
23 a consent order so we could mediate the case.
24 That failed. I had to file another 50. The
25 fact that I'm sitting here saying he doesn't



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1 have any of the information is ludicrous
2 because he's had the information from here on
3 out. Mr. LaFave also mentioned that something
4 about hearsay. He never raised that objection
5 at all at trial. For -- and second off it's an
6 exception to the hearsay rule under 804
7 subsection D, but with that said though, that
8 questionnaire if that being, she honestly
9 thought that it was not because of her work.
10 We deal with workers' comp all the time. All
11 the time. Day in and day out. Week in and
12 week out. But workers, they don't. They're
13 not in the bubble that we're in. They get
14 injured on the job and they fall from a ladder
15 that's one thing. They don't know what a
16 repetitive motion trauma injury is. We can't
17 expect them to sit here and know what it is.
18 If you want to take a reasonable person doing
19 reasonable due diligence, she honestly had no
20 idea until an insurance agent, surprise,
21 surprise, had said, oh, you know, I don't think
22 this is part of short term disability. This
23 may be Workers' Comp related. And that's when
24 she did her due diligence and aptly put.
25 Furthermore, I would sit here, Commissioners,



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1 and I would just say to you as well, there's
2 nothing in the record that says that this
3 didn't cause her accident. Nothing at all.
4 And other than Mr. LaFave just saying this is
5 repetitive in nature, well it is repetitive in
6 nature. And what happens to a 52-year-old lady
7 when she's doing a job for 13 years compared to
8 maybe a 30-some odd gentleman or myself or
9 whatever, maybe those jobs take on a different
10 form to a different person. You've got the egg
11 shell claimant theory. I don't know. All I
12 know is that this lady sustained a significant
13 injury, she timely reported it when she learned
14 of it. I know that she didn't say it outright
15 because she wasn't -- she doesn't know the
16 statutes and this -- and everything of that
17 nature -- we did it for her. But David Brown
18 her supervisor for 10 years, their witness
19 said that Ms. Grant was truthful, honest and a
20 hard worker. This is not someone trying to
21 skirt the system. This isn't my words, it's
22 not his words, it's not the Commissioner's
23 words. That's their witnesses' words. And
24 because of that when we're looking at this lady
25 she honestly believed that it was not due to



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1 her work injury. In fact, Mr. LaFave made an
2 excellent argument in his brief why how would
3 she know because Dr. Anderson never once put
4 any work restrictions on her at all. Well if
5 he's going to raise that argument to the
6 validity of whether or not this is repetitive
7 motion trauma injury wouldn't the same hold
8 true why Ms. Grant wouldn't have know that
9 maybe her job was the one causing the accident?
10 But in fact upon discovery Dr. Anderson does
11 opine that it is part of the accident. Steel
12 Technologies does admit to the types of
13 repetitive activities that Ms. Grant performed
14 and that they are all part of that list, and
15 that is what Dr. Anderson properly relied on.
16 And there's nothing in there that's different
17 in any way, shape or form. And that,
18 Commissioners, we do believe that this is a
19 compensable injury. Unless you have any other
20 questions I'll be happy to answer them. Thank
21 you very much.

22 APPELLANT/EMPLOYER/CARRIER'S REPLY:

23 MR. LaFAVE: Just to clarify a few points,
24 Commissioners, number one, the opinion that was
25 rendered by Dr. Anderson relied on the job



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1 description. The job description sets forth --
2 as job descriptions almost always do -- the
3 physical requirements of the job. It never at
4 any point, nor does Dr. Anderson, address the
5 frequency with which any of those activities
6 are undertaken. He has no idea how common
7 those occurrences are. And throwing numbers
8 out -- and I would point the Commission to the
9 Murphy versus Owens Corning case. And that
10 individual that brought a repetitive trauma
11 claim was doing that particular activity by her
12 acknowledgment 4,000 times in an eight hour
13 shift. We're dealing with lifting something --
14 if that's indeed what the repetitive activity
15 is that they're claiming -- a handful of times,
16 10 times, 15 times at the most, and that's
17 again if she does it all by herself. David
18 Brown never said that her job is repetitive.
19 He simply said, yes, this job description is
20 accurate with respect to the physical
21 requirements of the job, which again we've
22 never shied away from. The job's physical, she
23 has to lift, some of these skids can weigh, you
24 know, 40-some pounds. It doesn't make it
25 repetitive. Hard work is not repetitive. As



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1 for the short term disability carrier that was
2 where we objected to the hearsay. They never
3 brought in the short term disability adjuster
4 who allegedly made that this comment. However,
5 going to that date -- and we did acknowledge --
6 if that was date that she was told and she gave
7 notice with her Form 50 on September 14th, no
8 question that's within 90 days. 90 days from
9 the date somebody told her. But there's no
10 evidence that that person told her because it
11 was never in the record. It's hearsay. She
12 can't testify to what some short term
13 disability -- or some short term disability
14 adjuster told her. But the problem goes beyond
15 that. It's not from 8/21 to 9/9 -- 9/14 --
16 it's from 9/9 of 2016 to 8/21 of 2017. What
17 did she do during that period of time? And the
18 answer to that question is nothing. She got
19 medical treatment, no question about that. She
20 made no effort to try and determine at that
21 point -- as she's statutorily required to do --
22 she made no attempts to try and figure it out.
23 If the legislature wanted somebody to file
24 within 90 days of the date that they learned
25 the condition was compensable then the statute



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1 would have said that. The statute would have
2 said 90 days from the date you discovered the
3 condition's compensable, period, end of the
4 statute, but it doesn't. It goes a step
5 further and says -- even that -- you have to
6 exercise reasonable diligence to determine
7 whether or not it's compensable and simply she
8 didn't do it. And even if you want to say she
9 didn't know until August 21st, we would take
10 issue with that on page 13 of our Brief. She
11 was asked specifically, was your pain bad when
12 you would lift skids at work? It got to be
13 eventually. And when was the eventually that
14 it got to be? And her response to this
15 question is, when I finally made the choice --
16 well made the choice to go see Dr. Anderson.
17 By her own admission on the record she connect
18 the two when she -- she connected the two to
19 include when she started receiving medical
20 treatment in September of 2016.

21 COMMISSIONER WILKERSON: Any questions? Thank you
22 all. This concludes the hearing.

23 (There being nothing further, the full commission
24 hearing concluded at 1:58 p.m.)
25



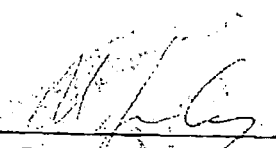
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CERTIFICATE

This is to certify that the within hearing consisting of twenty two (22) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on June 25, 2019.



M. Sean Cary
Court Reporter.

Notary Public for South Carolina
My Commission Expires: January 29, 2023

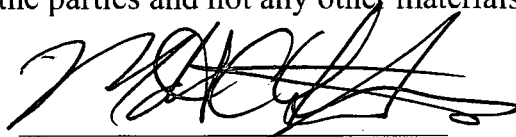


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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials.

January 15, 2020



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