APPELLATE PANEL

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1708689

Vasile Florin Craus, vs.	1ST APPELLANT/CLAIMANT,
NUTRA Manufactring, Inc.,	EMPLOYER,
AND	
Sentry Casualty Company,	CARRIER, DEFENDANTS/2ND APPELLANTS

Appellate Panel Review held in Columbia, South Carolina, on February 22, 2021 per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed June 22, 2021

APPEARANCES:

1st Appellant/Claimant, Vasile Florin Craus, of Anderson, South Carolina, unrepresented by counsel.

Defendants/2nd Appellants represented by Jeffrey S. Jones, Esquire of Willson Jones Carter & Baxley, P.A. in Greenville, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner Susan S. Barden (hereinafter, the "Hearing Commissioner"), on October 22, 2020, in Aiken, South Carolina. On November 25, 2020, she issued the following Order:

> **IT IS HEREBY ORDERED** that the Application of Employer/Carrier to stop payment of temporary total compensation is hereby granted, effective June 3, 2020, the date on which Claimant reached maximum medical improvement.
>
> **IT IS HEREBY ORDERED** that no body parts/conditions – other than the right hip – are causally related to the work injury on June 15, 2017.
>
> **IT IS FURTHER ORDERED** that as a result of Claimant's accidental injury occurring on June 15, 2017, he has sustained 7% permanent partial disability to the right hip, for which Defendants shall pay to Claimant 19.6 weeks of compensation, at the compensation rate of $437.13 per week, less a credit or offset to Defendants for the overpayment of temporary total compensation after June 3, 2020.
>
> **IT IS FURTHER ORDERED** that Claimant reached maximum medical improvement on June 3, 2020, and 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 Defendants shall reimburse Claimant for the right hip surgery and visits with Dr. Potts, subject to the Workers' Compensation fee schedule.
>
> **IT IS FURTHER ORDERED** that Claimant is entitled to mileage for the evaluation with Dr. Glenn Scott on June 3, 2020, pursuant to the Act.
>
> No hearing costs are assessed in this instance.
>
> **IT IS SO ORDERED.**

In her Order, dated November 25, 2020, the Hearing Commissioner made the following specific Findings of Fact and Conclusions of Law:

Findings of Fact

1. Claimant was an employee of the above-named Employer on and prior to June 15, 2017, on which date he did sustain an injury to the right hip arising out of and in the course of his employment, and proper notice was given to Employer. This

was an accepted claim as to the right hip only, and Claimant has received appropriate medical benefits and temporary total compensation. Defendants deny that any and all other body parts/conditions, as alleged by Claimant, are causally related to the admitted injury in issue.

2. In addition to the admitted right hip injury, Claimant alleges that he also injured his (a) kidneys/bladder, possibly from an infection from catheterization while in the hospital for the July 4, 2017 right hip surgery (allegedly resulting in kidney/bladder stones/polyps/tumor/dysfunction); and (b) heart/chest resulting in shortness of breath. Claimant also alleges other body parts/conditions, including prostate cancer/enlargement, a hernia, abdominal pain, gallstones/gallbladder, and inguinal lymph nodes (Hr. Tr. page 13, line 1 – p. 14, line 3; p. 17, line 25 – p. 18, line 10; p. 51, line 9 – p. 52, line 2; p. 53, lines 9 – 18; p. 67, line 21 – p. 70, line 22, containing the position of Claimant at the Hearing as to the body parts/conditions he alleges).

3. A post-Hearing review of all the medical evidence shows that Claimant has also told various providers that he has sustained other injuries/conditions relating to his back, bilateral arms, left hip, neck, right shoulder, face, bilateral legs, and "poor blood supply;" however, Claimant did not plead any of the conditions contained in this Finding at the Hearing. Out of an abundance of caution (as Claimant is not represented by counsel), the Undersigned shall attempt to address each body part/condition for which Claimant has complained to both authorized and unauthorized providers.

4. Claimant contends that the body parts/conditions he alleges in addition to the right hip began only after and because of his initial right hip surgery in July of 2017. Claimant has also made such attribution statements to both authorized and unauthorized providers in this claim (*e.g.*, Defendants' APA #9, pages 140-141; Defendants' APA #11, page 154; Defendants' APA #6, pages 103-104; Defendants' APA #14, pages 176 and 178).

5. Claimant requests reimbursement for evaluations/treatment for (a) alleged conditions, and (b) the third right hip surgery performed by Dr. Potts. Defendants deny that Claimant is entitled to any reimbursement, as Defendants state they (a) provided all appropriate, causally-related treatment, (b) should not be liable for unauthorized treatment Claimant sought on his own, and (c) are not liable for unrelated body parts/conditions having no nexus or link to the admitted injury.
6. Claimant contends that he has not reached maximum medical improvement. Defendants contend that Claimant has reached maximum medical improvement per the opinions of two authorized physicians.

7. Claimant is 46 years of age (testimony of Claimant; Claimant's Deposition Transcript, page 7).

8. Claimant completed high school in Romania (Claimant's Deposition Transcript, page 9).

9. Claimant is fluent in Ukrainian, Romanian, Italian, and English (testimony of Claimant; Claimant's Deposition Transcript, pages 8-9).

10. Claimant's employment history includes work in construction, security, and nursing home maintenance. He was also a forklift operator (testimony of Claimant; Claimant's Deposition Transcript, pages 11-13).

11. On June 15, 2017, Claimant's job with Employer was machine operator/team leader. Claimant trained/taught other employees (testimony of Claimant; Defendants' APA #12, page 167; Claimant's Deposition Transcript, page 15).

12. In the mechanics of the June 15, 2017 accident, Claimant fell onto his right hip. Also noted in temporal medical records were a (a) minor right shoulder injury, and (b) a facial injury occurring when Claimant's face hit his arm (Claimant's APA, pages 1 and 4, dated June 19, 2017).

13. By June 23, 2017, Claimant's face and shoulder injuries "resolved," with the only remaining injury documented as the right hip. Claimant's hip pain radiated to the right thigh and occasionally the right ankle (Claimant's APA, page 5, dated June 23, 2017; *See also* Claimant's APA, pages 3 and 6, dated June 26, 2017, containing no further mention of the shoulder or face). On June 28, 2017, Claimant's right hip pain radiated to his groin and down his leg (Defendants' APA #1, page 1). Eighteen and nineteen days after the accident (July 3 and 4, 2017, respectively), Claimant's injury is described as to his right hip (Defendants' APA #1, pages 4-6; Defendants' APA #3, page 52).

14. Based upon the evidence set forth in the preceding Finding of Fact, the situs of the June 15, 2017 injury is the right hip. This is based on the preponderance of the evidence in the record as a whole, including but not limited to the temporal medical records dated 2-3 weeks after the date of the accident (*e.g.*, Defendants' APA #1, pages 1-5; Claimant's APA), and Claimant's sworn deposition testimony taken 2 years after the date of the accident in which he denied any other contemporaneous injuries in the accident other than the right hip. This deposition testimony by Claimant is given great weight (testimony of Claimant; Claimant's Deposition Transcript, pages 17-19).

15. Claimant did complain of groin pain 13 days after the accident, but in the context of radiating pain from the hip – the source of Claimant's pain. However, the sole diagnosis on this date is "R hip contusion R hip pain." At the next sequential visit (July 3, 2017), the diagnosis is right hip fracture. In **October of 2017**, Claimant again described hip pain that radiated into his groin, such that providers documented "Right Inguinal pain." However, when Claimant's groin was examined, medical providers documented "[n]o palpable hernias." In **November of 2017**, medical evidence states that Claimant "denies

feeling any masses or bulges in his groin;" Claimant's exam showed "No palpable hernias" (Defendants' APA #1, pages 1-3, 6-8, 10-11, and 14; Defendants' APA #2, page 22).

16. As to the heart, thirteen days after the accident, Claimant had no chest pain, no palpitations, no pedal edema, no shortness of breath, and no wheezing. Eighteen days after the accident, Claimant similarly had no documented CVS or respiratory problems (Defendants' APA #1, pages 1 and 4-5).

17. As to any abdominal pain, Claimant denied any abdominal pain temporally with the accident or shortly thereafter (*e.g.,* Defendants' APA #1, page 1).

18. Because of his admitted right hip fracture, Claimant underwent right hip surgery in **July of 2017** (performed by Dr. Swathwood) including the implanting of hardware. Claimant subsequently underwent a second surgery in November 2018 (performed by Dr. O'Boyle) to remove the hardware (Defendants' APA #3, pages 55-57; Defendants' APA #15, pages 182-183).

19. As to all alleged body parts/conditions (*i.e.*, not the admitted hip injury), Claimant's propounded theory is that these alleged problems began after his first right hip surgery (July of 2017), including but not limited to inguinal/groin pain, kidney/bladder problems, testicular/prostate problems, stomach pain, and chest pain. Claimant has contended to providers that his hip pain goes to his groin, and then up from his groin to his stomach, and then up from his stomach up to his chest. He has also told providers that his chest pain also goes up into his head. When Claimant was asked at the Hearing about causation regarding some of these body parts, Claimant believes (a) a catheter was placed during surgery and may have caused infections, and (b) that the July 2017 hip surgery caused or resulted in an inguinal "knot." He also mentioned the trauma of the fall (testimony of Claimant; *See also* Claimant's Deposition Transcript, pages 24, 34-35, 37, 40-41, and 43; Defendants' APA #1, pages 13 and 16; Defendants' APA #4, page 78; Defendants' APA #6, page 97).

20. Claimant contends that he had no pre-existing conditions with regard to the body parts/conditions he alleges. However, this testimony is not entirely accurate: (a) two years before the accident, Claimant was treated for chest pain, and underwent CT of his chest which showed "large cavitary lesions in both lungs." Because of the "severity of his pulmonary disease," Claimant was admitted to a hospital during which stay he underwent bronchoscopy with lavage and biopsy. Claimant was diagnosed with "bilateral pulmonary masses with cavitation probably COPD;" (b) Claimant underwent an appendectomy after which he developed peritonitis and for which he underwent exploratory surgery. He was diagnosed with inflammatory bowel disease with remote history of enterocolitis; other medical evidence notes Claimant's history of diverticulitis, appendectomy, and colon resection. Claimant continues to have "colonic diverticulosis" without diverticulitis. He also has an anterior abdominal wall "*incisional* hernia" containing a small volume of fat without

acute inflammatory change; and (c) although Claimant did not plead his back at the Hearing, he has told various providers that he attributes back pain to the accident. Prior to the injury in issue, Claimant received treatment in New York for a herniated lumbar disc. Dr. Rana's report stating that Claimant's only prior surgery was an appendectomy is not accurate (Defendants' APA #3, pages 40-41, 43-44, and 52; Defendants' APA #19, page 202; Defendants' APA #2, page 33; Defendants' APA #9, pages 141-142; Defendants' APA #10, page 149; Defendants' APA #5, page 90; Defendants' APA #6, page 98; Defendants' APA #11, pages 154-155; Defendants' APA #14, page 176; Defendants' APA #16, page 186; Defendants' APA #17, page 187; Claimant's APA, pages 19 and 68).

21. As to the chest/heart, medical records from the date of the accident (June 15, 2017) through December 2017 (*i.e.*, **6 months of records from multiple providers**) document Claimant's (a) denial of chest pain or palpitations, and (b) uneventful chest/heart examinations. These records are inconsistent with Claimant's statement to Dr. Folk that he experienced chest pain from the date of the July 2017 surgery. Inconsistently, Claimant told Dr. Kmonicek that his chest pain began in November 2017. However, none of the November 2017 medical records document a complaint or problem regarding the chest/heart, and instead show no abnormality (*e.g.*, Defendants' APA #2, pages 19b-20 and 23; Defendants' APA #1, pages 1, 4, 7-8, 10, and 13-14; Defendants' APA #3, page 45; Defendants' APA #4, page 60; Defendants' APA #5, pages 86-87 and 90-91; Defendants' APA #6, pages 103-104; Defendants' APA #10, page 148).

22. As to the chest/heart, the first medical record documenting a chest complaint is January 2018—almost 7 months after the date of the accident in issue (and 6 months after the July 2018 surgery). In this record, Claimant reported that his pain travels up to his chest and is accompanied by shortness of breath (Defendants' APA #9, pages 140-141). Claimant continued to report bilateral chest pain and a racing heart including but not limited at the ER; however, those providers found no shortness of breath/wheezing and no cardiac issues; Claimant's heart rate is documented as of regular rate and rhythm, and his electrocardiogram is documented as normal (Defendants' APA #2, pages 33-34; Defendants' APA #6, page 99; Defendants' APA #1, pages 16-17; Defendants' APA #11, pages 155 and 162).

23. Because of his chest/heart complaints, Claimant was evaluated by a cardiologist (Dr. Kmonicek). Clamant told Dr. Kmonicek that his chest pain started in November 2017 and had been present ever since (however, this statement is inconsistent with the medical records through December 2017, documenting no cardiac problems or complaints). Dr. Kmonicek wrote Claimant's complaints regarding his chest are "clearly not cardiac in etiology." Further, Claimant admitted to Dr. Gerscovich that Dr. Kmonicek gave him a "clean bill of health without any evidence of cardiac pathology" (Defendants' APA #14, page 176; Defendants' APA #10, pages 148-153; Defendants' APA #6, pages 103-104).

24. As to the chest/heart, the medical evidence shows inconsistencies: Claimant continued to complain of chest pain in October of 2019. However, in November of 2019, Claimant denied chest pain and palpitations. In December of 2019, Claimant denied chest pain and palpitations. In January of 2020, Claimant complained to Dr. Potts of chest pain. However, Dr. Potts also found Claimant's heart to be of regular rate and with normal rhythm (*e.g.*, Defendants' APA #18, pages 196 and 199; Defendants' APA #19, page 201).

25. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his chest/heart symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

26. As to Claimant's corollary complaint of shortness of breath, Claimant had negative respiratory examinations and no complaints through all of 2017. In fact, Claimant reported no shortness of breath, whether with exertion or with lying down (*e.g.*, Defendants' APA #2, pages 19b-20 and 23; Defendants' APA #1, pages 1, 4-5, 7-8, 10-11, and 13-14; Defendants' APA #3, page 46; Defendants' APA #4, page 60; Defendants' APA #5, pages 86-87 and 90-91).

27. As to shortness of breath, January of 2018 is the first occurrence where Claimant reported shortness of breath (Defendants' APA #9, page 141). However, in March 2018, Claimant's breath sounds are documented as normal, and his examination revealed no problems; his cardiac workup at the ER was negative (Defendants' APA #2, pages 34-37). On March 19, 2018, Claimant is also documented as having unlabored breathing (Defendants' APA #1, pages 16-18). On April 1, 2018 at the ER, Claimant's examining physicians did not document any clinical problems, as Claimant's CT PE was normal (Defendants' APA #11, page 156). Later in April 2018, Dr. Koch found normal, non-labored breathing with no shortness of breath (Defendants' APA #12, page 167), but Claimant told Dr. Gerscovich the same month that he has shortness of breath with both exertion and lying down (Defendants' APA #14, page 177). In April 2019, Claimant told Dr. Behr that he is short of breath (Defendants' APA #17, page 188). Although Claimant told Dr. Frassinelli in December 2019 that he was experiencing shortness of breath, Dr. Frassinelli found Claimant's pulmonary effort "normal" (Defendants' APA #19, pages 201 and 203). *See also* Claimant's APA, page 21.

28. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his shortness of breath symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

29. As to the head/headaches, Clamant is documented by multiple providers as negative for headaches or dizziness after the accident and throughout 2017 (Defendants' APA #2, pages 19b-20; Defendants' APA #1, pages 1 and 4; Defendants' APA #5, page 86; Defendants' APA #6, page 99). In March 2018, Claimant reported headaches and pain "all over." Claimant contended that he had a DVT from his right hip into his chest and into his head. In April 2018, Claimant told a provider that he had experienced headaches, "every day for months." Because of Claimant's head complaints, both a CT and MRI were ordered the results of which were interpreted as normal (Defendants' APA #11, pages 155-156 and 158; Defendants' APA #12, page 168; Defendants' APA #14, page 177; Defendants' APA #1, pages 16-17).

30. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his head/headaches symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

31. As to the bilateral arms, Claimant told or presented to Emergency Room providers that he could not lift his arms for more than 3-4 seconds. However, medical evidence from November 2017 (5 months after the accident, and 4 months after the July 2017 surgery) do not document an arm problem, and in fact state that Claimant has "no arm pain on exertion." In December 2018, Claimant told physical therapy providers that his pain radiates to his left calf and both arms. As Claimant testified to at his deposition, he did not injure his neck or either arm in the accident (medical evidence in its entirety, including but not limited to Defendants' APA 5, page 86; Defendants' APA #11, page 158; Claimant's APA, pages 53 and 55).

32. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his symptoms and complaints in his bilateral arms are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

33. As to the left hip, the Undersigned finds it is not causally related to the June 15, 2017 work injury. Claimant's left hip was examined in January 2018 with normal range of motion and no problems/complaints documented. March 2018 is the first complaint of left hip pain in medical records, and no physician states that the left hip is causally related (Defendants' APA #9, page 142; Defendants' APA #4, page 81; medical evidence in its entirety).

34. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his symptoms and complaints to his left hip are causally related to the work injury on June 15, 2017. This finding is based on the evidence in

the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

35. As to gallstones/gallbladder, the Undersigned does not find this condition/body part compensable as there is no medical opinion linking Claimant's gallbladder to his work accident. The first medical record related to the gallbladder is an August 2019 renal ultrasound (more than 2 years after the June 2017 accident/July 2017 first hip surgery) and the second is from Dr. Frassinelli in December 2019, who diagnosed gallstones without obstruction, and suggested no treatment (Defendants' APA #19, page 203; Claimant's APA, pages 75-76).

36. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his gallstones/gallbladder/bladder symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

37. As to the back, by November of 2017, Claimant denied back pain to Dr. Hinnant (Defendants' APA #5, page 86). However, in January 2018, Claimant complained of low back pain which allegedly radiated to his chest, abdomen, and groin. At the Hearing, Claimant did not present any medical evidence as to that anatomical possibility (or impossibility). Nonetheless, Defendants provided a spine evaluation(s). Claimant's low back pain is described in one record as of "unspecified chronicity." Medical providers also state that Claimant's objective studies "would not likely explain his anterolateral leg/groin/pelvic/chest complaints," such that there was "No need for spine surgeon consult" (Defendants' APA #9, pages 140-145 and 147). As to Claimant's thoracic spine, there is a "[t]iny T8-9 disc protrusion without stenosis or cord compression. Otherwise benign" (Defendants' APA #8, page 137). There is inconsistency in medical records regarding the back, as Claimant reported back pain on March 1, 2018 (Defendants' APA #4, page 81), but told ER providers and Dr. Koch at two separate visits one month later in April of 2018 that he has "no back pain." Dr. Koch found normal lumbar extension and flexion, no tenderness to palpation over the lumbar spine, and a bilaterally normal straight leg raise. Claimant told Dr. Gerscovich that he has back pain. However, Dr. Frassinelli in December of 2019 found Claimant to be negative for back pain. Further, no physician has opined as to an aggravation of Claimant's pre-existing low back condition. As Claimant previously treated in New York for a herniated disc, these records are not in evidence (medical evidence in its entirety; *See* particularly Defendants' APA #11, page 154; Defendants' APA #12, page 167; Defendants' APA #4, page 78; Defendants' APA #8, pages 138-139; Defendants' APA #19, page 201; Defendants' APA #14, page 177).

38. Claimant has failed to meet his burden of proof by a preponderance of the evidence that the symptoms and complaints to his back and bilateral legs are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in Findings of Fact herein.

39. As to the alleged hernia/abdomen, Claimant believes that his symptoms occurred after the surgery on July 4, 2017. After the accident (June 15, 2017) but prior to the July 4, 2017 surgery, Claimant was negative for abdominal pain (Defendants' APA #3, page 52). On October 24, 2017, Med Central examined Claimant's abdomen and found it soft and nontender, with no palpable hernia (Defendants' #1, page 8). Similarly, on November 20, 2017, Claimant's abdomen was soft and nontender with no palpable hernia (Defendants' APA #1, page 11). On November 19, 2017, Claimant had no inguinal hernia on the right or left and no tenderness to palpation, and denied feeling any masses or bulges (Defendants' APA #2, pages 22 and 24). On November 22, 2017, urologist Dr. Hinnant found no problems with Claimant's abdomen upon examination, and as to any hernia, found "none palpable" (Defendants' APA #5, page 87). On November 27, 2017, Claimant's abdomen was soft and non-tender with no palpable hernia (Defendants' APA #1, page 14). On December 6, 2017, Claimant's abdomen is documented as soft and non-distended with no tenderness and no palpable hernia (Defendants' APA #5, page 91). One physician might miss a hernia, but the Undersigned cannot ignore the fact that multiple physicians found no abdominal problem or hernia through 2017, which evidence is inconsistent with Claimant's theory that his hernia began because of the July of 2017 right hip surgery. *See also* Defendants' APA #1, page 17 and Defendants' APA #11, page 156. Further, in 2018, Dr. Koch found Claimant's abdomen "within normal limits;" ER physicians that same month documented a "very benign abdominal exam" (Defendants' APA #11, page 156; Defendants' APA #12, page 167). In 2019, Dr. Seiler found "no evidence of hernia" (Defendants' APA #16, page 186).

40. As to the alleged hernia, the first medical record documenting a finding of a hernia occurs in 2019 (more than 2 years after the accident and/or the first right hip surgery in July 2017). Dr. Frassinelli diagnosed a hernia (right inguinal area, described as "[s]mall, reducible," but describes the hernia as "asymptomatic" and does not recommend surgery (Defendants' APA #19, page 203). However, Dr. Frassinelli answered a questionnaire (prepared by Claimant's counsel at the time), stating that Claimant's inguinal hernia is not secondary to the work accident or the surgical procedures to repair the hip fracture/labral tear (Defendants' APA #19, pages 203 and 205).

41. Claimant told Dr. Swathwood that Claimant's research leads Claimant to conclude that his pain is likely from his inguinal or femoral nerves; however, Dr. Swathwood states that the right hip surgery was not in the vicinity of either one of those nerves (Defendants' APA #4, page 78).

42. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his alleged abdomen and hernia symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

43. As to the inguinal lymph nodes, an ultrasound taken states only that there are "a few simple-appearing lymph nodes in the right inguinal region." There is no medical opinion stating that these nodes have been injured or otherwise negatively affected (Claimant's APA, page 63; medical evidence in its entirety).

44. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his inguinal lymph nodes symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

45. As to the right knee, the Undersigned finds that Claimant's right knee is not compensable. This body part is mentioned in medical records for first time in January 2018. Claimant told providers at this medical visit that his pain begins in his knee (*i.e.*, not his hip) and extends up to thigh to his hip, and then to his groin and testicles. Claimant presented no medical evidence to explain this anatomical possibility or impossibility (Defendants' APA #4, page 78).

46. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his right knee symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

47. As far as urinary/bladder/testicular/erectile/prostate/kidney (including but not limited to kidney stones) problems (which Claimant contends began after the July 2017 surgery), Claimant sought treatment with a "urologist/lawyer" (as referred to in Defendants' APA #9, page 141) in November 2017. Claimant told Dr. Hinnant that there was "no history of trauma." Dr. Hinnant diagnosed (a) epididymitis for which antibiotics were prescribed, and (b) impotence of "organic origin." Dr. Hinnant also diagnosed Claimant with benign prostatic hypertrophy with outflow obstruction, and prescribed Flomax. As Dr. Hinnant practices workers' compensation, it would seem reasonable that he would have commented on a nexus between Claimant's genital/urinary problems and the accident and/or hip surgery, if such a connection existed (Defendants' APA #5 in its entirety).

48. However, medical evidence from March 2018 shows that Claimant reported no urinary frequency or pain. Similarly, in April 2018, Claimant denied any bladder problems to Dr. Koch (Defendants' APA #2, page 34; Defendants' APA #12, page 167).

49. However, Claimant was dissatisfied with Dr. Hinnant's diagnoses, and sought treatment with a second urologist (Dr. Seiler) in February 2019. Dr. Seiler diagnosed Claimant with benign prostatic hyperplasia as well as urinary frequency. Dr. Seiler states that there were "no signs" of etiology for groin and testicular pain. Dr. Seiler goes on to say that "with distraction, [Claimant had] no tenderness." Dr. Seiler found Claimant's testicles to be of "normal size," and also found no hernia (Defendants' APA #16, page 186). As to an enlarged prostate, no physician has opined or stated that this condition is related to Claimant's accident and/or surgery (medical evidence in its entirety, including but not limited to Claimant's APA, page 38; *See also* Claimant's Deposition Transcript, page 40).

50. As to whether a catheter was utilized when Claimant underwent his right hip surgery, the medical evidence is at best equivocal. Med Central providers state, per the operative note of July of 2017, that "there was no catheter used." Med Central records also state that Claimant initially believed that his kidney/groin issues were epididymitis related to catheter insertion, but "later discovered he had not even had a catheter placed intraoperatively." Nonetheless, Claimant presented a document (Under "Nursing") containing a checklist to "provide infection *prevention* measures, assess removal of *potential* routes of infection, such as IV, intra-arterial or urinary catheters, Assess signs and symptoms of infection, Monitor amount and/or characteristics of urine, and Evaluate need to continue indwelling urinary catheter." Given the first item (provide *prevention* measures), and the second item (assess removal of *potential* routes of infection), the Undersigned cannot assume that Claimant actually experienced an infection as these records do not document such. Other items in the checklist are "provide a safe environment," "assess risk factors for falls," etc. The measurement of urine does not necessarily mean that a catheter was utilized, and the Undersigned cannot assume a catheter was used. However, even if Claimant is correct in that a catheter had been used, Claimant has not presented into evidence a medical opinion from any physician stating that Claimant sustained an infection from use of a catheter [emphasis added] (Defendants' APA #1, pages 13 and 16; *See also* Claimant's Deposition Transcript, pages 43-44; Claimant's APA, pages 16-17).

51. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his urinary/bladder/testicular/erectile/prostate/kidney (including, but not limited to kidney stones) symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

52. As to the neck, Claimant denied any neck pain to multiple providers for 10 months after the accident, and his neck examinations throughout this period show no documented complaints or problems, and instead full range of motion. Claimant first complained of neck pain on April 19, 2018—10 months after the accident, and 9 months after the date of the first surgery—to Dr. Gerscovich (*See* Defendants' APA #2, pages 19b-20, 23, and 34; Defendants' APA #1, pages 4-5, 11, 14, and 17; Defendants' APA #5, pages 86 and 91; Defendants' APA #11, pages 154-155; Defendants' APA #12, page 167; *Cf.* Defendants' APA #14, page 177).

53. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his neck symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Finding of Fact herein.

54. As to the alleged "poor blood supply" (*See* Defendants' APA #17, pages 187-188), there is no medical evidence establishing this condition nor a nexus to the accident in issue.

55. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his "poor blood supply" symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

56. Since the date of the accident, Claimant has sought ER treatment for "pain all over." Claimant similarly told Dr. Gerscovich that he has "pain globally in his body." Claimant told Med Central Health Resources that he has "excruciating pain all over and wants a bone scan of his entire body." Claimant told physical therapy providers that his pain was "not only in hip but throughout" including his "entire torso" (Defendants' APA #11, page 154; Defendants' APA #14, page 176; Defendants' APA #1, page 18; Claimant's APA, page 57).

57. Based on the preponderance of the evidence, no alleged condition (*i.e.*, other than the right hip) is causally related to the accident of June 15, 2017 or first surgery on July 4, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein. In fact, Dr. Gerscovich states that Claimant's scrotal, abdominal, chest, and neurologic pain are unrelated (Defendants' APA #14, page 178). Dr. Folk states that Claimant's hip pathology would not account for Claimant's complaints regarding his abdomen,

scrotum, chest, and head, as it would be "extremely unlikely." Dr. Folk goes on to state that Claimant's "hip pathology does not explain his vast array of complaints" (Defendants' APA #6, page 104).

58. Dr. Behr states that it is "highly unlikely" that Claimant's complaints of bladder issues, abdominal pain, chest pain, "poor blood supply," and prostate issues are related to the work injury (Defendants' APA #17, page 188).

59. Dr. Crumpler (ER physician) wrote in April 2018 that "The story changes multiple times even during the exam as to what there [sic] concern is" (Defendants' APA #11, page 156).

60. Dr. Rana, whom Claimant saw at the request of one of his previous attorneys, states that Claimant has no other causally-related injuries other than his right hip (Claimant's APA, page 69).

61. Dr. Gerscovich states that (a) "it appears that all the [alleged] symptoms are unrelated," (b) he sees evidence of psychosomatic symptoms, and (c) he recommends a psychiatrist or psychologist (Defendants' APA #14, pages 176 and 178-179). *See also* Claimant's APA, pages 45 and 51 (records from physical therapy), relating to Claimant's "very high level of anxiety" and appearance of "some symptom magnification of pain level." Psychological overlay is not pled in this case, and as no benefits were requested for psychological overlay, this condition is hereby found not compensable.

62. As to the right hip, myriad authorized and unauthorized physicians diagnosed/assessed Claimant with a right hip labral tear: (a) after Dr. Swathwood performed Claimant's first surgery, he diagnosed an "[a]nterior superior labral tear" which "likely occurred at the time of his fall at work;" the Undersigned gives this opinion great weight, as it is from the authorized treating physician who performed the first surgery (Defendants' APA #4, page 82); (b) authorized physician Dr. O'Boyle (who performed Claimant's second surgery removing the hardware) diagnosed a paralabral cyst in September 2018 and mentioned possible surgical treatment for the "labral tear" as discussed twice with Defendants' nurse case manager (Defendants' APA #15, pages 180 and 185); (c) Dr. Gerscovich states that there is "evidence of labral tear on MRI" and that "the MRI revealed a labral tear" (Defendants' APA #14, page 178); (d) Emergency Room providers refer to Claimant's "labral tear with a possible small associated cyst" (Defendants' APA #2, page 33); (e) Dr. Koch, authorized for one visit **("I'm currently only functioning as a second opinion")**, in his "Assessment/plan" lists "Labral tear." Dr. Koch also states that he did see attenuation of the superior labrum (Defendants' APA #12, pages 166, 168, and 170-171); (f) Dr. Folk diagnosed a tear of right acetabular labrum. Defendants' nurse case manager was there during the visit (Defendants' APA #6, pages 100 and 103). In an e-mail expressing frustration with Claimant's conduct during and after the one-time visit (Dr. Folk refused to treat Claimant further), Dr. Folk wrote that he did not recommend any further particular treatment for the right

hip given Claimant's "vast array of complaints" in that Claimant's "constellation of complaints" would not be remedied by surgery. However, Dr. Folk later indicated on a Form 14B that Claimant has a "tear of right acetabular labrum" of his right hip, and that Claimant needs future medicals in the form of a "surgical repair as indicated." The Undersigned gives this evidence great weight (Defendants' APA #6 pages 104 and 106-107; Defendants' APA #20, page 208); (g) authorized physician Dr. Behr in April 2019 states that "I do believe it is likely the patient's groin pain may be related to the work injury," and he states that Claimant's MRI arthrogram suggests possible attenuation of the labrum, and also references Dr. Koch's finding that Claimant's groin pain could be consistent with a labral tear (Defendants' APA #17, pages 187-188); (h) Dr. Scott states that the opinion of "Dr. Edwards" is that the labral tear "was the most likely cause of Claimant chronic and continuing pain in the right groin area" (*Note: the Undersigned does not have a record from "Dr. Edwards," but the Undersigned considered Dr. Scott's statement for the reason that he is an authorized physician*; Defendants' APA #20, page 209); (i) Dr. Ruocco (authorized radiologist) interprets Claimant's right hip MRI as suggesting attenuation of the superior labrum (Defendants' APA #13, pages 172-173; Claimant's APA, page 37); (j) Dr. Wienke (radiologist) interpreted Claimant's right hip MRI as showing a paralabral cyst "suggest[ing] an underlying labral tear" (Claimant's APA, pages 19-20); and (k) **Dr. Potts, Claimant's treating physician, diagnosed a labral tear and/or cyst and performed surgery to repair Claimant's labral pathology that the authorized (and unauthorized) physicians had already diagnosed/assessed** (Defendants' APA #18, pages 195 and 197-198; Claimant's Deposition Transcript, pages 38-39; testimony of Claimant; Claimant's APA, pages 72, 74, and 77).

63. Dr. O'Boyle referred Claimant to Dr. Koch to determine if Claimant's pain was consistent with a labral tear. The Undersigned agrees with Claimant that Dr. Koch explicitly stated that Dr. Koch was a one-time evaluator only (*i.e.*, a second opinion), as set forth in the preceding finding of fact (Claimant's APA, page 62; testimony of Claimant).

64. As to the right hip, Claimant's third surgery of June of 2019 greatly improved his right hip condition. The Undersigned bases this finding on the fact that medical records documenting Claimant's pre-third surgery antalgic gait, including one entry stating that Claimant walking "with a bent over appearance" (Defendants' APA #10, pages 148-149). However, by October 2019, the treating surgeon (Dr. Potts) found Claimant's gait normal; Dr. Potts documented the same at the next sequential visit on January 6, 2020. The Undersigned also notes that Dr. Potts found that Claimant's surgery "went great" (Defendants' APA #18, pages 196 and 199; *See also* Defendants' APA #3, page 46; Defendants' #1, pages 11 and 14; Defendants' APA #14, page 178; Defendants' APA #15, page 180; Claimant's APA, pages 43 and 45—all of which document Claimant's antalgic gait prior to the third right hip surgery; Claimant's APA, page 74).

65. Claimant reached maximum medical improvement on June 3, 2020 per the opinion of authorized physician Dr. Scott. Dr. Scott reiterated Claimant's maximum medical improvement status again on July 21, 2020. The Undersigned considered Dr. Rana's (Claimant's IME) statement that Claimant has not reached maximum medical improvement, but Dr. Rana saw Claimant in 2019. The Undersigned gives greater weight to the more recent pronouncement as to maximum medical improvement status (Defendants' APA #20, pages 210 and 212-213; Claimant's APA, pages 68-69).

66. Defendants met their burden of proof by a preponderance of the evidence that Claimant reached maximum medical improvement on June 3, 2020 for the injuries resulting from the June 15, 2017 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. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

67. The two 7% impairment ratings for the right hip are from authorized physicians. The Undersigned bases this finding on the opinions of Drs. Behr and Scott (Defendants' APA #17, pages 188-189; Defendants' APA #20, pages 210 and 213).

68. Claimant does not take prescription pain medication on a regular basis. Various medical records suggest that Claimant takes no prescription pain medication whatsoever. For instance, when Dr. Frasenelli offered Claimant pain medication for his gallstones, Claimant declined (Claimant's Deposition Transcript, pages 60-61; Defendants' APA #14, page 176: "The patient is not taking any medicines aside from holistic, herbal treatments;" Defendants' APA #2, page 24; Defendants' APA #19, page 203).

69. Authorized physicians released Claimant with no restrictions for his right hip (Defendants' APA #17, pages 188-189; Defendants' APA #20, pages 211 and 213).

70. Two authorized physicians (Drs. Koch and O'Boyle) found no signs of avascular necrosis (Defendants' APA #12, page 168; Defendants' APA #15, page 185; Claimant's APA, page 62).

71. As to the right hip, Dr. Scott found normal hip motion with negative impingement sign, very prominent pain behavior, and "non-physiologic components" during the exam (Defendants' APA #20, page 210).

72. As to permanency of the right hip, Dr. Potts (who performed the last/third hip surgery), found at the last two medical visits full range of motion, no joint instability, 5/5 strength, no tenderness to palpation, and no thigh tenderness to palpation. Claimant was doing well and having almost no pain (Defendants'

APA #18, pages 196 and 199-200).

73. Defendants may stop payment of temporary total disability benefits. Defendants were entitled to stop payment of temporary total compensation effective the date of maximum medical improvement on June 3, 2020 and are entitled to a credit for the overpayment of temporary total compensation since June 3, 2020, against the award for permanent partial disability ordered herein.

74. Pursuant to § 42-9-30(17), Claimant sustained 7% permanent partial disability to the right hip. The Undersigned finds that there is no disability beyond the impairment rating. This finding is made by a preponderance of the evidence, and this finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, hearing and deposition testimony of Claimant, the evidence set forth in the Findings of Fact herein, the fact that there are no restrictions assigned by Drs. Behr and Scott, and the two assigned impairment ratings of 7% by Drs. Behr and Scott. Awarding any additional permanency benefits beyond the impairment ratings would require me to speculate, and the Undersigned declines to do so.

75. Claimant is entitled to reimbursement for the right hip surgery and visits with Dr. Potts, subject to the Workers' Compensation fee schedule. Although Claimant may have been argumentative or verbally combative with various physicians, this conclusion regarding reimbursement is not based upon Claimant's demeanor or personality. It is based upon a causally-related condition that has been diagnosed by both authorized and unauthorized physicians. The Undersigned finds that Claimant was truthful when he testified that he was told that he could not see Dr. Koch again. Nothing in the Finding, however, should be construed as a statement that claimants are free to seek unauthorized care and have Defendants pay for such care. My conclusion as to this issue is strictly limited to the specific facts in this case. The condition for which Claimant underwent his third right hip surgery is causally related, as stated by (a) Dr. Swathwood (the physician who performed the first surgery) and (b) other physicians as well.

76. Claimant is entitled to mileage for the evaluation with Dr. Glenn Scott on June 3, 2020, pursuant to the Act.

77. Any other outstanding reimbursement shall only be made for authorized treatment/expenses.

78. Defendants have met their burden by a preponderance of the evidence that no body parts/conditions—other than the right hip – are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

79. As to future medical benefits, no further (i.e., future) medical treatment has been recommended by any authorized physician, and therefore none are ordered herein. Other than the permanency award for the right hip as ordered herein (and reimbursement as set forth herein), Defendants are not required to provide any further benefits for the right hip (*e.g.,* Defendants' APA #17, pages 188-189; Defendants' APA #20, page 213).

80. Claimant has failed to prove by a preponderance of the evidence 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. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

81. Defendants shall receive credit for overpayment of temporary benefits paid beyond June 3, 2020.

82. Claimant's average weekly wage is $655.67, yielding compensation rate of $437.13.

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 sustained an injury to his right hip by accident arising out of and in the course and scope of his employment on June 15, 2017.

3. Under § 42-9-260, Defendants were entitled to stop payment of temporary compensation on June 3, 2020, the date on which Claimant reached maximum medical improvement.

4. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until June 3, 2020, 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 7% permanent partial disability to the right hip. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since June 3, 2020, pursuant to § 42-9-210.

On December 7, 2020, within the statutory period for review, counsel for Defendants filed an application for review in the case setting forth their grounds for review, copies of which were furnished to all interested parties, prior to oral argument presented by the Appellate Panel on February 22, 2021. Additionally, on December 10, 2020, within the statutory period for review, Claimant filed an application for review in the case setting forth his grounds for review, copies of which were furnished to all interested parties, prior to oral argument presented by the Appellate Panel on February 22, 2021.

In Defendants' briefs, which were properly filed with Commission and properly served on all interested parties, and at oral arguments before the Appellate Panel on February 22, 2021, Defendants argued that the Hearing Commissioner erred in finding and ordering that Defendants shall reimburse Claimant for his right hip surgery and visits with Dr. Potts, subject to the Workers' Compensation fee schedule, as Claimant failed to meet the requirements of S.C. Code §42-15-60(A).

In Claimant's briefs, which were properly filed with Commission and properly served on all interested parties, and at oral arguments before the Appellate Panel on February 22, 2021, Claimant argued that, among other things, the Hearing Commissioner ignored the medical evidence.

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 have since been under study and consideration.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50, review the Award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. In the present case, for

the reasons set forth below, the Appellate Panel, by unanimous vote, affirms the Order of the Hearing Commissioner in part, reverses the Order of the Hearing Commissioner in part, and amends the Order of the Hearing Commissioner.

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. Claimant was an employee of the above-named Employer on and prior to June 15, 2017, on which date he did sustain an injury to the right hip arising out of and in the course of his employment, and proper notice was given to Employer. This was an accepted claim as to the right hip only, and Claimant has received appropriate medical benefits and temporary total compensation. Defendants deny that any and all other body parts/conditions, as alleged by Claimant, are causally related to the admitted injury in issue.

2. In addition to the admitted right hip injury, Claimant alleges that he also injured his (a) kidneys/bladder, possibly from an infection from catheterization while in the hospital for the July 4, 2017 right hip surgery (allegedly resulting in kidney/bladder stones/polyps/tumor/dysfunction); and (b) heart/chest resulting in shortness of breath. Claimant also alleges other body parts/conditions, including prostate cancer/enlargement, a hernia, abdominal pain, gallstones/gallbladder, and inguinal lymph nodes (Hr. Tr. page 13, line 1 – p. 14, line 3; p. 17, line 25 – p. 18, line 10; p. 51, line 9 – p. 52, line 2; p. 53, lines 9 – 18; p. 67, line 21 – p. 70, line 22, containing the position of Claimant at the Hearing as to the body parts/conditions he alleges).

3. A post-Hearing review of all the medical evidence shows that Claimant has also told various providers that he has sustained other injuries/conditions relating to his back, bilateral arms, left hip, neck, right shoulder, face, bilateral legs, and "poor blood supply;" however, Claimant did not plead any of the conditions contained in this Finding at the Hearing. Out of an abundance of caution (as Claimant is not represented by counsel), the Undersigned shall attempt to address each body part/condition for which Claimant has complained to both authorized and unauthorized providers.

4. Claimant contends that the body parts/conditions he alleges in addition to the right hip began only after and because of his initial right hip surgery in July of 2017. Claimant has also made such attribution statements to both authorized and unauthorized providers in this claim (*e.g.*, Defendants' APA #9, pages 140-141; Defendants' APA #11, page 154; Defendants' APA #6, pages 103-104; Defendants' APA #14, pages 176 and 178).

5. Claimant requests reimbursement for evaluations/treatment for (a) alleged conditions, and (b) the third right hip surgery performed by Dr. Potts. Defendants deny that Claimant is entitled to any reimbursement, as Defendants state they (a) provided all appropriate, causally-related treatment, (b) should not be liable for unauthorized treatment Claimant sought on his own, and (c) are not liable for unrelated body parts/conditions having no nexus or link to the admitted injury.

6. Claimant contends that he has not reached maximum medical improvement. Defendants contend that Claimant has reached maximum medical improvement per the opinions of two authorized physicians.

7. Claimant is 46 years of age (testimony of Claimant; Claimant's Deposition Transcript, page 7).

8. Claimant completed high school in Romania (Claimant's Deposition Transcript, page 9).

9. Claimant is fluent in Ukrainian, Romanian, Italian, and English (testimony of Claimant; Claimant's Deposition Transcript, pages 8-9).

10. Claimant's employment history includes work in construction, security, and nursing home maintenance. He was also a forklift operator (testimony of Claimant; Claimant's Deposition Transcript, pages 11-13).

11. On June 15, 2017, Claimant's job with Employer was machine operator/team leader. Claimant trained/taught other employees (testimony of Claimant; Defendants' APA #12, page 167; Claimant's Deposition Transcript, page 15).

12. In the mechanics of the June 15, 2017 accident, Claimant fell onto his right hip. Also noted in temporal medical records were a (a) minor right shoulder injury, and (b) a facial injury occurring when Claimant's face hit his arm (Claimant's APA, pages 1 and 4, dated June 19, 2017).

13. By June 23, 2017, Claimant's face and shoulder injuries "resolved," with the only remaining injury documented as the right hip. Claimant's hip pain radiated to the right thigh and occasionally the right ankle (Claimant's APA, page 5, dated June 23, 2017; *See also* Claimant's APA, pages 3 and 6, dated June 26, 2017, containing no further mention of the shoulder or face). On June 28, 2017, Claimant's right hip pain radiated to his groin and down his leg (Defendants' APA #1, page 1). Eighteen and nineteen days after the accident (July 3 and 4, 2017, respectively), Claimant's injury is described as to his right hip (Defendants' APA #1, pages 4-6; Defendants' APA #3, page 52).

14. Based upon the evidence set forth in the preceding Finding of Fact, the situs of the June 15, 2017 injury is the right hip. This is based on the preponderance of the evidence in the

record as a whole, including but not limited to the temporal medical records dated 2-3 weeks after the date of the accident (*e.g.,* Defendants' APA #1, pages 1-5; Claimant's APA), and Claimant's sworn deposition testimony taken 2 years after the date of the accident in which he denied any other contemporaneous injuries in the accident other than the right hip. This deposition testimony by Claimant is given great weight (testimony of Claimant; Claimant's Deposition Transcript, pages 17-19).

15. Claimant did complain of groin pain 13 days after the accident, but in the context of radiating pain from the hip – the source of Claimant's pain. However, the sole diagnosis on this date is "R hip contusion R hip pain." At the next sequential visit (July 3, 2017), the diagnosis is right hip fracture. In **October of 2017**, Claimant again described hip pain that radiated into his groin, such that providers documented "Right Inguinal pain." However, when Claimant's groin was examined, medical providers documented "[n]o palpable hernias." In **November of 2017**, medical evidence states that Claimant "denies feeling any masses or bulges in his groin;" Claimant's exam showed "No palpable hernias" (Defendants' APA #1, pages 1-3, 6-8, 10-11, and 14; Defendants' APA #2, page 22).

16. As to the heart, thirteen days after the accident, Claimant had no chest pain, no palpitations, no pedal edema, no shortness of breath, and no wheezing. Eighteen days after the accident, Claimant similarly had no documented CVS or respiratory problems (Defendants' APA #1, pages 1 and 4-5).

17. As to any abdominal pain, Claimant denied any abdominal pain temporally with the accident or shortly thereafter (*e.g.,* Defendants' APA #1, page 1).

18. Because of his admitted right hip fracture, Claimant underwent right hip surgery in **July of 2017** (performed by Dr. Swathwood) including the implanting of hardware. Claimant subsequently underwent a second surgery in November 2018 (performed by Dr. O'Boyle) to

remove the hardware (Defendants' APA #3, pages 55-57; Defendants' APA #15, pages 182-183).

19. As to all alleged body parts/conditions (*i.e.*, not the admitted hip injury), Claimant's propounded theory is that these alleged problems began after his first right hip surgery (July of 2017), including but not limited to inguinal/groin pain, kidney/bladder problems, testicular/prostate problems, stomach pain, and chest pain. Claimant has contended to providers that his hip pain goes to his groin, and then up from his groin to his stomach, and then up from his stomach up to his chest. He has also told providers that his chest pain also goes up into his head. When Claimant was asked at the Hearing about causation regarding some of these body parts, Claimant believes (a) a catheter was placed during surgery and may have caused infections, and (b) that the July 2017 hip surgery caused or resulted in an inguinal "knot." He also mentioned the trauma of the fall (testimony of Claimant; *See also* Claimant's Deposition Transcript, pages 24, 34-35, 37, 40-41, and 43; Defendants' APA #1, pages 13 and 16; Defendants' APA #4, page 78; Defendants' APA #6, page 97).

20. Claimant contends that he had no pre-existing conditions with regard to the body parts/conditions he alleges. However, this testimony is not entirely accurate: (a) two years before the accident, Claimant was treated for chest pain, and underwent CT of his chest which showed "large cavitary lesions in both lungs." Because of the "severity of his pulmonary disease," Claimant was admitted to a hospital during which stay he underwent bronchoscopy with lavage and biopsy. Claimant was diagnosed with "bilateral pulmonary masses with cavitation probably COPD;" (b) Claimant underwent an appendectomy after which he developed peritonitis and for which he underwent exploratory surgery. He was diagnosed with inflammatory bowel disease with remote history of enterocolitis; other medical evidence notes Claimant's history of diverticulitis, appendectomy, and colon resection. Claimant continues to have "colonic diverticulosis" without diverticulitis. He also has an anterior abdominal wall "*incisional* hernia"

containing a small volume of fat without acute inflammatory change; and (c) although Claimant did not plead his back at the Hearing, he has told various providers that he attributes back pain to the accident. Prior to the injury in issue, Claimant received treatment in New York for a herniated lumbar disc. Dr. Rana's report stating that Claimant's only prior surgery was an appendectomy is not accurate (Defendants' APA #3, pages 40-41, 43-44, and 52; Defendants' APA #19, page 202; Defendants' APA #2, page 33; Defendants' APA #9, pages 141-142; Defendants' APA #10, page 149; Defendants' APA #5, page 90; Defendants' APA #6, page 98; Defendants' APA #11, pages 154-155; Defendants' APA #14, page 176; Defendants' APA #16, page 186; Defendants' APA #17, page 187; Claimant's APA, pages 19 and 68).

21. As to the chest/heart, medical records from the date of the accident (June 15, 2017) through December 2017 (*i.e.*, **6 months of records from multiple providers**) document Claimant's (a) denial of chest pain or palpitations, and (b) uneventful chest/heart examinations. These records are inconsistent with Claimant's statement to Dr. Folk that he experienced chest pain from the date of the July 2017 surgery. Inconsistently, Claimant told Dr. Kmonicek that his chest pain began in November 2017. However, none of the November 2017 medical records document a complaint or problem regarding the chest/heart, and instead show no abnormality (*e.g.*, Defendants' APA #2, pages 19b-20 and 23; Defendants' APA #1, pages 1, 4, 7-8, 10, and 13-14; Defendants' APA #3, page 45; Defendants' APA #4, page 60; Defendants' APA #5, pages 86-87 and 90-91; Defendants' APA #6, pages 103-104; Defendants' APA #10, page 148).

22. As to the chest/heart, the first medical record documenting a chest complaint is January 2018—almost 7 months after the date of the accident in issue (and 6 months after the July 2018 surgery). In this record, Claimant reported that his pain travels up to his chest and is accompanied by shortness of breath (Defendants' APA #9, pages 140-141). Claimant continued to report bilateral chest pain and a racing heart including but not limited at the ER; however, those

providers found no shortness of breath/wheezing and no cardiac issues; Claimant's heart rate is documented as of regular rate and rhythm, and his electrocardiogram is documented as normal (Defendants' APA #2, pages 33-34; Defendants' APA #6, page 99; Defendants' APA #1, pages 16-17; Defendants' APA #11, pages 155 and 162).

23. Because of his chest/heart complaints, Claimant was evaluated by a cardiologist (Dr. Kmonicek). Clamant told Dr. Kmonicek that his chest pain started in November 2017 and had been present ever since (however, this statement is inconsistent with the medical records through December 2017, documenting no cardiac problems or complaints). Dr. Kmonicek wrote Claimant's complaints regarding his chest are "clearly not cardiac in etiology." Further, Claimant admitted to Dr. Gerscovich that Dr. Kmonicek gave him a "clean bill of health without any evidence of cardiac pathology" (Defendants' APA #14, page 176; Defendants' APA #10, pages 148-153; Defendants' APA #6, pages 103-104).

24. As to the chest/heart, the medical evidence shows inconsistencies: Claimant continued to complain of chest pain in October of 2019. However, in November of 2019, Claimant denied chest pain and palpitations. In December of 2019, Claimant denied chest pain and palpitations. In January of 2020, Claimant complained to Dr. Potts of chest pain. However, Dr. Potts also found Claimant's heart to be of regular rate and with normal rhythm (*e.g.*, Defendants' APA #18, pages 196 and 199; Defendants' APA #19, page 201).

25. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his chest/heart symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

26. As to Claimant's corollary complaint of shortness of breath, Claimant had negative respiratory examinations and no complaints through all of 2017. In fact, Claimant reported no shortness of breath, whether with exertion or with lying down (*e.g.*, Defendants' APA #2, pages 19b-20 and 23; Defendants' APA #1, pages 1, 4-5, 7-8, 10-11, and 13-14; Defendants' APA #3, page 46; Defendants' APA #4, page 60; Defendants' APA #5, pages 86-87 and 90-91).

27. As to shortness of breath, January of 2018 is the first occurrence where Claimant reported shortness of breath (Defendants' APA #9, page 141). However, in March 2018, Claimant's breath sounds are documented as normal, and his examination revealed no problems; his cardiac workup at the ER was negative (Defendants' APA #2, pages 34-37). On March 19, 2018, Claimant is also documented as having unlabored breathing (Defendants' APA #1, pages 16-18). On April 1, 2018 at the ER, Claimant's examining physicians did not document any clinical problems, as Claimant's CT PE was normal (Defendants' APA #11, page 156). Later in April 2018, Dr. Koch found normal, non-labored breathing with no shortness of breath (Defendants' APA #12, page 167), but Claimant told Dr. Gerscovich the same month that he has shortness of breath with both exertion and lying down (Defendants' APA #14, page 177). In April 2019, Claimant told Dr. Behr that he is short of breath (Defendants' APA #17, page 188). Although Claimant told Dr. Frassinelli in December 2019 that he was experiencing shortness of breath, Dr. Frassinelli found Claimant's pulmonary effort "normal" (Defendants' APA #19, pages 201 and 203). *See also* Claimant's APA, page 21.

28. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his shortness of breath symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

29. As to the head/headaches, Clamant is documented by multiple providers as negative for headaches or dizziness after the accident and throughout 2017 (Defendants' APA #2, pages 19b-20; Defendants' APA #1, pages 1 and 4; Defendants' APA #5, page 86; Defendants' APA #6, page 99). In March 2018, Claimant reported headaches and pain "all over." Claimant contended that he had a DVT from his right hip into his chest and into his head. In April 2018, Claimant told a provider that he had experienced headaches, "every day for months." Because of Claimant's head complaints, both a CT and MRI were ordered the results of which were interpreted as normal (Defendants' APA #11, pages 155-156 and 158; Defendants' APA #12, page 168; Defendants' APA #14, page 177; Defendants' APA #1, pages 16-17).

30. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his head/headaches symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

31. As to the bilateral arms, Claimant told or presented to Emergency Room providers that he could not lift his arms for more than 3-4 seconds. However, medical evidence from November 2017 (5 months after the accident, and 4 months after the July 2017 surgery) do not document an arm problem, and in fact state that Claimant has "no arm pain on exertion." In December 2018, Claimant told physical therapy providers that his pain radiates to his left calf and both arms. As Claimant testified to at his deposition, he did not injure his neck or either arm in the accident (medical evidence in its entirety, including but not limited to Defendants' APA 5, page 86; Defendants' APA #11, page 158; Claimant's APA, pages 53 and 55).

32. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his symptoms and complaints in his bilateral arms are causally related to the work injury on

June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

33. As to the left hip, the Undersigned find it is not causally related to the June 15, 2017 work injury. Claimant's left hip was examined in January 2018 with normal range of motion and no problems/complaints documented. March 2018 is the first complaint of left hip pain in medical records, and no physician states that the left hip is causally related (Defendants' APA #9, page 142; Defendants' APA #4, page 81; medical evidence in its entirety).

34. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his symptoms and complaints to his left hip are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

35. As to gallstones/gallbladder, the Undersigned do not find this condition/body part compensable as there is no medical opinion linking Claimant's gallbladder to his work accident. The first medical record related to the gallbladder is an August 2019 renal ultrasound (more than 2 years after the June 2017 accident/July 2017 first hip surgery) and the second is from Dr. Frassinelli in December 2019, who diagnosed gallstones without obstruction, and suggested no treatment (Defendants' APA #19, page 203; Claimant's APA, pages 75-76).

36. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his gallstones/gallbladder/bladder symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

37. As to the back, by November of 2017, Claimant denied back pain to Dr. Hinnant (Defendants' APA #5, page 86). However, in January 2018, Claimant complained of low back pain which allegedly radiated to his chest, abdomen, and groin. At the Hearing, Claimant did not present any medical evidence as to that anatomical possibility (or impossibility). Nonetheless, Defendants provided a spine evaluation(s). Claimant's low back pain is described in one record as of "unspecified chronicity." Medical providers also state that Claimant's objective studies "would not likely explain his anterolateral leg/groin/pelvic/chest complaints," such that there was "No need for spine surgeon consult" (Defendants' APA #9, pages 140-145 and 147). As to Claimant's thoracic spine, there is a "[t]iny T8-9 disc protrusion without stenosis or cord compression. Otherwise benign" (Defendants' APA #8, page 137). There is inconsistency in medical records regarding the back, as Claimant reported back pain on March 1, 2018 (Defendants' APA #4, page 81), but told ER providers and Dr. Koch at two separate visits one month later in April of 2018 that he has "no back pain." Dr. Koch found normal lumbar extension and flexion, no tenderness to palpation over the lumbar spine, and a bilaterally normal straight leg raise. Claimant told Dr. Gerscovich that he has back pain. However, Dr. Frassinelli in December of 2019 found Claimant to be negative for back pain. Further, no physician has opined as to an aggravation of Claimant's pre-existing low back condition. As Claimant previously treated in New York for a herniated disc, these records are not in evidence (medical evidence in its entirety; *See* particularly Defendants' APA #11, page 154; Defendants' APA #12, page 167; Defendants' APA #4, page 78; Defendants' APA #8, pages 138-139; Defendants' APA #19, page 201; Defendants' APA #14, page 177).

38. Claimant has failed to meet his burden of proof by a preponderance of the evidence that the symptoms and complaints to his back and bilateral legs are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including

but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in Findings of Fact herein.

39. As to the alleged hernia/abdomen, Claimant believes that his symptoms occurred after the surgery on July 4, 2017. After the accident (June 15, 2017) but prior to the July 4, 2017 surgery, Claimant was negative for abdominal pain (Defendants' APA #3, page 52). On October 24, 2017, Med Central examined Claimant's abdomen and found it soft and nontender, with no palpable hernia (Defendants' #1, page 8). Similarly, on November 20, 2017, Claimant's abdomen was soft and nontender with no palpable hernia (Defendants' APA #1, page 11). On November 19, 2017, Claimant had no inguinal hernia on the right or left and no tenderness to palpation, and denied feeling any masses or bulges (Defendants' APA #2, pages 22 and 24). On November 22, 2017, urologist Dr. Hinnant found no problems with Claimant's abdomen upon examination, and as to any hernia, found "none palpable" (Defendants' APA #5, page 87). On November 27, 2017, Claimant's abdomen was soft and non-tender with no palpable hernia (Defendants' APA #1, page 14). On December 6, 2017, Claimant's abdomen is documented as soft and non-distended with no tenderness and no palpable hernia (Defendants' APA #5, page 91). One physician might miss a hernia, but the Undersigned cannot ignore the fact that multiple physicians found no abdominal problem or hernia through 2017, which evidence is inconsistent with Claimant's theory that his hernia began because of the July of 2017 right hip surgery. *See also* Defendants' APA #1, page 17 and Defendants' APA #11, page 156. Further, in 2018, Dr. Koch found Claimant's abdomen "within normal limits;" ER physicians that same month documented a "very benign abdominal exam" (Defendants' APA #11, page 156; Defendants' APA #12, page 167). In 2019, Dr. Seiler found "no evidence of hernia" (Defendants' APA #16, page 186).

40. As to the alleged hernia, the first medical record documenting a finding of a hernia occurs in 2019 (more than 2 years after the accident and/or the first right hip surgery in July 2017).

Dr. Frassinelli diagnosed a hernia (right inguinal area, described as "[s]mall, reducible," but describes the hernia as "asymptomatic" and does not recommend surgery (Defendants' APA #19, page 203). However, Dr. Frassinelli answered a questionnaire (prepared by Claimant's counsel at the time), stating that Claimant's inguinal hernia is not secondary to the work accident or the surgical procedures to repair the hip fracture/labral tear (Defendants' APA #19, pages 203 and 205).

41. Claimant told Dr. Swathwood that Claimant's research leads Claimant to conclude that his pain is likely from his inguinal or femoral nerves; however, Dr. Swathwood states that the right hip surgery was not in the vicinity of either one of those nerves (Defendants' APA #4, page 78).

42. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his alleged abdomen and hernia symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

43. As to the inguinal lymph nodes, an ultrasound taken states only that there are "a few simple-appearing lymph nodes in the right inguinal region." There is no medical opinion stating that these nodes have been injured or otherwise negatively affected (Claimant's APA, page 63; medical evidence in its entirety).

44. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his inguinal lymph nodes symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

45. As to the right knee, the Undersigned find that Claimant's right knee is not compensable. This body part is mentioned in medical records for first time in January 2018. Claimant told providers at this medical visit that his pain begins in his knee (*i.e.*, not his hip) and extends up to thigh to his hip, and then to his groin and testicles. Claimant presented no medical evidence to explain this anatomical possibility or impossibility (Defendants' APA #4, page 78).

46. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his right knee symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

47. As far as urinary/bladder/testicular/erectile/prostate/kidney (including but not limited to kidney stones) problems (which Claimant contends began after the July 2017 surgery), Claimant sought treatment with a "urologist/lawyer" (as referred to in Defendants' APA #9, page 141) in November 2017. Claimant told Dr. Hinnant that there was "no history of trauma." Dr. Hinnant diagnosed (a) epididymitis for which antibiotics were prescribed, and (b) impotence of "organic origin." Dr. Hinnant also diagnosed Claimant with benign prostatic hypertrophy with outflow obstruction, and prescribed Flomax. As Dr. Hinnant practices workers' compensation, it would seem reasonable that he would have commented on a nexus between Claimant's genital/urinary problems and the accident and/or hip surgery, if such a connection existed (Defendants' APA #5 in its entirety).

48. However, medical evidence from March 2018 shows that Claimant reported no urinary frequency or pain. Similarly, in April 2018, Claimant denied any bladder problems to Dr. Koch (Defendants' APA #2, page 34; Defendants' APA #12, page 167).

49. However, Claimant was dissatisfied with Dr. Hinnant's diagnoses, and sought treatment with a second urologist (Dr. Seiler) in February 2019. Dr. Seiler diagnosed Claimant with benign prostatic hyperplasia as well as urinary frequency. Dr. Seiler states that there were "no signs" of etiology for groin and testicular pain. Dr. Seiler goes on to say that "with distraction, [Claimant had] no tenderness." Dr. Seiler found Claimant's testicles to be of "normal size," and also found no hernia (Defendants' APA #16, page 186). As to an enlarged prostate, no physician has opined or stated that this condition is related to Claimant's accident and/or surgery (medical evidence in its entirety, including but not limited to Claimant's APA, page 38; *See also* Claimant's Deposition Transcript, page 40).

50. As to whether a catheter was utilized when Claimant underwent his right hip surgery, the medical evidence is at best equivocal. Med Central providers state, per the operative note of July of 2017, that "there was no catheter used." Med Central records also state that Claimant initially believed that his kidney/groin issues were epididymitis related to catheter insertion, but "later discovered he had not even had a catheter placed intraoperatively." Nonetheless, Claimant presented a document (Under "Nursing") containing a checklist to "provide infection *prevention* measures, assess removal of *potential* routes of infection, such as IV, intra-arterial or urinary catheters, Assess signs and symptoms of infection, Monitor amount and/or characteristics of urine, and Evaluate need to continue indwelling urinary catheter." Given the first item (provide *prevention* measures), and the second item (assess removal of *potential* routes of infection), the Undersigned cannot assume that Claimant actually experienced an infection as these records do not document such. Other items in the checklist are "provide a safe environment," "assess risk factors for falls," etc. The measurement of urine does not necessarily mean that a catheter was utilized, and the Undersigned cannot assume a catheter was used. However, even if Claimant is correct in that a catheter had been used, Claimant has not presented into evidence a

medical opinion from any physician stating that Claimant sustained an infection from use of a catheter [emphasis added] (Defendants' APA #1, pages 13 and 16; *See also* Claimant's Deposition Transcript, pages 43-44; Claimant's APA, pages 16-17).

51. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his urinary/bladder/testicular/erectile/prostate/kidney (including, but not limited to kidney stones) symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

52. As to the neck, Claimant denied any neck pain to multiple providers for 10 months after the accident, and his neck examinations throughout this period show no documented complaints or problems, and instead full range of motion. Claimant first complained of neck pain on April 19, 2018—10 months after the accident, and 9 months after the date of the first surgery—to Dr. Gerscovich (*See* Defendants' APA #2, pages 19b-20, 23, and 34; Defendants' APA #1, pages 4-5, 11, 14, and 17; Defendants' APA #5, pages 86 and 91; Defendants' APA #11, pages 154-155; Defendants' APA #12, page 167; *Cf.* Defendants' APA #14, page 177).

53. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his neck symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Finding of Fact herein.

54. As to the alleged "poor blood supply" (*See* Defendants' APA #17, pages 187-188), there is no medical evidence establishing this condition nor a nexus to the accident in issue.

55. Claimant has failed to meet his burden of proof by a preponderance of the evidence that his "poor blood supply" symptoms and complaints are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

56. Since the date of the accident, Claimant has sought ER treatment for "pain all over." Claimant similarly told Dr. Gerscovich that he has "pain globally in his body." Claimant told Med Central Health Resources that he has "excruciating pain all over and wants a bone scan of his entire body." Claimant told physical therapy providers that his pain was "not only in hip but throughout" including his "entire torso" (Defendants' APA #11, page 154; Defendants' APA #14, page 176; Defendants' APA #1, page 18; Claimant's APA, page 57).

57. Based on the preponderance of the evidence, no alleged condition (*i.e.*, other than the right hip) is causally related to the accident of June 15, 2017 or first surgery on July 4, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein. In fact, Dr. Gerscovich states that Claimant's scrotal, abdominal, chest, and neurologic pain are unrelated (Defendants' APA #14, page 178). Dr. Folk states that Claimant's hip pathology would not account for Claimant's complaints regarding his abdomen, scrotum, chest, and head, as it would be "extremely unlikely." Dr. Folk goes on to state that Claimant's "hip pathology does not explain his vast array of complaints" (Defendants' APA #6, page 104).

58. Dr. Behr states that it is "highly unlikely" that Claimant's complaints of bladder issues, abdominal pain, chest pain, "poor blood supply," and prostate issues are related to the work injury (Defendants' APA #17, page 188).

59. Dr. Crumpler (ER physician) wrote in April 2018 that "The story changes multiple times even during the exam as to what there [sic] concern is" (Defendants' APA #11, page 156).

60. Dr. Rana, whom Claimant saw at the request of one of his previous attorneys, states that Claimant has no other causally-related injuries other than his right hip (Claimant's APA, page 69).

61. Dr. Gerscovich states that (a) "it appears that all the [alleged] symptoms are unrelated," (b) he sees evidence of psychosomatic symptoms, and (c) he recommends a psychiatrist or psychologist (Defendants' APA #14, pages 176 and 178-179). *See also* Claimant's APA, pages 45 and 51 (records from physical therapy), relating to Claimant's "very high level of anxiety" and appearance of "some symptom magnification of pain level." Psychological overlay is not pled in this case, and as no benefits were requested for psychological overlay, this condition is hereby found not compensable.

62. As to the right hip, myriad authorized and unauthorized physicians diagnosed/assessed Claimant with a right hip labral tear: (a) after Dr. Swathwood performed Claimant's first surgery, he diagnosed an "[a]nterior superior labral tear" which "likely occurred at the time of his fall at work;" the Undersigned give this opinion great weight, as it is from the authorized treating physician who performed the first surgery (Defendants' APA #4, page 82); (b) authorized physician Dr. O'Boyle (who performed Claimant's second surgery removing the hardware) diagnosed a paralabral cyst in September 2018 and mentioned possible surgical treatment for the "labral tear" as discussed twice with Defendants' nurse case manager (Defendants' APA #15, pages 180 and 185); (c) Dr. Gerscovich states that there is "evidence of labral tear on MRI" and that "the MRI revealed a labral tear" (Defendants' APA #14, page 178); (d) Emergency Room providers refer to Claimant's "labral tear with a possible small associated cyst" (Defendants' APA #2, page 33); (e) Dr. Koch, authorized for one visit (**"I'm currently only**

functioning as a second opinion"), in his "Assessment/plan" lists "Labral tear." Dr. Koch also states that he did see attenuation of the superior labrum (Defendants' APA #12, pages 166, 168, and 170-171); (f) Dr. Folk diagnosed a tear of right acetabular labrum. Defendants' nurse case manager was there during the visit (Defendants' APA #6, pages 100 and 103). In an e-mail expressing frustration with Claimant's conduct during and after the one-time visit (Dr. Folk refused to treat Claimant further), Dr. Folk wrote that he did not recommend any further particular treatment for the right hip given Claimant's "vast array of complaints" in that Claimant's "constellation of complaints" would not be remedied by surgery. However, Dr. Folk later indicated on a Form 14B that Claimant has a "tear of right acetabular labrum" of his right hip, and that Claimant needs future medicals in the form of a "surgical repair as indicated." The Undersigned give this evidence great weight (Defendants' APA #6 pages 104 and 106-107; Defendants' APA #20, page 208); (g) authorized physician Dr. Behr in April 2019 states that "I do believe it is likely the patient's groin pain may be related to the work injury," and he states that Claimant's MRI arthrogram suggests possible attenuation of the labrum, and also references Dr. Koch's finding that Claimant's groin pain could be consistent with a labral tear (Defendants' APA #17, pages 187-188); (h) Dr. Scott states that the opinion of "Dr. Edwards" is that the labral tear "was the most likely cause of Claimant chronic and continuing pain in the right groin area" (*Note: the Undersigned do not have a record from "Dr. Edwards," but the Undersigned considered Dr. Scott's statement for the reason that he is an authorized physician*; Defendants' APA #20, page 209); (i) Dr. Ruocco (authorized radiologist) interprets Claimant's right hip MRI as suggesting attenuation of the superior labrum (Defendants' APA #13, pages 172-173; Claimant's APA, page 37); (j) Dr. Wienke (radiologist) interpreted Claimant's right hip MRI as showing a paralabral cyst "suggest[ing] an underlying labral tear" (Claimant's APA, pages 19-20); and (k) **Dr. Potts, Claimant's treating physician, diagnosed a labral tear and/or cyst and performed surgery to**

repair Claimant's labral pathology that the authorized (and unauthorized) physicians had already diagnosed/assessed (Defendants' APA #18, pages 195 and 197-198; Claimant's Deposition Transcript, pages 38-39; testimony of Claimant; Claimant's APA, pages 72, 74, and 77).

63. Dr. O'Boyle referred Claimant to Dr. Koch to determine if Claimant's pain was consistent with a labral tear. The Undersigned agree with Claimant that Dr. Koch explicitly stated that Dr. Koch was a one-time evaluator only (*i.e.,* a second opinion), as set forth in the preceding finding of fact (Claimant's APA, page 62; testimony of Claimant).

64. As to the right hip, Claimant's third surgery of June of 2019 greatly improved his right hip condition. The Undersigned base this finding on the fact that medical records documenting Claimant's pre-third surgery antalgic gait, including one entry stating that Claimant walking "with a bent over appearance" (Defendants' APA #10, pages 148-149). However, by October 2019, the treating surgeon (Dr. Potts) found Claimant's gait normal; Dr. Potts documented the same at the next sequential visit on January 6, 2020. The Undersigned also note that Dr. Potts found that Claimant's surgery "went great" (Defendants' APA #18, pages 196 and 199; *See also* Defendants' APA #3, page 46; Defendants' #1, pages 11 and 14; Defendants' APA #14, page 178; Defendants' APA #15, page 180; Claimant's APA, pages 43 and 45—all of which document Claimant's antalgic gait prior to the third right hip surgery; Claimant's APA, page 74).

65. Claimant reached maximum medical improvement on June 3, 2020 per the opinion of authorized physician Dr. Scott. Dr. Scott reiterated Claimant's maximum medical improvement status again on July 21, 2020. The Undersigned considered Dr. Rana's (Claimant's IME) statement that Claimant has not reached maximum medical improvement, but Dr. Rana saw Claimant in 2019. The Undersigned give greater weight to the more recent pronouncement as to maximum medical improvement status (Defendants' APA #20, pages 210 and 212-213;

Claimant's APA, pages 68-69).

66. Defendants met their burden of proof by a preponderance of the evidence that Claimant reached maximum medical improvement on June 3, 2020 for the injuries resulting from the June 15, 2017 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. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

67. The two 7% impairment ratings for the right hip are from authorized physicians. The Undersigned base this finding on the opinions of Drs. Behr and Scott (Defendants' APA #17, pages 188-189; Defendants' APA #20, pages 210 and 213).

68. Claimant does not take prescription pain medication on a regular basis. Various medical records suggest that Claimant takes no prescription pain medication whatsoever. For instance, when Dr. Frasenelli offered Claimant pain medication for his gallstones, Claimant declined (Claimant's Deposition Transcript, pages 60-61; Defendants' APA #14, page 176: "The patient is not taking any medicines aside from holistic, herbal treatments;" Defendants' APA #2, page 24; Defendants' APA #19, page 203).

69. Authorized physicians released Claimant with no restrictions for his right hip (Defendants' APA #17, pages 188-189; Defendants' APA #20, pages 211 and 213).

70. Two authorized physicians (Drs. Koch and O'Boyle) found no signs of avascular necrosis (Defendants' APA #12, page 168; Defendants' APA #15, page 185; Claimant's APA, page 62).

71. As to the right hip, Dr. Scott found normal hip motion with negative impingement sign, very prominent pain behavior, and "non-physiologic components" during the exam

(Defendants' APA #20, page 210).

72. As to permanency of the right hip, Dr. Potts (who performed the last/third hip surgery), found at the last two medical visits full range of motion, no joint instability, 5/5 strength, no tenderness to palpation, and no thigh tenderness to palpation. Claimant was doing well and having almost no pain (Defendants' APA #18, pages 196 and 199-200).

73. Defendants may stop payment of temporary total disability benefits. Defendants were entitled to stop payment of temporary total compensation effective the date of maximum medical improvement on June 3, 2020 and are entitled to a credit for the overpayment of temporary total compensation since June 3, 2020, against the award for permanent partial disability ordered herein.

74. Pursuant to § 42-9-30(17), Claimant sustained 7% permanent partial disability to the right hip. The Undersigned find that there is no disability beyond the impairment rating. This finding is made by a preponderance of the evidence, and this finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, hearing and deposition testimony of Claimant, the evidence set forth in the Findings of Fact herein, the fact that there are no restrictions assigned by Drs. Behr and Scott, and the two assigned impairment ratings of 7% by Drs. Behr and Scott. Awarding any additional permanency benefits beyond the impairment ratings would require the Undersigned to speculate, and the Undersigned decline to do so.

75. Claimant has failed to meet his burden of proof by a preponderance of the evidence 1) of the existence of an emergency prior to obtaining unauthorized treatment with Dr. Potts; and 2) that Defendants refused to provide medical care. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, the oral arguments of Claimant and counsel for

Defendants, and the evidence set forth in the Findings of Fact herein.

76. Claimant has failed to meet his burden of proof by a preponderance of the evidence that he is entitled to reimbursement for the right hip surgery and visits with Dr. Potts, subject to the Workers' Compensation fee schedule. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, the oral arguments of Claimant and counsel for Defendants, and the evidence set forth in the Findings of Fact herein.

77. Claimant is entitled to mileage for the evaluation with Dr. Glenn Scott on June 3, 2020, pursuant to the Act.

78. Any other outstanding reimbursement shall only be made for authorized treatment/expenses.

79. Defendants have met their burden by a preponderance of the evidence that no body parts/conditions—other than the right hip – are causally related to the work injury on June 15, 2017. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

80. As to future medical benefits, no further (i.e., future) medical treatment has been recommended by any authorized physician, and therefore none are ordered herein. Other than the permanency award for the right hip as ordered herein, Defendants are not required to provide any further benefits for the right hip (*e.g.,* Defendants' APA #17, pages 188-189; Defendants' APA #20, page 213).

81. Claimant has failed to prove by a preponderance of the evidence 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. This finding is based on the

evidence in the record as a whole, including but not limited to the APA submissions by Claimant and Defendants, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

82. Defendants shall receive credit for overpayment of temporary benefits paid beyond June 3, 2020.

83. Claimant's average weekly wage is $655.67, yielding compensation rate of $437.13.

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. Under § 42-1-160, Claimant sustained an injury to his right hip by accident arising out of and in the course and scope of his employment on June 15, 2017.

3. Under § 42-9-260, Defendants were entitled to stop payment of temporary compensation on June 3, 2020, the date on which Claimant reached maximum medical improvement.

4. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until June 3, 2020, 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 7% permanent partial disability to the right hip. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since June 3, 2020, pursuant to § 42-9-210.

6. Under § 42-15-60(A), Defendants are not required to reimburse Claimant for the unauthorized right hip surgery and visits with Dr. Potts.

ORDER

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

IT IS HEREBY ORDERED that the Order of the Hearing Commissioner filed in the above-captioned matter on November 25, 2020, is hereby affirmed in part, and reversed in part.

IT IS, THEREFORE, ORDERED that the Application of Employer/Carrier to stop payment of temporary total compensation is hereby granted, effective June 3, 2020, the date on which Claimant reached maximum medical improvement.

IT IS HEREBY ORDERED that no body parts/conditions—other than the right hip – are causally related to the work injury on June 15, 2017.

IT IS FURTHER ORDERED that as a result of Claimant's accidental injury occurring on June 15, 2017, he has sustained 7% permanent partial disability to the right hip, for which Defendants shall pay to Claimant 19.6 weeks of compensation, at the compensation rate of $437.13 per week, less a credit or offset to Defendants for the overpayment of temporary total compensation after June 3, 2020.

IT IS FURTHER ORDERED that Claimant reached maximum medical improvement on June 3, 2020, and 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 is entitled to mileage for the evaluation with Dr. Glenn Scott on June 3, 2020, pursuant to the Act.

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IT IS FURTHER ORDERED that the portion of the Hearing Commissioner's Order requiring Defendants to reimburse Claimant for the unauthorized right hip surgery and visits with Dr. Potts, subject to the Workers' Compensation fee schedule, is hereby reversed.

No hearing costs are assessed in this instance.

AND IT IS SO ORDERED.

AFFIRMED IN PART
AND REVERSED IN PART

CONCUR:

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Avery B. Wilkerson, Jr., Commissioner

T. Scott Beck, Commissioner

Commissioner Aisha Taylor