DECISION AND ORDER OF THE APPELLATE PANEL OF THE WORKERS' COMPENSATION COMMISSION

WCC FILE NUMBER: 1222226

GENE GRADY, Employee, Respondent,

-Vs.-

THE SHAW GROUP, Employer,

and

ZURICH AMERICAN INSURANCE COMPANY, Carrier. Appellants

Appellate Panel Review
Columbia, South Carolina
September 16, 2019

Appellate Panel Decision and Order, assigned to Commissioner Beck, filed on January 28, 2020

Malcolm M. Crosland, Jr., Esquire, of Steinberg Law Firm, L.L.P., on behalf of Respondent.

Daniel B. Eller, Esquire, of Eller, Tonnsen, Bach on behalf of the Employer and Carrier/Appellants.

STATEMENT OF THE CASE

On September 12, 2012, the Claimant, Gene Grady, sustained an admitted injury by accident to his left shoulder while performing his job duties for the Defendant, The Shaw Group, Inc., in Barnwell County, South Carolina. The Defendants acknowledged the compensability of the accident and provided payment of temporary total disability benefits and medical treatment through various doctors. Claimant's primary medical treatment has been provided by Drs. Julie Barre and Bruce Steinberg, both orthopedic surgeons where he resides, in Jacksonville, Florida. Dr. Steinberg has also evaluated and treated the Claimant's left elbow, which the Defendants deny is causally related to the accident of September 13, 2012. In addition to the medical treatment provided by Drs. Barre and Steinberg, the Defendants authorized the Claimant to be treated by Dr. Arkam Rehman, a pain management physician, in Jacksonville, Florida.

The Defendants, by their WCC Form 21, dated June 21, 2016, assert Claimant reached maximum medical improvement on May 25, 2016 based on the opinion of Dr. Julie Barre. In the alternative, the Defendants contend the Claimant reached maximum medical improvement on March 30, 2018 in keeping with the opinion of Dr. Bruce Steinberg, who became the Claimant's authorized treating orthopedic surgeon after Dr. Barre left her practice in Jacksonville, Florida. Defendants seek a credit back to either of the two alternative dates of maximum medical improvement.

Defendants deny Claimant's left elbow symptoms are causally related to his admitted compensable injury but acknowledge the WCC Form 14b completed by Dr. Steinberg on June 24, 2018 indicates the Claimant has sustained a 5% impairment

rating to the left shoulder, affecting the left elbow, due to his accident of September 13, 2012. The Defendant's contend that under *Colonna v Marlboro Park Hospital* 404 S.C. 537 (Ct. App. 2013) in order to bring a claim under the compensability of §42-9-10, a second body part must not only have been affected, it must also have been injured or impaired as a result of the accident. Defendants further contest compensability of the left elbow relying on the deposition testimony of Dr. Julie Barre, who testified that the left elbow injury was not causally related to the work accident on September 13, 2012. Defendants also contend that based upon the WCC Form 14b completed by Dr. Steinberg on June 24, 2018, Claimant needs no future medical care and treatment.

The Claimant contends that based on injuries to his left shoulder and left arm; his age; his education; employment background; impairments; restrictions; medications; and limitations, the Claimant has been rendered permanently and totally disabled under §42-9-10 (A) of the Act (See Claimant's WCC Form 22, dated May 4, 2018). Claimant points out he suffered a bicep tendinosis; full thickness rotator cuff tear of the left shoulder, and medial epicondylitis of his left elbow, all of which are causally related to his admitted accident of September 13, 2012. In addition, Claimant points out he has had three surgeries to his left shoulder which have left him continuously experiencing exquisite pain in his left shoulder and elbow. He continues to receive authorized pain management for his admitted left shoulder injury, including taking Norco, 325 mg and Morphine, 15 mg several times a day to manage his pain. Claimant also notes, Dr. Bruce Steinberg, due to his admitted left shoulder injury offered his opinion:

> Claimant will, most probably, based upon a reasonable degree of medical certainty require a left shoulder replacement as a direct result of Claimant's admitted accident. (Claimant's APA p. 297)

However, on March 12, 2018, Dr. Steinberg opined that based on Claimant's clinical examination and treatment history, including four surgeries, he did not recommend "any further arthroscopic surgery" but "in the future it is possible he may require a reverse head total joint arthrosis" (Claimant's APA p, 287). Moreover, as previously stated, Dr. Steinberg indicated in a Form 14B dated June 24, 2018 that Claimant does not require any causally related medical treatment as a result of the work accident. (Def's APA p. 219) Dr. Barre and Dr. Steinberg have offered opinions his left shoulder injury affects the functioning of his left arm and hand. Although Dr. Barre gave him a 5% permanent impairment rating to his left upper extremity and 3% whole person rating based upon the Florida P.I.R. schedule, she offered her opinion the Claimant would not be able to return to work as an electrician and:

> Based upon a reasonable degree of medical certainty, the injury that occurred on September 13, 2012 will likely cause chronic impaired functioning of his left arm. (Claimant's APA p. 79)

However, Dr. Barre also testified in their deposition that the left elbow injury was not related to the work accident. Dr. Bruce Steinberg provided a 5% permanent impairment rating, again using the Florida P.I.R. rating schedule, but placed Claimant on permanent work restrictions of light/medium work. Dr. Arkham Rehman, the Claimants treating pain management physician, offered his opinion:

> Because of patient's pain projected to be long-term, we are adding long-acting medication to the pain treatment regime so that we can manage the pain better for better quality of life and functionality as we address pain with a combination of injections and rehab and rejuvent medication. We anticipate the medication need to be in excess of the next twelve months and will reassess the situation periodically for continued need. (Claimant's APA p. 279)

Finally, John Roberts, Roberts Disability Consultants, the Claimant's vocational expert, Jacksonville, Florida, offered his opinion:

> "... at this time, given Mr. Grady's age, education, and lack of a skill he can transfer over to less physically demanding jobs, he is unemployable, and would not have access to other light strength level of work where he currently lives." (Claimant's Exhibits p. 196)

Finally, the Claimant was also evaluated by Dr. Bright McConnell on May 23, 2018 in Charleston, South Carolina. Dr. McConnell performed an ultrasound evaluation of the Claimant's left elbow and reviewed the Claimant's recent MRI films of his left elbow and shoulder. Dr. McConnell, based on the AMA Guides to the Evaluation of Permanent Impairment, 5th Ed. offered his opinion the Claimant a 26% permanent impairment to his left upper extremity which equates to a 43% impairment of his left shoulder, restricted Claimant from performing activities requiring repetitive horizontal or overhead lifting, and that the Claimant's left elbow needed additional evaluation and treatment, including additional imaging with intravenous contrast on a high field scanner, as there was concern there may be a neurogenic process involved in his left elbow symptoms. Dr. McConnell recommended.

This claim was heard before the Single Commissioner on September 27, 2019. By his Decision and Order filed June 11, 2019, the Hearing Commissioner issued the following findings of fact and Conclusions of Law:

FINDINGS OF FACT

Based upon the parties' stipulations, the testimony of Mr. Gene Grady, the APA/Evidentiary submissions of the parties, and the Commission file relative to this

claim, the undersigned Commissioner makes the following findings of fact as required by S.C. Code Anno., § 42-17-40, 1976:

FIRST: On September 13, 2012 Gene Grady sustained a compensable injury to his left shoulder, affecting his left arm, while working at a rolling table fabricating steel pipe bars. When one of the bars began to fall from the table, Grady attempted to catch the bar to prevent injury to a co-worker. The Claimant experienced immediate pain in his left shoulder. The pain progressed into his left arm and elbow. The medical record is replete with references to Claimant's left elbow symptoms and that they relate to his admitted accident of September 13, 2012 to his left shoulder.

SECOND: As a result of the Claimant's compensable accident he was initially treated in Augusta at the Doctor's Hospital Center for Occupational Medicine. The Doctor's Hospital initial note of September 13, 2012 indicates the Claimant had injured his left shoulder earlier that day when he heard a "pop" in the shoulder. He experienced pain in the clavicle and down his left arm to the elbow.

THIRD: On October 10, 2012, Claimant's physical exam at Doctor's Hospital for Occupational Medicine stated he continued to experience "soreness" in his upper arm and felt "popping" in his left shoulder. In addition, he reported pain at the lateral epicondyle of his left elbow. The lateral epicondyle of the left elbow was tender to palpation. At the conclusion of his October 10, 2012 visit, Claimant was referred to Dr. Scott Duffin of Augusta Orthopedic and Sports Medicine Specialists.

FOURTH: Dr. Duffin was the physician authorized by the Defendants. In his May 15, 2013 office note, Dr. Duffin states "... still has some pain now kind of in the biceps area

and some around the elbow, with activities, such as lifting something heavy." In addition, the Claimant reported left shoulder pain. Dr. Duffin ordered physical therapy and conservative management of Claimant's symptoms. An open MRI of Claimant's left shoulder was performed on December 4, 2012 revealing an interior rotator cuff tear.

FIFTH: Dr. Duffin referred Claimant to South Aiken Physical Therapy for therapy primarily to his injured left shoulder/rotator cuff injury. On November 28, 2012, Claimant reported stiffness in his left shoulder with pain behind his elbow. Claimant's physical therapy at South Aiken Physical Therapy shows that he experienced ongoing severe left shoulder pain together with symptoms extending into his left elbow. The South Aiken Physical Therapy daily not on March 7, 2013 shows Claimant was unable to perform any activity with his left arm and that he continued treatment to experience pain on grade 2 palpation of his biceps muscle as well as post-physical therapy elbow pain (ulnar notch). Claimant participated in all physical therapy at South Aiken Physical Therapy, however, his symptoms did not improve significantly. Claimant discontinued his physical therapy at South Aiken Physical Therapy in July of 2013 due to his return to his home in Jacksonville, Florida; however, he was recommended to continue physical therapy in Florida. On July 9, 2013, Claimant told the therapist at South Aiken PT that he thought he had "rounded the corner" and was able to climb a ladder at work without shoulder pain. Likewise, on July 23, 2013 he continued to report his condition was improving and that he was able to "do a little more at work". On July 25, 2013 he reported the pain had decreased significantly and he was performing most work activities without pain.

SIXTH: Claimant moved back to Jacksonville, Florida, his hometown, where the Defendant's authorized his treatment to be undertaken by Dr. Julie Barre of the Hughston Clinic. Dr. Barre began treating Claimant on November 1, 2013. By February 7, 2014, she diagnosed left rotator cuff tendinopathy; low-grade partial thickness tear; super-spinatus and noted Claimant was a possible surgical candidate if further conservative care failed. She related all of these diagnoses to Claimant's admitted accident of September 13, 2012.

SEVENTH: Dr. Barre performed arthroscopic biceps tenodesis surgery in May of 2014. Despite Dr. Barre's surgery and post-surgical physical therapy, the Claimant's left bicep tendon and shoulder remained extremely symptomatic. On September 10, 2014, however, he reported that he felt he was progressing and the pain was getting "much better" The surgery by Dr. Barre revealed a less than 50% thickness tear of the rotator cuff, however, an MRI performed of Claimant's left shoulder on January 26, 2015 revealed advanced tendinopathy of the distal super-spinatus and infer-spinatus tendons with a partial articular sided tear of the super-spinatus tendon together with degenerative changes at the labrum. As a result, Dr. Barre recommended a left shoulder arthroscopy with planned rotator cuff repair. The surgery was performed on August 25, 2015 to repair Claimant's left rotator cuff tear.

EIGHTH: On September 4, 2015, Dr. Barre noted Claimant "seems [to be] doing quite well at this time". Six weeks after the shoulder surgery, he reported complaints of radicular-type symptoms going down past his left elbow into his hand. He attended physical therapy, but continued to experience symptoms in his bicep region as

well as symptoms radiating into his left forearm. On February 5, 2016, Dr. Barre noted a recent EMG/nerve conduction study of his left arm was normal.

NINTH: By May 10, 2016 Claimant had concluded his physical therapy following his second shoulder surgery. Claimant's physical therapist, with Align networks in Jacksonville Florida, based on a physical evaluation on April 28, 2016 assigned Claimant with a 5% upper extremity impairment, which was endorsed by Dr. Barre on May 10, 2016. Dr. Barre referred the Claimant for a course of pain management on May 28, 2016.

TENTH: Claimant underwent a Functional Capacity Evaluation at Align Networks, which found Claimant to have exerted maximum effort and appropriate pain behaviors. As a result of the Functional Capacity Evaluation, it was determined the Claimant did not meet the job demands for an electrician and that he was only able to perform light/medium work.

ELEVENTH: Based upon the Functional Capacity Evaluation analysis and Dr. Barre's physical exam of the Claimant which found the Claimant still symptomatic and requiring pain medication, Dr. Barre recommended a second opinion in addition to continued treatment by his pain management physician. Dr. Barre, by note, dated July 26, 2016 stated it was her opinion, "Based upon a reasonable degree of medical certainty, that Claimant's left shoulder and left arm are both directly and causally related to his admitted accident of September 13, 2012." On August 17, 2016 she further opined, "Based on a reasonable degree of medical certainty, the injury that occurred on 9/13/2012 will likely cause chronic impaired functioning of his [Claimant] left arm." Dr.

Barre completed a WCC Form 14b on November 21, 2016 stating Grady's body parts affected by his accident were his left shoulder and arm/hand. She further indicated on the WCC Form 14b the left arm and hand were impaired due to the accident but "deferred to Ortho" as to a percentage of impairment. However, in her deposition on March 13, 2017, Dr. Barre testified that Claimant's left elbow problems were not causally related to the work accident of September 13, 2012. However, Dr. Barre did recommend an MRI exam or an ultrasound of the left elbow to address the cause of Claimant's left elbow symptoms. By medical treatment/status report dated December 21, 2016, Dr. Barre ordered an MRI arthrogram of Claimant's left shoulder and an MRI of his left elbow with EMG study to be conducted at First Coast Neurology by Dr. Do.

TWELFTH: On referral from Dr. Julie Barre, the Claimant presented to Sunshine Spine and Pain, PA for pain management treatment by Dr. Arkam Rehman on March 5, 2015. Claimant was evaluated by Dr. Rehman on March 5, 2015. He rated his pain score 6/10 on an analog pain scale. The pain was constant with intermittent exacerbations. He reported sharp and shooting pain at times, but overall the pain in his shoulder was dull and achy. He reported pain in the left shoulder and lateral arm that increased with abduction and extension and sleeping activities. Dr. Rehman's physical exam of the Claimant was consistent with his complaints and a prescription of Norco 10-325 mg, half (½) to one (1) tablet up to four (4) times per day as needed for pain. Claimant maintained his regular visits with Dr. Rehman through his office visit of August 20, 2015, at which time Dr. Rehman added MS Contin Cr 30 mg tablet to be taken once every morning starting after shoulder surgery, which was being scheduled for August 25, 2015. Claimant returned to Dr. Rehman on September 17, 2015 after his second

shoulder surgery reporting severe pain in his shoulder since surgery and continued taking of Norco every six (6) hours, however, the Norco medication was not strong enough to produce a positive pain response.

THIRTEENTH: By April 22, 2016 the Claimant reported to Dr. Rehman ongoing left shoulder pain and that he had a post-surgery MRI scan for pain evaluation. Dr. Rehman reviewed both the Claimant's EMG/Nerve Conduction study performed on January 20, 2016 as well as the MRI. The MRI showed degenerative changes of the Claimant's labrum and tendinosis. The EMG/Nerve Conduction Study was read as normal with no delay across Claimant's elbow/cubital tunnel. On his May 20, 2016 visit to Dr. Rehman, Claimant reported ongoing left shoulder pain and that he had undergone a functional capacity evaluation following his visit with Dr. Rehman on April 22, 2016. He reported the functional capacity evaluation aggravated his pain and caused a consistent, aching pain in the left arm radiating into the fingers. He reported if he tried to pick anything up, he experienced pain in the left ventral elbow area.

FOURTEENTH: On July 25, 2016, Claimant was seen by Dr. Rehman in follow-up after his functional capacity evaluation. He again reported constant pain with intermittent exacerbation which was worse since his last visit. He described the pain as "burning" in quality. Dr. Rehman diagnosed 1. Rotator cuff tear or rupture of the left shoulder; 2. Pain in the left shoulder; 3. Other chronic pain; 4. Long-term (current) use of opiate analgesic for neuralgia and neuritis, unspecified. In response to the Claimant's report of increased shoulder pain, Dr. Rehman added and Medrol 4mg dose Pak to his pain management medication. Unfortunately, the Medrol dose Pak did not help his left shoulder pain, instead, increased his blood sugar too much. Dr. Rehman

noted that Claimant's chronic pain interferes with his activities of daily living and that his second surgery did not help long-term. In response to the Claimant's ongoing shoulder symptomology, Dr. Rehman ordered another course of physical therapy on September 19, 2016. At this visit, Claimant reported ongoing left shoulder and arm pain and that the tennis elbow brace for his left elbow had been acquired but did not help alleviate his elbow symptoms. In addition to taking the Norco prescribed by Dr. Rehman, Claimant described using topicals as well as a TENS unit to help manage his severe pain (Claimant's pain scale was self-reported as a 9/10).

FIFTEENTH: On the Claimant's visit with Dr. Rehman on January 16, 2017 he continued to report left shoulder pain of 8/10 on the VAS pain scale. Dr. Rehman continued to report Claimant's chronic pain interfered with his activities of daily living and that surgery for pain control did not help long-term. The Claimant had recently been provided a prescription for an MRI and arthrogram. Dr. Rehman renewed the Claimant's Norco prescription and, when completing a Florida Workers' Compensation Uniform Medical Treatment/Status Report form, endorsed the statement "the injured worker's functional limitations and restrictions, identified in detail below, are of such severity that he/she cannot perform activities, even at a sedentary level." From a pain management perspective, Dr. Rehman's note deferred whether the Claimant had achieved maximum medical improvement to his orthopedic surgeon.

SIXTEENTH: By March 20, 2017, Claimant's left shoulder pain had worsened to include muscle contractures and pain down his left arm with numbness and tingling in his fingers.

SEVENTEENTH: Claimant continued following with Dr. Rehman to manage his chronic pain and on June 19, 2017 Dr. Rehman again noted a level of 8/10 and that he was still awaiting the completion of an MRI study that had not been approved by the Carrier because they denied that the left elbow/left arm were causally related to the work accident. Physical therapy had been ineffective in managing his pain level, as had surgery. Dr. Rehman continued Claimant's Norco medication and added Voltaren 1% gel to be applied to the affected area. Dr. Rehman's office note of July 20, 2017 again noted Claimant's pain scale was at an 8/10 and that his medication makes his pain tolerable, otherwise, "the pain is very traumatic." Claimant's pain medication makes him constipated and foggy headed. The Claimant did not take his medication to drive to Dr. Rehman's clinic.

EIGHTEENTH: On August 21, 2017 Dr. Rehman saw the Claimant and reviewed his arthrogram study of his left shoulder taken on July 20, 2017. The arthrogram revealed a high-grade, partial thickness tear of the supraspinatus tendon. Post-surgical change from previous rotator cuff repair. Post-surgical change from bicep tenodesis, superior labral debridement, Mumford procedure, and acromioplasty. Dr. Rehman's impression was that of shoulder impingement with shoulder girdle pain, left shoulder rotator cuff tear tendinosis labral injury. Dr. Rehman also reviewed an EMG/Nerve Conduction Study performed on August 3, 2017 with bilateral EMG nerve conduction, which showed chronic to moderate C7 radiculopathy, mild CTS bilaterally, left greater than right, and mild right ulnar nerve entrapment. By December 18, 2017 Dr. Rehman added to the Claimant's pain management regime Morphine Sulfate ER 15mg to be taken once every morning for pain.

NINETEENTH: Dr. Harsh Dangaria, a pain management physician with Sunshine Spine and Pain evaluated Grady on March 19, 2018. Dr. Dangaria found the massage therapy for Grady's left shoulder to be of some benefit based on Grady's report. Dr. Dangaria advised Grady to continue with massage therapy. Grady reported the use of Morphine ER, Norco, and Voltaren Transdermal Gel made his chronic pain more tolerable. Grady described his shoulder pain as constant with intermittent exacerbations. The pain could be burning in character. His pain was increased by positional changes and decreased by his pain medications. Grady's pain medications were found to improve his overall quality of life. Along with improving functionality. Dr. Dangaria noted: "Because of [sic] the patient's pain is projected to be long term, we are adding a long acting medication to the pain treatment regimen so we can manage the pain better for better quality of life and functionality as we address pain with a combination of injections and rehab and adjuvant medications. We anticipate the medication need to be in excess of the next 12 months and we will reassess the situation periodically for continued need."

TWENTIETH: By April of 2018, Physician's Partners of America took over the pain management responsibilities of the Claimant. Claimant presented to Physician Partners of America on April 16, 2018 and Claimant's pain value was a 10 on this visit. His medications of Norco and Morphine were continued. He returned to Physician Partners of America on May 17, 2018 continuing to report left shoulder pain and pain from his shoulder to his hand. He reported massage therapy previously prescribed by Dr. Rehman had been helpful and that his pain was constant/100% of the time. A physical exam was positive for pain induced by an impingement test, he was provided a

prescription for massage therapy as well as Morphine ER, Norco, and Voltaren Transdermal Gel, in keeping with the medication regime prescribed by Dr. Dangaria.

TWENTY-FIRST: Claimant was seen for a surgical consultation on March 12, 2018 by Dr. Bruce Steinberg of Jacksonville Orthopedic Institute – San Marco. Dr. Steinberg's physical examination of Claimant's left shoulder showed pain with all range of motions. He had significant weakness with supraspinatus testing as well as pain. An examination of his left elbow was significant for exquisite palpable tenderness over the medial aspect of the left elbow and the flexor pronator origin with palpable tenderness of the medial aspect of his left arm and up into the region of his left shoulder. Dr. Steinberg's impression was left shoulder pain, status post most recently to his previous surgeries and prior to that, two additional surgeries; left partial chronic rotator cuff tear; left elbow joint pain, possible biceps etiology; left elbow medial epicondylitis. Dr. Steinberg explained to the Claimant a potential treatment plan involving a reverse head total joint arthrosis of the left shoulder (i.e. shoulder replacement). However, Dr. Steinberg opined that based on Claimant's clinical examination and treatment history, including four surgeries, he did not recommend "any further arthroscopic surgery" but "in the future it is possible he may require a reverse head total joint arthrosis" (Claimant's APA p, 287), He suggested and MRI of the left elbow, and requested the Claimant return after testing. Claimant returned to Dr. Steinberg on March 30, 2018 after having an MRI of the left elbow performed on March 14, 2018. The left elbow MRI established a low-grade interstitial tear of the common extensor. An injection to the elbow was offered, however, the Claimant declined and Dr. Steinberg noted he had "no further recommendations" for Claimant at that time.

TWENTY-SECOND: Dr. Steinberg completed a Florida Workers' Compensation Uniform Medical Treatment/Status Reporting Form which indicated he restricted the Claimant to carrying no more than 25 lbs. and lifting from floor to waist no more than 50 lbs. and restricted the Claimant to light/medium work. Dr. Steinberg assigned a 5% permanent impairment rating to the Claimant's body as a whole as a result of the Claimant's left shoulder injury. He further indicated Claimant reached MMI on March 30, 2018. He also opined that he did not anticipate Claimant would have residual clinical dysfunction or residual functional loss from the work injury. Dr. Steinberg's rating was provided pursuant to the 1996 Florida Uniform PIR schedule. Dr. Steinberg further stated in his May 25, 2018 note, "I have been asked to clarify my opinion set forth in my March 12, 2018 office note in which I indicated Mr. Grady's need for a reverse head total joint arthrosis of the left shoulder. **Based upon my review of his medical records, surgical history, and my clinical evaluation, it is my opinion, based upon a reasonable degree of medical certainty, that Mr. Grady will most probably require a reverse head total joint arthrosis in the future directly caused by his left shoulder injury sustained during his on-the-job accident of September 12, 2012.**" (Emphasis added) Dr. Steinberg opined in a Form 14b dated June 24, 2018 that under the Sixth Edition of the *AMA Guides to the Evaluation of Permanent Impairment* Claimant had a 5% permanent impairment rating for a left shoulder injury affecting the elbow. He further opined that Claimant did not require any causally related medical treatment as a result of the work accident (Def's APA p. 219). Moreover, Dr. Steinberg confirmed the date of MMI was March 30, 2018.

TWENTY-THIRD: Based upon Dr. Steinberg's report of May 23, 2018 the Claimant reached maximum medical improvement on that date.

TWENTY-FOURTH: Claimant was also seen for purposes of an independent medical evaluation on March 23, 2018 by Dr. Bright McConnell of Charleston Sports Medicine and Orthopedic Center. Dr. McConnell is board certified as an orthopedic surgeon by the American Board of Orthopedic Surgery. Dr. McConnell had the opportunity to review the records of Dr. Julie Barre; the EMG report of Dr. Bruce Hartwig dated January 20, 2016; the FCE of the Claimant dated April 28, 2016; as well as the follow-up Nerve Conduction Study completed by Dr. Do on August 3, 2017. Dr. McConnell also reviewed the records of Dr. Bruce Steinberg and the Claimant's MRI reports dated March 14, 2018 and July 20, 2017. Dr. McConnell was also made aware of Claimant's pre-accident shoulder surgeries in 2002 and 2003.

TWENTY-FIFTH: Dr. McConnell's history taken from the Claimant, with regard to his symptoms, showed he reported pain when using his left shoulder with any activity attempted horizontally or overhead. His left arm was weak when attempting to lift out with his outstretched arm. Pain and weakness was reported with any overhead activity. His pain increased at night. Crepitus was noted in the Claimant's shoulder. On physical exam, Dr. McConnell also found posterior periscapular discomfort. Claimant's left elbow was also particularly painful on the medial aspect as well as along the distal medial brachium region. Pain was described by the Claimant as "throbbing", which extended down into his left forearm. Claimant reported managing his symptoms with Norco and Morphine daily, as well as a transdermal Voltaren gel.

TWENTY-SIXTH: Dr. McConnell's physical exam and assessment of the claimant's left shoulder range of motion, found forward flexation was limited to 140 degrees; abduction was limited to 110 degrees; external rotation was limited to 40 degrees with internal rotation limited to the L5 level. Claimant demonstrated significant weakness on isolation testing of his shoulder abduction and rotator cuff. Weakness was found at forward flexation of his shoulder with tenderness along the long head of the biceps at the site of his tenodesis.

TWENTY-SEVENTH: Dr. McConnell noted pain in the Claimant's left elbow at the flexor pronator origin and along the medial intramuscular septum along the distal brachium. Dr. McConnell reviewed the MRI scan of his left elbow dated March 14, 2018. Dr. McConnell found the MRI scan of the Claimant's left elbow to reveal a focal enhanced small lesion which he believes correlated with the abnormality seen by Dr. McConnell when he performed an ultrasound examination of the Claimant's elbow in his clinic.

TWENTY-EIGHTH: After conducting a physical examination, Dr. McConnell's impression was that of: 1. Status post rotator cuff repair left shoulder with biceps tenodesis; 2. Status post excision of clavicle left shoulder; 3. Probable mid-residual medial epicondylitis left elbow; 4. Rule out possible focal traumatic neuroma medial left elbow.

TWENTY-NINTH: Utilizing the AMA guides to the Evaluation of Permanent Impairment, 5th Ed., Figure 16-40, 16-43, and 16-46; Dr. McConnell assigned a 4% impairment of the left upper extremity using the range of motion loss in flexation; an

additional 3% impairment based upon Claimant's loss of range of motion in abduction; an additional 1% impairment for range of motion loss of external rotation; and an additional 2% impairment based upon his loss of range of motion in internal rotation. Additionally, based upon table 16-35, he assigned a 6% additive impairment based on strength loss in forward flexation and additional 3% based upon strength loss in abduction, totaling an additional 9% impairment upon strength loss. Finally, using Table 16-27 an additive 10% impairment of the left upper extremity was provided based upon his distal clavicular excision and, using the combined values table, Claimant sustained 26% impairment of his left upper extremity which, using a 60% modifier for the shoulder achieved a 43% impairment of the Claimant's left shoulder due to his accident of September 13, 2012.

THIRTIETH: With regard to future medical treatment, Dr. McConnell opined the Claimant may be a candidate for percutaneous tenotomy with platelet rich plasma injection, a procedure known to be at use at the Mayo Clinic in Jacksonville.

THIRTY-FIRST: Dr. McConnell restricted the Claimant's work activity from any repetitious horizontal or overhead lifting and assigned weight lifting consistent with his Functional Capacity Evaluation.

THIRTY-SECOND: Dr. McConnell did not find the Claimant had achieved maximum medical improvement with regard to his left elbow pathology because he has not received any specific treatment for his left elbow symptoms and he is concerned the Claimant may have neurogenic process to his medial brachial pain. He recommended

additional imaging of the Claimant's left elbow with intravenous contrast on a high-field scanner.

THIRTY-THIRD: Claimant uses Morphine Sulfate extended release tablets to manage his chronic, severe, accident related shoulder pain. Morphine Sulfate extended release tablets may impair the mental or physical abilities needed to perform potentially hazardous activities such as driving a car or operating machinery. The Claimant also takes Norco (hydrocodone bitartrate). Norco, like the Claimant's morphine medication, "...may impair the mental or physical abilities needed to perform potentially hazardous activities, such as driving a car or operating machinery. Warn patients not to drive or operate dangerous machinery unless they are tolerant to the effects of Norco tablets and they know how they will react to the medication." (Claimant's APA p. 361)

THIRTY-FOURTH: Claimant submitted into evidence mileage reimbursement requests for the year 2017. The requests include the Claimant's round-trip mileage to Sunshine Spine and Pain; Precision Imaging Center; Hughston Orthopedics, Dr. Barre; and First Coast neurology, Dr. Do from January 16, 2017 to April 16, 2018. All of the medical providers for whom the Claimant submitted mileage requests during this time period are all authorized treating physicians or providers authorized by the Defendants.

THIRTY-FIFTH: Claimant was evaluated by John B. Roberts, M.H.S., and Certified Rehabilitation Counselor/Certified Disability Management Specialist on August 1, 2016 and again on May 30, 2018. Mr. Roberts obtained a Masters in Health Science with a specialty in rehabilitation and vocational counselling from the University of Florida in 1984 and obtained a Certificate of Rehabilitation Counselor through the Commission

on Rehabilitation Counselor Certification in 2008. He is also a Certified Senior Disability Analyst and Diplomat with the American Board of Disability Analysts and a Certified Case Manager. After meeting with the Claimant in August of 2016, and utilizing Dr. Barre's 5% permanent impairment to the Claimant's left upper extremity, and his physical restrictions of no lifting over 20 lbs. and no overhead use, as well as the restrictions provided by the Claimants Functional Capacity Evaluation of April 26, 2016 Mr. Roberts assessed Claimant's previous employment and medications as well as his educational background and transferrable skills.

THIRTY-SIXTH: As a result of the Claimant's work restrictions from Dr. Barre and his Functional Capacity Evaluation, Mr. Roberts determined that the Claimant would not be able to return to his past work as an electrician and would need to look for potential work that would not require him to work above his head or would allow him to work in more one-armed capacity. Mr. Roberts stated, "when taking into consideration all of Mr. Grady's vocational strengths and weaknesses, he will have a major problem in seeking employment within his geographical area in which he lives."

THIRTY-SEVENTH: Mr. Roberts conducted a thorough labor market survey of the Jacksonville, Florida area. He initially looked at electricians and electrical companies in the area to determine if there was any work the Claimant could perform with limited use of his left arm and hand. He contacted seven different electrical companies in the Jacksonville area and was unable to find any employer who could state the Claimant could work in his industry at a less-physical demands as outlined by the Functional Capacity Evaluation. Mr. Roberts also made contact with an additional ten potential employers who were also unwilling to state they would have a job for an individual like

the Claimant. Mr. Roberts also looked at the job of security guard, dietary aide, receptionist, detail department manager, detailer, host at Applebee's, or service advisor at a Ford dealership. Unfortunately, Claimant either did not have the skills required for those jobs, or the jobs exceeded the Claimant's physical capacity. At the time of Mr. Roberts' evaluation of the Claimant in August, 2016, he concluded "...at this time, given Mr. Grady's age, education, and the lack of a skill he can transfer over to other less physically demanding jobs, he is unemployable, and he would not have access to other light-strength levels of work where he currently lives."

THIRTY-EIGHTH: Mr. Roberts again evaluated the Claimant on May 30, 2018. In addition to the previous medical records reviewed, he also reviewed the report of Dr. Bright McConnell; PA Paul Steinke; as well as the records of Dr. Bruce Steinberg; Dr. Arkam Rehman; Dr. Julie Barre; and Heartland Rehab Services. Mr. Roberts found the Claimant was taking Norco medication as well as Morphine and the Voltaren gel to help with pain. His physical restrictions had not changed since his last vocational evaluation of the Claimant. Mr. Roberts again found the Claimant did not meet all the job demands of the job description for an electrician, based upon the restrictions outlined in the Functional Capacity Evaluation report.

THIRTY-NINTH: In assessing other employability weaknesses of the Claimant, Mr. Roberts noted the claimant's age; lack of usable skill set that he can do in a less physically demanding work; his physical restrictions; his inability to return to his past work as an electrician; Claimant's not having worked since 2013; his daily use of heavy narcotics for pain management; and the fact that he did not present very well, as he appeared to be in pain were all employability weaknesses.

FORTIETH: Again, Mr. Roberts conducted a labor market survey in an effort to try and identify employers for the Claimant in the Jacksonville, Florida area. He contacted seven different potential employers in the Electrical supply or installation field, as well as Lowe's Home Improvement. No employers would state that they could accommodate the Claimant's restrictions. Mr. Roberts also researched other jobs for the Claimant in unskilled entry-level positions including security guard/gate guard; parking lot cashier; counter clerk; sorter; bench worker; telemarketer. He again was unable to identify any one employer who would have a job where an individual like the Claimant could apply and would be considered for employment. Based upon his vocational assessment and labor market survey, Mr. Roberts concluded, "Given Mr. Grady's age, lack of skill in which he can transfer over to other, less physically demanding jobs, along with his numerous vocational weaknesses listed above, it is still my opinion he is unemployable and he would not have access to other light-strength work where he currently lives."

FORTY-FIRST: Claimant graduated from high school. He obtained a CAD (Computer- Aided Design) in 2007 and worked in that filed for approximately two years. The training that he received in CAD is no longer applicable to today's work in the field because of changed in CAD programming. In addition, Grady testified he does not believe he will be able to return to computer work because the medications he takes due to his compensable injuries make it hard for him to concentrate.

FORTY-SECOND: Claimant also has a certificate through the International Brotherhood of Electrical Workers that allowed him to work as a journeyman/wireman.

FORTY-THIRD: In 2002 Claimant had a left shoulder injury, however, he recovered from that injury and returned to electrical contracting work. Claimant also underwent two shoulder surgeries prior to the accident of September 13, 201 2. These surgeries resulted in permanent impairment and light-duty work restrictions. Electrical contracting in industrial and commercial work is very heavy work. Grady testified he had no problems performing very heavy work in the industrial electric filed prior to his accident of September 13, 2012.

FORTY-FOURTH: Before the Claimant's accident of September 13, 2012 he was not taking any pain medications on a regular basis. However, Claimant testified that he had previously received pain management for his left shoulder prior to the work accident of September 13, 2012.

FORTY-FIFTH: Grady's work as a commercial electrician required him to lift, on a frequent basis, reels of cable, bundles of pipe, steel pipe, equipment, and jacks that hold large reels of electrical cable, all of which weighed from 70 – 80 pounds. Power tools which he used to perform his job duties as a commercial electrician weighed, on average, approximately 25 pounds. On occasion, he was required to lift items weighing more than 100 pounds including reels of wires and large conduit. Much of the work as a commercial industrial electrician required the use of his arms overhead for a prolonged period of time installing light fixtures, running conduit, and installing junction boxes would all require overhead use of his arms. Grady estimated that approximately 30- 40% of his work was overhead. While using his arms overhead, he was required to hold weight in excess of 25 pounds. Some of the conduit he was required to lift overhead and install ranged from 75- 100 pounds.

FORTY-SIXTH: Grady attempted to return to work for the employer after his accident of September 13, 2012 and worked for approximately eight months as an inspector. He is unable to climb ladders as a result of his admitted accident and injuries due to a fall risk. Grady knew of no work as an inspector in the electrical field that did not involve climbing. Since leaving The Shaw Group, Grady has not worked as a result of his injuries related to his September 13, 2012 accident,

FORTY-SEVENTH: Grady underwent two surgeries related to his accident of September 13, 2012 and has five permanent anchors placed in his shoulder, one anchor reattached his bicep muscle and four anchors reattached his rotator cuff.

FORTY-EIGHTH: Grady has been treated since 2015 at Sunshine Spine and Pain for his chronic pain symptoms caused by his accident of September 13, 2012. He takes Morphine, 15mg in the morning and then four times a day he takes Norco, 10-325mg. When he takes his pain medications with breakfast in the morning, the medications make him feel drowsy and foggy headed. He takes a nap after breakfast, He is unable to operate a motor vehicle on a public street while taking his pain medication. He is not allowed to operate any machinery while taking his medication. He schedules his appointments with his pain management physician early in the morning and does not take his pain medication until he gets home. As a result of his accident he experiences pain in his left shoulder to his left elbow. His elbow symptoms have never gone away. His elbow symptoms feel like his "funny bone" has been activated. The pain shoots down his arm into his left hand and generates a spasm-like symptom. He has pain extending from his elbow into his hand at least once every fifteen minutes. The

pain in his shoulder is sharp pain, like a muscle cramp. The pain and weakness in his left arm and shoulder prevents him from lifting a gallon of milk with his left arm.

FORTY-NINTH: Grady performs some tasks around his house. He is able to dress himself. For household tasks he generally uses his right arm.

FIFTIETH: In addition to his pain medications, Morphine ER and Norco Grady also uses Voltaren gel, which also assists in reducing his symptoms. The dose has been increased from a 1% gel to a 3% gel. Grady testified he has been advised he will most likely need left shoulder replacement surgery, however, he is too young at this time for the surgery. When asked by his attorney whether he would proceed with shoulder replacement surgery if it was offered, he testified he would rather save that as a "last resort". At approximately age sixty (60) he will consider the shoulder replacement surgery suggested by Dr. Steinberg.

FIFTY-FIRST: Grady's average pain level in his left shoulder on a zero (0) – ten (10) analog pain scale is approximately eight (8). It can go down to a seven (7), and on bad days, goes up to a ten (10). His pain affects his sleep. He gets approximately an hour and a half to two hours of sleep before he wakes up. When he wakes up, he applies the Voltaren gel or uses his TENS unit.

FIFTY-SECOND: Grady is unable to perform any of his prior hobbies, such as fishing, golf, or basketball.

CONCLUSIONS OF LAW

Based upon the findings of fact set forth above, and in accordance with § 42-17-40, S.C. Code Anno., 1976, the undersigned Commissioner makes the following rulings of law:

FIRST: The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

SECOND: On September 13, 2012 the Claimant, Gene Grady, was an employee within the meaning of the S.C. Code Anno., § 42-1-130 (1976, as amended) sustained a compensable injury to his left shoulder affecting his left arm within the meaning of S.C. Code Anno., § 42-1-160 (1976, as amended), while performing duties arising out of and in the course and scope of his employment with The Shaw Group, Inc., an employer within the meaning of S.C. Code Anno., § 42-1-140 (1976).

THIRD: The Defendants are financially responsible for the medical treatment, evaluations, physical therapy, evaluative procedures, surgical procedures, mileage and medication which Mr. Grady has heretofore received/undergone as a result of his compensable injuries, including those modalities referenced in the findings of fact set forth above, as these medications, services, tests, surgeries, etc. were reasonable, medically necessary, and intended to lessen the Claimant's period of disability pursuant to S.C. Code Anno., § 42-15-60 (1976, as amended). Defendants are likewise responsible for the additional treatment, medications, evaluative procedures, surgical procedures, provided/prescribed by the Claimant's pain management physician at Sunshine Spine and Pain and Dr. Bruce Steinberg, who is currently Claimant's authorized treating physician. This includes the Claimant's need for a reverse head total

arthrosis of the left shoulder directly caused by the Claimant's compensable left shoulder injury, as these modalities are reasonable, medically necessary, and intended to lessen the Claimant's ultimate period of disability within the meaning of this statute.

FOURTH: "Under the South Carolina Workers' Compensation Act, a Claimant is entitled to compensation for total disability resulting from a work related injury." Last v MSI Construction Company, Inc., 305 SC 349, 409 S.E. 2d 334, 336 (1991) In this regard, the Supreme Court of South Carolina has consistently held that "the loss of earning capacity caused by the physical injury is the pertinent measure of compensable disability." (Id); see also Bowen v. Chiquola Mfg. Co., S.C. 322, 120 S.E. 2d 99 (1961); Shealy v. Algernon Blair, Inc., 250 S.C. 106, 156 S.E. 2d 640 (1967). Consequently, the issue is "whether the injury ha[s]...resulted in some loss... [the Claimant's] earning capacity." Orr v. Elastomeric Products, 323 S.C. 342, 474 S.E. 2d 448,449 (Ct. App. 1996); Last, 409 S.E. 2d 336.

FIFTH: A review of the relevant portions of the SC Code Anno. § 42-9-260 (1976, as amended) as well as Commission regulations 67-505 and 67-506 verifies: (a) Disability is presumed to continue until an employee has returned to work for the requisite fifteen (15) day period with the employer responsible for payment of temporary disability compensation; and (b) this compensation remains payable unless the injured employee is released by the treating physician to work "without restriction", provided with "limited duty work consistent with...[restrictions assigned by] the treating physician" or actively working.

SIXTH: In Grayson v. Carter Rhoad Furniture, 317 S.C. 306,454 S.E. 2d 320 (1995), in construing the language of a previous codification of regulation 67-504 (which is substantially similar to the current version of 67-505 and 67-506), the court held: (a) the authorized treater's admonition that Mr. Grayson needed to be "somewhat careful with lifting" constituted a work restriction; (b) this restriction was sufficient to prohibit the suspension/termination of temporary total disability compensation; and (c) Mr. Grayson remained entitled to this compensation even after his employment was terminated by Carter Road Furniture. Grayson 454 S.E.2d 322.

SEVENTH: A review of these authorities verifies that the Claimant herein, Gene Grady, has been entitled to temporary total disability compensation as his work status was restricted up to and beyond the date he achieved maximum medical improvement and therefore, he was temporarily and totally disabled within the meaning of SC Code Anno., §42-9-10 (1976, as amended), as a matter of law, for the period of May 29, 2014 through March 30, 2018 when Dr. Bruce Steinberg opined the Claimant had reached maximum medical improvement.

EIGHTH: As a result of the Claimant's compensable accident, he sustained injuries to his left shoulder and left arm. Based upon the physical work restrictions placed upon him by his treating physicians, he has been unable to return to work as an electrician or in any other capacity in the electrical field. The vocational assessment of John B. Roberts, M.H.S. of Roberts Disability Consultants indicates, given Claimant's age, education, work related physical limitations, the geographical area in which he lives, and all medical records and depositions reviewed by Mr. Roberts as well as his in –person evaluation of the Claimant, the Claimant lacks a skill which can transfer over to

less physically demanding jobs, has numerous vocational weaknesses and is unemployable and would not have access to other light-strength work where he currently lives. There is no other expert vocational evidence contained in the record. While the Claimant did obtain a C.A.D. degree, which he used in the early 2000's Claimant would not be able to return to that work because of the medication he takes (Norco and Morphine) and because the C.A.D. design industry, has changed, making his training no longer relevant. As a result of the Claimant's compensable injuries, he has sustained a total destruction of his earning capacity and, as of the date he achieved maximum medical improvement (March 30, 2018), he has been permanently and totally disabled as a result of his compensable injuries to his left shoulder and his separate injury to his left arm/elbow. Even if the Claimant had not sustained a separate injury to his left elbow, his left shoulder injury profoundly and seriously affects the functioning of his left arm and impairs the use of his left arm, in keeping with the Supreme Court's ruling of Colonna v. Marlboro Park Hospital,404 S.C.537, 745 S.E. 2d 128 (ct. app 2013)

NINTH: Under §42-1-40, average weekly wage is defined.

TENTH: Under § 42-15-20, proper and timely notice of Claimant's accident was provided to the Employer, the Shaw Group, Inc.

ELEVENTH: Under §42-9-10 (A) the Claimant is entitled to permanent and total disability benefits. Total disability does not require complete helplessness. Wynn v. Peoples Natural Gas Co. of SC, 238 S.C. 1, 118 S.E.2d 812 (1961) the generally accepted test of total disability is the inability to perform services other than those that

are "so limited in quality, dependability, or quantity that a reasonable stable market for them does not exist." Wynn (Id) The policy of allowing Claimant's to proceed under the general disability provisions of both §42-9-10 and § 42-9-20 allows for a claimant whose injury, while falling under the scheduled member section, nevertheless affects other parts of the body and warrants providing the Claimant with the opportunity greater than the presumptive disability provided for under the scheduled member section... Brown v Owens Steel Co., Inc., (S.C. App. 1994 316 S.C. 278, 450 S.E. 2d 57, rehearing denied, certiorari denied), Colonna, Id.

In conclusion, the Hearing Commissioner issued the following Order:

ORDERED, Adjudged and Decreed the Claimant sustained compensable injuries to his left arm and left shoulder by accident arising out of and in the course and scope of his employment with the Defendant, The Shaw Group, Inc., on September 13, 2012; and, it is further,

ORDERED, Adjudged and Decreed the Claimant received, and the Defendant, The Shaw Group, Inc., shall be responsible for all causally related medical care and treatment which has tended the Claimant's disability as provided by: Dr. Scott Duffin; Dr. Julie Barre; Dr. Arkam Rehman; and Dr. Bruce Steinberg, including reimbursement for causally related mileage and prescriptions; and, it is further,

ORDERED, Adjudged and Decreed that the Claimant sustained compensable injuries to his left shoulder and left elbow, which affect the functioning of his left arm and impairs his left arm as a direct result of his compensable accident of September 13, 2012. As a result of the Claimant's compensable injuries, he has been rendered totally

and permanently disabled as of March 30, 2018 and therefore, the Claimant is entitled to and the defendant, The Shaw Group, Inc., shall provide compensation at the Claimant's applicable compensation rate for 500 weeks and shall receive credit for all weekly compensation paid through the date of this Order; and it is further

ORDERED, Adjudged and Decreed the Defendants shall be responsible for all future causally related medical care and treatment as deemed necessary by the Claimant's authorized treating physicians, Dr. Bruce Steinberg and Physician Partners of America, Pain Relief Group. Specifically, in keeping with §42-15-60(B)(2) the Defendants shall be responsible for Claimant's periodic visits to his pain management physician at Physician Partners of America, Pain Relief Group and the Morphine ER, Norco, and Voltaren Transdermal Gel and Movantik (anti-constipation medication to address side effects of Norco and Morphine ER) and ongoing massage therapy. Additionally, based on the opinion of Dr. Bruce Steinberg dated May 25, 2018 the Defendants shall be responsible for Claimant's reverse head total joint arthrosis of the left shoulder.

The Defendants, by their WCC Form 30, timely appealed the Decision and Order of the Hearing Commissioner asserting the Hearing Commissioner erred as follows:

1. Whether the Single Commissioner erred in finding the Claimant suffered an injury by accident to his left shoulder affecting his left arm when such decision was against the greater weight of the evidence and constituted error of law? (FF#1; COL #2, #8)

2. Whether the Single Commissioner erred in finding the Claimant suffered an injury by accident to his left shoulder affecting his left arm when the former authorized treating physician, Dr. Julie Barre, testified the left arm was not injured in the work accident? (FF #1; COL #2)
3. Whether the Single Commissioner erred in finding the Claimant suffered an injury by accident to his left shoulder affecting his left arm when Dr. Bruce Steinberg did not assign an impairment rating to the left arm? (FF#1; COL#2)
4. Whether the Single Commissioner erred in finding Claimant could proceed under S.C. Code § 42-9-10 when such decision contravenes *Colonna v. Marlboro Park Hospital,* 404 S.C.537 (Ct. App. 2013) because the left arm was not injured or impaired as a result of the accident? (FF#1; COL #2, #4, #5. #6, #7, #8)
5. Whether the Single Commissioner erred in finding Claimant permanently and totally disabled under S.C>Code Ann. §42-9-10 when such decision was against the greater weight of the evidence and constituted an error of law? (FF #1; COL @2, #4, #%, #^, #7, #8, #11)
6. Whether the Single Commissioner erred in ordering Defendants to provide "all future causally related medical care and treatment as deeded necessary by the Claimant's authorized treating physicians" Claimant lifetime medical treatment when such decision was against the greater weight of the evidence and constituted error of law (Award)
7. Whether the Single Commissioner erred in ordering Defendants to provide "all future causally related medical care and treatment as deeded necessary by

the Claimant's authorized treating physicians" when Dr. Steinberg op ined in a Form 14B dated June 24, 2018 that Claimant did not require any causally related medical treatment as a result of the work accident? (Award, Def's APA p. 219)

8. Whether the Single Commissioner erred in ordering Defendants be held responsible for the reverse head total joint arthrosis surgery when Dr. Steinberg did not opine to a reasonable degree of medical certainty that such surgery was medically necessary as a result of the work accident? (Award, Claimant's APA p. 287)

The matter was set for a hearing before the Appellate panel of the South Carolina Workers' Compensation Commission on September 16, 2019 in Columbia, South Carolina. Both parties submitted Memoranda of Law into the record. Based upon the Commission's file, the Memoranda of Law submitted by both parties, and arguments of counsel, the South Carolina Workers Compensation Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Based upon the parties' stipulations, the testimony of Mr. Gene Grady, the APA/Evidentiary submissions of the parties, and the Commission file relative to this claim, the undersigned Commissioner makes the following findings of fact as required by S.C. Code Anno., § 42-17-40, 1976:

FIRST: On September 13, 2012 Gene Grady sustained a compensable injury to his left shoulder, affecting his left arm, while working at a rolling table

fabricating steel pipe bars. When one of the bars began to fall from the table, Grady attempted to catch the bar to prevent injury to a co-worker. The Claimant experienced immediate pain in his left shoulder. The pain progressed into his left arm and elbow. The medical record is replete with references to Claimant's left elbow symptoms and that they relate to his admitted accident of September 13, 2012 to his left shoulder.

SECOND: As a result of the Claimant's compensable accident he was initially treated in Augusta at the Doctor's Hospital Center for Occupational Medicine. The Doctor's Hospital initial note of September 13, 2012 indicates the Claimant had injured his left shoulder earlier that day when he heard a "pop" in the shoulder. He experienced pain in the clavicle and down his left arm to the elbow.

THIRD: On October 10, 2012, Claimant's physical exam at Doctor's Hospital for Occupational Medicine stated he continued to experience "soreness" in his upper arm and felt "popping" in his left shoulder. In addition, he reported pain at the lateral epicondyle of his left elbow. The lateral epicondyle of the left elbow was tender to palpation. At the conclusion of his October 10, 2012 visit, Claimant was referred to Dr. Scott Duffin of Augusta Orthopedic and Sports Medicine Specialists.

FOURTH: Dr. Duffin was the physician authorized by the Defendants. In his May 15, 2013 office note, Dr. Duffin states "... still has some pain now kind of in the biceps area and some around the elbow, with activities, such as lifting something heavy." In addition, the Claimant reported left shoulder pain. Dr. Duffin ordered physical therapy and conservative management of Claimant's symptoms. An open MRI of Claimant's left shoulder was performed on December 4, 2012 revealing an interior rotator cuff tear.

FIFTH: Dr. Duffin referred Claimant to South Aiken Physical Therapy for therapy primarily to his injured left shoulder/rotator cuff injury. On November 28, 2012, Claimant reported stiffness in his left shoulder with pain behind his elbow. Claimant's physical therapy at South Aiken Physical Therapy shows that he experienced ongoing severe left shoulder pain together with symptoms extending into his left elbow. The South Aiken Physical Therapy daily not on March 7, 2013 shows Claimant was unable to perform any activity with his left arm and that he continued treatment to experience pain on grade 2 palpation of his biceps muscle as well as post-physical therapy elbow pain (ulnar notch). Claimant participated in all physical therapy at South Aiken Physical Therapy, however, his symptoms did not improve significantly. Claimant discontinued his physical therapy at South Aiken Physical Therapy in July of 2013 due to his return to his home in Jacksonville, Florida; however, he was recommended to continue physical therapy in Florida. On July 9, 2013, Claimant told the therapist at South Aiken PT that he thought he had "rounded the corner" and was able to climb a ladder at work without shoulder pain. Likewise, on July 23, 2013 he continued to report his condition was improving and that he was able to "do a little more at work". On July 25, 2013 he reported the pain had decreased significantly and he was performing most work activities without pain.

SIXTH: Claimant moved back to Jacksonville, Florida, his hometown, where the Defendant's authorized his treatment to be undertaken by Dr. Julie Barre of the Hughston Clinic. Dr. Barre began treating Claimant on November 1, 2013. By February 7, 2014, she diagnosed left rotator cuff tendinopathy; low-grade partial thickness tear; super-spinatus and noted Claimant was a possible surgical candidate if

further conservative care failed. She related all of these diagnoses to Claimant's admitted accident of September 13, 2012.

SEVENTH: Dr. Barre performed arthroscopic biceps tenodesis surgery in May of 2014. Despite Dr. Barre's surgery and post-surgical physical therapy, the Claimant's left bicep tendon and shoulder remained extremely symptomatic. On September 10, 2014, however, he reported that he felt he was progressing and the pain was getting "much better" The surgery by Dr. Barre revealed a less than 50% thickness tear of the rotator cuff, however, an MRI performed of Claimant's left shoulder on January 26, 2015 revealed advanced tendinopathy of the distal super-spinatus and infer-spinatus tendons with a partial articular sided tear of the super-spinatus tendon together with degenerative changes at the labrum. As a result, Dr. Barre recommended a left shoulder arthroscopy with planned rotator cuff repair. The surgery was performed on August 25, 2015 to repair Claimant's left rotator cuff tear.

EIGHTH: On September 4, 2015, Dr. Barre noted Claimant "seems [to be] doing quite well at this time". Six weeks after the shoulder surgery, he reported complaints of radicular-type symptoms going down past his left elbow into his hand. He attended physical therapy, but continued to experience symptoms in his bicep region as well as symptoms radiating into his left forearm. On February 5, 2016, Dr. Barre noted a recent EMG/nerve conduction study of his left arm was normal.

NINTH: By May 10, 2016 Claimant had concluded his physical therapy following his second shoulder surgery. Claimant's physical therapist, with Align networks in Jacksonville Florida, based on a physical evaluation on April 28, 2016

assigned Claimant with a 5% upper extremity impairment, which was endorsed by Dr. Barre on May 10, 2016. Dr. Barre referred the Claimant for a course of pain management on May 28, 2016.

TENTH: Claimant underwent a Functional Capacity Evaluation at Align Networks, which found Claimant to have exerted maximum effort and appropriate pain behaviors. As a result of the Functional Capacity Evaluation, it was determined the Claimant did not meet the job demands for an electrician and that he was only able to perform light/medium work.

ELEVENTH: Based upon the Functional Capacity Evaluation analysis and Dr. Barre's physical exam of the Claimant which found the Claimant still symptomatic and requiring pain medication, Dr. Barre recommended a second opinion in addition to continued treatment by his pain management physician. Dr. Barre, by note, dated July 26, 2016 stated it was her opinion, "Based upon a reasonable degree of medical certainty, that Claimant's left shoulder and left arm are both directly and causally related to his admitted accident of September 13, 2012." On August 17, 2016 she further opined, "Based on a reasonable degree of medical certainty, the injury that occurred on 9/13/2012 will likely cause chronic impaired functioning of his [Claimant] left arm." However, in her deposition on March 13, 2017, Dr. Barre testified that Claimant's left elbow problems were not causally related to the work accident of September 13, 2012. However, Dr. Barre did recommend an MRI exam or an ultrasound of the left elbow to address the cause of Claimant's left elbow symptoms. By medical treatment/status report dated December 21, 2016, Dr. Barre ordered an MRI arthrogram of Claimant's

left shoulder and an MRI of his left elbow with EMG study to be conducted at First Coast Neurology by Dr. Do.

TWELFTH: On referral from Dr. Julie Barre, the Claimant presented to Sunshine Spine and Pain, PA for pain management treatment by Dr. Arkam Rehman on March 5, 2015. Claimant was evaluated by Dr. Rehman on March 5, 2015. He rated his pain score 6/10 on an analog pain scale. The pain was constant with intermittent exacerbations. He reported sharp and shooting pain at times, but overall the pain in his shoulder was dull and achy. He reported pain in the left shoulder and lateral arm that increased with abduction and extension and sleeping activities. Dr. Rehman's physical exam of the Claimant was consistent with his complaints and a prescription of Norco 10-325 mg, half (½) to one (1) tablet up to four (4) times per day as needed for pain. Claimant maintained his regular visits with Dr. Rehman through his office visit of August 20, 2015, at which time Dr. Rehman added MS Contin Cr 30 mg tablet to be taken once every morning starting after shoulder surgery, which was being scheduled for August 25, 2015. Claimant returned to Dr. Rehman on September 17, 2015 after his second shoulder surgery reporting severe pain in his shoulder since surgery and continued taking of Norco every six (6) hours, however, the Norco medication was not strong enough to produce a positive pain response.

THIRTEENTH: By April 22, 2016 the Claimant reported to Dr. Rehman ongoing left shoulder pain and that he had a post-surgery MRI scan for pain evaluation. Dr. Rehman reviewed both the Claimant's EMG/Nerve Conduction study performed on January 20, 2016 as well as the MRI. The MRI showed degenerative changes of the Claimant's labrum and tendinosis. The EMG/Nerve Conduction Study was read as

normal with no delay across Claimant's elbow/cubital tunnel. On his May 20, 2016 visit to Dr. Rehman, Claimant reported ongoing left shoulder pain and that he had undergone a functional capacity evaluation following his visit with Dr. Rehman on April 22, 2016. He reported the functional capacity evaluation aggravated his pain and caused a consistent, aching pain in the left arm radiating into the fingers. He reported if he tried to pick anything up, he experienced pain in the left ventral elbow area.

FOURTEENTH: On July 25, 2016, Claimant was seen by Dr. Rehman in follow-up after his functional capacity evaluation. He again reported constant pain with intermittent exacerbation which was worse since his last visit. He described the pain as "burning" in quality. Dr. Rehman diagnosed 1. Rotator cuff tear or rupture of the left shoulder; 2. Pain in the left shoulder; 3. Other chronic pain; 4. Long-term (current) use of opiate analgesic for neuralgia and neuritis, unspecified. In response to the Claimant's report of increased shoulder pain, Dr. Rehman added and Medrol 4mg dose Pak to his pain management medication. Unfortunately, the Medrol dose Pak did not help his left shoulder pain, instead, increased his blood sugar too much. Dr. Rehman noted that Claimant's chronic pain interferes with his activities of daily living and that his second surgery did not help long-term. In response to the Claimant's ongoing shoulder symptomology, Dr. Rehman ordered another course of physical therapy on September 19, 2016. At this visit, Claimant reported ongoing left shoulder and arm pain and that the tennis elbow brace for his left elbow had been acquired but did not help alleviate his elbow symptoms. In addition to taking the Norco prescribed by Dr. Rehman, Claimant described using topicals as well as a TENS unit to help manage his severe pain (Claimant's pain scale was self-reported as a 9/10).

FIFTEENTH: On the Claimant's visit with Dr. Rehman on January 16, 2017 he continued to report left shoulder pain of 8/10 on the VAS pain scale. Dr. Rehman continued to report Claimant's chronic pain interfered with his activities of daily living and that surgery for pain control did not help long-term. The Claimant had recently been provided a prescription for an MRI and arthrogram. Dr. Rehman renewed the Claimant's Norco prescription and, when completing a Florida Workers' Compensation Uniform Medical Treatment/Status Report form, endorsed the statement "the injured worker's functional limitations and restrictions, identified in detail below, are of such severity that he/she cannot perform activities, even at a sedentary level." From a pain management perspective, Dr. Rehman's note deferred whether the Claimant had achieved maximum medical improvement to his orthopedic surgeon.

SIXTEENTH: By March 20, 2017, Claimant's left shoulder pain had worsened to include muscle contractures and pain down his left arm with numbness and tingling in his fingers.

SEVENTEENTH: Claimant continued following with Dr. Rehman to manage his chronic pain and on June 19, 2017 Dr. Rehman again noted a level of 8/10 and that he was still awaiting the completion of an MRI study that had not been approved by the Carrier because they denied that the left elbow/left arm were causally related to the work accident. Physical therapy had been ineffective in managing his pain level, as had surgery. Dr. Rehman continued Claimant's Norco medication and added Voltaren 1% gel to be applied to the affected area. Dr. Rehman's office note of July 20, 2017 again noted Claimant's pain scale was at an 8/10 and that his medication makes his pain tolerable, otherwise, "the pain is very traumatic." Claimant's pain medication makes him

constipated and foggy headed. The Claimant did not take his medication to drive to Dr. Rehman's clinic.

EIGHTEENTH: On August 21, 2017 Dr. Rehman saw the Claimant and reviewed his arthrogram study of his left shoulder taken on July 20, 2017. The arthrogram revealed a high-grade, partial thickness tear of the supraspinatus tendon. Post-surgical change from previous rotator cuff repair. Post-surgical change from bicep tenodesis, superior labral debridement, Mumford procedure, and acromioplasty. Dr. Rehman's impression was that of shoulder impingement with shoulder girdle pain, left shoulder rotator cuff tear tendinosis labral injury. Dr. Rehman also reviewed an EMG/Nerve Conduction Study performed on August 3, 2017 with bilateral EMG nerve conduction, which showed chronic to moderate C7 radiculopathy, mild CTS bilaterally, left greater than right, and mild right ulnar nerve entrapment. By December 18, 2017 Dr. Rehman added to the Claimant's pain management regime Morphine Sulfate ER 15mg to be taken once every morning for pain.

NINETEENTH: Dr. Harsh Dangaria, a pain management physician with Sunshine Spine and Pain evaluated Grady on March 19, 2018. Dr. Dangaria found the massage therapy for Grady's left shoulder to be of some benefit based on Grady's report. Dr. Dangaria advised Grady to continue with massage therapy. Grady reported the use of Morphine ER, Norco, and Voltaren Transdermal Gel made his chronic pain more tolerable. Grady described his shoulder pain as constant with intermittent exacerbations. The pain could be burning in character. His pain was increased by positional changes and decreased by his pain medications. Grady's pain medications were found to improve his overall quality of life. Along with improving functionality. Dr.

Dangaria noted: "Because of [sic] the patient's pain is projected to be long term, we are adding a long acting medication to the pain treatment regimen so we can manage the pain better for better quality of life and functionality as we address pain with a combination of injections and rehab and adjuvant medications. We anticipate the medication need to be in excess of the next 12 months and we will reassess the situation periodically for continued need."

TWENTIETH: By April of 2018, Physician's Partners of America took over the pain management responsibilities of the Claimant. Claimant presented to Physician Partners of America on April 16, 2018 and Claimant's pain value was a 10 on this visit. His medications of Norco and Morphine were continued. He returned to Physician Partners of America on May 17, 2018 continuing to report left shoulder pain and pain from his shoulder to his hand. He reported massage therapy previously prescribed by Dr. Rehman had been helpful and that his pain was constant/100% of the time. A physical exam was positive for pain induced by an impingement test, he was provided a prescription for massage therapy as well as Morphine ER, Norco, and Voltaren Transdermal Gel, in keeping with the medication regime prescribed by Dr. Dangaria.

TWENTY-FIRST: Claimant was seen for a surgical consultation on March 12, 2018 by Dr. Bruce Steinberg of Jacksonville Orthopedic Institute – San Marco. Dr. Steinberg's physical examination of Claimant's left shoulder showed pain with all range of motions. He had significant weakness with supraspinatus testing as well as pain. An examination of his left elbow was significant for exquisite palpable tenderness over the medial aspect of the left elbow and the flexor pronator origin with palpable tenderness of the medial aspect of his left arm and up into the region of his left shoulder. Dr.

Steinberg's impression was left shoulder pain, status post most recently to his previous surgeries and prior to that, two additional surgeries; left partial chronic rotator cuff tear; left elbow joint pain, possible biceps etiology; left elbow medial epicondylitis. Dr. Steinberg explained to the Claimant a potential treatment plan involving a reverse head total joint arthrosis of the left shoulder (i.e. shoulder replacement). However, Dr. Steinberg opined that based on Claimant's clinical examination and treatment history, including four surgeries, he did not recommend "any further arthroscopic surgery" but "in the future it is possible he may require a reverse head total joint arthrosis" (Claimant's APA p, 287), He suggested and MRI of the left elbow, and requested the Claimant return after testing. Claimant returned to Dr. Steinberg on March 30, 2018 after having an MRI of the left elbow performed on March 14, 2018. The left elbow MRI established a low-grade interstitial tear of the common extensor. An injection to the elbow was offered, however, the Claimant declined and Dr. Steinberg noted he had "no further recommendations" for Claimant at that time.

TWENTY-SECOND: Dr. Steinberg completed a Florida Workers' Compensation Uniform Medical Treatment/Status Reporting Form which indicated he restricted the Claimant to carrying no more than 25 lbs. and lifting from floor to waist no more than 50 lbs. and restricted the Claimant to light/medium work. Dr. Steinberg assigned a 5% permanent impairment rating to the Claimant's body as a whole as a result of the Claimant's left shoulder injury. He further indicated Claimant reached MMI on March 30, 2018. He also opined that he did not anticipate Claimant would have residual clinical dysfunction or residual functional loss from the work injury. Dr. Steinberg's rating was provided pursuant to the 1996 Florida Uniform PIR schedule. Dr.

Steinberg further stated in his May 25, 2018 note, "I have been asked to clarify my opinion set forth in my March 12, 2018 office note in which I indicated Mr. Grady's need for a reverse head total joint arthrosis of the left shoulder. **Based upon my review of his medical records, surgical history, and my clinical evaluation, it is my opinion, based upon a reasonable degree of medical certainty, that Mr. Grady will most probably require a reverse head total joint arthrosis in the future directly caused by his left shoulder injury sustained during his on-the-job accident of September 12, 2012.**" (Emphasis added) Dr. Steinberg opined in a Form 14b dated June 24, 2018 that under the Sixth Edition of the *AMA Guides to the Evaluation of Permanent Impairment* Claimant had a 5% permanent impairment rating for a left shoulder injury affecting the elbow. He further opined that Claimant did not require any causally related medical treatment as a result of the work accident (Def's APA p. 219). Moreover, Dr. Steinberg confirmed the date of MMI was March 30, 2018.

TWENTY-THIRD: Based upon Dr. Steinberg's report of May 23, 2018 the Claimant reached maximum medical improvement on that date.

TWENTY-FOURTH: Claimant was also seen for purposes of an independent medical evaluation on March 23, 2018 by Dr. Bright McConnell of Charleston Sports Medicine and Orthopedic Center. Dr. McConnell is board certified as an orthopedic surgeon by the American Board of Orthopedic Surgery. Dr. McConnell had the opportunity to review the records of Dr. Julie Barre; the EMG report of Dr. Bruce Hartwig dated January 20, 2016; the FCE of the Claimant dated April 28, 2016; as well as the follow-up Nerve Conduction Study completed by Dr. Do on August 3, 2017. Dr. McConnell also reviewed the records of Dr. Bruce Steinberg and the Claimant's MRI

reports dated March 14, 2018 and July 20, 2017. Dr. McConnell was also made aware of Claimant's pre-accident shoulder surgeries in 2002 and 2003.

TWENTY-FIFTH: Dr. McConnell's history taken from the Claimant, with regard to his symptoms, showed he reported pain when using his left shoulder with any activity attempted horizontally or overhead. His left arm was weak when attempting to lift out with his outstretched arm. Pain and weakness was reported with any overhead activity. His pain increased at night. Crepitus was noted in the Claimant's shoulder. On physical exam, Dr. McConnell also found posterior periscapular discomfort. Claimant's left elbow was also particularly painful on the medial aspect as well as along the distal medial brachium region. Pain was described by the Claimant as "throbbing", which extended down into his left forearm. Claimant reported managing his symptoms with Norco and Morphine daily, as well as a transdermal Voltaren gel.

TWENTY-SIXTH: Dr. McConnell's physical exam and assessment of the claimant's left shoulder range of motion, found forward flexation was limited to 140 degrees; abduction was limited to 110 degrees; external rotation was limited to 40 degrees with internal rotation limited to the L5 level. Claimant demonstrated significant weakness on isolation testing of his shoulder abduction and rotator cuff. Weakness was found at forward flexation of his shoulder with tenderness along the long head of the biceps at the site of his tenodesis.

TWENTY-SEVENTH: Dr. McConnell noted pain in the Claimant's left elbow at the flexor pronator origin and along the medial intramuscular septum along the distal brachium. Dr. McConnell reviewed the MRI scan of his left elbow dated March 14, 2018.

Dr. McConnell found the MRI scan of the Claimant's left elbow to reveal a focal enhanced small lesion which he believes correlated with the abnormality seen by Dr. McConnell when he performed an ultrasound examination of the Claimant's elbow in his clinic.

TWENTY-EIGHTH: After conducting a physical examination, Dr. McConnell's impression was that of: 1. Status post rotator cuff repair left shoulder with biceps tenodesis; 2. Status post excision of clavicle left shoulder; 3. Probable mid-residual medial epicondylitis left elbow; 4. Rule out possible focal traumatic neuroma medial left elbow.

TWENTY-NINTH: Utilizing the AMA guides to the Evaluation of Permanent Impairment, 5th Ed., Figure 16-40, 16-43, and 16-46; Dr. McConnell assigned a 4% impairment of the left upper extremity using the range of motion loss in flexation; an additional 3% impairment based upon Claimant's loss of range of motion in abduction; an additional 1% impairment for range of motion loss of external rotation; and an additional 2% impairment based upon his loss of range of motion in internal rotation. Additionally, based upon table 16-35, he assigned a 6% additive impairment based on strength loss in forward flexation and additional 3% based upon strength loss in abduction, totaling an additional 9% impairment upon strength loss. Finally, using Table 16-27 an additive 10% impairment of the left upper extremity was provided based upon his distal clavicular excision and, using the combined values table, Claimant sustained 26% impairment of his left upper extremity which, using a 60% modifier for the shoulder achieved a 43% impairment of the Claimant's left shoulder due to his accident of September 13, 2012.

THIRTIETH: With regard to future medical treatment, Dr. McConnell opined the Claimant may be a candidate for percutaneous tenotomy with platelet rich plasma injection, a procedure known to be at use at the Mayo Clinic in Jacksonville.

THIRTY-FIRST: Dr. McConnell restricted the Claimant's work activity from any repetitious horizontal or overhead lifting and assigned weight lifting consistent with his Functional Capacity Evaluation.

THIRTY-SECOND: Dr. McConnell did not find the Claimant had achieved maximum medical improvement with regard to his left elbow pathology because he has not received any specific treatment for his left elbow symptoms and he is concerned the Claimant may have neurogenic process to his medial brachial pain. He recommended additional imaging of the Claimant's left elbow with intravenous contrast on a high-field scanner.

THIRTY-THIRD: Claimant uses Morphine Sulfate extended release tablets to manage his chronic, severe, accident related shoulder pain. Morphine Sulfate extended release tablets may impair the mental or physical abilities needed to perform potentially hazardous activities such as driving a car or operating machinery. The Claimant also takes Norco (hydrocodone bitartrate). Norco, like the Claimant's morphine medication, "...may impair the mental or physical abilities needed to perform potentially hazardous activities, such as driving a car or operating machinery. Warn patients not to drive or operate dangerous machinery unless they are tolerant to the effects of Norco tablets and they know how they will react to the medication." (Claimant's APA p. 361)

THIRTY-FOURTH: Claimant submitted into evidence mileage reimbursement requests for the year 2017. The requests include the Claimant's round-trip mileage to Sunshine Spine and Pain; Precision Imaging Center; Hughston Orthopedics, Dr. Barre; and First Coast neurology, Dr. Do from January 16, 2017 to April 16, 2018. All of the medical providers for whom the Claimant submitted mileage requests during this time period are all authorized treating physicians or providers authorized by the Defendants.

THIRTY-FIFTH: Claimant was evaluated by John B. Roberts, M.H.S., and Certified Rehabilitation Counselor/Certified Disability Management Specialist on August 1, 2016 and again on May 30, 2018. Mr. Roberts obtained a Masters in Health Science with a specialty in rehabilitation and vocational counselling from the University of Florida in 1984 and obtained a Certificate of Rehabilitation Counselor through the Commission on Rehabilitation Counselor Certification in 2008. He is also a Certified Senior Disability Analyst and Diplomat with the American Board of Disability Analysts and a Certified Case Manager. After meeting with the Claimant in August of 2016, and utilizing Dr. Barre's 5% permanent impairment to the Claimant's left upper extremity, and his physical restrictions of no lifting over 20 lbs. and no overhead use, as well as the restrictions provided by the Claimants Functional Capacity Evaluation of April 26, 2016 Mr. Roberts assessed Claimant's previous employment and medications as well as his educational background and transferrable skills.

THIRTY-SIXTH: As a result of the Claimant's work restrictions from Dr. Barre and his Functional Capacity Evaluation, Mr. Roberts determined that the Claimant would not be able to return to his past work as an electrician and would need to look for potential work that would not require him to work above his head or would allow him to

work in more one-armed capacity. Mr. Roberts stated, "when taking into consideration all of Mr. Grady's vocational strengths and weaknesses, he will have a major problem in seeking employment within his geographical area in which he lives."

THIRTY-SEVENTH: Mr. Roberts conducted a thorough labor market survey of the Jacksonville, Florida area. He initially looked at electricians and electrical companies in the area to determine if there was any work the Claimant could perform with limited use of his left arm and hand. He contacted seven different electrical companies in the Jacksonville area and was unable to find any employer who could state the Claimant could work in his industry at a less-physical demands as outlined by the Functional Capacity Evaluation. Mr. Roberts also made contact with an additional ten potential employers who were also unwilling to state they would have a job for an individual like the Claimant. Mr. Roberts also looked at the job of security guard, dietary aide, receptionist, detail department manager, detailer, host at Applebee's, or service advisor at a Ford dealership. Unfortunately, Claimant either did not have the skills required for those jobs, or the jobs exceeded the Claimant's physical capacity. At the time of Mr. Roberts' evaluation of the Claimant in August, 2016, he concluded "...at this time, given Mr. Grady's age, education, and the lack of a skill he can transfer over to other less physically demanding jobs, he is unemployable, and he would not have access to other light-strength levels of work where he currently lives."

THIRTY-EIGHTH: Mr. Roberts again evaluated the Claimant on May 30, 2018. In addition to the previous medical records reviewed, he also reviewed the report of Dr. Bright McConnell; PA Paul Steinke; as well as the records of Dr. Bruce Steinberg; Dr. Arkam Rehman; Dr. Julie Barre; and Heartland Rehab Services. Mr. Roberts found the

Claimant was taking Norco medication as well as Morphine and the Voltaren gel to help with pain. His physical restrictions had not changed since his last vocational evaluation of the Claimant. Mr. Roberts again found the Claimant did not meet all the job demands of the job description for an electrician, based upon the restrictions outlined in the Functional Capacity Evaluation report.

THIRTY-NINTH: In assessing other employability weaknesses of the Claimant, Mr. Roberts noted the claimant's age; lack of usable skill set that he can do in a less physically demanding work; his physical restrictions; his inability to return to his past work as an electrician; Claimant's not having worked since 2013; his daily use of heavy narcotics for pain management; and the fact that he did not present very well, as he appeared to be in pain were all employability weaknesses.

FORTIETH: Again, Mr. Roberts conducted a labor market survey in an effort to try and identify employers for the Claimant in the Jacksonville, Florida area. He contacted seven different potential employers in the Electrical supply or installation field, as well as Lowe's Home Improvement. No employers would state that they could accommodate the Claimant's restrictions. Mr. Roberts also researched other jobs for the Claimant in unskilled entry-level positions including security guard/gate guard; parking lot cashier; counter clerk; sorter; bench worker; telemarketer. He again was unable to identify any one employer who would have a job where an individual like the Claimant could apply and would be considered for employment. Based upon his vocational assessment and labor market survey, Mr. Roberts concluded, "Given Mr. Grady's age, lack of skill in which he can transfer over to other, less physically demanding jobs, along with his numerous vocational weaknesses listed above, it is still my opinion he is

unemployable and he would not have access to other light-strength work where he currently lives."

FORTY-FIRST: Claimant graduated from high school. He obtained a CAD (Computer- Aided Design) in 2007 and worked in that filed for approximately two years. The training that he received in CAD is no longer applicable to today's work in the field because of changed in CAD programming. In addition, Grady testified he does not believe he will be able to return to computer work because the medications he takes due to his compensable injuries make it hard for him to concentrate.

FORTY-SECOND: Claimant also has a certificate through the International Brotherhood of Electrical Workers that allowed him to work as a journeyman/wireman.

FORTY-THIRD: In 2002 Claimant had a left shoulder injury, however, he recovered from that injury and returned to electrical contracting work. Claimant also underwent two shoulder surgeries prior to the accident of September 13, 2012. These surgeries resulted in permanent impairment and light-duty work restrictions. Electrical contracting in industrial and commercial work is very heavy work. Grady testified he had no problems performing very heavy work in the industrial electric filed prior to his accident of September 13, 2012.

FORTY-FOURTH: Before the Claimant's accident of September 13, 2012 he was not taking any pain medications on a regular basis. However, Claimant testified that he had previously received pain management for his left shoulder prior to the work accident of September 13, 2012.

FORTY-FIFTH: Grady's work as a commercial electrician required him to lift, on a frequent basis, reels of cable, bundles of pipe, steel pipe, equipment, and jacks that hold large reels of electrical cable, all of which weighed from 70 – 80 pounds. Power tools which he used to perform his job duties as a commercial electrician weighed, on average, approximately 25 pounds. On occasion, he was required to lift items weighing more than 100 pounds including reels of wires and large conduit. Much of the work as a commercial industrial electrician required the use of his arms overhead for a prolonged period of time installing light fixtures, running conduit, and installing junction boxes would all require overhead use of his arms. Grady estimated that approximately 30- 40% of his work was overhead. While using his arms overhead, he was required to hold weight in excess of 25 pounds. Some of the conduit he was required to lift overhead and install ranged from 75- 100 pounds.

FORTY-SIXTH: Grady attempted to return to work for the employer after his accident of September 13, 2012 and worked for approximately eight months as an inspector. He is unable to climb ladders as a result of his admitted accident and injuries due to a fall risk. Grady knew of no work as an inspector in the electrical field that did not involve climbing. Since leaving The Shaw Group, Grady has not worked as a result of his injuries related to his September 13, 2012 accident,

FORTY-SEVENTH: Grady underwent two surgeries related to his accident of September 13, 2012 and has five permanent anchors placed in his shoulder, one anchor reattached his bicep muscle and four anchors reattached his rotator cuff.

FORTY-EIGHTH: Grady has been treated since 2015 at Sunshine Spine and Pain for his chronic pain symptoms caused by his accident of September 13, 2012. He takes Morphine, 15mg in the morning and then four times a day he takes Norco, 10-325mg. When he takes his pain medications with breakfast in the morning, the medications make him feel drowsy and foggy headed. He takes a nap after breakfast, He is unable to operate a motor vehicle on a public street while taking his pain medication. He is not allowed to operate any machinery while taking his medication. He schedules his appointments with his pain management physician early in the morning and does not take his pain medication until he gets home. As a result of his accident he experiences pain in his left shoulder to his left elbow. His elbow symptoms have never gone away. His elbow symptoms feel like his "funny bone" has been activated. The pain shoots down his arm into his left hand and generates a spasm-like symptom. He has pain extending from his elbow into his hand at least once every fifteen minutes. The pain in his shoulder is sharp pain, like a muscle cramp. The pain and weakness in his left arm and shoulder prevents him from lifting a gallon of milk with his left arm.

FORTY-NINTH: Grady performs some tasks around his house. He is able to dress himself. For household tasks he generally uses his right arm.

FIFTIETH: In addition to his pain medications, Morphine ER and Norco Grady also uses Voltaren gel, which also assists in reducing his symptoms. The dose has been increased from a 1% gel to a 3% gel. Grady testified he has been advised he will most likely need left shoulder replacement surgery, however, he is too young at this time for the surgery. When asked by his attorney whether he would proceed with shoulder replacement surgery if it was offered, he testified he would rather save that as

a "last resort". At approximately age sixty (60) he will consider the shoulder replacement surgery suggested by Dr. Steinberg.

FIFTY-FIRST: Grady's average pain level in his left shoulder on a zero (0) – ten (10) analog pain scale is approximately eight (8). It can go down to a seven (7), and on bad days, goes up to a ten (10). His pain affects his sleep. He gets approximately an hour and a half to two hours of sleep before he wakes up. When he wakes up, he applies the Voltaren gel or uses his TENS unit.

FIFTY-SECOND: Grady is unable to perform any of his prior hobbies, such as fishing, golf, or basketball.

CONCLUSIONS OF LAW

Based upon the findings of fact set forth above, and in accordance with § 42-17-40, S.C. Code Anno., 1976, the undersigned Commissioner makes the following rulings of law:

FIRST: The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

SECOND: On September 13, 2012 the Claimant, Gene Grady, was an employee within the meaning of the S.C. Code Anno., § 42-1-130 (1976, as amended) sustained a compensable injury to his left shoulder affecting his left arm within the meaning of S.C. Code Anno., § 42-1-160 (1976, as amended), while performing duties arising out of and in the course and scope of his employment with The Shaw Group, Inc., an employer within the meaning of S.C. Code Anno., § 42-1-140 (1976).

THIRD: The Defendants are financially responsible for the medical treatment, evaluations, physical therapy, evaluative procedures, surgical procedures, mileage and medication which Mr. Grady has heretofore received/undergone as a result of his compensable injuries, including those modalities referenced in the findings of fact set forth above, as these medications, services, tests, surgeries, etc. were reasonable, medically necessary, and intended to lessen the Claimant's period of disability pursuant to S.C. Code Anno., § 42-15-60 (1976, as amended). Defendants are likewise responsible for the additional treatment, medications, evaluative procedures, surgical procedures, provided/prescribed by the Claimant's pain management physician at Sunshine Spine and Pain and Dr. Bruce Steinberg, who is currently Claimant's authorized treating physician. This includes the Claimant's need for a reverse head total arthrosis of the left shoulder directly caused by the Claimant's compensable left shoulder injury, as these modalities are reasonable, medically necessary, and intended to lessen the Claimant's ultimate period of disability within the meaning of this statute.

FOURTH: "Under the South Carolina Workers' Compensation Act, a Claimant is entitled to compensation for total disability resulting from a work related injury." Last v MSI Construction Company, Inc., 305 SC 349, 409 S.E. 2d 334, 336 (1991) In this regard, the Supreme Court of South Carolina has consistently held that "the loss of earning capacity caused by the physical injury is the pertinent measure of compensable disability." (Id); see also Bowen v. Chiquola Mfg. Co., S.C. 322, 120 S.E. 2d 99 (1961); Shealy v. Algernon Blair, Inc., 250 S.C. 106, 156 S.E. 2d 640 (1967). Consequently, the issue is "whether the injury ha[s]...resulted in some loss... [the Claimant's] earning

capacity." Orr v. Elastomeric Products, 323 S.C. 342, 474 S.E. 2d 448,449 (Ct. App. 1996); Last, 409 S.E. 2d 336.

FIFTH: A review of the relevant portions of the SC Code Anno. § 42-9-260 (1976, as amended) as well as Commission regulations 67-505 and 67-506 verifies: (a) Disability is presumed to continue until an employee has returned to work for the requisite fifteen (15) day period with the employer responsible for payment of temporary disability compensation; and (b) this compensation remains payable unless the injured employee is released by the treating physician to work "without restriction", provided with "limited duty work consistent with...[restrictions assigned by] the treating physician" or actively working.

SIXTH: In Grayson v. Carter Rhoad Furniture, 317 S.C. 306,454 S.E. 2d 320 (1995), in construing the language of a previous codification of regulation 67-504 (which is substantially similar to the current version of 67-505 and 67-506), the court held: (a) the authorized treater's admonition that Mr. Grayson needed to be "somewhat careful with lifting" constituted a work restriction; (b) this restriction was sufficient to prohibit the suspension/termination of temporary total disability compensation; and (c) Mr. Grayson remained entitled to this compensation even after his employment was terminated by Carter Road Furniture. Grayson 454 S.E.2d 322.

SEVENTH: A review of these authorities verifies that the Claimant herein, Gene Grady, has been entitled to temporary total disability compensation as his work status was restricted up to and beyond the date he achieved maximum medical improvement and therefore, he was temporarily and totally disabled within the meaning of SC Code

Anno., §42-9-10 (1976, as amended), as a matter of law, for the period of May 29, 2014 through March 30, 2018 when Dr. Bruce Steinberg opined the Claimant had reached maximum medical improvement.

EIGHTH: As a result of the Claimant's compensable accident, he sustained injuries to his left shoulder and left arm. Based upon the physical work restrictions placed upon him by his treating physicians, he has been unable to return to work as an electrician or in any other capacity in the electrical field. The vocational assessment of John B. Roberts, M.H.S. of Roberts Disability Consultants indicates, given Claimant's age, education, work related physical limitations, the geographical area in which he lives, and all medical records and depositions reviewed by Mr. Roberts as well as his in –person evaluation of the Claimant, the Claimant lacks a skill which can transfer over to less physically demanding jobs, has numerous vocational weaknesses and is unemployable and would not have access to other light-strength work where he currently lives. There is no other expert vocational evidence contained in the record. While the Claimant did obtain a C.A.D. degree, which he used in the early 2000's Claimant would not be able to return to that work because of the medication he takes (Norco and Morphine) and because the C.A.D. design industry, has changed, making his training no longer relevant. As a result of the Claimant's compensable injuries, he has sustained a total destruction of his earning capacity and, as of the date he achieved maximum medical improvement (March 30, 2018), he has been permanently and totally disabled as a result of his compensable injuries to his left shoulder and his separate injury to his left arm/elbow. Even if the Claimant had not sustained a separate injury to his left elbow, his left shoulder injury profoundly and seriously affects the functioning of

his left arm and impairs the use of his left arm, in keeping with the Supreme Court's ruling of Colonna v. Marlboro Park Hospital,404 S.C.537, 745 S.E. 2d 128 (ct. app 2013)

NINTH: Under § 42-1-40, average weekly wage is defined.

TENTH: Under § 42-15-20, proper and timely notice of Claimant's accident was provided to the Employer, the Shaw Group, Inc.

ELEVENTH: Under § 42-9-10 (A) the Claimant is entitled to permanent and total disability benefits. Total disability does not require complete helplessness. Wynn v. Peoples Natural Gas Co. of SC, 238 S.C. 1, 118 S.E.2d 812 (1961) the generally accepted test of total disability is the inability to perform services other than those that are "so limited in quality, dependability, or quantity that a reasonable stable market for them does not exist." Wynn (Id) The policy of allowing Claimant's to proceed under the general disability provisions of both §42-9-10 and § 42-9-20 allows for a claimant whose injury, while falling under the scheduled member section, nevertheless affects other parts of the body and warrants providing the Claimant with the opportunity greater than the presumptive disability provided for under the scheduled member section... Brown v Owens Steel Co., Inc., (S.C. App. 1994 316 S.C. 278, 450 S.E. 2d 57, rehearing denied, certiorari denied), Colonna, Id.

ORDER

Based on the foregoing findings of fact and conclusions of law the Appellate Panel of the South Carolina Workers' Compensation Commission Affirms the Order of the Single Commissioner with Amendments and, therefore, it is hereby:

ORDERED, Adjudged and Decreed the Claimant received, and the Defendant, The Shaw Group, Inc., shall be responsible for all causally related medical care and treatment which has tended the Claimant's disability as provided by: Dr. Scott Duffin; Dr. Julie Barre; Dr. Arkam Rehman; and Dr. Bruce Steinberg, including reimbursement for causally related mileage and prescriptions; and, it is further,

ORDERED, Adjudged and Decreed that the Claimant sustained compensable injuries to his left shoulder and left elbow, which affect the functioning of his left arm and impairs his left arm as a direct result of his compensable accident of September 13, 2012. As a result of the Claimant's compensable injuries, he has been rendered totally and permanently disabled as of March 30, 2018 and therefore, the Claimant is entitled to and the defendant, The Shaw Group, Inc., shall provide compensation at the Claimant's applicable compensation rate for 500 weeks and shall receive credit for all weekly compensation paid through the date of this Order; and it is further

ORDERED, Adjudged and Decreed the Defendants shall be responsible for all future causally related medical care and treatment as deemed necessary by the Claimant's authorized treating physicians, Dr. Bruce Steinberg and Physician Partners of America, Pain Relief Group. Specifically, in keeping with §42-15-60(B)(2) the Defendants shall be responsible for Claimant's periodic visits to his pain management physician at Physician Partners of America, Pain Relief Group and the Morphine ER, Norco, and Voltaren Transdermal Gel and Movantik (anti-constipation medication to address side effects of Norco and Morphine ER) and ongoing massage therapy. Additionally, based on the opinion of Dr. Bruce Steinberg dated May 25, 2018 the

Defendants shall be responsible for Claimant's reverse head total joint arthrosis of the left shoulder.

AND IT IS SO ORDERED.

No hearing costs are assessed.

T. Scott Beck, Commissioner,
Chairperson, Appellate Panel
SC Workers Compensation Commission

Aisha Taylor, Commissioner,
SC Workers Compensation Commission

Avery B. Wilkerson, Jr, Commissioner,
SC Workers Compensation Commission

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 January 28, 2020