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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

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WCC NO: 0922191

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Larry Dinkins,.....Claimant/Appellant

v.

Cooper Tools, Inc., and  
Indemnity Insurance Company  
c/o ACE USA/ESIS,.....Defendants/Respondents

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MOTION FOR REINSTATEMENT OF APPEAL

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The above entitled matter was filed with the Court of Appeals on February 13, 2013. The Notice of the Appeal indicated that the Appellant was appealing the decision of the Workers' Compensation dated January 15, 2013. The Appellant inadvertently failed to include a copy of the Order with his Notice of Appeal.

The Appellant requests that the Court reinstate the Appeal in that the Appellant has now attached a copy of the Order to be appealed.

Further grounds are that the Reinstatement of Appeal would cause no prejudice to the Respondents.



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William Ceth Land, Esquire  
Land, Parker & Welch, P.A.  
Post Office Box 138  
Manning, South Carolina 29102  
803-435-8894  
ATTORNEY FOR APPELLANT

April 12, 2013

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

W.C.C. FILE NO: 0922191

LARRY DINKINS,

EMPLOYEE,  
CLAIMANT/RESPONDENT

VS.

COOPER TOOLS, INC.,

EMPLOYER,

AND

INDEMNITY INSURANCE COMPANY  
c/o ACE USA/ESIS,

CARRIER,  
DEFENDANTS/RESPONDENTS

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Appellate Panel Review held in Columbia, South  
Carolina, on September 17, 2012, per notices timely  
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

1-15-13

APPEARANCES: Claimant/Respondent represented by John C. Land III, Esquire,  
of Land Parker & Welch, P.A. of Manning, South Carolina.

Defendants/Appellants represented by Landon L. Hughey, Esquire,  
of McAngus Goudelock & Courie, LLC of Columbia, South Carolina.

## STATEMENT OF THE CASE

This claim is brought by Larry E. Dinkins ("Claimant"). This matter arises out of Claimant's Form 50 filed on November 15, 2010, alleging a repetitive trauma injury to bilateral feet, ankles and left knee on November 20, 2009 while employed by Cooper Tools, Inc. ("Cooper Tools"). Claimant alleges he permanently and totally disabled as result of the injury and is entitled to lifetime medical treatment for the applicable body parts and conditions.

The Defendants, Cooper Tools and Indemnity Insurance Company c/o ACE USA / ESIS ("Defendants"), responded on December 15, 2010 by denying Claimant's contentions on the Form 50. Defendants asserted Claimant did not suffer a compensable work-related injury to his bilateral feet, ankles and left knee in November 2009, and alleged Claimant did not satisfy the notice requirement set forth in §42-15-20.

On January 25, 2012, the parties appeared before Commissioner Derrick L. Williams ("Single Commissioner") for a Hearing to determine the above-stated issues. By Order Dated January 29, 2012, the Single Commissioner found Claimant sustained a compensable injury affecting his feet, hands, ankles, left knee right knee and back as the result of a repetitive trauma injury, assigning great weight to the independent medical examination from Dr. Jeffrey E. Faaberg, Sr. The Single Commissioner also found that Claimant provided timely notice of his compensable injury to Cooper Tools.

In reaching his Decision and Order, the Single Commissioner found and ruled as follows:

### SINGLE COMMISSIONER'S FINDINGS OF FACT

1. That all parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation law, as amended, with Cooper Tools, Inc. as employer, and Indemnity Insurance Company as insurer, Defendants.

2. That the injured worker, Larry E. Dinkins, was an employee of the above-named employer on and about the 20<sup>th</sup> day of November 2009, on which date he did sustain a compensable injury by accident to his feet, hands, ankles, left knee, right knee and back due to repetitive trauma.

3. That the injury worker's pre-injury wage was such that a compensation rate of Three Hundred Sixty and 87/100ths (\$360.87) Dollars applies as was stipulated by the parties.

4. That based on the evidence in the record, including the injured worker's testimony and medical reports, the injured worker has carried his burden of proving a compensable injury by accident to his feet, hands, ankles, left knee, right knee and back due to repetitive trauma.

5. That in the opinion of the Commissioner, the injured worker is a 47-year-old high school graduate whose testimony and understanding of some things were not even average and he is not overly sophisticated.

6. That in the opinion of this Commissioner, the injured worker testified very credibly and his testimony was believed. The injured worker did not seek to embellish or magnify his complaints and his testimony that he told his employer that the work was causing his problems is believable; therefore, in the opinion of this Commissioner timely notice was given within the required 90 days which is based on the direct observation of the injured worker and the evidence as a whole.

7. That in the opinions of this Commissioner, in viewing the disability form entered by the Defendants, it is unclear who filled out what sections on the forms and the originals were not produced to compare with the handwriting and it would be speculating to find that the injured worker completely filled out either form.

8. In the opinion of this Commissioner, the testimony of Kathryn Griffin and Ramona Bradley does not outweigh the medical evidence and the injured worker's testimony in this claim. Both were very pleasant witnesses.

9. That in the opinion of this Commissioner, Dr. Thomas N. Joseph stated on the 13<sup>th</sup> day of November 2009 that the injured worker had bilateral midfoot osteoarthritis and right ankle arthritis for which a prescription for custom orthotic semi-rigid arch supports and Naproxen were recommended as well as sedentary work duties only.

10. That the injured worker was independently medically examined by Dr. Jeffrey E. Faaberg, Sr., who provided a valid causation statement in this claim, which is assigned great weight.

11. That in the opinion of this Commissioner, the injured worker had two surgeries on his left knee by Dr. Brandon S. Fites, whose final assessment was cervical disc displacement, cervical spinal stenosis, carpal tunnel syndrome, cubital tunnel syndrome as well as bilateral knee pain. Dr. Fites also recommended occasional injections two to three per year as well as bilateral hinged knee braces. Anti-inflammatory drugs were recommended.

12. That in the opinion of this Commissioner, Dr. Brandon Fites further strongly recommended that the best chance for the injured worker's knees to not give him pain was to obtain a sit down work job only, which may require vocational rehabilitation and training.

13. That in the opinion of this Commissioner, Dr. Arland Compton diagnoses the injured worker on the 20<sup>th</sup> day of July 2010, as having bilateral knee arthritis, low back pain and probably arthritis in left shoulder. Dr. Compton further stated that the injured worker was no longer able to work because if he stands for a long time he develops increasing low back pain, bilateral foot pain and swelling of his left lower extremity. Naprosyn was prescribed as well as Clinoril once or twice daily.

14. That in the opinion of this Commissioner, Dr. Jeffrey E. Faaberg, Sr. rendered his opinion that the injured worker had a 20% impairment to the left lower extremity, a 25% impairment to the right lower extremity, a 10% impairment to the cervical spine, and a 5% impairment to the lumbar spine, and these impairments are in line with the other medical reports and the injured worker's compensable injuries.

15. That in the opinion of this Commissioner, the injured worker reached maximum medical healing on the 30<sup>th</sup> day of August 2011, which is based on the medicals from the Free Medical Clinic, Inc.

16. That in the opinion of this Commissioner, based on the evidence as a whole including all medical evidence and testimony presented, I find that the injured worker is permanently and totally disabled pursuant to §42-9-10, due to the combination of his injuries all of which is based on the records as a whole, and specifically the opinion of Dr. Jeffrey E. Faaberg, Sr.

17. That in the opinion of this Commissioner, the injured worker is to receive a lump sum award.

18. That in the opinion of this Commissioner, Utica-Mohawk language is to be included in this Decision and Order pursuant to James v. Anne's 386 S.C. 326, 688 S.E.2d 562 (2010).

19. That in the opinion of this Commissioner, the injured worker is entitled to future causally related medicals pursuant to Dodge supported by the opinion of Dr. Jeffrey E. Faaberg, Sr.

20. That in the opinion of this Commissioner, the Defendants are responsible for reimbursement for all causally related medicals to date, including surgical costs, out-of-pocket expenses, mileage and prescriptions.

21. That in the opinion of this Commissioner, the following allocation is appropriate and shall be allocated pursuant to Utica-Mohawk Mills v. Orr, 227 S.C. 226, 97 S.E.2d 589, in the approximate amount of \$157,362.70, as of the 30<sup>th</sup> day of August 2011. It is hereby agreed that the settlement proceeds of \$157,362.70 shall be allocated as follows:

- (a) \$52,362.70 for attorney fees and related expenses of \$1,004.00, subject to approval of the Form 61 by the South Carolina Workers' Compensation Commission;
- (b) \$103,996.00 in compromise settlement of disputed future lost earnings at the rate of \$62.76 per week for 1,657.24 weeks (claimant's life expectancy pursuant to SC Code Ann. §19-1-150), commencing on the date of settlement.

### SINGLE COMMISSIONER'S CONCLUSIONS OF LAW

1. S.C. Code Ann. §42-1-40 is applicable in determining average weekly wage.
2. S.C. Code Ann. §42-1-120 is applicable in defining "disability."
3. S.C. Code Ann. §42-1-130 is applicable in defining "employee."
4. S.C. Code Ann. §42-1-140 is applicable in defining "employer."
5. S.C. Code Ann. §42-1-150 is applicable in defining "employment."
6. S.C. Code Ann. §42-1-160 is applicable in defining a compensable "accident."
7. S.C. Code Ann. §42-9-10 is applicable in determining benefits when the incapacity to work is total.
8. S.C. Code Ann. §42-9-301 is applicable to "lump sum payment."
9. S.C. Code Ann. §42-15-20 is applicable in determining proper notice of an accident.
10. S.C. Code Ann. §42-17-40 is applicable in defining the "conduct of Hearings and Awards", and "evidence allowed."
11. S.C. Code Ann. §19-1-150 (1976), *Utica-Mohawk Mills v. Orr*, (277 SC 226, 8 S.E.2d 589), and *Sciarotta v. Bowen*, 837 F.2d 135 (3<sup>rd</sup> Ci. 1988) are applicable in addressing the offset of workers' compensation benefits for Social Security Disability.
12. Regulation 67-1205 of the South Carolina Workers' Compensation Act is applicable in determining reasonable attorney fees.
13. Regulation 67-1206 of the South Carolina Workers' Compensation Act is applicable in determining reimbursement of an attorney's actual costs.

14. S.C. Code Ann. §42-3-180 is applicable to all questions arising under this Title if not settlement by agreement of the parties interested therein with the approval of the Commission, shall be determined by the Commissioner except as otherwise provided in this Title.

15. Regulation 67-1605 is applicable to whether Commission may order that the carrier not receive a discount for payment in lump sum.

16. S.C. Code Ann. §42-1-172 governs repetitive trauma.

### **SINGLE COMMISSIONER'S ORDER**

IT IS, THEREFORE, ORDERED, that the Defendants shall pay to the injured worker, Larry E. Dinkins, compensation at the rate of Three Hundred Sixty and 87/100ths (\$360.87) Dollars for total and permanent disability beginning on the 1<sup>st</sup> day of December 2010, and each week thereafter for a period of 500 weeks with the Defendants being entitled to a credit for any short-term disability benefits received by the injured worker; in now case shall the period covered by compensation exceed 500 weeks.

IT IS FURTHER ORDERED that the Defendants shall be liable for all causally related medical, hospital, surgical, doctors' and nurses' bills incurred from the date of the injury by accident, November 20, 2009, and to continue to furnish reasonable and necessary nursing services, medicines, sick travel, medical, hospital and other treatment or care during the life of the injured to any limitations, including the maximum compensation limits.

IT IS FURTHER ORDERED that the total award in this case shall be allocated as follows:

- (a) \$52,362.70 for attorney fees and related expenses of \$1,004.00, subject to approval of the Form 61 by the South Carolina Workers' Compensation Commission;

(b) \$103,996.00 in compromise settlement of disputed future lost earnings at the rate of \$62.76 per week for 1,657.24 weeks (Claimant's life expectancy pursuant to S.C. Code Ann. §19-1-150), commencing the date of the settlement.

AND IT IS SO ORDERED.

### APPEAL TO FULL COMMISSION

Within the statutory period, the Defendants filed an Application for Review (Form 30) in the case setting forth exceptions to the Single Commissioner's ruling. On appeal, Defendants alleged, among other things, that the weight of the evidence did not support a findings that the Claimant sustained a compensable repetitive trauma injury, that the Claimant timely notified the employer of the accident, or that Claimant could satisfy the requirements of S.C. Code Ann. §42-1-172. Copies of the Application were furnished to all interested parties. Oral arguments were presented before the Appellate Panel on September 17, 2012. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

In the appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50, review the award, weigh the evidence that was presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Based upon review of the foregoing, we hereby Reverse the Decision and Order of the Single Commissioner and institute the following Order:

### FACTS OF THE CASE

The Claimant testified that he believed he was permanently and totally disabled due to repetitive trauma in the course and scope of his employment. When asked what he believed

caused the problems now preventing him from working, the Claimant guessed that working, lifting, painting or doing whatever he was told to do was the cause of his various problems. (Hearing Transcript, p. 17, ln. 12-19). The Claimant treated with a number of providers due his alleged work injury, including but not limited to Dr. Thomas Joseph, M.D., Dr. Douglas deHoll, M.D., Dr. Brandon Fites, M.D., Dr. Arland Compton, M.D., and additional providers. Claimant's last day of work at Cooper Tools was December 1, 2009 (Hearing Transcript, p. 7, ll. 4-5); p. 17, ll. 20-23).

Claimant had two left knee surgeries performed by Dr. Fites, on December 7, 2009 and January 18, 2010 (APA 2, pp. 22-27). Dr. Fites ultimately recommended "sitdown" work for Claimant on November 10, 2010 (APA 2, p. 19). Claimant also saw Dr. deHoll with complaints of cervical spine pain, numbness, tingling and weakness in his hands and upper extremities on January 27, 2011 (APA 2, p. 20). Dr deHoll referred Claimant for nerve conduction studies, which revealed moderate bilateral carpal tunnel syndrome (APA 7, pp. 39-40).

An Independent Medical Examination ("IME") was conducted by Dr. Faaberg and submitted by the Claimant as part of his Administrative Procedures Act submissions ("APA") (APA 41-45). Dr. Faaberg saw the Claimant upon referral of Claimant's attorney. Dr. Faaberg's IME provides a recitation of the Claimant's medical history, which includes treatment for bilateral knee problems (to include the two left knee surgeries with Dr. Fites, and two prior right knee surgeries), bilateral carpal tunnel syndrome, chronic neck pain and stiffness, low back pain and other conditions (APA 8, pp. 41-45).

Dr. Faaberg found the Claimant was at maximum medical improvement. Dr. Faaberg also offered an opinion, to a reasonable degree of medical certainty, that the Claimant was incapable of returning to work that involved repetitive use of the upper extremity and prolonged

standing in one position with bending over. (APA 8, p. 45). In a subsequent letter referencing his October 4, 2011 Independent Medical Examination Report, Dr. Faaberg opined, "with a reasonable degree of medical certainty, that the Claimant's repetitive use of his upper extremities and a workday involving long periods of standing have aggravated impairment in the Claimant's upper and lower extremities and spine." According to Dr. Faaberg, the repetitive "work use of these regions" worsened these conditions. (APA 8, p. 46).

### DISCUSSION

The Claimant cannot meet with requirements of South Carolina Code Ann. §42-1-172 and the IME from Dr. Faaberg lacks sufficient objective evidence. South Carolina Code Ann. §42-1-172(A) states that compensability of a repetitive trauma injury must be determined only under the provisions of the statute. South Carolina Code Ann. §42-1-172(B) specifically provides:

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

S.C. Code Ann. § 42-1-172(B).

Here, the Single Commissioner failed to make a specific finding of fact by a preponderance of the evidence that a causal connection had been established by medical evidence between the repetitive activities that occurred while Claimant was engaged in the regular duties of his employment with Cooper Tools and the injury. Therefore, the Single Commissioner's Decision and Order failed to make a requisite finding under S.C. Code Ann. § 42-1-172(B) and the claim is not compensable under a plain reading of the statute.

Not one of the Claimant's treating physicians – Dr. deHoll, Dr. Fites (APA 4-21), Dr. Joseph (APA 1-3), Dr. Compton (the Claimant's family doctor) (APA 31-32) and others – ever rendered a medical opinion that Claimant's conditions were in any way related to his employment. The only medical evidence presented by the Claimant purporting to link his injuries to his employment is Dr. Jeffrey E. Faaberg's IME and letter (APA 8). Dr. Faaberg's opinion merely describes a number of general work activities such as "use of upper extremities" and standing for long periods of time (APA 44). There is no indication Dr. Faaberg ever personally viewed a video of the job in question, or performance of the job itself. Nor is there any evidence that Dr. Faaberg reviewed a job description.

The IME further indicates Dr. Faaberg did not see any results of the previously ordered EMG (APA 8, p. 42). Dr. Faaberg states the EMG was ordered by Dr. Fites (APA 8, p. 44), when in fact it was ordered by Dr. deHoll (APA 2, p. 21). Dr. Faaberg did not have any of the records related to the Claimant's prior right knee injury and open ligamentous repair following a motorcycle accident in 1985 (APA 8, p. 44). Dr. Faaberg further noted he did not have any imaging of the lumbar spine for review, nor did he have an opportunity to review the MRI of the Claimant's cervical spine (APA 8, p. 44). Dr. Faaberg concluded the Claimant's chronic pain, carpal tunnel disease and inability to use his upper extremities had worsened while employed at Cooper Tools, despite seeing him for the first and only time on October 4, 2011 – without the benefit of the EMG study or cervical MRI (APA 8, p. 45). The medical evidence shows that the Claimant's first complaints of numbness in his hands comes from Dr. Compton on December 29, 2010 (APA 5, p. 32) – over one year after the Claimant's last date of employment at Cooper Tools. Furthermore, the December 29, 2010 report from Dr. Compton indicates the Claimant has pain in his hands if Claimant sits for a long period of time (APA 5, p. 32).

Claimant cannot establish a compensable repetitive trauma injury S.C. Code Ann. § 42-1-172, and the Claimant has failed to meet its burden of proving his injuries arise out and occurred in the course of his employment. The IME from Dr. Faaberg lacks objective evidence and should not have been assigned great weight by the Single Commissioner. None of the records from the other providers show any medical opinion of a causal link between the Claimant's medical conditions and his employment at Cooper Tools.

### **FINDINGS OF FACT**

Based upon the oral arguments, APA Submissions, and record on appeal, the Appellate Panel makes the following findings of fact:

1. That all parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation law, as amended.
2. That Claimant was an employee of Cooper Tools on and about the 20<sup>th</sup> day of November 2009, on which date he did not sustain a compensable injury due to repetitive trauma. This is based on all of the evidence in the record, including but not limited to Claimant's testimony, medical reports and other witness testimony.
3. That the November 13, 2009 report from Dr. Joseph does not make a causal link to the Claimant's employment. While the report mentions pain with standing on the Claimant's job, it also mentions pain "on his first steps in the morning or first steps after rest." (APA 1, pp. 1-2).
4. That the records from Sumter Orthopedic Associates, dated November 20, 2009 – January 27, 2011 (both Dr. Fites and Dr. deHoll), make no mention of a causal link between the Claimant's medical conditions and his employment (APA 2, pp. 4-21).
5. That the records from Tuomey Healthcare System, dated December 7, 2009 – January 5, 2011, make no mention of a causal link between the Claimant's medical conditions and his employment (APA 3, pp. 22-28).
6. That the records from Palmetto Health Richland, dated May 23, 2011 – July 25, 2011, make no mention of a causal link between the Claimant's medical conditions and his employment (APA 4, pp. 29-30).
7. That a 2010 note from Dr. Arland Compton indicates the Claimant reported he was no longer able to work because he was experiencing increasing low back pain, bilateral foot pain and swelling after standing. However, there is no opinion or causal link between the

Claimant's conditions and job duties made by Dr. Compton to a reasonable degree of medical certainty (APA 5, p. 31).

8. That the records from The Free Medical Clinic, Inc., dated August 4, 2011 – August 30, 2011, make no mention of a causal link between the Claimant's medical conditions and his employment (APA 6, pp. 33-38).

9. That the August 30, 2011 report from The Free Medical Clinic, Inc. notes the onset of the Claimant's right hand and hip pain was "6 months" (APA 6, p. 38). The Claimant's employment at Cooper Tools ended December 1, 2009 (Hearing Transcript, p. 7, ll. 4-5); p. 17, ll. 20-23).

10. That the first mention of hand pain and numbness is the December 29, 2010 report from Dr. Compton, which is over a year after his employment at Cooper Tools ended (APA 5, p. 32).

11. That the records from Dr. Randal Westerkam, M.D. make no mention of a causal link between the Claimant's medical conditions and his employment (APA 7, pp. 39-40).

12. That the Claimant was seen by Dr. Jeffrey Faaberg, M.D. for a one-time IME on October 4, 2011, upon request of the Claimant's attorney (APA 8, pp. 41-46).

13. That Dr. Faaberg indicated in his report that he did not see the results of the EMG (APA 8, p. 42).

14. That Dr. Faaberg did not have the Claimant's cervical MRI available for review at the time of the IME (APA 8, p. 44).

15. That Dr. Faaberg did not have imaging of the Claimant's lumbar spine available for review at the time of the IME (APA 8, p. 44).

16. That Dr. Faaberg noted the Claimant had two prior right knee surgeries from Dr. Gee, as well as two prior left knee surgeries with Dr. Fites (APA 8, p. 44).

17. That Dr. Faaberg did not have any documentation available related to Claimant's open ligamentous repair in 1985 (APA 8, p. 44).

18. That Dr. Faaberg rendered an opinion that Claimant's carpal tunnel syndrome and wrist tendonitis was aggravated by his employment, despite the fact that his first treatment for hand pain and numbness was on December 29, 2010 – over one year after his employment ended (APA 5, p. 32).

19. That the IME and letter from Dr. Faaberg lacks sufficient, objective medical evidence and the Full Commission finds it is not persuasive (APA 8). This finding is based generally on the IME from Dr. Faaberg and the limitation of the imaging, scanning and testing available for his review. This finding is also based on the inconsistencies between the IME

and letter from Dr. Faaberg and the other evidence in the record, including but not limited to the other medical records and the Claimant's testimony (*See* APA 5, p. 32).

20. That the only medical opinion of any causal link between the Claimant's job activities and his medical conditions comes from the IME from Dr. Faaberg, which we find lacks sufficient objective evidence for the reasons outlined in the above findings.

21. That despite not having the results of the EMG, cervical MRI, or lumbar imaging, Dr. Faaberg rendered an opinion that the Claimant's upper extremities, lower extremities and spine were aggravated by or caused by work activities (APA 8, p. 46).

22. That Dr. Faaberg rendered an opinion that Claimant's inability to use his upper extremities worsened during his employment at Cooper Tools, despite the fact that the first medical evidence indicating Claimant had any hand or wrist pain was the December 29, 2010 report from Dr. Compton – over one year after Claimant's employment ended (APA 5, p. 32).

23. That the Claimant has been mowing two yards since leaving Cooper Tools (Hearing Transcript, p. 18, ll. 13-16).

24. The Claimant has not carried his burden of proof to establish causation a compensable injury to his feet, hands, ankles, left knee, right knee and back due to repetitive trauma at work. This finding is based on all of the medical evidence submitted with the APA's, along with the Claimant's testimony. In finding Claimant did not meet his burden of proof, the Full Commission further bases this finding on the lack of objective evidence and the inconsistencies contained within the IME from Dr. Faaberg.

25. That in the Decision and Order, the Single Commissioner did not make a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the Claimant was engaged in the regular duties of his employment and the injury or injuries.

26. That the Decision and Order does not satisfy the specific requirements of the South Carolina Code §42-1-172(B).

27. That the Full Commission need not address the Notice defense raised by the Defendants under South Carolina Code §42-15-20, as the Claimant did not sustain a compensable injury pursuant to South Carolina Code Ann. §§42-1-160 and 42-1-172.

### CONCLUSIONS OF LAW

Under the South Carolina Workers' Compensation Act and other applicable law, it is the determination and conclusion of the Appellate Panel that:

1. Pursuant to S.C. Code Ann. §42-1-172(B), an injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence

between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.

2. Pursuant to S.C. Code Ann. §42-1-172(B), the Single Commissioner did not make a specific finding of fact by a preponderance of the evidence that a causal connection had been established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury. Therefore, the claim is not compensable under S.C. Code Ann. §42-1-172.

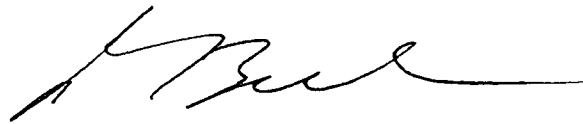
3. The Appellate Panel is not persuaded by Dr. Faaberg's IME or the opinions rendered in his letter, as this evidence is outweighed by the other evidence in the record "Expert medical testimony is designed to aid the Commission in coming to the correct conclusion; therefore the Commissioner determines the weight and credit to be given to the expert testimony." Tiller v. National Healthcare Center, 334 S.C. 333, 513 S.E.2d 843, 340 (1999). "Once admitted, expert testimony is to be considered just like any other testimony." Tiller, citing Smith v. Southern Builders, 202 S.C. 88, 24 S.E.2d 109 (1943).

4. The Claimant did not meet his burden of proof and the claim is therefore not compensable under §§42-1-160 and 42-1-172 and other applicable law. The Claimant is not entitled to any benefits under the South Carolina Workers' Compensation Act.

### ORDER

IT IS THEREFORE ORDERED that the Order of the Single Commissioner is hereby Reversed, and the above Findings of Fact and Conclusions of Law are the decision of the Workers' Compensation Commission. The claim is denied and no benefits are due under the South Carolina Workers' Compensation Act.

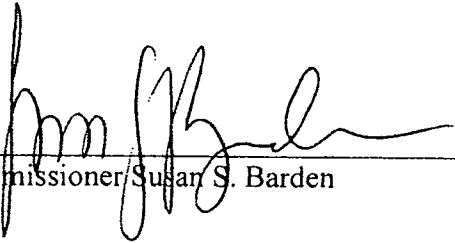
**AND IT IS SO ORDERED.**

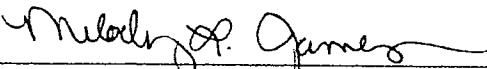


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Commissioner T. Scott Beck  
For the Appellate Panel

WE CONCUR:

  
\_\_\_\_\_  
Commissioner Susan S. Barden

  
\_\_\_\_\_  
Commissioner Melody L. James

CERTIFICATE OF SERVICE

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

***By Valerie Deller on January 15, 2013***

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

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WCC NO: 0922191

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Larry Dinkins,.....Claimant/Appellant

v.

Cooper Tools, Inc., and  
Indemnity Insurance Company  
c/o ACE USA/ESIS,.....Defendants/Respondents

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CERTIFICATE OF SERVICE

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I hereby certify that due and proper service of the documents described below was made on the 12 day of April, 2013, by depositing a true copy of same in the United States mail at Manning, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon and addressed to:

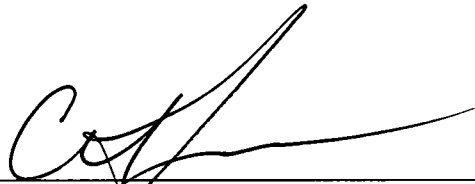
The Honorable Tanya A. Gee (ORIGINAL AND SIX COPIES)  
S.C. Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

Ms. Virginia L. Crocker  
S.C. Workers' Compensation Commission  
P.O. Box 1715  
Columbia, South Carolina 29202-1715

Mr. Landon L. Hughey, Esquire  
McAngus, Goudelock & Courie, LLC  
P.O. Box 12519  
Columbia, South Carolina 29211

Description of Documents:

**MOTION FOR REINSTATEMENT OF APPEAL**

A handwritten signature in black ink, appearing to read 'Ceth Land', written over a horizontal line.

William Ceth Land, Esquire  
Land, Parker & Welch, P.A.  
Post Office Drawer 138  
Manning, South Carolina 29102  
803-435-8894