

Proof Of Service of A Notice of Appeal

The State of South Carolina

In the Court Of Appeals

Appeal from South Carolina Workers' Compensation Commission

Full Commission Appellate Panel Order

Case No. 2019-001851

DESIGNATION OF MATTER

TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant propose the following to be listed on the Record on Appeal:

- **Order and Decision of the single commissioner (December 1, 2015)**
- **Full Commission Hearing Transcript (August 19,2019)**
- **Decision and Order (March 4, 2019)**
- **Full Commission Panel Hearing (February 23, 2016)**
- **Panel Decision and Order filed (April 25, 2016)**
- **Appellants Testimony (March 4, 2019)**
- **Complaint;**
- **Answer;**

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APR 14 2020

SC Court of Appeals

Respondents propose the following be included in the Record on Appeal:

- **Decision and Order of the Full Commission (10/03/2019)**

DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1315719

Nathaniel Spann,
Employee,
Claimant,

vs.

Professional Systems,

Employer,
and

Liberty Mutual Insurance Company,

Carrier,
Defendants.

ORDER

HEARING:

Held in Columbia, South Carolina on March 4, 2019.

APPEARANCES:

Claimant is *pro se*.

Defendants represented by Michael W. Burkett,
Esquire of Willson Jones Carter & Baxley, P.A.,
Columbia, South Carolina.

PURPOSE OF HEARING:

To determine the issues as set forth on the Forms 50
and 51.

DECISION AND ORDER:

By Avery B. Wilkerson, Jr., Commissioner

FILED:

May 2, 2019

Copies served via U.S. Mail upon:

Nathaniel Spann

Michael W. Burkett, Esq.

I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

Defendants' Exhibits:

- Exhibit A: South Carolina Court of Appeals Documents, dated 05/31/2016 – 07/28/2016, consisting of pages A1-A12.
- Exhibit B: Appellate Panel Decision and Order, dated 04/25/2016, consisting of pages B1-B9.
- Exhibit C: Approved Form 19, dated 09/18/2017, page C1.
- Exhibit D: South Carolina Workers' Compensation Commission Decision and Order, dated 12/01/2015, consisting of pages D1-D11.
- Exhibit E: Claimant's Form 30 Request for Commission Review, dated 11/23/2015, consisting of pages E1-E4.
- Exhibit F: South Carolina Workers' Compensation Orders, dated 09/21/2004 – 04/19/2005, consisting of pages F1-F18.
- Exhibit G: South Carolina Workers' Compensation Decision and Order, dated 09/14/2000, consisting of pages G1-G5.

II. STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. The purpose of the hearing is to determine the issues as set forth in the Forms 50 and 51 and any other issues which may timely come before the Commission;
2. That the Claimant's accident occurred on September 12, 2013;
3. The Claimant's average weekly wage was \$282.70 with a corresponding compensation rate of \$188.48;
4. Notices were timely and properly served upon all parties of interest;
5. Venue set in Richland County is proper as agreed by all parties;
6. That the South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved;

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declaration or unstipulated medical reports.

III. STATEMENT OF THE CASE

This matter has an extensive procedural history. The Claimant initially had a hearing with Commissioner Campbell on March 31, 2015. Commissioner Campbell issued a Decision and Order dated December 1, 2015. (Exhibit D). Commissioner Campbell found the Claimant reached maximum medical improvement on August 29, 2014. He also found the Defendants were entitled to stop payment of temporary total compensation effective December 16, 2014 and were entitled to credit for the overpayment of temporary total compensation since this date. Finally, he found the claimant sustained a 4% permanent partial disability to his back as a result of his accidental injury.

The Claimant filed an appeal to the Full Commission on November 23, 2015 (Exhibit E). On April 25, 2016, the Full Commission affirmed the decision of the Single Commissioner in full (Exhibit B). The Claimant subsequently appealed to the South Carolina Court of Appeals, but the Court dismissed his appeal on July 11, 2016 (Exhibit A).

The Claimant subsequently filed a Form 50 Request for a Hearing on November 8, 2018. The Claimant's Form 50 requests finding that the Claimant is entitled to temporary total disability benefits and that he is permanently and totally disabled. Procedurally, the Claimant was able to have his claim before the Commission by alleging a change of condition for the worse. The Defendants admit that the Claimant sustained a compensable injury to his back on September 12, 2013. The Defendants, however, deny that the Claimant sustained a change of condition. The Defendants also argued that the Claimant failed to timely assert his change of condition claim

within the one year period.

IV. EVIDENCE OF THE CASE

Claimant's Testimonial Evidence

The Claimant admitted that he was simply pursuing this claim again because he disagreed with the Single Commissioner's Order dated December 1, 2015.

Defendants' Exhibit A: South Carolina Court of Appeals Documents

The Court of Appeals dismissed the Claimant's appeal request because he failed to order the transcript, as required by Rule 207 of the South Carolina Appellate Court Rules. (Defendants' Exhibit A, p.A2). The Claimant was provided with two notices from the Court of Appeals requesting that the Claimant order the transcript and address the remaining deficiencies. (*Id.* at A4; *see also id.* at A6). The Court of Appeals' Order dismissing the matter was filed on July 11, 2016. (*Id.* at A2).

Defendants' Exhibit B: Appellate Panel Decision and Order

The Appellate Panel's Decision and Order was filed on April 25, 2016. (Defendants' Exhibit B, p.B1). The Appellate Panel affirmed in full the Order of the Single Commissioner. (*Id.* at B8). *See* Defendants' Exhibit D for Decision and Order of Single Commissioner.

Defendants' Exhibit C: Approved Form 19

The Claimant sustained a compensable injury at work on September 12, 2013. (Defendants' Exhibit C, p.C1). A Form 19 dated September 12, 2013, indicates the Claimant collected 76 weeks of temporary total disability benefits, totaling \$15,364.66. (*Id.*). The Claimant collected 15 weeks of temporary partial disability benefits, totaling \$2,575.56. (*Id.*). The total compensation paid totaled \$17,940.22. The total medical benefits paid totaled \$10,471.86. (*Id.*).

Defendants' Exhibit D: South Carolina Workers' Compensation Commission Decision and Order

The Hearing was heard by Commissioner Campbell on March 31, 2015 to determine the issues as set forth in the Form 21. (Defendants' Exhibit D, p.D1). The Single Commissioner ordered that the Employer/Carrier stop payment of temporary total disability benefits as of December 16, 2014, the date on which the Defendants filed their Form 21 Request for Hearing. (*Id.* at D9). The Single Commissioner ordered that the Claimant sustained a compensable injury to the low back and sustained a 4% permanent partial disability to the low back, for which he was entitled to 12 weeks of compensation, at the compensation rate of \$188.48 per week, totaling \$2,261.76. (*Id.*). From this amount, the Defendants were entitled to a credit or offset for the overpayment of temporary total disability benefits in the amount of \$9,235.52, which represented 49 weeks of overpayment. The Single Commissioner ordered that the Claimant reached MMI on August 29, 2014, and as such, the Defendants were not liable for any additional medical, surgical, hospital, or other medical treatment to the Claimant after said date, until and unless further ordered by this Commission. (*Id.* at D10). The Single Commissioner ordered that the Claimant had not sustained any serious and permanent disfigurement as a result of this accident, and as such, the Defendants are not liable for the same. (*Id.*). The Single Commissioner ordered that the Defendants are entitled to \$6,973.76 from the Claimant. (*Id.*). This amount reflected the overpayment of temporary total disability benefits the Defendants were entitled to after taking into consideration the Claimant's permanent partial disability award of \$2,261.76. (*Id.*). The Decision and Order of the Single Commissioner was filed on December 1, 2015. (*Id.* at D1).

Defendants' Exhibit E: Claimant's Form 30 Request for Commission Review

The Claimant filed a Form 30 Request for Commission Review on November 23, 2015. (Defendants' Exhibit E, p.E1). The Claimant completed a Form 59 on January 14, 2016. (*See id.* at E3). The Claimant provided a supplemental addendum to his Form 59. (*See id.* at E4). The letter indicated, "I fail to see the decision that was made, due to the evidence that I'm sending you." (*Id.*).

V. FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Nathaniel Spann as Employee-Claimant and Professional Systems as Employer and Liberty Mutual Insurance Company as Carrier, Defendants.
2. That the average weekly wage of Employee at the time of the above-described accident was \$282.70, and his compensation rate was \$188.48.
3. At the Hearing, the Claimant admitted that he was simply pursuing this claim again because he disagreed with Commissioner Campbell's Order filed on December 1, 2015. He offered no evidence to support a change of condition claim, so the Defendants' defense regarding the timeliness of the Form 50 does not need to be addressed.
4. The South Carolina Court of Appeals dismissed the Claimant's appeal due to the Claimant's failing to order a transcript of his hearing from the Workers' Compensation Commission. The Order dismissing the matter was filed on July 11, 2016.
5. The Decision and Order of the Appellate Panel was filed on April 25, 2016.
6. The South Carolina Workers' Compensation Commission received a Form 19 on August 10, 2016.

7. The Decision and Order of Commissioner Campbell was filed on December 1, 2015.
8. The Claimant filed a Form 30 Request for Commission Review on November 30, 2015. The Claimant filed a Form 59 Appellant's Informal Brief on January 22, 2016.
9. Based on the greater weight of the evidence, the case at issue was awarded by Commissioner Campbell's Order filed on December 1, 2015. The Full Commission affirmed the Single Commissioner's ruling, and the Full Commission's Order was filed on April 25, 2016. The Claimant appealed the Order of the Full Commission to the Court of Appeals. The Court of Appeals dismissed the Claimant's appeal in an Order filed on July 11, 2016. Thus, this claim is barred under the doctrine of *res judicata*.

VI. CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Pursuant to Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 452 S.E.2d 832 (1994) and other relevant statutes, regulations, and case laws, the claim is barred by the doctrine of *res judicata*.

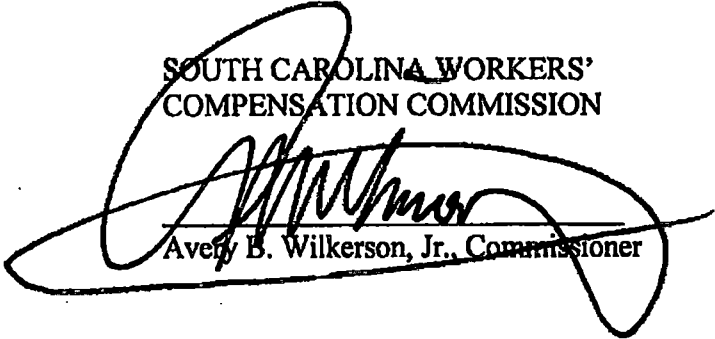
VII. ORDER/AWARD

IT IS HEREBY ORDERED that all benefits requested by the Claimant are denied as this claim is barred by the doctrine of *res judicata*.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**



Avery B. Wilkerson, Jr., Commissioner

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 Deborah Hutto on May 2, 2019

HEARING DATE: March 4, 2019
WCC FILE NO. 1315709



CLAIMANT: Nathaniel Spann
EMPLOYER: Professional Systems, LLC
CARRIER: Liberty Insurance Corporation

ATTORNEY: *Pro Se*
ATTORNEY: Michael W. Burkett

DOI: 09/12/2013

COURT REPORTER: Gloria Davis
d/b/a Palmetto Court Reporting
321 Mac Circle
Lexington, SC 29073
(803) 358-0515
PalmettoCrtRptng@aol.com

E-Mailed on 3/ 12 /19

DIRECTIVES

Attorney Burkett, please draft the order consistent with the below findings and return to this office within 30 days:

1. Please note in the Order the date these instructions were sent to the parties.
2. Testimony of Nathaniel Spann –
3. APA A1-A12

B1 – B9

C1

D1 – D11

E1 – E4

F1 – F18

G1 – G5

4. Based on the greater weight of the evidence the present case was awarded on Commissioner Campbell's Order served 12/1/2015. Full Commission affirmed 4/25/2016. Order filed. Court of Appeals. Law of case applied, *res judicata*.

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APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1315719

Nathaniel Spann,

APPELLANT
CLAIMANT,

vs.

Professional Systems,

EMPLOYER,

AND

Liberty Mutual,

CARRIER,
DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina,
on February 23, 2016 per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed

April 25th, 2016

APPEARANCES:

Appellant Nathaniel Spann, Claimant of Lynchburg, South
Carolina, appearing *pro se*.

Defendants/Respondents represented by Ramie S. Shalabi,
Esquire of Willson Jones Carter & Baxley, P.A. in
Columbia, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner R. Michael Campbell, II, on March 31, 2015, in Florence, South Carolina. On December 1, 2015, Commissioner Campbell issued an Order from which the Claimant appealed.

The Hearing Commissioner's Decision and Order set forth the following Findings of Fact:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Nathaniel Spann as Employee-Claimant and Professional Systems as Employer and Liberty Mutual as Carrier, Defendants.
2. That Claimant was an employee of the above-named Employer on and prior to September 12, 2013, on which date he did sustain an injury to the low back arising out of and in the course of his employment, and proper notice was given to Employer. This was an accepted claim, and Claimant has received appropriate medical benefits and is presently receiving temporary total compensation.
3. That the average weekly wage of Employee at the time of the above-described accident was \$282.70, making a compensation rate of \$188.48 applicable in this matter.
4. Defendants provided Claimant with evaluations and treatment with Doctor's Care, Dr. Thomas Joseph of Camden Bone and Joint, and Dr. Michael Peelle of Moore Orthopaedics.
5. On August 29, 2014, Dr. Michael Peelle of Moore Center for Orthopaedics placed Claimant at MMI. However, Dr. Peelle did not assign an impairment rating due to not having had the opportunity to review medical records for Claimant's prior low back injury. Dr. Peelle released the Claimant back to work for a sedentary job since Claimant refused to participate in an FCE and states he already has performed his activities with physical therapy (Defendants' APA, p. 4).
6. On December 9, 2014, after having been provided by Defendants with all of

Claimant's medical records for his prior low back injury, Dr. Peelle opined Claimant sustained a 0% impairment to the lumbar spine. He also opined Claimant would not need future medical treatment and released Claimant with restrictions of sedentary work. Dr. Peelle notes the Claimant's work restrictions are due to his prior injuries and are not related to his accident on September 12, 2013.

7. That Claimant reached maximum medical improvement on August 29, 2014 for the injuries resulting from the September 12, 2013 accident and that there is no evidence in the record that any additional medical treatment would tend to lessen the period of Claimant's disability.

8. That Defendants were entitled to stop payment of temporary total compensation effective December 16, 2014 and are entitled to a credit for the overpayment of temporary total compensation since December 16, 2014, against the award for permanent partial disability ordered herein.

9. Claimant is not entitled to an additional evaluation for another rating. Claimant did not dispute he is at maximum medical improvement.

10. That Claimant has sustained 4% permanent partial disability to his low back as a result of the accidental injury on September 12, 2013.

11. That Claimant has failed to prove that he is entitled to any further medical benefits, any award for serious disfigurement or any other compensable element under the law, other than the award for disability as ordered herein.

The Hearing Commissioner set out the following Conclusions of Law:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant did sustain an injury to his low back by accident arising out of and in the course and scope of his employment on September 12, 2013.

3. Under §§ 42-9-10 and 42-1-120, Claimant was entitled to compensation for a period of temporary total disability from September 12, 2013 until December 16, 2014, the date on which Defendants filed their Form 21 Request for Hearing

4. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until August 29, 2014, the date on which Claimant reached maximum medical improvement, but not thereafter, there being no evidence that any additional medical treatment would tend to lessen the period of his disability.

5. Under § 42-9-30, Claimant has sustained 4% permanent partial disability to the low back. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since December 16, 2014.

The Hearing Commissioner issued the following orders:

IT IS HEREBY ORDERED that the Application of Employer/Carrier to stop payment of temporary total compensation is hereby granted, effective December 16, 2014, the date on which Defendants filed their Form 21 Request for Hearing.

IT IS FURTHER ORDERED that as a result of Claimant's accidental injury occurring on September 12, 2013, he has sustained 4% permanent partial disability to the low back, for which he is entitled to 12 weeks of compensation, at the compensation rate of \$188.48 per week. This amount equates to \$2,261.76. From this amount, the Defendants are entitled to a credit or offset for the overpayment of temporary total compensation in the amount of \$9,235.52 which represents 49 weeks of overpayment.

IT IS FURTHER ORDERED Claimant reached maximum medical improvement on August 29, 2014, and as such Defendants are not liable for any additional medical, surgical, hospital or other medical treatment to Claimant after said date, until and unless further ordered by this Commission.

seek the services of an attorney. Additionally, the Claimant was advised of his right to testify. The Claimant declined to testify at the Hearing.

IV. EVIDENCE OF THE CASE

Defendants relied on properly submitted medical evidence in the APA Submissions.

The medical records from The Moore Orthopaedic Clinic reflect Claimant was evaluated there on 2003 for low back pain. Dr. Alaric Van Dam assigned Claimant an 8% rating to the back on December 18, 2003. (Defendant's APA p. 12). Dr. Peelle evaluated and treated Claimant from April 11, 2014 until August 29, 2014. Dr. Peelle noted the natural history of Claimant's back condition. (p. 10). Further, an epidural steroid injection at L5-S1 was offered to Claimant but Claimant refused to take the injection. (Id.). After additional appointments and reviewing Claimant's updated MRI, Dr. Peelle treated Claimant again on August 29, 2014 in which Dr. Peelle opined there is no focal neurologic deficits that warrant any surgical intervention. (p. 4). Dr. Peelle believed Claimant could work light duty, as Claimant reports he has been doing for last several years, but Claimant refused to participate in a functional capacity evaluation. (Id.). Dr. Peelle noted Claimant made it clear to Dr. Peelle he has no plans on returning to work. Dr. Peelle further noted secondary gain issues and a play with regard to the Claimant's level of disability (Id.). Dr. Peelle released Claimant at maximum medical improvement but first wanted to evaluate the Claimant's old jury and old impairment rating to determine whether there has been any change in his impairment. (Id.). Dr. Peelle assigned a 0% impairment rating to the Claimant's back and released him with sedentary work restrictions due to prior injuries and Claimant's failure to participate in an FCE. (pg. 1).

Medical records from Dr. Thomas Joseph reflect Claimant was evaluated and seen by Dr. Joseph prior to Dr. Peelle. Dr. Joseph referred Claimant to Dr. Peelle, a spine specialist.

(Defendants' APA #3) Prior to Dr. Joseph, Claimant was treating with Doctor's Care for back pain. (Defendants' APA #5).

Medical records from Lowe's Therapy indicate Claimant has had physical therapy for his back dating back to 1999. (Defendants' APA #2).

Medical records from Sandhills Medical Foundation show Claimant was seen on November 13, 2012, less than one year before this accident, for "chronic lumbar back pain." (Defendants' APA #7, p.46). He was also seen on September 19, 2011, July 22, 2011, September 2, 2010, and April 12, 2010 for low back pain. (p. 48-56).

Additional records from Dr. Denny indicate Claimant saw him continuously from 1998 through 2008 for back pain that radiated to his left leg at times. A note from March 5, 2008 indicates Claimant asked for an excuse stating he cannot go to work until he sees an orthopaedist as he is going through workers' compensation litigation (Defendants' APA #8, p. 57).

Medical records from Midlands Orthopaedics show the Claimant treated for back pain from 1999 until 2002 stemming from a work-related injury (Defendants' APA #11).

Exhibit C reflects an Order from Commissioner Holly Atkins on September 14, 2000 for a 25% disability to his back from an accident on October 11, 1998 (Exhibit C).

Exhibit D reflects an Order from Commissioner Funderburk on September 21, 2004 for a change of condition stemming from the October 11, 1998 accident. Pursuant to an Order from the Full Commission, Commissioner Funderburk increased Claimant's disability by 2% to the back. Claimant appealed that Order.

Exhibit E reflects an Order from Circuit Court Judge Clifton Newman which affirmed the 2% increase.

A record such as was necessary for a decision was made of the proceeding and after careful

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Exhibit E reflects an Order from Circuit Court Judge Clifton Newman which affirmed the 2% increase.

A record such as was necessary for a decision was made of the proceeding and after careful

4. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until August 29, 2014, the date on which Claimant reached maximum medical improvement, but not thereafter, there being no evidence that any additional medical treatment would tend to lessen the period of his disability.

5. Under § 42-9-30, Claimant has sustained 4% permanent partial disability to the low back. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since December 16, 2014.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner from which this appeal has been taken is hereby **AFFIRMED IN FULL**.

IT IS AFFIRMED that the Application of Employer/Carrier to stop payment of temporary total compensation is hereby granted, effective December 16, 2014, the date on which Defendants filed their Form 21 Request for Hearing.

IT IS FURTHER AFFIRMED ORDERED that as a result of Claimant's accidental injury occurring on September 12, 2013, he has sustained 4% permanent partial disability to the low back, for which he is entitled to 12 weeks of compensation, at the compensation rate of \$188.48 per week. This amount equates to \$2,261.76. From this amount, the Defendants are entitled to a credit or offset for the overpayment of temporary total compensation in the amount of \$9,235.52 which represents 49 weeks of overpayment.

IT IS FURTHER AFFIRMED that Claimant reached maximum medical improvement on August 29, 2014, and as such Defendants are not liable for any additional medical, surgical, hospital or other medical treatment to Claimant after said date, until and unless further ordered by this Commission.

IT IS FURTHER AFFIRMED that Claimant has not sustained any serious and permanent disfigurement as a result of this accident, and as such Defendants are not liable for same.

IT IS FURTHER AFFIRMED that Defendants are entitled to \$6,973.76 from Claimant. This amount reflects the overpayment of temporary total compensation Defendants are entitled to after taking into account the Claimant's permanent partial disability award of \$2,261.76.

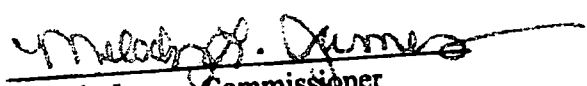
AND IT IS SO ORDERED.

**AFFIRMED WITH
AMENDMENT
CONCUR:**

**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**


Gepe McCaskill, Commissioner


Susan Barden, Commissioner


Melody James, Commissioner

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 Kim Falls on April 25, 2016

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1315719

Nathaniel Spann,)
Claimant,)
v.)
Professional Systems,)
Employer,)
and)
Liberty Mutual Insurance Co.,)
Carrier/Defendants.)
_____)

COPY

FULL COMMISSION PANEL HEARING

Tuesday, February 23, 2016
9:47 a.m. - 10:05 a.m.

The full commission panel hearing was held before the South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina, on the 23rd day of February, 2016 before Jill H. Vickers, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES

COMMISSION PANEL:
Melody James, Chair
Susan Barden
Gene McCaskill

Nathaniel Spann
 4830 Trinity Road
 Sumter, South Carolina 29080
 Pros Se Claimant

Ramie S. Shalabi, Esquire
 Willson, Jones, Carter & Baxley, P.A.
 872 S. Pleasantburg Drive
 Greenville, South Carolina 29607
 Attorney for the Defendants

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CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

1 **COURT REPORTER:** Today is February 23, 2016. This
 2 is South Carolina Workers' Compensation Case
 3 Number 1315719. This is the case of Nathaniel
 4 Spann, Claimant vs. Professional Systems,
 5 Employer, and Liberty Insurance is the Carrier.
 6 The Appellant is the Claimant who is pro se.
 7 The Respondent is represented by Ramie S.
 8 Shalabi. Each side is allowed ten minutes for
 9 oral argument and three minutes in reply. You
 10 are requested to argue the grounds of exception
 11 and stay within the record.

12 **COMMISSIONER JAMES:** Okay. And we've had some
 13 off-the-record discussions, and we'll go ahead
 14 and put those on the record. And Mr. Spann, I
 15 will ask you upfront, as I indicated off the
 16 record, it's my understanding you're going
 17 forward without an attorney. Is that correct?

18 **MR. SPANN:** Yes, ma'am.

19 **COMMISSIONER JAMES:** You know that you have a right
 20 to an attorney, and we would postpone today's
 21 hearing if you want to get one. You understand
 22 that?

23 **MR. SPANN:** Yes, ma'am.

24 **COMMISSIONER JAMES:** And you understand that there
 25 is always a risk in going forward without an



1 attorney?

2 **MR. SPANN:** Yes, ma'am.

3 **COMMISSIONER JAMES:** But you still wish to do so?

4 **MR. SPANN:** Yes, ma'am.

5 **COMMISSIONER JAMES:** And also, we had some
6 discussion about we know at least one of the
7 commissioners on the panel, Commissioner
8 Barden, has heard a prior case of Mr. Spann's,
9 and Mr. Spann has indicated that he recognizes
10 at least one of the other of us was sitting on
11 one of his panels, so any of the three of us
12 may have heard a prior case. So, I'm going to
13 ask both parties, knowing -- well, does either
14 commissioner wish to add anything to that?

15 **COMMISSIONER BARDEN:** Well, I want to specify that I
16 filed an order in July of '14 ordering
17 temporary benefits for Mr. Spann, and in the
18 off-the-record discussion, I asked Mr. Shalabi
19 if he had any problem if I heard this case, and
20 he advised me at that time that he does not,
21 and I just wanted to make sure that that's
22 still the case, Mr. Shalabi?

23 **MR. SHALABI:** That's correct. That issue -- that
24 order is not on appeal today. That issue is
25 not



SPANN V. PROFESSIONAL SYSTEMS ET AL.

5

1 ...

2 COMMISSIONER BARDEN: Right, exactly, but I just
3 wanted ---

4 MR. SHALABI: There's no objection at all.

5 COMMISSIONER BARDEN: -- to tell you that I certainly
6 can be fair and impartial, and we have a clean
7 slate here today. Thank you.

8 COMMISSIONER JAMES: And Mr. Spann, do you have any
9 objection to Commissioner Barden hearing this?

10 MR. SPANN: No, ma'am.

11 COMMISSIONER JAMES: And from the respondents, the
12 defendants, there's been an indication that I
13 may have sat on a prior full commission panel.
14 Mr. Spann indicated that he does not recognize
15 me, but nonetheless, I may have sat on a prior
16 case. So, I'm going to ask both parties if
17 either party has any objection to me hearing
18 the case. Mr. Spann, do you have any
19 objection?

20 MR. SPANN: No, ma'am, no objection.

21 COMMISSIONER JAMES: And Mr. Shalabi, do you have
22 any objection?

23 MR. SHALABI: I have no objection.

24 COMMISSIONER JAMES: All right. Although Mr.
25 Shalabi indicates that he does not remember



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1 whether Commissioner McCaskill has previously
2 sat on a panel, Mr. Spann has indicated that he
3 believes Commissioner McCaskill has sat on a
4 panel. So, I'm going to ask each party again
5 if there are any objections to Commissioner
6 McCaskill sitting on the panel? Mr. Shalabi,
7 do you have an objection?

8 **MR. SHALABI:** No objection.

9 **COMMISSIONER JAMES:** And Mr. Spann, do you have any
10 objection?

11 **MR. SPANN:** No, ma'am.

12 **COMMISSIONER JAMES:** All right. The proper way to
13 do this is, actually, if you are an attorney
14 and you have a client, if you wish to go out
15 and consult your client, you may. Mr. Spann,
16 you're representing yourself, so -- you're in
17 here, but Mr. Shalabi, do you need to consult
18 with your clients?

9 **MR. SHALABI:** No, ma'am.

0 **COMMISSIONER JAMES:** You're certainly welcome for us
1 to go off the record and you step outside, if
2 you wish to.

3 **MR. SHALABI:** No. I think they're fine in
4 proceeding.

5 **THE COURT:** In that case, then we will proceed to



1 the arguments. Mr. Spann, if you'll stand up
2 at the podium, or if you need to use your
3 notes, it's fine, sir.

4 **MR. SPANN:** What I wrote in my 59 is that the
5 commissioner failed to consider the report of
6 the MRI's. My MRI report in 2014 and 2001 is
7 way different. I don't know why he didn't see
8 that. Maybe he didn't get the paperwork from
9 Bill Shipley that he didn't see it, but my L2-3
10 and 3-4 are damaged. Now, when my L4 and 5 was
11 damaged, that was back in '98. My L3 -- I
12 mean, my L4 and 5 never healed. It's still
13 damaged, just because it's on my report, on my
14 2014 report. And they were saying that I've
15 been to the doctor so many times, yes, I have,
16 because my back is still hurting. My back has
17 never healed from '98, because I went back to
18 work -- I was off for two years not working at
19 all. When I went back to work in 2007 or
20 whatever it was. I worked at McDonald's. I
21 had two kids, and I had child support. So, I
22 had to go back to work, either go back to work
23 or go to jail. So, I went back no work. I
24 forgot the judge's name -- he said, "Well, you
25 need to probably do so", so I did it. So, I



1 went to this cleaning service in 2008. I
2 worked for them six years. I cleaned the store
3 by myself. I learned how to clean the store in
4 a way that other people, you know, probably
5 don't know how to, but I found out a way to
6 clean the store and shine the store with a mop,
7 instead of running that big old machine tearing
8 my back up more. So, I done that for six
9 years, and he says that he don't see any
10 difference in my back, but I've got it in black
11 and white.

12 **COMMISSIONER JAMES:** Who is "he", when you say "he"?

13 **MR. SPANN:** Mr. Peelle he gave me a zero rating.
14 Why would he give me a zero rating if Bill
15 Shipley gave him all the reports of the doctor,
16 and he saw them and had evaluated them, and
17 still come up with a zero rating? Why? Now,
18 if they had seen me lift a refrigerator or
19 carrying somebody on my back that was over 200
20 pounds, I see that. If he had that kind of
21 evidence on me, I can see that, but the
22 evidence that's in black and white shows that
23 my 2-3 is damaged, and it's -- what you call
24 it -- what's the word -- let me get the word.
25 I'm sorry. They said my back is damaged more



1 than what it was the first time, because only
2 the L4 and L5 was damaged, but I had a
3 herniated disc back then, and because of
4 work -- I used to work at a chemical plant, and
5 I made carbon sulphate, which is coming out of
6 the machine, and you put it on a pallet. I use
7 to make 100,000 pounds a week for this company.
8 That's 12 pallets on the line a day, 2,000
9 pounds. I wore my discs out, and I messed my
10 discs up by doing that. It wasn't something
11 that I fell or somebody hit me in the back
12 or -- it was from work, but what I'm saying is,
13 when I worked for this company, I worked for
14 them six years. Why do you think they didn't
15 let me go in six years, because I cleaned the
16 whole store by myself. So, I'm looking at it
17 like this, why get rid of someone that can
18 clean a store by himself and get paid what I
19 was getting paid. They actually were paying me
20 \$5.00 an hour. I got paid \$10.00, but I
21 cleaned the store in so many hours, so they
22 really was getting over on me for six years,
23 and I let that happen because I had to work.
24 Now that I can't work and I mean due to the job
25 that I used to do which was light duty work,



1 and they fired me. Instead of them giving me
2 a job to show someone else how to clean a
3 store, they let me go out the door under
4 Workmans' Comp. How did they do it, I don't
5 know, but it was done. Now, if he's got
6 anything in his records that's showing that my
7 MRI was different from 2001 to 2014, I would
8 like him to present it. Thank you.

9 **MS. SHALABI:** May it please the commission. Just
10 for a little bit of procedural history, the
11 date of incident was September 12th, 2013. He
12 treated with various doctors, including
13 Dr. Peelle, over the course of a year, and he
14 was found to be at MMI on August 29th of 2014.
15 At that time, Dr. Peelle offered an injection
16 at L5-S1, but that was refused. He went
17 through physical therapy. Dr. Peelle then
18 recommended an FCE which Mr. Spann declined.
19 He didn't want to participate in an FCE. At
20 that point, Dr. Peelle -- and this is in the
21 records -- felt there that was nothing else he
22 could offer from a medical standpoint and
23 released the claimant. He didn't assign an
24 impairment rating on that appointment. He
25 wanted additional records to look at to



1 compare. So, Bill Shipley, who was on this
 2 before me, sent a letter to Dr. Peelle, along
 3 with numerous medical records, and that was
 4 also copied to Mr. Spann on October 24th. In
 5 the meantime, on October 15th and October 16th,
 6 Mr. Spann filed a Form 30, I think,
 7 erroneously, and then filed a Form 50. He
 8 requested a rating. Dr. Peelle was in the
 9 process of assigning a rating, and there was a
 10 bit of delay there, and Dr. Peelle assigned a
 11 zero percent rating. Now, at no point did Mr.
 12 Spann request a second opinion. In fact, at
 13 the hearing, he conceded he's at MMI, but his
 14 only issue was that he wanted a higher rating.
 15 He felt that Dr. Peelle's rating wasn't fair.
 16 At that hearing, Mr. Spann had the opportunity
 17 to testify. He declined. He didn't want to
 18 testify at that hearing. He never disputed
 19 that he was at MMI. Again, it was just a 0
 20 percent rating. I prepared -- we received the
 21 order instructions on November 17th, 2015. The
 22 hearing was held in March, so there was a bit
 23 of a delay in getting the order instructions
 24 which caused a lot of TTD being paid out in
 25 the meantime. The order instruction was



1 received on November 17th. I wrote the order
 2 the very next day. I sent it to Mr. Spann just
 3 to expedite the process. It was signed by
 4 Commissioner Campbell on December 1st, at which
 5 point we then stopped TTD. So, Mr. Spann has
 6 an issue with the overpayments being involved.
 7 It's about \$6,900.00, just for math's sake. He
 8 was assigned a 4 percent disability rating by
 9 Commissioner Campbell. That's \$2,261.76. The
 10 overpayment was \$9,235.52, which left the net
 11 of overpayment of \$6,973.76. The claimant
 12 never argued for additional treatment. There's
 13 no evidence in the record as to a higher
 14 impairment rating. We were not cross appealing
 15 the TTD issue. We were granted an overpayment
 16 of TTD from the date that we filed the Form 21
 17 and not the MMI date. We're not appealing
 18 that. We just respectfully request that you
 19 uphold Commissioner Campbell's decision. You
 20 guys have more experience and knowledge than I
 21 do, but I think it would be unprecedented to
 22 force the carrier to send the claimant to
 23 another doctor just to get a higher rating. I
 24 think that's what depositions are for,
 25 questionnaires, et cetera. You know, the



1 carrier did its job. We paid TTD. We sent him
2 in for treatment with various doctors. We
3 would have paid for any treatment recommended
4 by Dr. Peelle. Dr. Peelle felt that there was
5 nothing else he could do for him. Mr. Spann
6 again never requested additional treatment.
7 That would have been authorized to avoid this
8 issue, but he never wanted additional
9 treatment. He just wanted a higher rating.
10 And we just respectfully request that you
11 uphold Commissioner Campbell's decision. Thank
12 you.

13 **COMMISSIONER JAMES:** Thank you. Mr. Spann.

14 **MR. SPANN:** Yes, I did want a higher rating, because
15 I knew that rating wasn't right, and I did ask
16 him -- I called him and asked him, "Can I go
17 see a doctor", and he said, "No, we're not
18 going to pay for it". So, now I go to a clinic
19 where I can pay for it, you know. So, when he
20 said that, he missed -- missed something,
21 because I called him personally, and he said,
22 "Nathaniel, we're not going to pay for it if
23 you go to another doctor", so that left me not
24 going to another doctor because he told me he
25 wasn't going to pay for it. He told me that



1 right in my ear. But this is what I'm asking
2 y'all to look at where -- if you see in my
3 paperwork where it said "Midlands ...". do
4 y'all have that?

5 **COMMISSIONER JAMES:** That was handed up to the
6 single commissioner.

7 **MR. SPANN:** Yeah, I wrote that in my 59. Do y'all
8 have that?

9 **COMMISSIONER JAMES:** If it's with your 59, yes, sir,
10 we do.

11 **MR. SPANN:** Okay. This is from Dr. Lynch. He says
12 -- in his diagram, he says "I think he can
13 probably be improved to help make him --
14 determine -- determination -- that he get a
15 discogram to the CT -- or the CT scan of the
16 3-4 and 4-5 and the 5-1", and it says, "If they
17 are not coordinated by the two bottom discs,
18 which are bad ..." -- that's the L4 and the L5,
19 which are bad -- he said, "We'll do an
20 interbody cage fusion on this individual". So,
21 if Dr. Lynch did not see that, why did he get
22 this paperwork to make his decision on my
23 rating? He should have said, "Well, if the 4-5
24 and the 5-1 is bad and 3-4 wasn't bad at that
25 time, this is showing you that my 3 and 4 was



1 not bad, or my 2-3 was not bad. Now, it is
 2 bulging, and it is evident. So, how can he
 3 make a decision like that where he's seeing it
 4 in black and white? That's not making any
 5 sense to me. It's not making any sense to me
 6 for him to look at this paperwork which was
 7 given to him and see that -- he said that if my
 8 3-4 is coordinated with my two bad discs, that
 9 they would do a fusion, some kind of interbody
 10 on me because of the four bad discs. Now, I've
 11 got two bad discs from Fiber Tech, and I've got
 12 two bad discs at 2-3 from Professional Systems
 13 where I worked for them six years bending,
 14 cleaning, mopping, and everything had to do
 15 with their work. So, I am asking y'all to look
 16 at that and consider that. What's right is
 17 right, and what's wrong is wrong. Paperwork
 18 don't lie.

19 (Whereupon, the three minute timer went off.)

20 MR. SPANN: Excuse my language. I'm not being
 21 defensive, but when you see it in black and
 22 white, it don't lie, and that's what I came to
 23 y'all commissioners -- to show y'all this.
 24 Now, they gave me DDD, degenerative disc
 25 disease. This is something I'm going to have



1 the rest of my life. It's not going to get
2 better. It's going to get worse. Now, I've
3 got two more discs that's bad that's evidence
4 it's bulging. It's not going to get better.
5 It's going to get worse. So, to me, to go out
6 there and try to sit down all day and work all
7 day, then they're going to have to cut me open
8 to fix everything that's already torn up?

9 **COMMISSIONER JAMES:** Mr. Spann, your three minutes
10 has expired. If you'll just finish your
11 thought.

12 **MR. SPANN:** Okay. My point is, it's in black and
13 white that Dr. Peelle made the wrong
14 decision.

15 **COMMISSIONER JAMES:** Thank you, sir. That will
16 conclude this hearing.

17 **(Whereupon, the hearing concluded at 10:05 a.m.)**
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23
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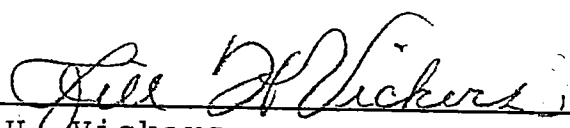


CERTIFICATE

This is to certify that the hearing consisting of sixteen (16) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on July 6, 2016.


Jill H. Vickers
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: July 5, 2016



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DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1315719

Nathaniel Spann,	)
Employee,	)
Claimant,	)
	)
vs.	)
	)
Professional Systems,	)
	)
Employer,	)
and	)
	)
Liberty Mutual,	)
	)
Carrier,	)
Defendants.	)

HEARING:

Held in Florence, South Carolina on March 31, 2015.

APPEARANCES:

Claimant, appearing *pro se*.

Defendants represented by Ramie S. Shalabi, Esquire
of Willson Jones Carter & Baxley, P.A., Columbia,
South Carolina.

PURPOSE OF HEARING:

To determine the issues as set forth on the Form 21.

DECISION AND ORDER:

By **R. Michael Campbell, II, Commissioner**

FILED:

December 1, 2015.

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).

December 1, 2015

By: Bárbara Cheeseboro, Administrative
Assistant to Commissioner Campbell

49 weeks of overpayment.

IT IS FURTHER ORDERED Claimant reached maximum medical improvement on August 29, 2014, and as such Defendants are not liable for any additional medical, surgical, hospital or other medical treatment to Claimant after said date, until and unless further ordered by this Commission.

IT IS FURTHER ORDERED that Claimant has not sustained any serious and permanent disfigurement as a result of this accident, and as such Defendants are not liable for same.

IT IS FURTHER ORDERED that Defendants are entitled to \$6,973.76 from Claimant. This amount reflects the overpayment of temporary total compensation Defendants are entitled to after taking into account the Claimant's permanent partial disability award of \$2,261.76.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Mike Campbell

under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant did sustain an injury to his low back by accident arising out of and in the course and scope of his employment on September 12, 2013.

3. Under §§ 42-9-10 and 42-1-120, Claimant was entitled to compensation for a period of temporary total disability from September 12, 2013 until December 16, 2014, the date on which Defendants filed their Form 21 Request for Hearing

4. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until August 29, 2014, the date on which Claimant reached maximum medical improvement, but not thereafter, there being no evidence that any additional medical treatment would tend to lessen the period of his disability.

5. Under § 42-9-30, Claimant has sustained 4% permanent partial disability to the low back. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since December 16, 2014.

VII. ORDER/AWARD

IT IS HEREBY ORDERED that the Application of Employer/Carrier to stop payment of temporary total compensation is hereby granted, effective December 16, 2014, the date on which Defendants filed their Form 21 Request for Hearing.

IT IS FURTHER ORDERED that as a result of Claimant's accidental injury occurring on September 12, 2013, he has sustained 4% permanent partial disability to the low back, for which he is entitled to 12 weeks of compensation, at the compensation rate of \$188.48 per week. This amount equates to \$2,261.76. From this amount, the Defendants are entitled to a credit or offset for the overpayment of temporary total compensation in the amount of \$9,235.52 which represents

0% impairment to the lumbar spine. He also opined Claimant would not need future medical treatment and released Claimant with restrictions of sedentary work. Dr. Peelle notes the Claimant's work restrictions are due to his prior injuries and are not related to his accident on September 12, 2013.

7. That Claimant reached maximum medical improvement on August 29, 2014 for the injuries resulting from the September 12, 2013 accident and that there is no evidence in the record that any additional medical treatment would tend to lessen the period of Claimant's disability.

8. That Defendants were entitled to stop payment of temporary total compensation effective December 16, 2014 and are entitled to a credit for the overpayment of temporary total compensation since December 16, 2014, against the award for permanent partial disability ordered herein.

9. Claimant is not entitled to an additional evaluation for another rating. Claimant did not dispute he is at maximum medical improvement.

10. That Claimant has sustained 4% permanent partial disability to his low back as a result of the accidental injury on September 12, 2013.

11. That Claimant has failed to prove that he is entitled to any further medical benefits, any award for serious disfigurement or any other compensable element under the law, other than the award for disability as ordered herein.

VI. CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and

consideration and study of all the evidence, the following findings of fact are accordingly made.

V. FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Nathaniel Spann as Employee-Claimant and Professional Systems as Employer and Liberty Mutual as Carrier, Defendants.

2. That Claimant was an employee of the above-named Employer on and prior to September 12, 2013, on which date he did sustain an injury to the low back arising out of and in the course of his employment, and proper notice was given to Employer. This was an accepted claim, and Claimant has received appropriate medical benefits and is presently receiving temporary total compensation.

3. That the average weekly wage of Employee at the time of the above-described accident was \$282.70, making a compensation rate of \$188.48 applicable in this matter.

4. Defendants provided Claimant with evaluations and treatment with Doctor's Care, Dr. Thomas Joseph of Camden Bone and Joint, and Dr. Michael Peelle of Moore Orthopaedics.

5. On August 29, 2014, Dr. Michael Peelle of Moore Center for Orthopaedics placed Claimant at MMI. However, Dr. Peelle did not assign an impairment rating due to not having had the opportunity to review medical records for Claimant's prior low back injury. Dr. Peelle released the Claimant back to work for a sedentary job since Claimant refused to participate in an FCE and states he already has performed his activities with physical therapy (Defendants' APA, p. 4).

6. On December 9, 2014, after having been provided by Defendants with all of Claimant's medical records for his prior low back injury, Dr. Peelle opined Claimant sustained a

(Defendants' APA #3) Prior to Dr. Joseph, Claimant was treating with Doctor's Care for back pain. (Defendants' APA #5).

Medical records from Lowe's Therapy indicate Claimant has had physical therapy for his back dating back to 1999. (Defendants' APA #2).

Medical records from Sandhills Medical Foundation show Claimant was seen on November 13, 2012, less than one year before this accident, for "chronic lumbar back pain." (Defendants' APA #7, p.46). He was also seen on September 19, 2011, July 22, 2011, September 2, 2010, and April 12, 2010 for low back pain. (p. 48-56).

Additional records from Dr. Denny indicate Claimant saw him continuously from 1998 through 2008 for back pain that radiated to his left leg at times. A note from March 5, 2008 indicates Claimant asked for an excuse stating he cannot go to work until he sees an orthopaedist as he is going through workers' compensation litigation (Defendants' APA #8, p. 57).

Medical records from Midlands Orthopaedics show the Claimant treated for back pain from 1999 until 2002 stemming from a work-related injury (Defendants' APA #11).

Exhibit C reflects an Order from Commissioner Holly Atkins on September 14, 2000 for a 25% disability to his back from an accident on October 11, 1998 (Exhibit C).

Exhibit D reflects an Order from Commissioner Funderburk on September 21, 2004 for a change of condition stemming from the October 11, 1998 accident. Pursuant to an Order from the Full Commission, Commissioner Funderburk increased Claimant's disability by 2% to the back. Claimant appealed that Order.

Exhibit E reflects an Order from Circuit Court Judge Clifton Newman which affirmed the 2% increase.

A record such as was necessary for a decision was made of the proceeding and after careful

seek the services of an attorney. Additionally, the Claimant was advised of his right to testify. The Claimant declined to testify at the Hearing.

IV. EVIDENCE OF THE CASE

Defendants relied on properly submitted medical evidence in the APA Submissions.

The medical records from The Moore Orthopaedic Clinic reflect Claimant was evaluated there on 2003 for low back pain. Dr. Alaric Van Dam assigned Claimant an 8% rating to the back on December 18, 2003. (Defendant's APA p. 12). Dr. Peelle evaluated and treated Claimant from April 11, 2014 until August 29, 2014. Dr. Peelle noted the natural history of Claimant's back condition. (p. 10). Further, an epidural steroid injection at L5-S1 was offered to Claimant but Claimant refused to take the injection. (Id.). After additional appointments and reviewing Claimant's updated MRI, Dr. Peelle treated Claimant again on August 29, 2014 in which Dr. Peelle opined there is no focal neurologic deficits that warrant any surgical intervention. (p. 4). Dr. Peelle believed Claimant could work light duty, as Claimant reports he has been doing for last several years, but Claimant refused to participate in a functional capacity evaluation. (Id.). Dr. Peelle noted Claimant made it clear to Dr. Peelle he has no plans on returning to work. Dr. Peelle further noted secondary gain issues and a play with regard to the Claimant's level of disability (Id.). Dr. Peelle released Claimant at maximum medical improvement but first wanted to evaluate the Claimant's old jury and old impairment rating to determine whether there has been any change in his impairment. (Id.). Dr. Peelle assigned a 0% impairment rating to the Claimant's back and released him with sedentary work restrictions due to prior injuries and Claimant's failure to participate in an FCE. (pg. 1).

Medical records from Dr. Thomas Joseph reflect Claimant was evaluated and seen by Dr. Joseph prior to Dr. Peelle. Dr. Joseph referred Claimant to Dr. Peelle, a spine specialist.

the exception of any self-serving declaration or unstipulated medical reports.

III. STATEMENT OF THE CASE

This case was heard by the undersigned Commissioner in Florence, South Carolina, on March 31, 2015.

The Defendants filed a Form 21 Employer's Request for Hearing to stop temporary total compensation, seek a determination of permanent partial disability, if any, for the Claimant, and to seek credit for all temporary total compensation paid after the date Claimant reached maximum medical improvement.

It is Claimant's position in this matter that his impairment rating provided by Dr. Michael Peelle pursuant to the American Medical Association Guide to the Evaluation of Permanent Impairment ("AMA Guides") does not accurately reflect his impairment. Claimant requested a second opinion with respect to his impairment rating. Claimant did not dispute that he reached maximum medical improvement.

It is Defendants' position in this matter that the Claimant is at maximum medical improvement for any injury to his lower back caused by his accident on September 12, 2013. Defendants maintained the Claimant has a long history of back issues, some stemming from previous workers' compensation claims, and that the accident on September 12, 2013 did not cause any permanent impairment to the Claimant's back. Additionally, Defendants maintain the Claimant does not have a permanent partial disability beyond Dr. Peelle's impairment rating. The Defendants also maintain Dr. Peelle's impairment rating was assigned to a reasonable degree of medical certainty under the AMA Guides.

The claimant was advised of his right to an attorney by the undersigned and declined to

- APA #14: Records of Orthopaedic Clinic of Sumter, dated 6/2/99 through 12/16/98, consisting of pages 94-98.
- Exhibit A: Claimant's Employment/Personnel file.
- Exhibit B: Claimant's Payroll records.
- Exhibit C: Decision and Order of Commissioner Holly Atkins, dated September 14, 2000 regarding S.C.W.C.C. File No. 9823037, consisting of pages C1-C5.
- Exhibit D: Decision and Order of Commissioner George Funderburk, dated September 21, 2004 regarding S.C.W.C.C. File No. 9823037, consisting of pages D1-D12.
- Exhibit E: Order of the Circuit Court dated April 19, 2005 regarding Docket No. 2005-CP-43-231, consisting of pages E1-E6.
- Exhibit F: Claimant's Criminal and Litigation History

II. STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. The purpose of the hearing is to determine the issues as set forth in the Form 21 and any other issues which may timely come before the Commission;
2. That the Claimant's accident occurred on September 12, 2013;
3. The Claimant's average weekly wage was \$282.70 with a corresponding compensation rate of \$188.48;
4. Notices were timely and properly served upon all parties of interest;
5. Venue, set in Florence, South Carolina, is proper as agreed by all parties;
6. That the South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved;
7. The issues for determination are whether the Defendants are entitled to stop payment of temporary total compensation and the Claimant's entitlement to temporary total disability compensation, permanent partial disability compensation, total disability compensation, medical benefits and/or disfigurement, if any, and any other issues which may timely come before the Commission.

Without objection, the Commission's file was made a part of the record in this matter with

I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

Claimant's APA Submissions:

- APA #1: Records of Moore Center for Orthopaedics, dated 11/20/2014 through 12/18/13, consisting of pages 1-13.
- APA #2: Records of Lowe's Therapy, dated 4/3/2014 through 9/28/99, consisting of pages 14-23.
- APA #3: Records of Camden Bone and Joint, dated 3/20/14 though 1/20/14, consisting of pages 24-29.
- APA #4: Records of InMed, dated 3/12/14, consisting of pages 30-31.
- APA #5: Reports of Doctor's Care-Florence, dated 12/18/13 through 10/1/13, consisting of pages 32-41.
- APA #6: Records of McLeod Regional Medical Center, dated 9/13/13, consisting of pages 42-45.
- APA #7: Records of Sandhills Medical Foundation, dated 11/13/12 through 4/12/10, consisting of pages 46-56.
- APA #8: Records of Sumter Family Healthcare, dated 3/5/08 through 11/25/98, consisting of pages 57-65.
- APA #9: Records of Tuomey Healthcare System, dated 5/13/04 through 3/7/99, consisting of pages 66-67.
- APA #10: Records of Dr. Forrest A. Pmmernenke, dated 12/15/03 through 11/5/03, consisting of pages 68-77.
- APA #11: Records of Midlands Orthopaedics, P.A., dated 2/6/02 through 7/14/99, consisting of pages 78-88.
- APA #12: Records of Dr. Charles Nivens, dated 12/6/99 through 11/1/99, consisting of pages 89-91.
- APA #13: Records of Palmetto Baptist Medical Center, dated 7/20/99, consisting of pages 92-93.

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1315719

Nathaniel Spann,

APPELLANT
CLAIMANT,

vs.

Professional Systems,

EMPLOYER,

AND

Liberty Mutual,

CARRIER,
DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina,
on August 19, 2019 per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed
October 3, 2019

APPEARANCES:

Appellant Nathaniel Spann, Claimant of Lynchburg, South
Carolina, appearing *pro se*.

Defendants/Respondents represented by W. Strat Stavrou,
Esquire of Willson Jones Carter & Baxley, P.A. in
Columbia, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner Avery Wilkerson on March 4, 2019, in Columbia, South Carolina. On May 2, 2019, Commissioner Wilkerson issued an Order from which the Claimant appealed.

The Hearing Commissioner's Decision and Order set forth the following Findings of Fact:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Nathaniel Spann as Employee-Claimant and Professional Systems as Employer and Liberty Mutual Insurance Company as Carrier, Defendants.

2. That the average weekly wage of Employee at the time of the above-described accident was \$282.70, and his compensation rate was \$188.48.

3. At the Hearing, the Claimant admitted that he was simply pursuing this claim again because he disagreed with Commissioner Campbell's Order filed on December 1, 2015. He offered no evidence to support a change of condition claim, so the Defendants' defense regarding the timeliness of the Form 50 does not need to be addressed.

4. The South Carolina Court of Appeals dismissed the Claimant's appeal due to the Claimant's failing to order a transcript of his hearing from the Workers' Compensation Commission. The Order dismissing the matter was filed on July 11, 2016.

5. The Decision and Order of the Appellate Panel was filed on April 25, 2016.

6. The South Carolina Workers' Compensation Commission received a Form 19 on August 10, 2016.

7. The Decision and Order of Commissioner Campbell was filed on December 1, 2015.

8. The Claimant filed a Form 30 Request for Commission Review on November 30,

2015. The Claimant filed a Form 59 Appellant's Informal Brief on January 22, 2016.

9. Based on the greater weight of the evidence, the case at issue was awarded by Commissioner Campbell's Order filed on December 1, 2015. The Full Commission affirmed the Single Commissioner's ruling, and the Full Commission's Order was filed on April 25, 2016. The Claimant appealed the Order of the Full Commission to the Court of Appeals. The Court of Appeals dismissed the Claimant's appeal in an Order filed on July 11, 2016. Thus, this claim is barred under the doctrine of *res judicata*.

The Hearing Commissioner set out the following Conclusions of Law:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Pursuant to Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 452 S.E.2d 832 (1994) and other relevant statutes, regulations, and case laws, the claim is barred by the doctrine of *res judicata*.

The Hearing Commissioner issued the following orders:

It is hereby Ordered that all benefits requested by the Claimant are denied as this claim is barred by the doctrine of *res judicata*.

No hearing costs are assessed in this instance.

Within the statutory period, Claimant filed an Application for Review (Form 30) in the case setting forth the following assignment of error:

1) I Nathaniel Spann, due to the facts and findings of this case and the evidence that I have presented my Form 30, my discogram from Palmetto Baptist, my discogram from Midland tee (sic), and my radiology report from 2014. I failed to see the decision that was made due to the evidence that I am sending you. I have new evidence that say (sic) saying that my disc are the same (illegible) and degenerative. The zero percent is incorrect as we see.

Pursuant to S.C. Code Ann. §42-17-50 (1985), the Appellate Panel reviewed the Order and weighed the evidence in the record as presented at the initial hearing. The Panel also considered all issues raised in the brief of the Respondent. The Panel makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Nathaniel Spann as Employee-Claimant and Professional Systems as Employer and Liberty Mutual Insurance Company as Carrier, Defendants.
2. That the average weekly wage of Employee at the time of the above-described accident was \$282.70, and his compensation rate was \$188.48.
3. At the Hearing, the Claimant admitted that he was simply pursuing this claim again because he disagreed with Commissioner Campbell's Order filed on December 1, 2015. He offered no evidence to support a change of condition claim, so the Defendants' defense regarding the timeliness of the Form 50 does not need to be addressed.
4. The South Carolina Court of Appeals dismissed the Claimant's appeal due to the Claimant's failing to order a transcript of his hearing from the Workers' Compensation Commission. The Order dismissing the matter was filed on July 11, 2016.
5. The Decision and Order of the Appellate Panel was filed on April 25, 2016.
6. The South Carolina Workers' Compensation Commission received a Form 19 on

August 10, 2016.

7. The Decision and Order of Commissioner Campbell was filed on December 1, 2015.

8. The Claimant filed a Form 30 Request for Commission Review on November 30, 2015. The Claimant filed a Form 59 Appellant's Informal Brief on January 22, 2016.

9. Based on the greater weight of the evidence, the case at issue was awarded by Commissioner Campbell's Order filed on December 1, 2015. The Full Commission affirmed the Single Commissioner's ruling, and the Full Commission's Order was filed on April 25, 2016. The Claimant appealed the Order of the Full Commission to the Court of Appeals. The Court of Appeals dismissed the Claimant's appeal in an Order filed on July 11, 2016. Thus, this claim is barred under the doctrine of *res judicata*.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Pursuant to Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 452 S.E.2d 832 (1994) and other relevant statutes, regulations, and case laws, the claim is barred by the doctrine of *res judicata*.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS, THEREFORE, ORDERED that all benefits requested by the Claimant are denied

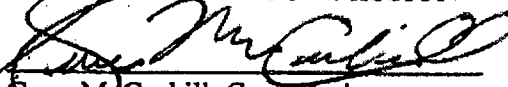
as this claim is barred by the doctrine of *res judicata*.

IT IS FURTHER ORDERED that further pleadings in this case are to be administratively dismissed.

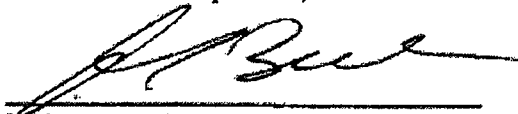
AND IT IS SO ORDERED.

AFFIRMED

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Gene McCaskill, Commissioner


R. Michael Campbell II, Commissioner


T. Scott Beck, Commissioner

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 October 3, 2019

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1315719

Nathaniel Spann,)
)
Claimant,)
)
v.)
)
Professional Systems,)
)
Employer,)
)
and)
)
Liberty Insurance,)
)
-----)

COPY

FULL COMMISSION HEARING

Monday, August 19, 2019
2:13 p.m. - 2:35 p.m.

The Full Commission Hearing was heard before Commissioners Gene McCaskill, T. Scott Beck, R. Michael Campbell; Chair, at the South Carolina Workers' Compensation Commission, South Carolina, on the 19th day of August, 2019 before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

W. Strat Stavrou, Jr., Esquire
 Willson, Jones, Carter & Baxley, P.A.
 3600 Forest Drive, Suite 204
 Columbia, South Carolina 29204
 Attorney for the Carrier

Also present:
 Nathaniel Spann, Pro se

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EXHIBITS

(No Exhibits were marked during this hearing.)

STIPULATIONS

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



CALL TO ORDER:

COURT REPORTER: Today is August 19th, 2019. This is South Carolina Workers' Compensation Case Number 1315719. This is the case of Nathaniel Spann versus Professional Systems and Liberty Insurance. The Appellate is the Claimant who is pro se. The Respondent is represented by Strat Stavrou. Each side is allowed ten minutes for oral argument and the Appellate three minutes in reply. You are requested to argue the grounds of exception and stay within the record.

COMMISSIONER CAMPBELL: All right. And, Mr. Spann, I know that -- I know you are familiar how this works but I -- I still need to obviously extend to you your right to counsel with this matter and see if you wanted time to go seek a counsel and if so we would grant you time to go seek counsel. Obviously, you are within your right to represent yourself in this matter and I just need to see if you're going to that waive that right and want to move forward or would like time to seek counsel?

MR. SPANN: Let's go forward.

COMMISSIONER CAMPBELL: All right. Fair enough.



1 Well, since we are here today on your appeal,
2 I -- I will let you -- if you could step up
3 here, up to the podium for us, that would be
4 great.

5 APPELLANT'S/CLAIMANT'S POSITION STATEMENT:

6 MR. SPANN: All right. What I wanted to do is give
7 y'all the new evidence that I have. Is that
8 proper or ---

9 COMMISSIONER CAMPBELL: What -- what evidence are
10 you are you referring to?

11 MR. SPANN: Okay, well, the three doctors -- the two
12 doctors that I went to and what Mr. Peelle had
13 said with the zero percent rating. As every
14 one went on that procedure that he gave me a
15 zero percent rating, that it wasn't correct.
16 And when I -- when I did my 30 I showed, I
17 mean, I told y'all that, you know, that my 2014
18 x-ray, well, MRI showed that it was more than
19 my L4 and 5 that was, you know, messed up. So
20 if he saw that -- and just like I showed Mr.
21 Beck -- but the old paperwork, he had to see
22 the old paperwork, he said he did. If he saw
23 the old paperwork, the old paperwork says, if
24 his L4 and his 3 and 4 is -- is bad just like
25 the two bad discs then they would want to do a



1 discectomy. So if he saw that, how can he get
2 a zero percent out of something that's worser
3 (sic) than what it is. And I'm trying to see,
4 I mean, I went to all three of y'all. I saw --
5 I don't know why nobody saw it but Beck, you
6 know what I mean, and I couldn't understand
7 that. Remember the paperwork I showed you Beck
8 and you says show it to the lawyer, and this is
9 --this is the evidence right here (indicating).

10 **COMMISSIONER CAMPBELL:** Are you sure that was
11 Commissioner Beck and ---

12 **MR. SPANN:** Yeah.

13 **COMMISSIONER CAMPBELL:** --- it wasn't Mr. Wilkerson?

14 **MR. SPANN:** No, it was Commissioner Beck.

15 **COMMISSIONER BECK:** I don't believe we ever met,
16 sir.

17 **MR. SPANN:** You don't believe we every met. I
18 thought -- wait a minute I got paperwork with
19 your name on it.

20 **COMMISSIONER BECK:** I'm not sure what you have. I
21 think I'm the only one you probably haven't
22 been in front of.

23 **MR. SPANN:** I thought you were -- I thought Beck was
24 the one I saw and I showed you that evidence.
25 I'm going to show you what I showed you.



1 COMMISSIONER CAMPBELL: Now, now, we're here today
2 on the on the Order that Commissioner Wilkerson
3 issued.

4 MR. SPANN: This ain't it.

5 COMMISSIONER CAMPBELL: Okay. Okay. I just -- all
6 right.

7 MR. SPANN: I'm sorry Mr. Wilkerson. But I thought
8 I showed you this paper here (indicating). Can
9 you look at this paper? Can you just look at
10 it and ---

11 COMMISSIONER CAMPBELL: Yeah, you can put it -- you
12 can approach. Let me ask you, when was it, Mr.
13 Spann, that you believe you saw Commissioner
14 Beck?

15 MR. SPANN: It -- it was before I ---

16 COMMISSIONER BECK: Where did you -- where do you
17 think you saw me at?

18 MR. SPANN: I thought I saw you in this court room
19 in one of these court rooms. It was -- I got
20 it on my paperwork. Didn't I see Beck?

21 MR. STAVROU: If I may ---

22 MR. SPANN: Go ahead.

23 MR. STAVROU: I do believe -- I do believe there was
24 a Form 50 hearing that was scheduled before
25 you, Commissioner Beck, at some point. I saw



1 it when reviewing the file. And at that time
2 I believe you had advised him that he may want
3 to seek legal counsel and you gave, I think
4 there's an Order in the Commission's file
5 granting him 30 days ---

6 **COMMISSIONER BECK:** That's what I'm looking ...

7 **MR. STAVROU:** --- granting him 30 days to get a
8 lawyer and then subsequent that did not happen.

9 **COMMISSIONER BECK:** Do you know what the date of
10 that is because I'm just not seeing it in the
11 file.

12 **MR. STAVROU:** No.

13 **COMMISSIONER BECK:** And I don't mean to be
14 disrespectful.

15 **MR. SPANN:** Yeah, I know.

16 **COMMISSIONER BECK:** I see a thousand people a week.

17 **MR. SPANN:** I understand. Understand.

18 **MR. STAVROU:** It would have been ---

19 **COMMISSIONER BECK:** Especially, if we didn't have a
20 hearing.

21 **MR. SPANN:** Right.

22 **MR. STAVROU:** Yeah, there was no hearing. We did
23 not have a hearing, only a pre-hearing
24 conference ---

25 **MR. SPANN:** Right.



1 MR. STAVROU: --- in late 2018, I believe.

2 COMMISSIONER BECK: 2018.

3 MR. STAVROU: Uh-huh (affirmative response). That's
4 my recollection.

5 COMMISSIONER CAMPBELL: I'm going -- I'm going to
6 stop your time for right now while we review
7 this because I don't want us to cut into your
8 time while we make a determination on this.

9 MR. SPANN: Okay.

10 MR. STAVROU: That's fine.

11 COMMISSIONER BECK: And what -- what you recall me
12 telling you is to show this to your lawyer?

13 MR. SPANN: Yeah, I showed it to him.

14 COMMISSIONER BECK: Oh, no, he's not your lawyer.

15 MR. SPANN: No, not -- no, no I showed him -- you
16 told me ---

17 COMMISSIONER BECK: Right.

18 MR. SPANN: --- to show him that evidence -

19 COMMISSIONER BECK: Sure.

20 MR. SPANN: --- and I sat back down. That's what
21 I'm saying. I -- I showed you ---

22 COMMISSIONER BECK: You mean when we were together
23 before?

24 MR. SPANN: Huh?

25 COMMISSIONER BECK: When we were, yeah, together?



1 MR. SPANN: Yeah, it was in one of these offices and
2 I showed you this -- this information. Did
3 y'all see this? I want everybody to see this.

4 COMMISSIONER BECK: I guess my point is and I don't
5 see -- do you have a copy of that order with
6 you?

7 MR. SPANN: He should.

8 MR. STAVROU: I had it in my file. I don't think I --

9 COMMISSIONER BECK: I'm not seeing it in our
10 database.

11 MR. STAVROU: I do think it's in your database.

12 MR. SPANN: He's -- had Dr. Peelle saw that then he
13 would have had another decision. So he must be
14 -- he must be didn't see that.

15 MR. STAVROU: I mean, I can address the -- when my --
16 --

17 COMMISSIONER BECK: But my point is we didn't have a
18 hearing, I didn't make an order ---

19 MR. SPANN: No.

20 COMMISSIONER BECK: --- with regards to the
21 disability on that.

22 MR. SPANN: No, no, you didn't.

23 COMMISSIONER BECK: If -- if you asked for a lawyer,
24 I would have likely told you show it to your
25 lawyer.





1 **MR. SPANN:** Yeah, I know. I just showed you that
2 paperwork and you told me to show it to him and
3 that's what I did. But -- but that -- that's
4 the evidence that if Mr. Peelle saw that
5 paperwork there's no way he would give me a
6 zero rating. No way.

7 **COMMISSIONER BECK:** But my point is for you to get
8 additional evidence then you got to make a
9 motion to get that in. That gives them an
10 opportunity to respond as to it's admissibility
11 and I assume that's not been done.

12 **MR. SPANN:** Oh, okay. Maybe I that's a mistake I
13 probably made.
14 **COMMISSIONER CAMPBELL:** Strat, have you been provided
15 with this.

16 **MR. SPANN:** Yes, he has.
17 **MR. STAVROU:** Someone may have been prior to me, but
18 I -- I'm not sure what that is. I didn't ...

19 **COMMISSIONER CAMPBELL:** Here, show this to Mr.
20 Stavrou, if you would? And just so that
21 everybody understand, we are still on the
22 record just the time is stopped, but we still
23 are on the record.

24 **MR. STAVROU:** It looks like the second page of an
25 MRI report perhaps or a CT scan maybe a CT scan

1 in 1999.

2 **MR. SPANN:** Right.

3 **COMMISSIONER BECK:** You see what we're here on today
4 is the determination by Commissioner Wilkerson.
5 In essence you had your day in court and res
6 judicata applies. I'm not sure what the
7 admissibility of additional evidence has to do
8 with that issue.

9 **MR. SPANN:** Okay. The issue that I'm trying to get
10 around to, I work for this company for six
11 years by myself. You got first shift, second
12 shift, third shift. I did all three of those
13 shifts by myself in one store. Now, with all
14 that work I had to do, gradually, I was going
15 to get worser (sic), which I did. And that's
16 the part I'm really trying to get at. That I
17 did a lot of work for this company for six
18 years and then I shined their floors with a new
19 chemical that I made myself so they didn't have
20 to bring the wax people in. The floors was
21 already shining.

22 **COMMISSIONER BECK:** But you had two merits hearings
23 to get that point across.

24 **MR. SPANN:** Right, but ...

25 **COMMISSIONER BECK:** And you weren't successful on



1 either of those merits hearings. We're not --
2 we're here to determine whether or not the
3 Commissioner made an error in finding that this
4 is res judicata. In other words it's a final
5 order.

6 **MR. SPANN:** Right, but I what I'm saying is that the
7 work that I done for this company and the
8 damage that my body took from it because I did
9 have two bad disc already, now I got five.

10 **COMMISSIONER BECK:** But you were paid disability on
11 this claim?

12 **MR. SPANN:** Yes, I -- yeah, after -- after
13 everything happened, yes.

14 **COMMISSIONER BECK:** Right. You were given an award
15 for disability. I think if I remember
16 correctly in the record, you were actually paid
17 some TTD for a period of time as well.

18 **MR. SPANN:** Right, and then they said that I owed
19 them money back and which -- why would I owe
20 them money back where my body was already
21 damaged from the work that I had done for the
22 company. Now, if you go work for a company and
23 you do all you can for a company and they're
24 getting all the income from it and giving you
25 a piece of that income and you get hurt from



1 making them money and then you, I mean, at the
2 end you -- you -- your body is damaged and you
3 don't get no repercussions from that. That's
4 just what I'm trying to prove. I mean, I -- I
5 worked for the company six years. I -- I
6 buffed, I waxed, I did a little stripping and
7 I -- I did everything I could to make their
8 store look perfect. So what I'm saying is that
9 the work that I done and the -- the damage that
10 put on my body was more damage than what I
11 already had, so why -- how can you give me a
12 zero percent rating off something that --
13 something that -- that's more than -- you
14 understand what I'm saying? Mr. Campbell, I'm
15 trying to get make it clear.

16 **COMMISSIONER CAMPBELL:** I -- I understand your point
17 that you're making.

18 **MR. SPANN:** Yeah, but I'm just saying the company
19 made-- these companies made thousands and
20 thousands of dollars off of me, thousands of
21 dollars. They made a thousand dollars and they
22 really paid me five dollars an hour for me
23 cleaning this whole store up there in Florence.
24 I took out the trash, I vacuumed the floor, I
25 mopped the floor, did the bathrooms, everything



1 was on me. They didn't -- they didn't bring in
2 another man for the night shift like they
3 should have. They didn't do that because they
4 took advantage of my situation. They say,
5 well, he can do all the work his self, let's
6 put it on him and didn't give me the money for
7 it. They didn't -- they gave me lessor money
8 than gave me more money, because they was
9 paying me ten dollars an hour for one man.
10 That just should have been twenty dollars an
11 hour because I did two man work and shined
12 their floors. And I want to show you this.

13 **COMMISSIONER BECK:** Show Mr. Stavrou.

14 **COMMISSIONER CAMPBELL:** Yeah, let him take the
15 letter first.

16 **MR. SPANN:** Oh, okay. That's my proof what I --
17 what kind of work that I did. That's the proof
18 right there.

19 **COMMISSIONER BECK:** Well, I don't think the quality
20 of your work is in question, sir.

21 **MR. SPANN:** What I'm saying is I -- I got abused.
22 That's what I was looking at. I got abused of
23 me doing the work that I done for the company.

24 **COMMISSIONER CAMPBELL:** Mr. Stavrou.

25 **MR. STAVROU:** I -- I mean, I'm going to object to



1 the submission. I mean, the date of that
2 letter is from May 2019 and this ...

3 **MR. SPANN:** This is the work I done for this company
4 six years.

5 **COMMISSIONER CAMPBELL:** That post dates the hearing.

6 **COMMISSIONER BECK:** What was the hearing date?

7 **MR. STAVROU:** The hearing that we're here for was on
8 March 14th, 2019. The original hearing on the
9 same issue ---

10 **COMMISSIONER BECK:** It post dates all the litigation
11 in this?

12 **MR. STAVROU:** Yes. Yes.

13 **MR. SPANN:** I -- like I said, I've been shining them
14 floors ---

15 **COMMISSIONER BECK:** My point is that it wouldn't --
16 it wouldn't qualify as after discovery
17 evidence, sir. It wasn't in existence at the
18 time.

19 **MR. SPANN:** Yeah, what I'm saying is it takes work
20 to do what I done. I had to mop a whole -- I
21 don't know how -- how long this floor was or
22 how wide it was or what was the size of the of
23 the store. I made up a new product that you
24 could put on the floors and buff it and it
25 would shine like wax. And I got the proof



1 right here. I was going to show you that
 2 proof. I have proof right here, but I'm
 3 ashamed the work that I done for this company
 4 and I got that much back from them. And I got
 5 a bad back and what five bad discs -- five bad
 6 disc in my back, and L4 and 5 they're grinding
 7 together now. But what I'm saying is it was
 8 from the work and I done it with the company.
 9 But I do want to show you all this.

10 **COMMISSIONER BECK:** But we're not going -- we're not
 11 going to be able to accept that because ---

12 **MR. SPANN:** Oh, okay.

13 **COMMISSIONER BECK:** . --- because he's objecting to
 14 it.

15 **MR. SPANN:** Okay, all right. Like I said, I -- I
 16 made them a product, I'm trying to get it out.
 17 Do you see what I'm saying? It was a lot of
 18 work to that. Like I said, I worked for this
 19 company hand and foot, you know what I mean?
 20 I was dedicated to them for six years. They
 21 changed their names four or five times. I was
 22 still there and I think they really abused me
 23 of me working for them.

24 **COMMISSIONER CAMPBELL:** So, so let me ask, just to -
 25 - just to kind of drill down on this, what



1 would you like to see the three of us do for
2 you if you had your way?

3 **MR. SPANN:** To justify the situation. Give me a
4 rating so I can do what I have to do and take
5 care of my family.

6 **COMMISSIONER CAMPBELL:** And you understand that, sir,
7 that we're limited to what is in front of us
8 today as to what we can do and what it -- what
9 is with regard to Commissioner Wilkerson's
10 Order, which is what you appealed today. So
11 it's got to be properly in front of us and
12 that's not properly in front of us today, do
13 you understand that, sir?

14 **MR. SPANN:** Okay. So what you saying, I have to
15 give somebody that know what they doing and how
16 to do it because I'm doing everything the wrong
17 way, is that what you're saying?

18 **COMMISSIONER CAMPBELL:** Not necessarily. I'm just
19 saying with what you appealed, with what we're
20 here today, we can only focus on what -- what's
21 in front of us today but we're -- it's -- your
22 time has expired, but you're going to have
23 three -- you're going to have three more
24 minutes again to reply to Mr. Stavrou. So
25 let's -- let's hear from him and then we'll get



1 you back up and you'll have your three minutes,
2 okay.

3 **MR. SPANN:** All right.

4 **DEFENDANT'S/RESPONDENT'S POSITION STATEMENT:**

5 **MR. STAVROU:** Thank you, and may it please the
6 Court. Strat Stavrou here on behalf of the
7 Defendants, Professional Systems and Liberty
8 Mutual. My client's position in this case is
9 simply this: we had an accepted September
10 12th, 2013 work accident where Mr. Spann was
11 provided benefits, was treated until he reached
12 maximum medical improvement. A Form 58 request
13 for hearing was filed and Forms 51 and 21 were
14 filed by the insurance carrier subsequently,
15 and there was a hearing held before
16 Commissioner Campbell on March 31, 2015. And,
17 you know, that hearing was an MMI extended
18 disability and entitlement to future care
19 hearing. I -- it's, I believe and understand
20 that Mr. Spann did not contest that MMI of that
21 hearing. It was -- the primary dispute was
22 extended disability. A decision was made, a
23 four percent or partial disability award was
24 given with a credit to the Carrier for TTD
25 benefits paid back to the date of the filing of



1 the Form 21, which is how the credit that Mr.
2 Spann referenced in him owing the carrier
3 money, that's how that came about. The credit
4 for over payment of TTD was in excess of the
5 permanent partial disability award. And that
6 case was Appealed to the Full Commission,
7 heard, and it was affirmed and it was Appealed
8 to the Court of Appeals. The Court of Appeals
9 dismissed that Appeal, as it wasn't per- --
10 ever perfected and there have been subsequent
11 Form 50s filed since that time. Ultimately,
12 one went through to a hearing with Commissioner
13 Wilkerson, which is the subject of what we're
14 here for today. The Order that Commissioner
15 Wilkerson gave after the most recent Form 50
16 hearing request and the defendants' position at
17 that time was this was -- this issue has been
18 decided. He received an award. The award's
19 been -- been paid, that a credit has not been
20 paid back, as I understand it, to the Carrier.
21 But the Carrier has paid all the benefits that
22 it owed in this case and provided all
23 treatments that it was required to provide.
24 This case is over with. It's concluded. The
25 time for submitting evidence or making



1 arguments has passed. This is -- any further
2 awards, benefits, sought from Mr. Spann are
3 barred by the doctrine res judicata.

4 **COMMISSIONER BECK:** Mr. Stavrou, I found that Order
5 and it looks like it was Commissioner
6 McCaskill.

7 **MR. STAVROU:** Okay.

8 **COMMISSIONER BECK:** He gave ---

9 **COMMISSIONER MCCASKILL:** Yes, I did.

10 **COMMISSIONER BECK:** --- the opportunity for Mr.
11 Spann to get counsel.

12 **MR. STAVROU:** To get an attorney. Thank you.

13 **COMMISSIONER CAMPBELL:** All right. And Mr. Spann
14 you have three minutes to reply, sir.

15 **CLAIMANT'S/APPELLANT'S REPLY:**

16 **MR. SPANN:** Okay. The evidence that I have shows
17 y'all -- I mean, y'all said it don't even mean
18 nothing, but to me everything that went on...
19 I mean McCaskill, you, I never saw you, but the
20 decision that y'all made I don't think it was
21 fair because of the evidence. I don't know why
22 y'all didn't see the evidence, but the evidence
23 was right in front of y'all that the rating was
24 wrong and decisions was wrong and I was still
25 here when five bad discs in my back, which I



1 only had two that was my L4 and L5. If you
2 look at the paperwork there's only two. Now,
3 I got three more and the neck is all messed up
4 for some reason, I don't know why. They said
5 it degenerated or whatever. But like I said,
6 the work that I have done for this company I
7 did not get reimbursed for it. And then they
8 flipped the script saying that I owed them some
9 money. There's no way I should owe them
10 anything because I shouldn't had no zero
11 percent rating from the giddy up. And he
12 shouldn't took me off, he shouldn't gave me MMI
13 or whatever you call that maximum, you
14 shouldn't have done that. And I think it was
15 wrong. And if there is any way y'all can
16 change that decision, please, please make that
17 decision and change that decision. That
18 decision was wrong and let's make it right.

19 **COMMISSIONER CAMPBELL:** All right, sir. Thank you.

20 I appreciate it.

21 **COMMISSIONER BECK:** Thank you very much.

22 **COMMISSIONER CAMPBELL:** Appreciate y'all both being
23 here today.

24 **(There being nothing further, the full commission**
25 **hearing concluded at 2:35 p.m.)**



CERTIFICATE

This is to certify that the within hearing consisting of twenty one (21) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on December 12, 2019.

Amber Scarborough
Amber Scarborough

Notary Public for South Carolina
My Commission Expires: May 30, 2023



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Respondents certify that this designation contains no matter which is irrelevant to this appeal.



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