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P R O C E E D I N G S

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COMMISSIONER BECK: Today's date is

3

September 11, 2014. This is Workers' Compensation

4

File Number 1205924. Claimant in this matter is

5

David Lemon, represented today by Attorney Chuck

6

Jacobson. Employer is Mount Pleasant Waterworks,

7

Carrier is State Accident Fund, they are

8

represented today by Attorney Matt Schonfeld. Date

9

of accident in this matter is May 8, 2012. Parties

10

have stipulated to an average weekly wage of

11

\$636.04, yielding a compensation rate of \$424.05.

12

We are here today on both Claimant's Form 50 and

13

Defendant's Form 21. I've received APAs from both

14

the Claimant and the Defendant in this

15

matter.

16

Are there any objections to APAs,

17

jurisdiction, venue, or any other matter,

18

Mr. Jacobson?

19

MR. JACOBSON: No objection, your Honor.

20

COMMISSIONER BECK: Mr. Schonfeld?

21

MR. SCHONFELD: No, your Honor.

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COMMISSIONER BECK: Without objection the

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Commission File becomes a part of the record with

24

the exception of self-serving declarations and un-

25

stipulated medical reports.

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1 Also during the pre-hearing conference in this
2 matter the respected positions of the parties was
3 discussed. From Mr. Lemon's standpoint. He
4 asserts he achieved maximum medical improvement on
5 February 12, 2014, is here seeking a finding of
6 permanent and total disability, seeking an award of
7 lifetime causally related medical care, asserts
8 that the Defendant is entitled to only a 20.5714
9 weeks of credit for a prior back claim with this
10 employer. He is seeking the award in lump sum and
11 is requesting Utica allocation language in the
12 order.

13 Mr. Jacobson, anything in addition to that
14 with regard to the Claimant's position that you
15 would like to get on the record or any other matter
16 you're here to litigate today, sir?

17 MR. JACOBSON: Yes, sir, your Honor. The only
18 reason we're stipulating to that 22-plus weeks of
19 temporary total disability as a credit is because
20 that was for a prior back injury claim and the Form
21 19 specifically delineated the 22-plus weeks for
22 temporary total disability so we concede that under
23 Midland since the injury was to the same body
24 party.

25 We do not concede any credit for any other

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1 payments made to Mr. Lemon for any prior claims.
2 Under Midland those injuries were not prior back
3 injury claims and the Form 19s in those claims do
4 not set out -- and the Form 19 of the back injury
5 claim does not set out any allocation of PPD or
6 Permanent Partial Disability for the back.

7 And as stated in pre-conference, the clincher
8 that was put into evidence relating to a prior back
9 claim, in my opinion, is not allocated, because the
10 same consideration that the Carrier was delegating
11 for the 25 percent of the back, the \$32,000 figure,
12 was the same consideration stated for the release
13 of all claims including past medical, future
14 medical, and future change of condition, and future
15 disability.

16 COMMISSIONER BECK: All right. Thank you,
17 sir.

18 With regard to the Defendant's position. They
19 assert a MMI date of June 30, 2013, assert that the
20 Claimant is entitled to an award of PPD to the back
21 only, that he would be entitled to causally related
22 medical care in the future per Dr. Aymond, only.
23 And they are seeking a credit for TTD paid beyond
24 the date of MMI or, alternatively, back to the
25 filing of the Form 21, which, in this particular
