

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

SC Court of Appeals

Appellate Case No. 2021-000683

Thomas Contreras, Claimant, ... Appellant,

v.

St. John's Fire District Commission, Employer, and
State Accident Fund, Carrier, ... Respondents.

**AMENDED
RECORD ON APPEAL**

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

BEFORE THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

W.C.C. FILE NO. 082264D

THOMAS CONTRERAS,

Claimant,

v.

CONSENT ORDER

ST. JOHNS FIRE DISTRICT
COMMISSION,

Employer,

STATE ACCIDENT FUND,

Carrier.

That this matter was set on Form 50/51 and Form 21. Prior to the hearing, the parties reached the following agreement:

1. That the Claimant has an admitted injury to his right shoulder and has been treated by Dr. DeMarco for his shoulder;

2. That the Claimant is not at maximum medical improvement;

3. That the Claimant is authorized to return to Dr. DeMarco for additional treatment and surgery;

4. That this file shall be returned to general files and shall be reset at the request of either party.

IT IS SO ORDERED.

c *Susan S. Barden* _____ ation
Susan S. Barden


Margaret M. Urbanic, Esquire
Attorney for Employer/Carrier


Gary Christmas, Esquire
Attorney for Claimant

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

002

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0822640

Thomas Contreras,)
)
 Claimant,)
)
 vs.)
)
 St. John's Fire District,)
)
 Employer,)
 and)
 State Accident Fund,)
 Carrier, Defendants.)

ORDER & AWARD

HEARING:

Held on May 14, 2013, in Summerville, South Carolina, per notices timely and properly served upon all parties of interest.

APPEARANCES:

Gary Christmas, Esquire, Howell & Christmas, LLC, Charleston County, South Carolina, appearing on behalf of Claimant.

Margaret M. Urbanic, Esquire, Clawson & Staubes, LLC, Charleston County, South Carolina, appearing on behalf of Defendants.

PURPOSE OF HEARING:

To determine issues pursuant to Forms 50 and 51.

DECISION & ORDER:

The Honorable Gene McCaskill

FILED:

August 27, 2013.

STIPULATIONS

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. Notice of the hearing was properly and timely served upon all parties in interest.
3. Venue, set in Charleston County, is proper as agreed by the parties.
4. The Claimant sustained admitted injuries to his right shoulder.

STATEMENT OF THE CASE

This matter is before the Commission pursuant to the Claimant's Form 50 and defendants' Form 51. Claimant contends that (1) he sustained permanent partial wage loss pursuant to S.C. Code Ann. §42-9-20 as a result of sustaining injuries to his right shoulder, right upper extremity, right bicep and right clavicle as a result of his October 8, 2008, accident at work; (2) he was dually employed at the time of his accident at work and therefore, is entitled to a higher average weekly wage of \$1,174.20, with a corresponding compensation rate of \$782.83, which equates to the maximum compensation rate for the year of 2008, in the amount of \$661.29; (3) the injury to his right shoulder affects his right upper extremity and right bicep; (4) he is entitled to temporary partial wage loss from January 21, 2011, through May 15, 2011; (5) he is entitled to permanent partial wage loss from May 25, 2011, through May 10, 2013; (6) is seeking a lump sum payment of any award; (6) is seeking apportionment language under James vs. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 to be placed in the Order of his case; (7) is entitled to lifetime medical care and treatment and is also seeking past and future medical care and treatment pursuant to 42-15-60 and/or Dodge vs. Bruccoli, Clark, Layman, Inc., 334 SC 574, 514 SE2d 593 (Ct. App. 1999);

and finally, (8) he is entitled to reimbursement for travel to and from causally related medical treatment and he is entitled to reimbursement for any and all out of pocket expenses.

By defendants Form 51 – Employer’s Answer to Request for Hearing, defendants only admit Claimant’s injuries to his right shoulder and denied any and all other body parts to include, right upper extremity, right bicep and right clavicle. Defendants also deny that (1) Claimant suffers from wage loss pursuant to S.C. Code Ann. §42-9-20; and (2) that he is not entitled to his award in lump sum and should receive same in weekly benefits.

APA SUBMISSIONS AND EXHIBITS

Claimant by and through his counsel, provided Submissions as required by Regulation 67-612. The Submissions were entered into evidence pursuant to the Administrative Procedures Act and received without objection. The APA Submissions are as follows:

On Behalf of Claimant:

<u>APA</u>	<u>NOTICE OF PHYSICIAN/OTHER</u>	<u>DATE OF REPORT</u>	<u># OF PAGES</u>
1	Jean Hutchinson, Vocational Evaluator	10/12/11	8 (1-8)
2	Dr. Charles Hughes, Hughes Orthopaedics	10/6/11	6 (9-14)
3	Dr. James DeMarco	10/24/12 - 8/6/10	39 (15-53)
4	Diagnostic Medical Reports	3/29/12 - 3/8/06	24 (54-73.8)
5	Dr. David Jaskwhich	5/5/10 - 12/19/08	11 (78-88)
6	Dr. James Spearman	12/3/08	1 (89)

7	Atlantic Occupational Health	11/19/08 - 10/14/08	3 (90-93)
8	Roper St. Francis	03/24/11 - 11/17/05	42 (94-135)
9	Physical Therapy	7/19/12 - 10/30/08	98 (136-224)

Exhibits

<u>APA</u>		<u>DATE</u>	<u># OF PAGES</u>
10	State Budget and Control Board and Other Selected Documents From Claimant's Personnel File	2011 - 2008	40 (225-264)
11	Claimant's Wage Information	2012 - 2007	5 (265-269)
12	Claimant's Form 20, from His Second Employer, AMF Bowling Centers, Wherein at the Time of His Workers' Compensation Accident He Had an Average Weekly Wage of \$1180.72, with a Corresponding Compensation Rate of \$120.49	2008-2007	2 (269.5-271)
13	Claimant's Form 20 from His Second Employer, AMF Bowling Centers, Wherein Claimant Now Has an Average Weekly Wage of \$60.65, with a Corresponding Compensation Rate of \$40.44	2013-2012	2 (272-273)
14	Claimant's Analysis for His Combined Average Weekly Wage and Compensation Rate and Analysis for Back Due Temporary Partial and/or Permanent Partial Benefits	2013-2011	26 (274-299)

On Behalf of Defendants:

<u>APA</u>	<u>NOTICE OF PHYSICIAN/OTHER</u>	<u>DATE OF REPORT</u>	<u># OF PAGES</u>
1	Dr. David Jaskwhich	12/12/08 – 10/28/09	00001-00010
2	Dr. James DeMarco	9/24/10 – 8/7/12	00011-00023
3	Charleston Physical Therapy	10/29/08 – 10/30/08	00024-00027
4	Roper Hospital	10/11/10	00028-00044
5	St. Francis Hospital	10/8/08	00045-00051
6	Dr. Donald Olofsson	8/26/09	00052-00054
7	Dr. James Taggart	1/20/09	00055
8	Dr. James DeMarco Physician's Statement 14B	9/4/12	00056

Exhibits

<u>APA</u>		<u>DATE</u>	<u># OF PAGES</u>
A	Claimant's Deposition 4/29/13	4/29/13	
B	Form 19	12/13/06	

EVIDENCE OF THE CASE

The record includes the testimony of Claimant, Thomas Contreras. Further, Claimant and defendants submitted medical records into evidence through APA Submissions and also submitted Exhibits.

Testimony of Claimant, Thomas Contreras:

Claimant was sworn in and testified that he is fifty-one (51) years of age, that he only has a high school diploma from 1979, that he does not have a four (4) year degree, does not have a two (2) year degree and does not have any technical college or training of any kind. Claimant testified that prior to his work accident that he has never worked in an office setting, has no computer training of any kind and has never been trained in Quickbooks, Excel, PowerPoint, Adobe or Outlook. Claimant testified that he has worked for employer for twenty-two (22) years and seven (7) months, that he has never had any write ups for dishonesty, that he has no criminal record and that he has no history of drug or alcohol abuse. Claimant testified that he has been married for twenty-eight (28) years and that he has two (2) children. Claimant testified that he was in the Army for four (4) years and three (3) months and that he was honorably discharged as a Class E-4.

Claimant testified that prior to working for the fire department as a firefighter that he worked for Domino's Pizza delivering pizzas and making pizzas, that he worked for Home Depot, that he worked at AMF Bowling Alley and that he also installed fireplaces. Claimant testified that all the jobs that he worked previously were physical jobs and required the use of both of his shoulders and arms. He testified that while installing fireplaces, he was required to place the fireplaces in the hole that was made for them and was also required to run pipes through the

chimney. With regard to Claimant's job at Domino's Pizza, he testified that he worked as a pizza delivery driver and that he also put the pizza boxes together. He testified that if he was helping to make pizza dough, that he would have to grab the dough, flatten the dough out and place cheese on same. Claimant testified that he does not think that he would be able to return to any of his previous jobs given the permanent work restrictions he has now which include no lifting more than twenty (20) pounds and no overhead use of the right arm. Claimant testified that he would not be able to perform any of his prior work because of the lifting requirements for said jobs, lifting overhead requirements and repetitive motion required for both of his arms.

Claimant testified that his job with the fire department as a Captain required him to perform the same type of work that every firefighter is required to perform, to include physical requirements. Claimant testified that his job as a Firefighter required him to meet physical standard NFPA, which includes policies regarding hearing, lifting and sight. Claimant testified that some of the physical requirements required by the NFPA require him to lift a one-hundred and sixty-five (165) pound dummy during physical fitness tests. Claimant testified that his job as a firefighter requires the ability to function and react quickly, calmly, and also requires physical demands that he is no longer able to perform since his work accident and injuries. With regard to Claimant's job as a Firefighter, he testified that he can no longer lift ladders, raise ladders or carry generators since his work accident. Claimant testified that he is right hand dominant.

Claimant testified that his job requires physical training and that on the day of his accident at work, he was bench pressing weights and heard a popping sound when he went upward causing injury to his right shoulder and right bicep. Claimant testified that on a pain scale of zero (0) to ten (10), zero (0) being no pain and ten (10) being the worst pain, that the pain in his right

shoulder is a seven (7), that on his worse day the pain is a seven (7), and that on his best day the pain feels like a five (5). Claimant testified that the pain in his right bicep is a seven (7), and on his best day it is a five (5). Claimant testified that he has pain and spasms in his right shoulder and that his shoulder gets very tight. Claimant testified that there is never a time that he does not feel pain into his right shoulder or right bicep and that it is always constant. Claimant testified that around the year of 2006, he injured his left shoulder at work when he was lifting weights. Claimant testified that prior to this work related accident he had no physical restrictions or limitation with regard to his ability to lift with his right shoulder and right arm.

Claimant testified that prior to this work-related accident he has never had any pain or symptoms to his right shoulder or right bicep. Claimant testified that prior to his work accident he had no problem with range of motion in his right shoulder, but that he does now because he cannot hold his shoulder in an upward position. Claimant testified that he has pain in the front and back of his right bicep and pointed to the front of his bicep near the bend of his elbow. Claimant testified that prior to his work-related accident he did not have any problems with strength in his right shoulder but that he does now because if he lifts his shoulder up same causes pain and his right bicep will spasm.

The Claimant testified that as a result of his work accident he had four (4) surgeries to his right shoulder and three (3) injections to his right shoulder. Claimant testified that he still experiences pain to his right shoulder after his four (4) surgeries and that the pain is permanent.

Claimant testified that at the time of his accident at work he was also working for AMF Bowling Alley and has worked there for about twelve (12) years. Claimant testified that after review of the Form 20 from St. John's (which reflects an average weekly wage of \$993.49, and a

corresponding compensation rate of \$662.36) and the Form 20 from AMF (which reflects an average weekly wage of \$180.72, and a corresponding compensation rate of \$120.49), that same is correct. The Claimant testified that he was terminated by St. John's on January 21, 2011. He testified that in January of 2013, his hours increased at the bowling alley from about four (4) hours to seventeen (17) hours per week and that he typically gets about fourteen (14) hours per week. He testified that he earned \$1,610.08, while working at the bowling alley from January of 2013, through March of 2013. Claimant testified that he now earns about \$9.18 an hour working for the bowling alley. He testified that when he retired as a Fire fighter he wanted to go into a manager position at the bowling alley. Claimant testified that when the managerial position opened up at the bowling alley that Claimant was not hired for same because the employer gave same to another manager who already lived in Charleston. Claimant testified that if the bowling alley would have tried to give him a chance to perform that job that he would have tried same. Claimant testified that at the time of his work accident he also operated snack machines which were located in fire stations. Claimant testified that he has performed this work since 1995 and is not claiming an additional average weekly wage or compensation rate. Claimant testified that he has not made any money on the snack machines and that he has actually lost money on same because of the injury to his shoulder. Claimant testified that he owns about six (6) snack machines that he takes care of which are located in fire stations and that he delivers the snacks to the fire stations and restocks the machines. Claimant testified that he has broken even on this business and has not incurred any type of monetary profit for same. He testified that he devotes about three (3) hours a week to his snack machine business and that there is a potential prospect for snack machines to be turned into a real income for him. Claimant also testified that he also

helps take care of his two (2) year old grand-daughter, while his daughter is in school, on an occasional basis when his daughter calls in.

Claimant testified that he is still trying to obtain full employment even though he is still working for the bowling alley. He testified that he has tried to obtain work at Wal-Mart and CarMax and that he also applied for two federal jobs but that no company has hired him. Claimant testified that with regards to his failed attempts to find work that he did not get the job at Wal-Mart because he took a test and did not pass same. Claimant testified that he was looking into a job with the Federal Government in the immigration department because he is fluent in Spanish and that said salary ranged from \$58,000 to \$90,000.00. Claimant testified that the other job for the Federal Government was a finance clerk position which had a salary of \$39,000.00 to \$40,000.00 per year, and that he has not heard back with regards to either of those federal jobs. Claimant testified that the federal jobs would be sit down behind the desk type positions, and that he thinks that he can do that type of work sitting behind a desk. Claimant testified that he has done everything he knows to do in order to try and find work fulltime but that he has not been hired. Claimant testified that he is earning less money now than at the time of his work related accident. He testified that he has tried to obtain fulltime employment since being terminated from the fire department in January of 2011, but that hat he has not been hired.

Claimant testified that if he were physically able to work at the fire department that he would but that that he is not physically able to do so because he would not be able to pass the physical agility test due to his work restrictions and limitations. Claimant testified that if Wal-Mart, CarMax, or any Federal job became available and he was hired for any of them that he

would try his best to perform those jobs. Claimant testified that with regards to the jobs at Wal-Mart and CarMax that he is not sure if he would really be able to perform those jobs but that he does not know unless he tries. Claimant testified that if there is a job available that was within his permanent work restrictions that he would be working for same now but that no such job has been made available to him.

Claimant testified that prior to his work related accident he used to vacuum, dust, and clean windows at his home but that he cannot do same anymore because it causes pain in his right shoulder and bicep. Claimant testified that he does not have any problems dressing himself. Claimant testified that he is able to perform some yard work at his home such as raking leaves, washing the car and occasionally doing the dishes. He testified that he tried trimming and cutting the bushes in his yard but that he is was not able to finish same. Claimant testified that he is right hand dominant but that since his work accident he drives left handed and does not keep his right hand on the steering wheel anymore because moving it back and forth causes pain in his right shoulder and right bicep. Claimant testified that he would like to continue the treatment that authorized treating physician, Dr. DeMarco, has recommended for him, to include medications, pain management, injections, tens unit, repeat diagnostics, physical therapy and office visits.

Claimant testified that he has not been back in to see Dr. DeMarco since August of 2012, and that he is not taking any pain medication currently. Claimant testified that he signed up for a gym membership but that he has not gone for a long period of time. Claimant testified that he thought about going back to school to study in human resources but he has not been able to do so due to financial reasons. Claimant testified that he has never applied for Social Security Disability.

With regards to Claimant raking the leaves, he testified that prior to the accident at work, he never had any problems with pain in his shoulder while doing that. Claimant testified that prior to his work accident, he did not have any problems with doing the dishes, washing the car or yard work, but that he has problems doing those activities now, and that he cannot perform them pain free. Claimant testified now that when he rakes, his shoulder moves back and forth and it gets stiff and causes his bicep to hurt. He testified that when he rakes the leaves he has to take breaks, and he breaks every thirty (30) to forty-five (45) minutes. Claimant testifies that he does not have the money or ability to pay to go get educated in human resources and that even if he was able to obtain training for same, that he is not sure that he would be able to do it. Claimant testified that it was his plan to try and find a fulltime job, since he was terminated in January 2011, but that it has been two (2) years since he was terminated, and he has still not been able to find work fulltime.

During his employment with employer, Claimant testified that he received an award from employer for the most improved over a one year span and that he was also given a Citizens Award from Bank of America. He testified that he was promoted to Captain of the Fire Department.

Claimant testified that he is in charge of his own bank accounts, handles his own financial affairs and makes his own decisions for himself regarding food, clothing and shelter. He testified that he has never been deemed by any court to be incompetent.

Claimant testified that he injured his left shoulder at work in 2006, when he was lifting weights at the fire station, that he filed a workers' compensation claim for same, and that he received \$19,000.00 for the injury to his left shoulder. Claimant testified that after his left

shoulder injury at work he was able to return to work fulltime and full duty and was able to perform all of job requirements.

REVIEW OF MEDICAL EVIDENCE

A review of the medical evidence reveals that the Claimant was evaluated by Jean Hutchinson on October 10, 2011. Vocational Specialist opines on October 12, 2011, that "[I]n considering these aforementioned factors, approaching advanced age, high school level of education with training through the Fire Department, past work experience as a fire department chief, bowling alley clerk, vending machine tender, and landscape laborer, and significant physical limitations and ongoing pain of more than three years' duration, I am of the opinion that [Claimant] is unable to perform the required job tasks of his former work as a fire department chief, is unable to return to his past employment as a landscape laborer, and does not have transferable skills to perform other work that is within his residual functional capacity. I am of the opinion that [Claimant] is able to continue working as a bowling alley clerk and he indicated that he earns approximately \$8.00 per hour and is currently working five hours per week. He noted that he continues to work as a vending machine tender (vending machines in fire stations) once per month. [Claimant] continues to be employed on a part-time basis, limited basis despite his injury and subsequent physical limitations and restrictions. This continued employment is contingent upon accommodations by the current employer upon which [Claimant] cannot count on for which there is no contract. These accommodations may end at any time if the accommodated situation is not of benefit to the employer. [Claimant] cannot expect this type of accommodation or treatment by subsequent employers. I am of the opinion that he has therefore sustained a loss as to his competitiveness and access to the open job market when compared to

other non-injured job seekers. With the restrictions placed on him by his physicians, he is appropriate for selected work at the sedentary exertional level. [Claimant is fortunate to have an understanding employer who has tailored a job to meet his physical restrictions. Should this job cease, should his supervisor or job duties change, or should his physical problems become worse, I am of the opinion that [Claimant] would be in jeopardy with regard to locating suitable employment and would incur a loss of future earning capacity. [Claimant] continues to experience significant physical limitations and pain. Should these issues resolve to the point where he has more function and stamina, he may be appropriate for further job placement in sedentary positions. [Claimant] can expect to earn at or near minimum wage (\$7.25 - \$8.00 per hour) and would continue to experience a significant loss of earning capacity" (APA #1).

A review of the medical evidence reveals that the Claimant underwent an independent medical evaluation by Dr. Charles Hughes on October 6, 2011. Dr. Charles Hughes opined on October 6, 2011, that most probably and to a reasonable degree of medical certainty (1) Mr. Contreras' injury to his right shoulder, right upper extremity, right bicep, and clavicle, are caused by and/or aggravated by the injuries he sustained in his October 8, 2008 accident at work; (2) Claimant's injury to his right shoulder affects his right upper extremity by way of pain and tenderness into his right biceps and clavicle as a result of his October 8, 2008 accident at work; (3) Claimant has permanent physical work restrictions to his right shoulder, right upper extremity, right bicep and clavicle as a result of the injuries that he sustained at work on October 8, 2008, to include no climbing, no pushing, no horizontal lifting, no overhead activities, no pulling, and no lifting more than ten pounds with the right arm; (4) Claimant has permanent physical work restrictions to his right shoulder, right upper extremity and right bicep to include no more pushing

than one (1) minute at a time, no pulling for one (1) minute at a time, no horizontal lifting for one (1) minute at a time; and (5) That Claimant sustained a fourteen (14%) percent permanent impairment to his right shoulder and an additional ten (10%) percent permanent impairment to right upper extremity for his distal clavicle AC joint injury (APA #2).

A review of the medical evidence reveals Claimant was evaluated by authorized treating physician Dr. James DeMarco from August 6, 2010, through October 24, 2012. Via a 14B – Physician’s Statement, dated September 4, 2012, and May 16, 2011, Dr. DeMarco opines that Claimant will not be able to return to his prior occupation as a result of the injuries he sustained at work on October 8, 2008. He further opines on September 4, 2012, that Claimant sustained a nine percent (9%) permanent impairment to his right upper extremity which converts to a fifteen percent (15%) permanent impairment to his right shoulder as a result of his October 8, 2008, accident at work. He opined on May 16, 2011, that Claimant sustained an eleven percent (11%) permanent impairment to his right shoulder as a result of this October 8, 2008 accident at work. He opined on October 24, 2012 and October 8, 2012 that most probably and to reasonable degree of medical certainty; (1) Claimant’s injuries to his right shoulder and right upper extremity, (right bicep) are caused by and/or aggravated by the injuries that he sustained in his October 8, 2008 accident at work; (2) That Claimant’s injuries to his right shoulder affects his right upper extremity by way of radiating pain and tenderness into his right bicep as a result of his October 8, 2008 accident at work; and (3) Claimant will need continued medical care and treatment to his right shoulder, right upper extremity, right bicep and clavicle to include medications, pain management clinic, injections, tens unit, repeat diagnostic, physical therapy, and follow up visits with his office which will tend to lessen Claimant’s period of disability. On August 7, 2012,

Claimant was placed at maximum medical improvement. Dr. DeMarco opines on August 7, 2012, that Claimant has work restrictions to include no lifting more than 40 pounds with both hands, no lifting more than 20 pounds with the right arm overhead and no carrying or pushing more than 50 pounds with both hands. On August 7, 2012, he opines that Claimant sustained a nine percent (9%) permanent impairment to his right upper extremity (Dr. DeMarco opined that this breaks down to three percent (3%) for biceps atrophy, an additional three percent (3%) for loss of internal rotation; an additional two percent (2%) for loss of forward flexion and an additional one percent (1%) for pain and muscle spasm. He opines that Claimant may require future treatment consisting of repeat corticosteroid injections, anti-inflammatories and/or physical therapy if Claimant's condition regresses (APA #3).

A review of the medical evidence reveals that Claimant underwent four (4) surgeries to his right shoulder as a result of his accident at work. Claimant underwent Surgery 1 to his right shoulder January 29, 2009, for right shoulder pain and superior labral tear with bursitis, right shoulder superior labral tear, anterior-posterior consisting of right shoulder arthroscopy with extensive debridement of bursa, synovium, labrum and bone, and arthroscopic repair of superior labrum anterior-posterior tear. Claimant underwent Surgery 2 to his right shoulder October 1, 2009, for right shoulder pain and impingement status post labral repair consisting of right shoulder arthroscopy with extensive debridement of suture, labrum, bursa, and bone. Claimant underwent Surgery 3 on October 11, 2010, for right shoulder thickening of middle glenohumeral ligament and superior coracohumeral ligament, right shoulder intra-articular synovitis, right shoulder type one (1) superior labrum anterior to posterior tear, right shoulder subacromial impingement syndrome and bursitis, and right shoulder acromioclavicular joint osteoarthritis

consisting of right shoulder subacromial decompression and bursectomy, right shoulder acromioclavicular joint resection, and right shoulder major debridement of a superior labrum anterior to posterior tear, intrarticular synovitis and release of middle glenohumeral and superior coracohumeral ligaments and rotator interval tissue. Claimant underwent Surgery 4 to his right shoulder on March 29, 2012, for right shoulder coracoid impingement, right shoulder intra-articular synovitis adhesions, right shoulder subacromial impingement with adhesions, right shoulder long headed biceps tendinopathy, consisting of right shoulder major debridement of intra-articular synovitis with coracoid decompression, right shoulder subacromial decompression and bursectomy, and right shoulder long head of the biceps tenodesis. An MRI of Claimant's right shoulder dated December 12, 2008 revealed supraspinatus tendinitis, probable superior labral tear, and moderate AC joint arthrosis. An MRI of Claimant's right shoulder dated August 26, 2009, revealed mild articular-sided irregularity of the supraspinatus and infraspinatus tendons suggesting low grade articular-sided partial tear versus prior resurfacing, mild tendinopathy of the supraspinatus and infraspinatus tendons, irregularity of the glenoid labrum from the 9 o'clock through the 5 o'clock position suggesting prior repair or resurfacing versus a nondisplaced labral tear, mild tendinopathy of the intra-articular portion of the biceps tendon, mild to moderate osteoarthritis of the acromioclavicular joint and mild osteoarthritis of the glenohumeral joint, and postoperative changes (APA #4).

A review of the medical evidence reveals that Claimant was evaluated by authorized treating physician, Dr. David Jaskwhich, from December 19, 2008, through May 5, 2010. On May 5, 2010, Dr. Jaskwhich opines the Claimant has reached maximum medical improvement and sustained a ten percent (10%) permanent impairment rating to the right shoulder which was

based upon the fact Claimant has consistent pain, soreness, and weakness in the right shoulder. He opines that Claimant has permanent work restrictions of no lifting more than twenty-five (25) pounds, lifting overhead and occasional lifting fifty (50) pounds at waist level, and no more lifting than fifty (50) pounds in general. Dr. Jaskwhich opines that given those permanent work restrictions same would include Claimant from being able to pass his physical and agility test for work which requires him to be able to drag one hundred seventy-five (175) pounds (APA #5).

A review of the medical evidence reveals that Claimant was evaluated by Dr. James Spearman on December 3, 2008. Claimant present to Dr. Spearman on December 3, 2008 with right shoulder pain, and right shoulder weakness in abduction of supraspinatus, crepitus and pain on ROM. Dr. Spearman recommended that Claimant undergo an MRI and kept Claimant on light duty work restriction until his return (APA #6).

A review of the evidence reveals that Claimant was treated by Atlantic Occupational Health from October 14, 2008, through November 19, 2008. On November 9, 2008, Claimant was referred to an orthopaedic specialist for his right shoulder injuries. He was diagnosed with a right shoulder strain. On October 29, 2008, and on October 14, 2008, Claimant was referred for physical therapy (APA #7).

A review of the medical evidence reveals that Claimant was evaluated by Roper St. Francis Hospital from November 17, 2005, through March 24, 2011. On October 28, 2008, Claimant reported to the St. Francis Hospital emergency room with right shoulder pain which came from lifting weights while working. Claimant was diagnosed with a soft tissue injury to the posterior right shoulder and provided medications for same. Claimant was also diagnosed with bicipital tendonitis of the right shoulder (APA #8).

A review of the medical evidence reveals that Claimant underwent physical therapy from October 30, 2008, through July 19, 2012. Claimant treated at physical therapy for right shoulder supraspinatus and infraspinatus tendons. Claimant was released from physical therapy at Charleston Physical Therapy on July 9, 2012 after achieving all goals. Claimant also underwent physical therapy with Rehabilitation Centers of Charleston and was discharged on September 9, 2010 (APA #9).

REVIEW OF EXHIBITS

A review of the Exhibits submitted by Claimant are as follows: (1) State Budget and Control Board and Other Selected Documents From Claimant's Personnel File; (2) Claimant's Wage Information; (3) Claimant's Form 20, from His Second Employer, AMF Bowling Centers, Wherein at the Time of His Workers' Compensation Accident He Had an Average Weekly Wage of \$1180.72, with a Corresponding Compensation Rate of \$120.49; (4) Claimant's Form 20 from His Second Employer, AMF Bowling Centers, Wherein Claimant Now Has an Average Weekly Wage of \$60.65, with a Corresponding Compensation Rate of \$40.44; and (5) Claimant's Analysis for His Combined Average Weekly Wage and Compensation Rate and Analysis for Back Due Temporary Partial and/or Permanent Partial Benefits. A review of the Exhibits submitted by defendants are as follows: (1) Claimant Deposition 4/29/13; and (2) Form 19 12/13/06. ~

FINDINGS OF FACT

Based upon the greater weight of the evidence, including the testimony of Claimant, Thomas Contreras, the medical reports, restrictions, and other documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act, the Commission file

relative to this claim, and the credibility of all the evidence and testimony submitted, this Commissioner therefore makes the following findings of fact:

1. That, Claimant, Thomas Contreras, and employer, St. Johns Fire District Commission (hereinafter "St. Johns"), were subject to the South Carolina Workers' Compensation Act, at the time of the accidental injury.
2. That, the relationship of employer/employee existed between Claimant, Thomas Contreras, and employer, St. Johns, at the time of Claimant's work-related accident.
3. That, I find, that on or about October 8, 2008, Claimant suffered injury by accident, arising out of in the course and scope of employment, wherein he injured his right shoulder and right upper extremity (Authorized treating orthopedic surgeon Dr. James DeMarco APA #3, pp. 16-17; Orthopedic surgeon Dr. Charles Hughes APA #2, p. 9).
4. That, Defendants have provided the Claimant medical care and treatment for his injuries, including four (4) right shoulder surgeries.
5. That, authorized treating orthopaedic surgeon, Dr. James DeMarco, opines on his 14-B medical statements dated September 4, 2012, and May 16, 2011, that Claimant is unable to return to work at his past employment. (defendants' APA #8, p. 00056 and APA #3, p.15).
6. That, at the time of Claimant's work accident, he was working for two (2) employers; (a) St. Johns; and (b) AMF Bowling Centers (hereinafter "AMF") (APA #11, 12, and 13; and Hearing Tr. p. 25, ll. 20-22).

7. That I find that Claimant's combined earnings from his dual employment with St. Johns and AMF equates to an average weekly wage of one-thousand one hundred seventy four dollars and twenty cents (\$1,174.20) and a corresponding compensation rate of six-hundred sixty one dollars and twenty nine cents (\$661.29) (the maximum compensation rate for 2008 which is the year in which Claimant was injured on the job) (APA 11, pp. 265-269 and APA #12, pp. 269.5-271).
8. That, Claimant's job at the St. Johns fire department, which he held for over twenty-two (22) years, is physical by description (APA #10, pp. 228-230).
9. That, Claimant's last day of work with employer St. Johns was on January 21, 2011, after he was approved for early retirement due to his final physician's report stating that he was unable to return to work as a firefighter (APA #10, p. 231).
10. That, all of Claimant's jobs, prior to his work with the fire department, were also physical in nature (Hearing Tr. p. 17, l. 18-p. 18, l. 23).
11. That, since being unable to return to work with employer St. Johns, Claimant has continued to work as a desk clerk at the AMF bowling alley for fourteen (14) hours per week (Hearing Tr. p. 27, ll. 1-5 and p. 35, ll. 13-15).
12. That, since being unable to return to work with employer St. Johns, Claimant has actively searched for other employment. Claimant applied for a management position at the AMF bowling alley where he works when it became available; however, despite Claimant having worked at the bowling alley for twelve (12)

- years, he did not get the job as manager of the bowling alley (Hearing Tr. p. 35, ll. 16-24 and p. 43, ll. 12-25).
13. That, Claimant also has looked for other employment, took a test at Wal-Mart and failed said test and that he applied at CarMax, but that he was not hired. Claimant also applied for "a couple" of Federal jobs, but that he has yet to get an answer from any of these job applications (Hearing Tr. p. 28, l. 14-p. 29, l. 11; p. 36, l. 3-p. 37, l. 11; p. 47, ll. 6-13; and p. 48, ll. 6-23).
 14. That, Claimant also has a small vending machine route which he works once per month. Those machines are located in area fire houses. Claimant testified that he makes little or no income from this route (Hearing Tr. p. 27, l. 21-p. 28, l. 13 and p. 37, l. 18-p. 39, l. 1).
 15. That, the Claimant was fifty-one (51) years old at the time of the hearing.
 16. That, Claimant is a high school graduate (1979).
 17. That, Claimant is married with two (2) children.
 18. That, Claimant is a US Army veteran who was honorably discharged.
 19. That, pursuant to the opinion of authorized treating orthopaedic surgeon, Dr. James DeMarco, Claimant cannot return to his employment with the employer St. Johns (APA #3, p. 15 and defendants APA #8, p. 00056). Authorized treating surgeon DeMarco's opinion that Claimant cannot return to his past employment is corroborated by the uncontroverted and only vocational assessment in the record provided by certified rehabilitation counselor, Jean R. Hutchinson (APA #1, pp. 7-8). Vocational expert, Hutchinson, is of the opinion that Claimant cannot return

to his past employment and that Claimant will now only be able to earn at or near minimum wage (APA #1, pp. 7-8). Furthermore, orthopaedic surgeon, Dr. Charles Hughes, also opines that Claimant can return to his prior employment (APA #2, p. 14).

20. That, defendants did not choose to submit a vocational evaluation in this case.

21. That, based on the record as a whole, the greater weight of the evidence, leads to the conclusion that Claimant cannot return to his previous employment with employer, St. Johns. Additionally, I find that Claimant, as he is today, cannot and will not find similar employment with another fire department.

22. That, given the Claimant's present physical condition, past work experience, age, education and skill set (he has no computer skills), I find that Claimant can only expect to earn minimum wage at his employment going forward.

23. That, based on the record as a whole, I conclude that the greater weight of the evidence, dictates that the Claimant has suffered permanent partial wage loss, pursuant to S.C. Code Ann. §42-9-20. Accordingly, I further find that Claimant is entitled to the compensation computation as allowed pursuant to the statute.

24. That, prior to Claimant's work accident and injuries, he was able to earn and had an average weekly wage of one-thousand one hundred seventy four dollars and twenty one cents (\$1,174.21) per week. That, as a result of Claimant's work related injuries, I find that Claimant is now only able to earn minimum wage (\$7.25 x 40 hours per week) which equates to two-hundred and ninety dollars (\$290) per week.

25. That, I find that, given Claimant's pre-accident average weekly wage and earning capacity was one-thousand one hundred seventy four dollars and twenty one cents (\$1,174.21), and given that I find that Claimant's post work accident earning capacity is only two-hundred and ninety (\$290.00) dollars per week, I find that Claimant has suffered and will continue to suffer wage loss in the amount of eight hundred eighty eight dollars and twenty one cents (\$884.21) per week (Claimant's Average Weekly Wage of \$1,174.21 minus his new post accident wages of \$290.00 per week).

26. Accordingly, pursuant to S.C. Code Ann. §42-9-20, Claimant is entitled to, and defendants shall pay, an award of permanent partial wage loss in the amount of sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of Claimant's eight-hundred eighty four dollars and twenty one cents (\$884.21) loss of earning capacity per week which equates to five-hundred eighty nine dollars and forty seven cents (\$589.47) per week (which equates to a total amount of \$153,262.20). Furthermore, I find that Claimant is entitled to said five-hundred eighty nine dollars and forty seven cents (\$589.47) per week for a total of two-hundred and sixty (260) weeks (Pursuant to S.C. Code Ann. §42-9-20 Claimant can receive 340 weeks of compensation for wage loss). By a separate finding in this Order, Claimant is entitled to eighty (80) weeks of Temporary Partial Wage Loss. Accordingly, Claimant has two-hundred and sixty (260) weeks of partial wage loss available to him under the statute for permanent partial wage loss (340 weeks minus 80 weeks). Accordingly, Claimant is entitled to, and defendants shall pay Claimant one-hundred fifty three thousand

two hundred sixty two dollars and twenty cents (\$153,262.20 [wage loss of \$589.47 times 260 weeks]) to Claimant for permanent total wage loss. Again, said benefits are not to be paid to Claimant in lump sum and shall be paid to Claimant in the amount of five-hundred eighty nine dollars and forty seven cents (\$589.47) per week over a 260 week period.

27. That, Claimant is entitled to a lump sum payment for any and all past due temporary partial disability benefits due.

28. That, furthermore, Claimant is entitled to, and that Defendants shall pay Claimant, temporary partial wage loss in the amount of sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of his average weekly wage of one-thousand one hundred seventy four dollars and twenty one cents (\$1,174.21) minus the actual amount of wages that he earned for each week worked as demonstrated by Claimant's Exhibit APA #13, p. 274-276 (average weekly wage minus actual earnings) for eighty (80) weeks for the period of January 21, 2011 through August 7, 2012. Based upon Claimant's pre-accident wages he should have earned ninety-three thousand nine hundred thirty six dollars and eighty cents (\$93,936.80) during said eighty (80) weeks; however, his actual earnings were only two-thousand seven hundred and one dollar and one cent (\$2,701.10) during said eighty (80) weeks. Accordingly, Claimant is entitled to, and defendants shall pay Claimant, sixty-thousand eight hundred twenty three dollars and eighty cents (\$60,823.80) for his past temporary partial wage loss over eighty (80) weeks ($\$93,936.80 \text{ minus } \$2,701.10 = \$91,235.70$; two-thirds of $\$91,235.70 = \$60,823.80$).

29. That, with regard to Claimant's permanent partial wage loss award, the Claimant is only entitled to a lump sum payment of said award as it applies to the payment of Claimant's attorney's fees and case costs and the remaining benefits shall be paid to him in weekly installments. Accordingly, subject to Commission approval of Claimant's Form 61 and Form 61A, Claimant's attorney shall be entitled to \$71,362.00 in attorney's fees (this is based upon 1/3 of Claimant's total award in the amount of \$214,086.00 [Claimant's award of \$153,262.20, for future wage loss, divided by three = attorney's fees of \$51,087.40; plus Claimant's award of \$60,823.80, for permanent partial wage loss, divided by three = attorney's fees of \$20,274.60 = total attorney's fees of \$71,362.00]), and \$3,381.77, for case cost reimbursement.

30. That, Claimant shall be entitled, and Defendants shall pay, for Claimant's past causally related medical care and treatment. Medical payment shall be made by the Defendants to the medical provider, the Claimant, or his insurance carrier, or to Medicare/Medicaid, if those expenses have been previously paid by them.

31. That, I find that authorized orthopedic surgeon, Dr. James DeMarco, opined on "check the box" forms dated October 8, 2012, and October 24, 2012, that Claimant is in need of future medical care and treatment in the form of medications, pain management clinic, injections, tens unit, repeat diagnostic imaging, physical therapy and follow up office visits as a result of his August 8, 2008, accident at work. He further opined that said medical treatment would tend to lessen Claimant's period of disability. Dr. DeMarco, does not opine on his

14-B issued on May 16, 2011, that Claimant will need future medical care and treatment; however, he opines differently on his October 8, 2012, and October 24, 2012, check the box reports and I give more weight to the opinions given in said reports given that they were provided at a later date than the 14-B, were provided closer to Claimant's hearing date and more accurately reflect Claimant's current condition and need for future medical care and treatment.

32. That Claimant is entitled to, and Defendants shall pay, for all causally related future medical care and treatment for Claimant pursuant to S.C. Code Ann. §42-15-60, Dodge vs. Bruccoli, Clark, Layman, Inc., 334 SC 574, 514 SE2d 593 (Ct. App. 1999) and any other authority under the Act as I find that said medical treatment will tend to lessen Claimant's period of disability.

33. That Claimant reached maximum medical improvement as of August 7, 2012.

34. That I find that Claimant is entitled to the following allocation of his benefits of \$214,086.00, pursuant to James vs. Anne's 390 S.C. 188, 701 S.E.2d 730 and Utica Mohawk Mills vs. Orr 227 S.C. 226, 87 S.E.2d 589 (Ct. App. 2006):

- a. \$78,518.43 in compromise of disputed future disability benefits at the rate of \$55.10 per week commencing May 14, 2013, for a period of 27.40 years; representing Claimant's life expectancy pursuant to Section 19-1-150 of the S.C. Code of Laws and pursuant to Section 42-9-10 and 42-9-20 of the S.C. Code of Laws as interpreted by the S.C. Supreme Court decision of James vs. Anne's 390 S.C. 188, 701 S.E.2d 730 and Utica Mohawk Mills vs. Orr 227 S.C. 226, 87 S.E.2d 589 (Ct. App. 2006).

- b. \$71,362.00 as attorney's fees per written agreement between Claimant and attorney.
- c. \$3,381.77 in cost advances and expenses.
- d. \$0.00 towards the payment of future medical benefits.
- e. \$60,823.80, for past temporary partial wage loss.

CONCLUSIONS OF LAW

1. That this case is governed by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That S.C. Code Ann. 42-1-40 is applicable in defining "average weekly wages."
3. That S.C. Code Ann. 42-1-100 is applicable in defining compensation.
4. That S.C. Code Ann. 42-1-120 is applicable in defining disability.
5. That S.C. Code Ann. 42-1-130 is applicable in defining employee.
6. That S.C. Code Ann. 42-1-140 is applicable in defining employer.
7. That S.C. Code Ann. 42-1-150 is applicable in defining employment.
8. That S.C. Code Ann. 42-1-160 is applicable in defining injury and personal injury.
9. That S.C. Code Ann. 42-9-10 is applicable in defining "the amount of compensation for total disability."
10. That S.C. Code Ann. 42-9-30 is applicable in determining "the amount of compensation and period of disability" for injuries.
11. That S.C. Code Ann. 42-15-60 is applicable in determining "medical, surgical, hospital and other treatment."

12. That S.C. Code Ann. 42-70-40 is applicable in "governing the conduct of hearing and rendering of awards."

ORDER

NOW, THEREFORE, IT IS ORDERED:

1. That, based on the record as a whole, I conclude that the greater weight of the evidence, dictates that the Claimant has suffered permanent partial wage loss, pursuant to S.C. Code Ann. §42-9-20. Accordingly, I further find that Claimant is entitled to the compensation computation as allowed pursuant to the statute.
2. Accordingly, pursuant to S.C. Code Ann. §42-9-20, Claimant is entitled to, and defendants shall pay, an award of permanent partial wage loss in the amount of sixty-six and two-thirds percent (66 2/3%) of Claimant's eight-hundred eighty four dollars and twenty one cents (\$884.21) loss of earning capacity per week which equates to five-hundred eighty nine dollars and forty seven cents (\$589.47) per week (which equates to a total amount of \$153,262.20). Furthermore, I find that Claimant is entitled to said five-hundred eighty nine dollars and forty seven cents (\$589.47) per week for a total of two-hundred and sixty (260) weeks (Pursuant to S.C. Code Ann. §42-9-20 Claimant can receive 340 weeks of compensation for wage loss). By a separate finding in this Order, Claimant is entitled to eighty (80) weeks of Temporary Partial Wage Loss. Accordingly, Claimant has two-hundred and sixty (260) weeks of partial wage loss available to him under the statute for permanent partial wage loss (340 weeks minus 80 weeks). Accordingly, Claimant is entitled to, and defendants shall pay Claimant one-hundred fifty three thousand

two hundred sixty two dollars and twenty cents (\$153,262.20 [wage loss of \$589.47 times 260 weeks]) to Claimant for permanent total wage loss. Again, said benefits are not to be paid to Claimant in lump sum and shall be paid to Claimant in the amount of five-hundred eighty nine dollars and forty seven cents (\$589.47) per week over a 260 week period.

3. That, Claimant is entitled to a lump sum payment for any and all past due temporary partial disability benefits due.
4. That, furthermore, Claimant is entitled to, and that Defendants shall pay Claimant, temporary partial wage loss in the amount of sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of his average weekly wage of one-thousand one hundred seventy four dollars and twenty one cents (\$1,174.21) minus the actual amount of wages that he earned for each week worked as demonstrated by Claimant's Exhibit APA #13, p. 274-276 (average weekly wage minus actual earnings) for eighty (80) weeks for the period of January 21, 2011 through August 7, 2012. Based upon Claimant's pre-accident wages he should have earned ninety-three thousand nine hundred thirty six dollars and eighty cents (\$93,936.80) during said eighty (80) weeks; however, his actual earnings were only two-thousand seven hundred and one dollar and one cent (\$2,701.10) during said eighty (80) weeks. Accordingly, Claimant is entitled to, and defendants shall pay Claimant, sixty-thousand eight hundred twenty three dollars and eighty cents (\$60,823.80) for his past temporary partial wage loss over eighty (80) weeks ($\$93,936.80$ minus $\$2,701.10 = \$91,235.70$; two-thirds of $\$91,235.70 = \$60,823.80$).

5. That, with regard to Claimant's permanent partial wage loss award, the Claimant is only entitled to a lump sum payment of said award as it applies to the payment of Claimant's attorney's fees and case costs and the remaining benefits shall be paid to him in weekly installments. Accordingly, subject to Commission approval of Claimant's Form 61 and Form 61A, Claimant's attorney shall be entitled to \$71,362.00 in attorney's fees (this is based upon 1/3 of Claimant's total award in the amount of \$214,086.00 [Claimant's award of \$153,262.20, for future wage loss, divided by three = attorney's fees of \$51,087.40; plus Claimant's award of \$60,823.80, for permanent partial wage loss, divided by three = attorney's fees of \$20,274.60 = total attorney's fees of \$71,362.00]), and \$3,381.77, for case cost reimbursement.
6. That, Claimant shall be entitled, and Defendants shall pay, for Claimant's past causally related medical care and treatment. Medical payment shall be made by the Defendants to the medical provider, the Claimant, or his insurance carrier, or to Medicare/Medicaid, if those expenses have been previously paid by them.
7. That Claimant is entitled to, and Defendants shall pay, for all causally related future medical care and treatment for Claimant pursuant to S.C. Code Ann. §42-15-60, Dodge vs. Brucoli, Clark, Layman, Inc., 334 SC 574, 514 SE2d 593 (Ct. App. 1999) and any other authority under the Act as I find that said medical treatment will tend to lessen Claimant's period of disability to include medications, pain management clinic, injections, tens unit, repeat diagnostic imaging, physical

therapy and follow up office visits as recommended by authorized treating physician, Dr. James DeMarco.

8. That I find that Claimant is entitled to the following allocation of his benefits of \$214,086.00, pursuant to James vs. Anne's 390 S.C. 188, 701 S.E.2d 730 and Utica Mohawk Mills vs. Orr 227 S.C. 226, 87 S.E.2d 589 (Ct. App. 2006):

- a. \$78,518.43 in compromise of disputed future disability benefits at the rate of \$55.10 per week commencing May 14, 2013, for a period of 27.40 years; representing Claimant's life expectancy pursuant to Section 19-1-150 of the S.C. Code of Laws and pursuant to Section 42-9-10 and 42-9-20 of the S.C. Code of Laws as interpreted by the S.C. Supreme Court decision of James vs. Anne's 390 S.C. 188, 701 S.E.2d 730 and Utica Mohawk Mills vs. Orr 227 S.C. 226, 87 S.E.2d 589 (Ct. App. 2006).
- b. \$71,362.00 as attorney's fees per written agreement between Claimant and attorney.
- c. \$3,381.77 in cost advances and expenses.
- d. \$0.00 towards the payment of future medical benefits.
- e. \$60,823.80, for past temporary partial wage loss.

AND IT IS SO ORDERED.


Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

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

August 27, 2013

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

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

WCC NUMBER 0822640

THOMAS CONTRERAS

V.

ST. JOHN'S FIRE DISTRICT, EMPLOYER

STATE ACCIDENT FUND, CARRIER

HEARING:

DECEMBER 16, 2013

APPEARANCES:

**RESPONDENT-CLAIMANT WAS
REPRESENTED BY GARY CHRISTMAS
APPELLANT-CARRIER WAS REPRESENTED
BY MARGARET M. URBANIC**

This case was originally heard back on May 14, 2013, on Forms 50/51. As a result of the hearing, the Single Commissioner made the following findings of fact:

1. That, Claimant, Thomas Contreras, and employer, St. Johns Fire District Commission (hereinafter "St. Johns"), were subject to the South Carolina Workers' Compensation Act, at the time of the accidental injury.
2. That, the relationship of employer/employee existed between Claimant, Thomas Contreras, and employer, St. Johns, at the time of Claimant's work-related accident.
3. That, I find, that on or about October 8, 2008, Claimant suffered injury by accident, arising out of in the course and scope of employment, wherein he injured his right shoulder and right upper extremity (Authorized treating orthopedic surgeon Dr. James DeMarco APA #3, pp. 16-17; Orthopedic surgeon Dr. Charles Hughes APA #2, p. 9).
4. That, Defendants have provided the Claimant medical care and treatment for his injuries, including four (4) right shoulder surgeries.
5. That, authorized treating orthopedic surgeon, Dr. James DeMarco, opines on his 14-B medical statements dated September 4, 2012, and May 16, 2011, that Claimant is unable to return to work at his past employment. (Defendants' APA #8, p. 00056 and APA #3, p.15).
6. That, at the time of Claimant's work accident, he was working for two (2) employers; (a) St. Johns; and (b) AMF Bowling Centers (hereinafter "AMF") (APA #11, 12, and 13; and Hearing Tr. p. 25, ll. 20-22).

7. That I find that Claimant's combined earnings from his dual employment with St. Johns and AMF equates to an average weekly wage of one-thousand one hundred seventy four dollars and twenty cents (\$1,174.20) and a corresponding compensation rate of six-hundred sixty one dollars and twenty nine cents (\$661.29) (the maximum compensation rate for 2008 which is the year in which Claimant was injured on the job) (APA 11, pp. 265-269 and APA #12, pp. 269.5-271).
8. That, Claimant's job at the St. Johns fire department, which he held for over twenty-two (22) years, is physical by description (APA #10, pp. 228-230).
9. That, Claimant's last day of work with employer St. Johns was on January 21, 2011, after he was approved for early retirement due to his final physician's report stating that he was unable to return to work as a firefighter (APA #10, p. 231).
10. That, all of Claimant's jobs, prior to his work with the fire department, were also physical in nature (Hearing Tr. p. 17, l. 18-p. 18, l. 23).
11. That, since being unable to return to work with employer St. Johns, Claimant has continued to work as a desk clerk at the AMF bowling alley for fourteen (14) hours per week (Hearing Tr. p. 27, ll. 1-5 and p. 35, ll. 13-15).
12. That, since being unable to return to work with employer St. Johns, Claimant has actively searched for other employment. Claimant applied for a management position at the AMF bowling alley where he works when it became available; however, despite Claimant having worked at the bowling alley for twelve (12) years, he did not get the job as manager of the bowling alley (Hearing Tr. p. 35, ll. 16-24 and p. 43, ll. 12-25).

13. That, Claimant also has looked for other employment, took a test at Wal-Mart and failed said test and that he applied at CarMax, but that he was not hired. Claimant also applied for "a couple" of Federal jobs, but that he has yet to get an answer from any of these job applications (Hearing Tr. p. 28, l. 14-p. 29, l. 11; p. 36, l. 3-p. 37, l. 11; p. 47, ll. 6-13; and p. 48, ll. 6-23).

14. That, Claimant also has a small vending machine route which he works once per month. Those machines are located in area fire houses. Claimant testified that he makes little or no income from this route (Hearing Tr. p. 27, l. 21-p. 28, l. 13 and p. 37, l. 18-p. 39, l. 1).

15. That, the Claimant was fifty-one (51) years old at the time of the hearing.

16. That, Claimant is a high school graduate (1979).

17. That, Claimant is married with two (2) children.

18. That, Claimant is a US Army veteran who was honorably discharged.

19. That, pursuant to the opinion of authorized treating orthopedic surgeon, Dr. James DeMarco, Claimant cannot return to his employment with the employer St. Johns (APA #3, p. 15 and defendants APA #8, p. 00056). Authorized treating surgeon DeMarco's opinion that Claimant cannot return to his past employment is corroborated by the uncontroverted and only vocational assessment in the record provided by certified rehabilitation counselor, Jean R. Hutchinson (APA #1, pp. 7-8). Vocational expert, Hutchinson, is of the opinion that Claimant cannot return to his past employment and that Claimant will now only be able to earn at or near minimum wage (APA #1, pp. 7-8). Furthermore, orthopedic surgeon, Dr. Charles

Hughes, also opines that Claimant can return to his prior employment (APA #2, p. 14).

20. That, defendants did not choose to submit a vocational evaluation in this case.

21. That, based on the record as a whole, the greater weight of the evidence, leads to the conclusion that Claimant cannot return to his previous employment with employer, St. Johns. Additionally, I find that Claimant, as he is today, cannot and will not find similar employment with another fire department.

22. That, given the Claimant's present physical condition, past work experience, age, education and skill set (he has no computer skills), I find that Claimant can only expect to earn minimum wage at his employment going forward.

23. That, based on the record as a whole, I conclude that the greater weight of the evidence, dictates that the Claimant has suffered permanent partial wage loss, pursuant to S.C. Code Ann. §42-9-20. Accordingly, I further find that Claimant is entitled to the compensation computation as allowed pursuant to the statute.

24. That, prior to Claimant's work accident and injuries, he was able to earn and had an average weekly wage of one-thousand one hundred seventy four dollars and twenty one cents (\$1,174.21) per week. That, as a result of Claimant's work related injuries, I find that Claimant is now only able to earn minimum wage (\$7.25 x 40 hours per week) which equates to two-hundred and ninety dollars (\$290) per week.

25. That, I find that, given Claimant's pre-accident average weekly wage and earning capacity was one-thousand one hundred seventy four dollars and twenty one cents (\$1,174.21), and given that I find that Claimant's post work accident earning

capacity is only two-hundred and ninety (\$290.00) dollars per week, I find that Claimant has suffered and will continue to suffer wage loss in the amount of eight hundred eighty eight dollars and twenty one cents (\$884.21) per week (Claimant's Average Weekly Wage of \$1,174.21 minus his new post accident wages of \$290.00 per week).

26. Accordingly, pursuant to S.C. Code Ann. §42-9-20, Claimant is entitled to, and defendants shall pay, an award of permanent partial wage loss in the amount of sixty-six and two-thirds percent (66 2/3%) of Claimant's eight-hundred eighty four dollars and twenty one cents (\$884.21) loss of earning capacity per week which equates to five-hundred eighty nine dollars and forty seven cents (\$589.47) per week (which equates to a total amount of \$153,262.20). Furthermore, I find that Claimant is entitled to said five-hundred eighty nine dollars and forty seven cents (\$589.47) per week for a total of two-hundred and sixty (260) weeks (Pursuant to S.C. Code Ann. §42-9-20 Claimant can receive 340 weeks of compensation for wage loss). By a separate finding in this Order, Claimant is entitled to eighty (80) weeks of Temporary Partial Wage Loss. Accordingly, Claimant has two-hundred and sixty (260) weeks of partial wage loss available to him under the statute for permanent partial wage loss (340 weeks minus 80 weeks). Accordingly, Claimant is entitled to, and defendants shall pay Claimant one-hundred fifty three thousand two hundred sixty two dollars and twenty cents (\$153,262.20 [wage loss of \$589.47 times 260 weeks]) to Claimant for permanent total wage loss. Again, said benefits are not to be paid to Claimant in lump sum

and shall be paid to Claimant in the amount of five-hundred eighty nine dollars and forty seven cents (\$589.47) per week over a 260 week period.

27. That, Claimant is entitled to a lump sum payment for any and all past due temporary partial disability benefits due.

28. That, furthermore, Claimant is entitled to, and that Defendants shall pay Claimant, temporary partial wage loss in the amount of sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of his average weekly wage of one-thousand one hundred seventy four dollars and twenty one cents (\$1,174.21) minus the actual amount of wages that he earned for each week worked as demonstrated by Claimant's Exhibit APA #13, p. 274-276 (average weekly wage minus actual earnings) for eighty (80) weeks for the period of January 21, 2011 through August 7, 2012. Based upon Claimant's pre-accident wages he should have earned ninety-three thousand nine hundred thirty six dollars and eighty cents (\$93,936.80) during said eighty (80) weeks; however, his actual earnings were only two-thousand seven hundred and one dollar and one cent (\$2,701.10) during said eighty (80) weeks. Accordingly, Claimant is entitled to, and defendants shall pay Claimant, sixty-thousand eight hundred twenty three dollars and eighty cents (\$60,823.80) for his past temporary partial wage loss over eighty (80) weeks ($\$93,936.80$ minus $\$2,701.10 = \$91,235.70$; two-thirds of $\$91,235.70 = \$60,823.80$).

29. That, with regard to Claimant's permanent partial wage loss award, the Claimant is only entitled to a lump sum payment of said award as it applies to the payment of Claimant's attorney's fees and case costs and the remaining benefits shall be paid to him in weekly installments. Accordingly, subject to Commission approval

of Claimant's Form 61 and Form 61A, Claimant's attorney shall be entitled to \$71,362.00 in attorney's fees (this is based upon 1/3 of Claimant's total award in the amount of \$214,086.00 [Claimant's award of \$153,262.20, for future wage loss, divided by three = attorney's fees of \$51,087.40; plus Claimant's award of \$60,823.80, for permanent partial wage loss, divided by three = attorney's fees of \$20,274.60 = total attorney's fees of \$71,362.00]), and \$3,381.77, for case cost reimbursement.

30. That, Claimant shall be entitled, and Defendants shall pay, for Claimant's past causally related medical care and treatment. Medical payment shall be made by the Defendants to the medical provider, the Claimant, or his insurance carrier, or to Medicare/Medicaid, if those expenses have been previously paid by them.

31. That, I find that authorized orthopedic surgeon, Dr. James DeMarco, opined on "check the box" forms dated October 8, 2012, and October 24, 2012, that Claimant is in need of future medical care and treatment in the form of medications, pain management clinic, injections, tens unit, repeat diagnostic imaging, physical therapy and follow up office visits as a result of his August 8, 2008, accident at work. He further opined that said medical treatment would tend to lessen Claimant's period of disability. Dr. DeMarco, does not opine on his 14-B issued on May 16, 2011, that Claimant will need future medical care and treatment; however, he opines differently on his October 8, 2012, and October 24, 2012, check the box reports and I give more weight to the opinions given in said reports given that they were provided at a later date than the 14-B, were provided

closer to Claimant's hearing date and more accurately reflect Claimant's current condition and need for future medical care and treatment.

32. That Claimant is entitled to, and Defendants shall pay, for all causally related future medical care and treatment for Claimant pursuant to S.C. Code Ann. §42-15-60, Dodge vs. Bruccoli, Clark, Lymann, Inc., 334 SC 574, 514 SE2d 593 (Ct. App. 1999) and any other authority under the Act as I find that said medical treatment will tend to lessen Claimant's period of disability.

33. That Claimant reached maximum medical improvement as of August 7, 2012.

34. That I find that Claimant is entitled to the following allocation of his benefits of \$214,086.00, pursuant to James vs. Anne's 390 S.C. 188, 701 S.E.2d 730 and Utica Mohawk Mills vs. Orr 227 S.C. 226, 87 S.E.2d 589 (Ct. App. 2006):

- a. \$78,518.43 in compromise of disputed future disability benefits at the rate of \$55.10 per week commencing May 14, 2013, for a period of 27.40 years; representing Claimant's life expectancy pursuant to Section 19-1-150 of the S.C. Code of Laws and pursuant to Section 42-9-10 and 42-9-20 of the S.C. Code of Laws as interpreted by the S.C. Supreme Court decision of James vs. Anne's 390 S.C. 188, 701 S.E.2d 730 and Utica Mohawk Mills vs. Orr 227 S.C. 226, 87 S.E.2d 589 (Ct. App. 2006).
- b. \$71,362.00 as attorney's fees per written agreement between Claimant and attorney.
- c. \$3,381.77 in cost advances and expenses.
- d. \$0.00 towards the payment of future medical benefits.
- e. \$60,823.80, for past temporary partial wage loss.

The Employer/Carrier timely filed a Form 30 raising the following issues:

Whether the Single Commissioner erred in Finding of Fact #9 as it is not supported by substantial evidence;

Whether the Single Commissioner erred in Finding of Fact #19 as it is not supported by substantial evidence;

Whether the Single Commissioner erred in Finding of Fact #21 as it is not supported by substantial evidence;

Whether the Single Commissioner erred in Finding of Fact #22 as it is not supported by substantial evidence;

Whether the Single Commissioner erred in Finding of Fact #23 as it is not supported by substantial evidence;

Whether the Single Commissioner erred in Finding of Fact #24 as it is not supported by substantial evidence;

Whether the Single Commissioner erred in Finding of Fact #25 as it is not supported by substantial evidence;

Whether the Single Commissioner erred in Finding of Fact #26 as it is not supported by substantial evidence;

Whether the Single Commissioner erred in Finding of Fact #28 as it is not supported by substantial evidence;

Whether the Single Commissioner erred in ordering that the Claimant suffered a permanent partial wage loss;

Whether the Single Commissioner erred in ordering the calculation of the permanent partial wage loss;

Whether the Single Commissioner erred in ordering temporary partial wage loss as a form 17 has been signed and filed with the Commission;

Whether the Single Commissioner erred in the calculation of temporary total wage loss

In an appellate review, the Panel shall, pursuant to 42-17-50, review the Decision and Order weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and Conclusions of Law consistent with or inconsistent with those of the Single Commissioner. After careful review of the case including the Commission's file and arguments and briefs of counsel, the Appellate panel by unanimous decision Affirms in part, Reverses in Part and Remands the Decision and Order of the Hearing Commissioner. The Appellate Panel makes the following Findings of Fact:

- 1. That the South Carolina Workers' Compensation Commission has jurisdiction over this matter.**
- 2. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act and that jurisdiction and venue are proper.**
- 3. That an employer/ employee relationship existed between the Claimant and employer, St. John's Fire District at the time of the accident.**
- 4. Claimant suffered an injury to his right shoulder on October 8, 2008 in the course and scope of his employment.**
- 5. That, authorized treating orthopedic, Dr. DeMarco opines on his 14-B medical statements dated September 4, 2012 and May 16, 2011, that Claimant is unable to return to work at his past employment.**
- 6. That, the Defendants have provided the Claimant with medical care and treatment for his**

injuries, including four right shoulder surgeries.

7. That Dr. DeMarco, the authorized treating orthopedic surgeon, issued a rating on August 7, 2012. Dr. DeMarco found that the Claimant had a 9% permanent partial impairment to the shoulder and that this included 3% biceps atrophy, 3% for loss of internal rotation, 2% for loss of forward flexion and 1% for pain and muscle spasm. There is no separate rating to the upper extremity.
8. Dr. Hughes, an orthopedist, performed an IME at the Claimant's request and issued a 14% permanent impairment rating to the Claimant's right shoulder and a 10% rating for the Claimant's clavicle injury.
9. That, Claimant's last day of work with the employer was January 21, 2011, after he was approved for early retirement due to his final physician's report stating that he was unable to return to work as a firefighter. (APA #10, p. 231).
10. That the Single Commissioner did not find the clavicle compensable and that issue was not appealed.
11. That, at the time of Claimant's work accident, he was working for two (2) employers; (a) St. Johns; and (b) AMF Bowling Centers (hereinafter "AMF") (APA #11, 12, and 13; and Hearing Tr. p. 25, ll. 20-22).
12. That we find that Claimant's combined earnings from his dual employment with St. Johns and AMF equates to an average weekly wage of one-thousand one hundred seventy four dollars and twenty cents (\$1,174.20) and a corresponding compensation rate of six-hundred sixty one dollars and twenty nine cents (\$661.29) (the maximum compensation rate for 2008 which is the year in which Claimant was injured on the job) (APA 11, pp. 265-269 and APA #12, pp. 269.5-271).

13. That, Claimant's job at the St. Johns fire department, which he held for over twenty-two (22) years, is physical by description (APA #10, pp. 228-230).
14. That, all of Claimant's jobs, prior to his work with the fire department, were also physical in nature (Hearing Tr. p. 17, l. 18-p. 18, l. 23).
15. That, since being unable to return to work with employer St. Johns, Claimant has continued to work as a desk clerk at the AMF bowling alley for fourteen (14) hours per week (Hearing Tr. p. 27, ll. 1-5 and p. 35, ll. 13-15).
16. That, since being unable to return to work with employer St. Johns, Claimant has actively searched for other employment. Claimant applied for a management position at the AMF bowling alley where he works when it became available; however, despite Claimant having worked at the bowling alley for twelve (12) years, he did not get the job as manager of the bowling alley (Hearing Tr. p. 35, ll. 16-24 and p. 43, ll. 12-25).
17. That, Claimant also has looked for other employment, took a test at Wal-Mart and failed said test and that he applied at CarMax, but that he was not hired. Claimant also applied for several Federal jobs, but that he has yet to get an answer from any of these job applications (Hearing Tr. p. 28, l. 14-p. 29, l. 11; p. 36, l. 3- p. 37, l. 11; p. 47, ll. 6-13; and p. 48, ll. 6-23).
18. That, Claimant also has a small vending machine route which he works once per month. Those machines are located in area fire houses. Claimant testified that he makes little or no income from this route (Hearing Tr. p. 27, l. 21-p. 28, l. 13 and p. 37, l. 18-p. 39, l. 1).
19. That, pursuant to the opinion of the authorized treating orthopedic surgeon, Dr. DeMarco, Claimant cannot return to his employment with the employer, St. John's. (APA #3, p. 15 and Defendants' APA #8, p. 56). Dr. DeMarco's opinion that Claimant cannot return to

his past employment is corroborated by the uncontroverted and only vocational assessment in the record provided by certified rehabilitation counselor, Jean Hutchinson. (APA #1, pp. 7-8). Vocational expert, Hutchinson, is of the opinion that Claimant cannot return to his past employment as a firefighter.

20. That, based on the record as a whole, the greater weight of the evidence, leads to the conclusion that Claimant cannot return to his previous employment with employer, St. John's Fire District. Additionally, Claimant cannot and will not find similar employment with another fire department.
21. That, the Claimant was fifty-one (51) years old at the time of the hearing.
22. That, Claimant is a high school graduate (1979).
23. That, Claimant is married with two (2) children.
24. That, Claimant is a US Army veteran who was honorably discharged.
25. That, the Claimant was paid temporary total benefits from October 18, 2010 through September 25, 2011. Temporary total benefits were suspended as a signed Form 17 was filed on September 30, 2011.
26. No credit was requested by the Defendants and that issue was not raised before the Single Commissioner.
27. Claimant is entitled to a lump sum payment for any and all past due temporary partial disability benefits due.
28. That, Claimant shall be entitled, and Defendants shall pay, for Claimant's past causally related medical care and treatment. Medical payment shall be made by the Defendants to the medical provider, the Claimant, or his insurance carrier, or to Medicare/Medicaid, if those expenses have been previously paid by them.

29. That, we find that authorized orthopedic surgeon, Dr. James DeMarco, opined on "check the box" forms dated October 8, 2012, and October 24, 2012, that Claimant is in need of future medical care and treatment in the form of medications, pain management clinic, injections, tens unit, repeat diagnostic imaging, physical therapy and follow up office visits as a result of his August 8, 2008, accident at work. He further opined that said medical treatment would tend to lessen Claimant's period of disability. Dr. DeMarco, does not opine on his 14-B issued on May 16, 2011, that Claimant will need future medical care and treatment; however, he opines differently on his October 8, 2012, and October 24, 2012, check the box reports and we give more weight to the opinions given in said reports given that they were provided at a later date than the 14-B, were provided closer to Claimant's hearing date and more accurately reflect Claimant's current condition and need for future medical care and treatment.
30. That Claimant is entitled to, and Defendants shall pay, for all causally related future medical care and treatment for Claimant pursuant to S.C. Code Ann. §42-15-60, Dodge vs. Brucoli, Clark, Layman, Inc., 334 SC 574, 514 SE2d 593 (Ct. App. 1999) and any other authority under the Act as we find that said medical treatment will tend to lessen Claimant's period of disability.
31. That Claimant reached maximum medical improvement as of August 7, 2012.
32. That the Claimant's injury is limited to the right shoulder.
33. Claimant is entitled to an award under 42-9-30 for the right shoulder.
34. That Claimant is entitled to allocation language pursuant to James v. Anne's, 390 S.C. 188, 701 S.E.2d 730 and Utica Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 589 (Ct. App. 2006).

That the Appellate Panel makes the following Conclusions of Law:

S.C. Code Ann. Section 42-1-40 defines average weekly wage in this state and Section 42-1-50 defines for the preceding year.

S.C. Code Ann. Section 42-1-120 defines disability.

S.C. Code Ann. Section 42-1-130 defines Employee.

S.C. Code Ann. Section 42-1-140 defines Employer.

S.C. Code Ann. Section 42-1-150 defines Employment.

S.C. Code Ann. Section 42-1-160 defines an injury by accident arising out of and in the course and scope of employment.

S.C. Code Ann. Section 42-9-30 governs the amount of compensation paid for specific disability.

S.C. Code Ann. Section 42-15-20 governs timely notice to the Employer.

S.C. Code Ann. Section 42-9-10 determines benefits when the incapacity to work is total.

S.C. Code Ann. Section 42-15-60 defines medical treatment to be furnished including lifetime medical benefits for a prosthetic device.

S.C. Code Ann. Section 42-1-400 defines "work which is a part of the owner's trade, business or occupation."

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

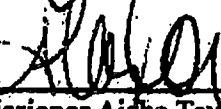
The order of the Single Commissioner is hereby affirmed in part, reversed in part and remanded by this Appellate Panel. This case shall be remanded to the Jurisdictional Commissioner for a determination of an award to the Claimant's right shoulder under 42-9-30.

IT IS SO ORDERED this 5th day of May, 2014, at Columbia, South Carolina.

SOUTH CAROLINA WORKER'S

By: 
Commissioner Scott Beck, Chair

By: 
Commissioner Susan Barden

By: 
Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kim Falls on May 5, 2014

The South Carolina Court of Appeals

Thomas Contreras, Appellant,

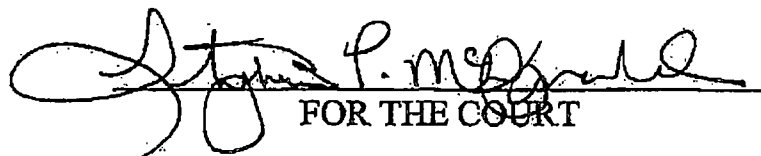
v.

St. John's Fire District, Employer, and State Accident
Fund, Carrier, Respondents.

Appellate Case No. 2014-001217

ORDER

Respondents have filed a motion to dismiss, alleging the order of the appellate panel of the South Carolina Workers' Compensation Commission is not a final decision and not immediately appealable. After careful consideration, we dismiss Appellant's appeal. See S.C. Code Ann. § 1-23-380 (Supp. 2014) (limiting appeals of the commission to those from a "final decision"); *Price v. Peachtree Elec. Servs., Inc.*, 405 S.C. 455, 457, 748 S.E.2d 229, 230 (2013) ("An agency decision that does not decide the merits of a contested case is not a final agency decision subject to judicial review."); *Bone v. U.S. Food Serv.*, 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013) (same); see also *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 265, 692 S.E.2d 894 (2010) (reiterating that appeals from administrative agencies may be sought only from final decisions, explaining the general appealability statute, section 14-3-330 of the South Carolina Code (1976 & Supp. 2014), does not apply to appeals from administrative agencies, and overruling this court's opinion in *Canteen v. McLeod Regional Medical Center*, 384 S.C. 617, 682 S.E.2d 504 (Ct. App. 2009), to the extent it relied on section 14-3-330 to permit the appeal of interlocutory orders of the administrative law court or an administrative agency).


FOR THE COURT

Columbia, South Carolina

cc:

Gary Christmas, Esquire

Margaret Mary Urbanic, Esquire

Ellen H. Goodwin, Esquire

Stephen Benjamin Samuels, Esquire

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0822640

Thomas Contreras,

Claimant,

v.

St. John's Fire District,

Employer,

and

State Accident Fund,

Carrier.

DECISION & ORDER

This matter came before the Single Commissioner on a remand from the Full Commission. This case was originally in front of the Single Commissioner on May 14, 2013. At the May 2013 hearing, both parties submitted APA Submissions and the Claimant testified on his own behalf. In the original order of the Single Commissioner, dated August 27, 2013, Claimant was found to have suffered a wage loss under § 42-9-20. Defendants filed a Form 30 and the Full Commission found that the Single Commissioner erred in finding that the Claimant suffered a wage loss and that the case should be remanded for a determination under §42-9-30, as Claimant suffered only an injury to his right shoulder. Claimant appealed this decision to the Court of Appeals. The Court of Appeals dismissed the appeal as the order being appealed was not a final decision. This case was then remanded to the Commission for a determination under §42-9-30. As this matter is a remand from the Full Commission for a determination under § 42-9-30, a hearing was not held. All previously submitted APA Submissions and the Commission's file have been

made part of the record. Both parties submitted briefs in support of their respective positions and both of those briefs have been made part of the record.

Claimant alleges an injury by accident to his right shoulder on October 8, 2008. Defendants admit an injury to the right shoulder but deny the nature and extent of the injury.

A review of the testimony from the May 2013 hearing indicates the following:

Claimant testified that he was 51 years old at the time of the hearing and a high school graduate. Claimant worked for the fire department for 22 years. Claimant had risen to the rank of captain. Claimant had a total of four surgeries to his shoulder. Claimant also worked at a bowling alley. Claimant also had a snack route stocking vending machines. Claimant has worked at the bowling alley for approximately 12 years. Claimant is fluent in Spanish and applied for a job as translator with the federal government. Claimant is able to rake leaves and wash his car. Claimant also spends time taking his mother to various doctors' appointments and looks after his grandchild at times.

A review of the medical evidence shows that Claimant was initially went to the ER with complaints to the right shoulder. (Defendants' APA Submissions, p. 45). The first orthopedist to see the Claimant was Dr. Spearman. The initial complaint was that of right shoulder pain. (Claimant's APA Submissions, p. 89). Claimant's care was then taken over by Dr. Jaskwhich on December 19, 2008. Dr. Jaskwhich noted that Claimant was suffering from popping and catching in his right shoulder. A MRI showed a superior labral tear. (Claimant's APA Submissions, p. 87). Dr. Jaskwhich performed a right shoulder arthroscopic repair of superior labrum anterior-posterior (SLAP) tear on

January 29, 2009. (Claimant's APA's p. 60). In the follow up notes, Dr. Jaskwhich only discusses problems with the Claimant's shoulder. Dr. Spearman performed the second arthroscopic procedure on Claimant's right shoulder in October of 2009. (Claimant's APA Submissions, p. 78). Dr. Jaskwhich then took over the Claimant's follow up care post surgery. Dr. Jaskwhich noted in May of 2010 that Claimant's chief complaint was for right shoulder pain. (Claimant's APA Submissions, p. 76). Dr. Jaskwhich did not recommend additional surgery. On July 14, 2010, Dr. Jaskwhich noted that although the Claimant still had right shoulder pain, he was at maximum medical improvement. (Claimant's APA Submissions, p. 74). Dr. Jaskwhich assigned a 10% rating to the right shoulder based on his persistent pain, soreness and weakness in his right shoulder.

Claimant's care was then transferred to Dr. DeMarco. On the new patient information form, Claimant indicated the location of his pain was the right shoulder. (Claimant's APA Submissions, p. 50). Dr. DeMarco first saw the Claimant on August 6, 2010. The chief complaint listed was a right shoulder injury. On October 11, 2010, Dr. DeMarco performed the third surgery on Claimant's shoulder, a sub-acromial decompression and excision of glenohumeral ligament with previous SLAP repair and debridement. (Claimant's APA Submissions, p. 38).

Claimant's last surgery was on March 29, 2012. Surgery was performed on March 29, 2012. The preoperative diagnosis was right shoulder coracoid impingement, right shoulder intra-articular synovitis and adhesions, right shoulder subacromial impingement with adhesions and right shoulder long head of biceps tendinopathy. The post operative diagnosis was right shoulder coracoid impingement, right shoulder intra-articular synovitis and adhesions, right shoulder subacromial impingement with

adhesions and right shoulder long head of biceps tendinopathy. (Claimant's APA Submissions, p. 54).

August 7, 2012 was the last time Claimant was seen by Dr. DeMarco. Under history of present illness, the right shoulder was listed. The examination was to the Claimant's right shoulder. Shoulder pain was listed under the assessment section and treatment section. Dr. DeMarco also stated that:

At this point the patient is at MMI and has permanent partial restrictions of less than 40 pounds of overhead lifting with both hands and no more than 20 pounds with his right arm overhead. Less than 50 pounds of two handed carrying and pushing and pulling. He can do a medium level job. He has a permanent partial impairment of 9%. 3% for biceps atrophy, 3% for loss of internal rotation, 2% for loss of forward flexion and 1% for pain muscles spasm. I do not predict any further surgical intervention in the next year however if he regresses with his pain he may need repeat corticosteroid injections, anti-inflammatories and/or physical therapy.

(Claimant's APA Submissions, pp. 19-20).

FINDINGS OF FACT

After reviewing the briefs and the WCC file including the previously submitted APA Submissions, I make the following Findings of Fact:

1. That the South Carolina Worker's Compensation Commission has jurisdiction over this matter.
2. That jurisdiction and venue are proper.
3. That the Defendants have only admitted an injury to the right shoulder.
4. Claimant suffered an admitted injury to his right shoulder on October 8, 2008 while in the course and scope of his employment at St. John's Fire District.
5. That the Claimant has an average weekly wage of \$1,174.20 making for a compensation rate of \$661.29, the maximum compensation rate for 2008.
6. The above cited case was heard by the undersigned on 05/14/13.

7. A Decision and Order was issued on 08/27/13.
8. Defendants filed a Form 30 (Notice of Appeal) on 09/03/13.
9. The Appellate Panel heard oral arguments on 12/16/13.
10. The Appellate Panel issued a Decision and Order on 05/05/14.
11. The Appellate Panel affirmed in part, reversed in part and remanded to the jurisdictional commissioner for a determination of an award to the Claimant's right shoulder under §42-9-30.
12. The Judicial Department assigned the case per its usual practice. As such, the case was assigned to this office as the undersigned was the jurisdictional commissioner at the time of assignment.
13. Given that I had heard the case and issued the Order affirmed in part, reversed in part, the parties were contacted by email to inquire if either or both wished me to recuse myself from ruling on the case per the directive of the Appellate Panel.
14. Neither party asked for a recusal.
15. As such, I asked the parties to brief the case consistent with the ruling of the Appellate Panel. Those briefs have been provided and have been made part of the record.
16. The Order of the Appellate Panel reads, "IT IS THEREFORE ORDERED AND, ADJUDGED AND DECREED that: The order of the single Commissioner is hereby affirmed in part, reversed in part and remanded by this Appellate Panel. This case shall be remanded to the Jurisdictional Commissioner for a determination of an award to the Claimant's right shoulder under § 42-9-30." That is the sole issue

before me. As a matter of review, I made the following applicable findings of fact following the hearing on 12/16/13:

17. The Claimant suffered an injury by accident to his right shoulder on 09/04/12 arising out of and within the course and scope of his employment.

18. The Defendants have provided the Claimant with medical care and treatment for this injury including four shoulder surgeries.

19. Dr. James DeMarco, the authorized treating physician, states on the Form 14B dated 05/16/11 that the Claimant is unable to return to work at his current employment.

20. The Claimant was 51 years old at the time of the 2013 hearing.

21. The Claimant is a high school graduate (1979).

22. The Claimant is a US Army veteran who was honorably discharged.

23. All of the Claimant's jobs prior to his work at the fire department were physical in nature.

24. The Claimant's job at the fire department which he held for over twenty-two years is physical by description.

25. As noted in Finding #19, the Claimant per Dr. DeMarco cannot return to his employment with the St. Johns Fire District Commission.

26. That finding is corroborated by Jean R. Hutchinson, M.Ed., who is a certified rehabilitation counselor and is certified in vocational evaluation. Dr. Charles Hughes also opines that he does not think the Claimant can return to his prior employment.

27. The Defendants did not choose to submit a vocational evaluation.

28. The Claimant was at MMI as of 08/07/12.

29. In addition to those findings to make a determination consistent with the directive from the Full Commission, I must consider the most recent impairment ratings in this case.

30. Dr. James DeMarco, who was the authorized treating physician, opined on 09/04/12, that the Claimant sustained a 9% permanent impairment to his right upper extremity which converts to a 15% permanent impairment of his right shoulder as a result of his work-related accident on 10/08/08.

31. Dr. Charles Hughes, who performed an IME, opined on 10/06/11 that the Claimant had suffered 14% permanent impairment to his right shoulder.

32. It is important to note that my directive from the Full Commission is very specific. I am to determine an award to the Claimant's right shoulder pursuant to §42-9-30.

33. While both parties make additional arguments in their briefs, this issue and this issue alone was before me in this remand.

34. Thus, when the evidence relevant to such a determination is considered, the Claimant has suffered 35% permanent partial disability to the right shoulder.

CONCLUSIONS OF LAW

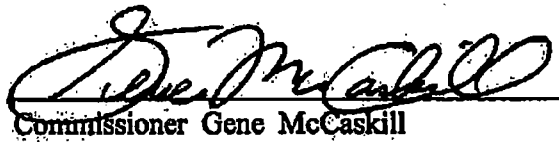
The following sections of the South Carolina Code of Law give the appropriate definition of divisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. Under South Carolina Code Section 42-1-160, Claimant failed to prove that she sustained an injury in the course and scope of her employment.
2. South Carolina Code Section 42-1-40 defines average weekly wage.

3. South Carolina Code Section 42-9-30 governs the amount of compensation paid for specific disabilities.
4. South Carolina Code Section 42-15-60 defines medical treatment to be furnished including lifetime medical benefits.

ORDER

Therefore, it is ORDERED, ADJUDGED AND DECREED that the Claimant has suffered a 35% permanent partial disability to his right shoulder. No hearing costs are assessed in this matter.



Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

October 22, 2015

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0822640**

Thomas Contreras,

Claimant,

v.

St. John's Fire District Commission,

Employer,

and

State Accident Fund,

Carrier.

FULL COMMISSION ORDER

This matter came before the Full Commission on the Claimant's Form 30. As oral arguments were not requested by the Appellant, this case was decided on the briefs of the parties and a review of the record. This review arises out of an order issued October 22, 2015 by the Single Commissioner.

The Single Commissioner made the following findings of fact:

1. That the South Carolina Worker's Compensation Commission has jurisdiction over this matter.
2. That jurisdiction and venue are proper.
3. That the Defendants have only admitted an injury to the right shoulder.
4. Claimant suffered an admitted injury to his right shoulder on October 8, 2008 while in the course and scope of his employment at St. John's Fire District.
5. That the Claimant has an average weekly wage of \$1,174.20 making for a compensation rate of \$661.29, the maximum compensation rate for 2008.

6. The above cited case was heard by the undersigned on 05/14/13.
7. A Decision and Order was issued on 08/27/13.
8. Defendants filed a Form 30 (Notice of Appeal) on 09/03/13.
9. The Appellate Panel heard oral arguments on 12/16/13.
10. The Appellate Panel issued a Decision and Order on 05/05/14.
11. The Appellate Panel affirmed in part, reversed in part and remanded to the jurisdictional commissioner for a determination of an award to the Claimant's right shoulder under §42-9-30.
12. The Judicial Department assigned the case per its usual practice. As such, the case was assigned to this office as the undersigned was the jurisdictional commissioner at the time of assignment.
13. Given that I had heard the case and issued the Order affirmed in part, reversed in part, the parties were contacted by email to inquire if either or both wished me to recuse myself from ruling on the case per the directive of the Appellate Panel.
14. Neither party asked for a recusal.
15. As such, I asked the parties to brief the case consistent with the ruling of the Appellate Panel. Those briefs have been provided and have been made part of the record.
16. The Order of the Appellate Panel reads, "IT IS THEREFORE ORDERED AND, ADJUDGED AND DECREED that: The order of the single Commissioner is hereby affirmed in part, reversed in part and remanded by this Appellate Panel. This case shall be remanded to the Jurisdictional Commissioner for a determination of an award to the Claimant's right shoulder under § 42-9-30." That is the sole issue

before me. As a matter of review, I made the following applicable findings of fact following the hearing on 12/16/13:

17. The Claimant suffered an injury by accident to his right shoulder on 09/04/12 arising out of and within the course and scope of his employment.

18. The Defendants have provided the Claimant with medical care and treatment for this injury including four shoulder surgeries.

19. Dr. James DeMarco, the authorized treating physician, states on the Form 14B dated 05/16/11 that the Claimant is unable to return to work at his current employment.

20. The Claimant was 51 years old at the time of the 2013 hearing.

21. The Claimant is a high school graduate (1979).

22. The Claimant is a US Army veteran who was honorably discharged.

23. All of the Claimant's jobs prior to his work at the fire department were physical in nature.

24. The Claimant's job at the fire department which he held for over twenty-two years is physical by description.

25. As noted in Finding #19, the Claimant per Dr. DeMarco cannot return to his employment with the St. Johns Fire District Commission.

26. That finding is corroborated by Jean R. Hutchinson, M.Ed., who is a certified rehabilitation counselor and is certified in vocational evaluation. Dr. Charles Hughes also opines that he does not think the Claimant can return to his prior employment.

27. The Defendants did not choose to submit a vocational evaluation.

28. The Claimant was at MMI as of 08/07/12.

29. In addition to those findings to make a determination consistent with the directive from the Full Commission, I must consider the most recent impairment ratings in this case.

30. Dr. James DeMarco, who was the authorized treating physician, opined on 09/04/12, that the Claimant sustained a 9% permanent impairment to his right upper extremity which converts to a 15% permanent impairment of his right shoulder as a result of his work-related accident on 10/08/08.

31. Dr. Charles Hughes, who performed an IME, opined on 10/06/11 that the Claimant had suffered 14% permanent impairment to his right shoulder.

32. It is important to note that my directive from the Full Commission is very specific. I am to determine an award to the Claimant's right shoulder pursuant to §42-9-30.

33. While both parties make additional arguments in their briefs, this issue and this issue alone was before me in this remand.

34. Thus, when the evidence relevant to such a determination is considered, the Claimant has suffered 35% permanent partial disability to the right shoulder.

Claimant timely filed a Form 30 with the following grounds for appeal:

1. Whether the Single Commissioner on remand erred as a matter of fact and law in finding that the instructions on remand limited his findings to a permanent partial disability award under § 42-9-30 when the vacating of the previous Order required additional findings to be made regarding temporary partial disability and temporary total disability?

2. Whether the Single Commissioner on remand erred as a matter of fact and law in failing to include, affirm or otherwise determine the amount of temporary partial disability compensation due?

3. Whether the Single Commissioner on remanded erred as a matter of act and law making a disability award which was unsupported by the evidence and failed to

take into account Claimant's actual loss of earnings capacity?

4. Whether the Single Commissioner on remand erred as a matter of fact and law in determining Claimant reached MMI on September 4, 2012?

5. Whether the Single Commissioner on remand erred as a matter of fact and law in failing to make specific and detailed findings of fact sufficient for appellate review?

After reviewing the briefs submitted by the parties and the record in its entirety, this Appellate Panel makes the following findings:

FINDINGS OF FACT

1. That the South Carolina Worker's Compensation Commission has jurisdiction over this matter.
2. That jurisdiction and venue are proper.
3. That the Defendants have only admitted an injury to the right shoulder.
4. Claimant suffered an admitted injury to his right shoulder on October 8, 2008 while in the course and scope of his employment at St. John's Fire District.
5. That the Claimant has an average weekly wage of \$1,174.20 making for a compensation rate of \$661.29, the maximum compensation rate for 2008.
6. The above cited case was heard by the Single Commissioner on 05/14/13.
7. A Decision and Order was issued on 08/27/13.
8. Defendants filed a Form 30 (Notice of Appeal) on 09/03/13.
9. The Appellate Panel heard oral arguments on 12/16/13.
10. The Appellate Panel issued a Decision and Order on 05/05/14.

11. The Appellate Panel affirmed in part, reversed in part and remanded to the jurisdictional commissioner for a determination of an award to the Claimant's right shoulder under §42-9-30.

12. The Judicial Department assigned the case per its usual practice. As such, the case was assigned to the same Single Commissioner that heard the case on May 14, 2013.

14. The Single Commissioner asked the parties to brief the case consistent with the ruling of the Appellate Panel. Those briefs have been provided and have been made part of the record.

15. The Order of the Appellate Panel of May 5, 2015 reads, "IT IS THEREFORE ORDERED AND, ADJUDGED AND DECREED that: The order of the single Commissioner is hereby affirmed in part, reversed in part and remanded by this Appellate Panel. This case shall be remanded to the Jurisdictional Commissioner for a determination of an award to the Claimant's right shoulder under § 42-9-30."

That was the sole issue before the Commission. As a matter of review, the following applicable findings of fact were made following the hearing on 12/16/13:

16. The Claimant suffered an injury by accident to his right shoulder on 09/04/12 arising out of and within the course and scope of his employment.

17. The Defendants have provided the Claimant with medical care and treatment for this injury including four shoulder surgeries.

18. Dr. James DeMarco, the authorized treating physician, states on the Form 14B dated 05/16/11 that the Claimant is unable to return to work at his current employment.

19. The Claimant was 51 years old at the time of the 2013 hearing.
20. The Claimant is a high school graduate (1979).
21. The Claimant is a US Army veteran who was honorably discharged.
22. All of the Claimant's jobs prior to his work at the fire department were physical in nature.
23. The Claimant's job at the fire department which he held for over twenty-two years is physical by description.
24. As noted in Finding #19, the Claimant per Dr. DeMarco cannot return to his employment with the St. Johns Fire District Commission.
25. That finding is corroborated by Jean R. Hutchinson, M.Ed., who is a certified rehabilitation counselor and is certified in vocational evaluation. Dr. Charles Hughes also opines that he does not think the Claimant can return to his prior employment.
26. The Defendants did not choose to submit a vocational evaluation.
27. The Claimant was at MMI as of 08/07/12.
28. In addition to those findings to make a determination consistent with the directive from the Full Commission, we must consider the most recent impairment ratings in this case.
30. Dr. James DeMarco, who was the authorized treating physician, opined on 09/04/12, that the Claimant sustained a 9% permanent impairment to his right upper extremity which converts to a 15% permanent impairment of his right shoulder as a result of his work-related accident on 10/08/08.
31. Dr. Charles Hughes, who performed an IME, opined on 10/06/11 that the Claimant had suffered 14% permanent impairment to his right shoulder.

32. It is important to note that the directive from the Full Commission Order of May 5, 2014 is very specific. We are to determine an award to the Claimant's right shoulder pursuant to §42-9-30.

33. While both parties make additional arguments in their briefs, this issue and this issue alone was before the Commission on this remand.

34. Thus, when the evidence relevant to such a determination is considered, the Claimant has suffered 35% permanent partial disability to his right shoulder.

35. Appellant also raised issues from the prior Appellate Panel order dated May 5, 2014. We find that the Appellant cannot challenge the order from the Full Commission dated May 5, 2014 and that the only issues from the order of October 22, 2015 are properly before this review panel.

36. The Single Commissioner Order of October 22, 2015 is affirmed in its entirety.

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Law give the appropriate definition of divisions of the South Carolina Workers' Compensation Act as applicable to this case:

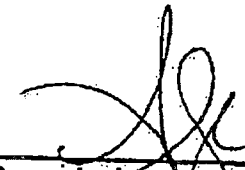
1. South Carolina Code Section 42-9-30 governs schedule of period of disability and compensation.

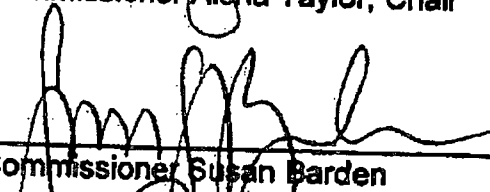
2. South Carolina Code Section 42-17-50 governs review and rehearing by the Commission.

ORDER

Therefore, the Order of the Single Commissioner is affirmed in its entirety.

IT IS SO ORDERED!

By: 
Commissioner Aisha Taylor, Chair

By: 
Commissioner Susan Barden

By: 
Commissioner Scott Beck

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on May 27, 2016

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Thomas Contreras, Claimant, Appellant,

v.

St. John's Fire District Commission, Employer, and State
Accident Fund, Carrier, Respondents.

Appellate Case No. 2016-001247

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2019-UP-040
Heard November 13, 2018 – Filed January 23, 2019

VACATED AND REMANDED

Gary Christmas, of Howell & Christmas, LLC, of Mt.
Pleasant; and Stephen B. Samuels, of Samuels Law Firm,
LLC, of Columbia, for Appellant.

Margaret M. Urbanic, of Clawson and Staubes, LLC, of
Charleston; and Page S. Hilton, of State Accident Fund,
of Columbia, for Respondent.

PER CURIAM: In this workers' compensation case, Thomas Contreras appeals the order of the Appellate Panel of the South Carolina Workers' Compensation Commission (the Appellate Panel). Contreras argues the Appellate Panel erred in

(1) finding Contreras's injury was limited to his right shoulder, and the Single Commissioner of the South Carolina Workers' Compensation Commission (the Single Commissioner) did not find the clavicle compensable; and (2) prohibiting Contreras from raising the issue of temporary partial disability (TPD) on remand. We vacate and remand to the South Carolina Workers' Compensation Commission (the Commission).

1. We find the Appellate Panel's findings of fact and conclusions of law are not sufficiently detailed to allow us to determine whether the decision was erroneous. *See Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986) ("The findings of fact of [the Appellate Panel] must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings."). Although the Appellate Panel's order stated there was "no separate impairment rating to the upper extremity," its order failed to clearly set forth the underlying facts upon which it relied to support its conclusion that Contreras's injury was limited to the right shoulder. *See id.* ("Implicit findings of fact are not sufficient. Whe[n] material facts are in dispute, the [Appellate Panel] must make specific, express findings of fact."). "To obtain compensation in addition to that scheduled for the injured member, claimant must show that some other part of his body is affected." *Singleton v. Young Lumber Co.*, 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960). Here, Contreras presented evidence that he injured his right arm and right clavicle in addition to his right shoulder. This issue impacts the ultimate liability in the case and determines whether compensation falls under section 42-9-20 of the South Carolina Code (2015) or section 42-9-30 of the South Carolina Code (2015). *See Drake v. Raybestos-Manhattan, Inc.*, 241 S.C. 116, 129, 127 S.E.2d 288, 295 (1962) (holding an issue that impacts the "ultimate liability in the case" is "one upon which the Commission is required to make an express finding of fact" and "failure to do so requires that the case be remanded to the Commission for such finding"), *superseded by statute*.

Without specific and definite findings upon the evidence, we must remand because we cannot determine whether the Appellate Panel's findings are unsupported by substantial evidence or controlled by an error of law. *See S.C. Code Ann. § 42-17-40(A)* (2015) ("The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue, must be filed with the record of the proceedings."); *Turner v. Campbell Soup Co.*, 252 S.C. 446, 450, 166 S.E.2d 817, 818 (1969) (finding remand is appropriate when the Appellate Panel fails to make an essential finding of fact or when its findings are so indefinite or general as to afford no reasonable basis for the appellate court to determine

whether the findings of fact are supported by the evidence and whether the law has been properly applied to the findings); *id.* at 450, 166 S.E.2d at 818–19 ("To hold otherwise would in such cases make the determination of the rights of the parties turn upon the neglect of the [Appellate Panel] to make essential findings of fact, or require the appellate court to make the omitted findings of fact which our statute forbids." (quoting *Drake*, 241 S.C. at 124, 127 S.E.2d at 292–93)). Thus, we vacate the Appellate Panel's order and remand the case to the Commission to make specific findings of fact regarding Contreras's right arm, right shoulder, and right clavicle.¹

2. We find the Appellate Panel erred in prohibiting Contreras from raising the issue of TPD on remand to the Single Commissioner and to the Appellate Panel on appeal from remand. Initially, we find Contreras did not have to raise this issue in his interlocutory appeal to preserve this issue. *See S.C. Baptist Hosp. v. S.C. Dep't of Health & Envt'l Control*, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987) ("An agency decision which does not decide the merits of a contested case, but merely remands . . . for further action is not a final agency decision subject to judicial review."); *Bone v. U.S. Food Service*, 399 S.C. 566, 576, 733 S.E.2d 200, 205 (2012) ("Whe[n] the party is not yet able to appeal due to the lack of a final judgment, the issue is not precluded [as the law of the case] as there was no prior opportunity for appeal.").

We find the Appellate Panel's findings of fact regarding Contreras's TPD award do not afford this Court a reasonable basis to "determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings." *Turner*, 252 S.C. at 450, 166 S.E.2d at 818 (quoting *Drake*, 241 S.C. at 124, 127 S.E.2d at 292–93). Although the Appellate Panel found Contreras was entitled to TPD, it failed to make specific findings regarding the amount of compensation awarded for TPD. "It is the duty of the Commission to make specific findings upon which a claimant's entitlement to compensation may rest and upon which the amount of compensation due him may be calculated by one of the statutory formulae." *Shealy v. Algernon Blair, Inc.*, 250 S.C. 106, 109–10, 156 S.E.2d 646, 648 (1967). "[A]wards without such specific findings do not comply

¹ Because the Appellate Panel's order was insufficient, we need not address whether Contreras should have received an award under section 42-9-20 rather than section 42-9-30. *See Futch v. McAllister Towing of Georgetown Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

with the requirements of the [Workers' Compensation Act] and are illegal." *Id.* at 110, 156 S.E.2d at 648. We vacate and remand this issue to the Commission to make specific findings of fact and conclusions of law regarding awarding TPD benefits to Contreras. See *Etheredge v. Monsanto Co.*, 349 S.C. 451, 454, 562 S.E.2d 679, 681 (Ct. App. 2002) (stating the Appellate Panel is the ultimate fact finder in workers' compensation cases and is not bound by the Single Commissioner's findings of facts and conclusions of law); *Fradley v. Pacific Mills*, 231 S.C. 601, 606, 99 S.E.2d 398, 401 (1957) (stating it is for the Commission, and not the court, to make specific findings regarding an award, and it is appropriate for the court to remand the case to the Commission to make such findings).

VACATED AND REMANDED.

HUFF, SHORT, and WILLIAMS, JJ., concur.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0822640

Thomas Contreras,

Claimant,

v.

St. John's Fire District Commission,

Employer,

and

State Accident Fund,

Carrier.

FULL COMMISSION ORDER

This matter comes before the Full Commission on remand from the South Carolina Court of Appeals, *Contreras v. St. John's Fire District Commission*, 2019—UP-040. On February 3, 2021, the parties notified the Commission pursuant to S.C. Code Ann. Reg. 67-712 that the matter was ripe for adjudication.

PROCEDURAL HISTORY

The Hearing Commissioner issued his original Order on August 27, 2013. Appeal was taken by Defendants to the Full Commission, for which oral arguments were held December 16, 2013, and the Appellate Panel issued its Order on May 5, 2014, remanding the case to the Single Commissioner. Claimant appealed the Full Commission's Order to the Court of Appeals, which issued its Order, citing *Bone*, on April 3, 2015. Upon notice of the Order from the Court of Appeals, the Hearing Commissioner (upon remand) issued his second Order on October 22, 2015, from which Claimant appealed. After re-review of the record, the Full Commission issued its

second Appellate Order on May 27, 2016, from which Order Claimant appealed to the Court of Appeals. The Court of Appeals issued its Opinion on January 23, 2019, "vacat[ing] the Appellate Panel's order" and remanding the case to the Commission for additional findings regarding the (a) shoulder, arm, and clavicle, and (b) amount of temporary partial benefits which Claimant is entitled to receive.

On February 3, 2021, the Commission received notice (See attached letter) from the prevailing party, as required by Regulation 67-712, that the case was being remitted to the Commission from the Court of Appeals. Upon the Commission's receipt of notice on February 3, 2021, that the Court of Appeals (a) vacated the Commission's Order, and (b) requested additional findings, the Commission re-reviewed the record and hereby issues the following new Order, in compliance with the directives of the Court to (a) *"make specific findings of fact regarding Contreras's right arm, right shoulder, and right clavicle"* and (b) *"make specific findings of fact and conclusions of law regarding awarding TPD benefits to Contreras"* [emphasis added].

FINDINGS OF FACT

1. The South Carolina Workers' Compensation Commission has jurisdiction over this matter.
2. Venue is proper.
3. As to right shoulder compensability, the Defendants admit an injury to the right shoulder arising out of and in the course and scope of Claimant's employment on October 8, 2008. To the Commission's knowledge, the compensability/admitted

status of Claimant's right shoulder injury has never been in dispute; therefore, the Commission has never adjudicated or questioned the compensability of the right shoulder. In cases where there is no controversy as to a body part or condition (*i.e.*, where there is a stipulation of the parties as to an admitted body part/condition), the Commission does not make findings as to compensability. However, out of an abundance of caution in order to comply with the Court's directive to make findings regarding the right shoulder, the Commission would point to the Court's attention (a) Defendants' pleadings before the Commission in which Defendants admit a right shoulder injury; (b) Defendants' counsel's stipulations at the original Hearing in May 2013 (*e.g.*, Hearing Transcript, page 4, lines 13-14, as contained in Record, page 534; page 9, lines 9-10, as contained in Record, page 539); (c) the Consent Order of March 19, 2012, wherein the parties agreed that no hearing would be held at that juncture as Claimant was not yet at maximum medical improvement for his "admitted" right shoulder injury; and (d) the fact that Defendants paid for Claimant's four shoulder surgeries (two performed by authorized treating physician Dr. Jaskwhich* on January 29, 2009, and October 1, 2009, respectively; and two performed by authorized treating physician Dr. DeMarco on October 11, 2010, and March 29, 2012, respectively—See operative notes of Drs. Jaskwhich and DeMarco as contained in Record, pages 138-145, 401-402, and 421-423).

*Notwithstanding any pleadings/counsel statements in the record to the contrary (*e.g.*, Record, page 500), Dr. DeMarco did not perform all four of Claimant's shoulder surgeries, as Dr. Jaskwhich's two sets operative notes will attest. Dr. Jaskwhich was an authorized treating physician who performed Claimant's first two shoulder surgeries. The Commission alerts the Court to this fact solely for purposes of accuracy of the record.

4. As to permanency of the right shoulder, the Appellate panel agrees with the 35% permanency award (\$69,435.45) made by the Hearing Commissioner (.35 x 300 weeks per scheduled loss under Section 42-9-30(14) x Claimant's compensation rate of \$661.29). Based upon our review of the Record, including but not limited to the following evidence, we affirm the Single Commissioner's award of 35% to the right shoulder: (a) Dr. DeMarco's 15% impairment rating to the shoulder; (b) although Dr. DeMarco instructed Claimant on the date of maximum medical improvement (August 7, 2012) to return "PRN," that as of the date of the Hearing, Claimant had not returned to Dr. DeMarco—or any other physician—for treatment for Claimant's shoulder injury; (c) Claimant's restrictions from authorized treating physician Dr. DeMarco (50 lbs. two-handed carrying/pushing/pulling; 40 lbs. overhead lifting with both hands; and 20 lbs. overhead with right arm), to which restrictions we accord the greatest weight, rather than those restrictions recommended by a one-time IME in 2011 prior to Claimant's 4th surgery in 2012; (d) the final 7 pages of physical therapy treatment notes (2012) including the physical therapy discharge summary, that speak to objective findings/improvement in Claimant's condition (range of motion and strength) and Claimant's subjective admissions to these providers (e.g., pain reduction⁷ and ability to engage in recreational activities), notwithstanding any self-serving Hearing testimony or earlier statements to a vocational expert to the contrary (e.g., Record, page 88). For instance, the physical therapy discharge summary and other physical therapy records state that Claimant's pain at rest is "0/10," and with activity "2/10;" that Claimant has returned to his recreational activities; that Claimant has "achieved all physical therapy goals at 90-100%;" that Claimant made "excellent progress" with shoulder rehab; and

that as to problems as of July 19, 2012, physical therapy providers wrote "none apparent" other than periodic "L shld [unrelated] pain;" (e) that Claimant no longer takes prescription pain medication for his injury (including any prescribed by his own family physician, although Claimant treats with this physician for other conditions such as diabetes and colds); and (f) that Claimant has no driving restrictions, and in fact drives himself to the bowling alley where he works, drives to run errands, and also drives his mother to the store and to her appointments (See e.g., Hearing Transcript, pages 39-41, as contained in Record, pages 569-571; Claimant's Deposition, pages 23-24 and 30, as contained in Record, pages 455 and 457; Record, e.g., pages 104, 223-229, and 449).

5. As to prescription medication for Claimant's shoulder injury specifically, Claimant told providers in 2010 that "*It feels fine as long as long as I'm on my Celebrex.*" [emphasis added]. Similarly, when Claimant saw his one-time IME (Dr. Hughes) in 2011, Claimant was still taking Celebrex once a day. However, as of the date of the Hearing, Claimant admitted that he does not take any prescription pain medication for his work injury, whether from his family physician or otherwise; we also find this fact instructive as to the improvement in Claimant's condition. Prior to the date of the Hearing, as of the date of Claimant's deposition, pages 27-28, as contained in Record, 456, Claimant had only a few pain patches left, and was using over-the-counter medication only a "a few times a week." (See Hearing Transcript, page 39, as contained in Record, page 569; Record, e.g., pages 98 and 261).

6. As to the right clavicle and right arm, Claimant pled both body parts. Defendants denied both the right clavicle and the right arm as injured body parts. No body parts other than the right shoulder were admitted by Defendants, whether in pleadings or at the Hearing. We base this finding in part on Hearing Transcript, pages 4, 9, and 12, as contained in Record, pages 534, 539, and 542).

7. As to the right clavicle, we interpret the Hearing Commissioner's Order of August 27, 2013, to show that (a) under "Stipulations," Claimant's only admitted injury is to his right shoulder (Order of Commissioner McCaskill, pages 1-2, as contained in Record, pages 3-4); (b) in his "Statement of the Case," Commissioner McCaskill specifically recognized that the right clavicle was alleged/pled, but denied by Defendants (Order of Commissioner McCaskill, page 2, as contained in Record page 4; Hearing Transcript, pages 11-12, as contained in Record, pages 541-542); (c) in his findings of fact, Commissioner McCaskill specifically set forth or listed the body parts he found injured and therefore compensable: the right shoulder and right arm (Order of Commissioner McCaskill, page 20, Finding of Fact #3, as contained in Record, page 22); (d) the right clavicle was not included in that list of compensable body parts—*expressio unius est exclusio alterius*; (e) Commissioner McCaskill did not hold the compensability of the right clavicle in abeyance or otherwise defer the issue until a later point in time; and therefore, based upon these factors, (f) we find that Commissioner McCaskill found the right clavicle not compensable. **Claimant appealed neither (a) the denial of the compensability of the right clavicle, or (b) any alleged failure on Commissioner McCaskill's part to address the right clavicle although this body part was**

specifically pled, raised at the Hearing, and recognized in the Order as an alleged body part. Further, at the first oral argument before the Appellate Panel on December 16, 2013, the Panel interpreted Claimant's counsel's comments as a concession that—as the right clavicle is not listed among those body parts Commissioner McCaskill found injured—the clavicle is non-compensable and/or abandoned which is the law of the case, and as such, no longer a body part/condition subject to the Commission's adjudication. We base this finding on the colloquy between Commissioner Beck and Claimant's counsel, as located in the Appellate Hearing Transcript, pages 13-14 (Record, pages 593-594; dated December 16, 2013), as set forth below:

COMMISSIONER BECK: The [Single/Hearing Commissioner's] order only addressed right shoulder and right upper extremity, that I see. I don't see anything in here with regard to the clavicle.

MR. CHRISTMAS: Yes, sir. Let me address that.

COMMISSIONER BECK. Your argument that the clavicle as another body part, while it may be dispositive at a hearing, it's sort of —the law of the case is [sic] not in here.

MR. CHRISTMAS: Sure.

COMMISSIONER BECK: Would you disagree with that?

MR. CHRISTMAS: *I would not disagree with that.*

COMMISSIONER BECK: So we've got [before the Appellate Panel] right shoulder and right upper extremity. And I assume by the right upper extremity, you're referring to the bicep?

MR. CHRISTMAS: Yes, Sir. [emphasis added].

See *also* Record, *e.g.*, pages 595-596. There was no assertion made during oral argument that the issue was deferred/preserved and subject to a future Hearing as to compensability. The Panel believes it would be procedurally improper to rule on additional body parts not found as compensable/injured, unless a hearing commissioner's (a) denial of compensability is appealed, or (b) failure to address a pled body part is appealed. However, if the Court's instruction is for the Appellate Panel to adjudicate the compensability of the right clavicle, we would make the following substantive findings of fact:

- (a) The shoulder is the situs of the injury, a finding we base upon the greater weight of the evidence; if the right clavicle is implicated, it is in an incidental way for reasons set forth *infra*;
- (b) No diagnostic study of the right clavicle itself (*e.g.*, an x-ray of the right clavicle) has ever been ordered by any physician, including but not limited to Emergency Room providers on the date of the accident, authorized treating physician Dr. Jaskwhich (who performed the first two shoulder surgeries), or Dr. DeMarco (who performed the second two shoulder surgeries); only Claimant's right "shoulder" has been x-rayed (diagnostic test labeled as "shoulder" x-ray); and the only MRI's in evidence were ordered for Claimant's right "shoulder" (Record, *e.g.*, page 150; page 175: "here for follow up of his *right shoulder MRI*"; [emphasis added]; page 403: "MRI RIGHT SHOULDER [emphasis supplied]; page 443

- ("XR shoulder"); and page 445: "MRI OF THE RIGHT SHOULDER" [emphasis supplied]);
- (c) When Claimant completed Employer's accident report, under "What was the injury or illness? Tell us the part of the body that was affected and how it was affected; be more specific than 'hurt,' 'pain,' or 'sore.'" Claimant wrote: "*My right shoulder. I feel pain in the back and top of my shoulder*" (Record, page 344);
 - (d) Although not dispositive, the First Report of Injury contains no mention of the right clavicle, and instead states that Claimant hurt his right *shoulder* while lifting weights [emphasis added] (Record, page 347);
 - (e) The "Incident Investigation Report: contains the statement that Claimant "felt something pull in his right *shoulder*" [emphasis added] (Record, page 348);
 - (f) In medical intake sheets completed by Claimant, Claimant never mentions his right clavicle as injured or painful or as the location of pain; by contrast, Claimant instead describes his problem/injury and its "Location" as the "shoulder" or "right shoulder" (Record, e.g., page 415);
 - (g) The only subjective reference to the right clavicle itself that we locate in treatment records is in January 2011 ("tenderness" in clavicle), just a few months after Claimant's 3rd surgery, involving "acromioclavicular joint resection"—but as part of an operation specifically described as to the "right shoulder" (Record, pages 119 and 140);
 - (h) On January 21, 2011 (after Claimant's 3rd surgery in 2010—which 3rd surgery involved the right clavicle resection—Dr. Demarco assigned a 7% *right upper extremity rating "which converts to [an] 11 percent right shoulder impairment"*

[emphasis added]. We find it instructive that there is no additional impairment for the right clavicle attached to this narrative treatment note. Nor in Dr. DeMarco's addendum does he assign an impairment to the right clavicle (Record, e.g., pages 118-119, 331, and 408).

- (i) Dr. DeMarco's second impairment rating (May 2011), as stated on the Commission's Form 14B, is 11% to the right shoulder; and no other body part is indicated as affected, including but not limited to the right clavicle (Record, page 100).
- (j) On the date of maximum medical improvement after Claimant's 4th and final surgery (August 7, 2012), Dr. DeMarco assigned a 9% impairment rating, with no mention of the right clavicle as impaired, disabling, or complained of (Record, page 104);
- (k) On the same date (August 7, 2012), Dr. DeMarco listed, under both "Assessment" and "Treatment," only "Shoulder pain"—there is no reference to or mention of right clavicle pain or other clavicle problem under these categories (Record, pages 103-104);
- (l) On September 4, 2012, Dr. DeMarco's Form 14B (to which Commission Form we give great weight) states that as to "Body part(s) injured," it is Claimant's "Rt. Shoulder;" and as to "Body part(s) affected:" **Dr. Demarco did not include the right clavicle, although there was a blank for this physician to write in or otherwise include the right clavicle.** In this document, Dr. Demarco states that Claimant has a 9% right upper extremity impairment rating, which rating Dr. DeMarco converts to a 15% shoulder rating (Record, page 449).

- (m) In the "check-the-box" questionnaires (October 2012) sent by Claimant to the authorized treating physician, there are no causation/aggravation statements with regard to the right clavicle in either items (1) or (2); we give greater weight to this evidence from the authorized treating physician than we give to the causation opinion from Claimant's one-time IME who evaluated Claimant prior to the date of (i) Claimant's last surgery, (ii) physical therapy discharge notes, and (iii) maximum medical improvement (Record, pages 101-102; See also Record, pages 94-95);
- (n) Claimant's vocational evaluator states that Claimant "continues to have pain in his right *shoulder*" and which radiates *up to the top* of his right *shoulder* [emphasis added]. We cannot locate in this report where Claimant himself separately and subjectively refers the evaluator to his "*clavicle*." However, as far as any practical or functional limitations are concerned, Claimant's condition has clearly improved since the date of his vocational assessment: Claimant told his vocational evaluator (in 2011) that he is no longer able to bowl or fish, a statement inconsistent with Claimant's abilities as later expressed to other providers that he has returned to recreational activities (2012) and an admission at his deposition (2013) that he has "sort of cut down on [fishing]" and that jetties are "*where I like* [present tense] *to go*"—i.e., not "*liked*" to go or "*used*" to go [emphasis added]. Additionally, we note that Claimant admitted to Dr. Hughes that he does in fact bowl (Record, page 98), but Claimant inconsistently told his vocational evaluator, just four days later (Record, pages 87-88), that he cannot bowl and even "*cannot allow his right arm to swing naturally*" [emphasis added]

- (e.g., Record, pages 86-93, dated 2011; Cf. Record, page 98: able to do some bowling, dated 2011; page 223: returned to recreational activities, dated 2012; page 456, dated 2013); and
- (o) Claimant takes no prescription medication for his right clavicle, a finding we base on Claimant's admission that he takes no pain medication for his work related condition, although he treats with a family physician for other conditions/illnesses such as diabetes and colds (Hearing Transcript, page 39, as contained in Record, page 569, lines 21-23; Record, page 455).

8. As to the right arm, we find the following:

- (a) The situs of the injury is the shoulder, a finding we base on the greater weight of the evidence, including but not limited to the specific evidence cited herein;
- (b) No specific or separate diagnostic study of the arm/humerus/radius/ulna/bicep muscle itself has ever been ordered by any physician in this case—whether by x-ray or MRI, and whether before or after Claimant's surgeries; the only diagnostic studies ever ordered for Claimant are labeled for the "*shoulder*" or "*right shoulder*" after "*Injury to shoulder*" (e.g., Record, pages 146 and 149-150; page 175: "here for follow up of his *right shoulder MRI*; [emphasis added]; page 403: "MRI RIGHT SHOULDER [emphasis supplied]; page 443 ("*XR Shoulder*"); and page 445: "MRI OF THE RIGHT SHOULDER" [emphasis supplied]);
- (c) Claimant's 2008 shoulder MRI, as interpreted by both Dr. Thesing and authorized treating physician Dr. Jaskwhich, does not identify a "biceps"

injury: Dr. Thesing found "1. Supraspinatus tendinitis but no evidence of a full thickness rotator cuff tear. 2. Probable superior labral tear; and 3.

Moderate AC joint arthrosis." Dr. Thesing lists no pathology with regard to the biceps tendon; similarly, Dr. Jaskwhich (the authorized treating orthopedist), upon his review of this MRI, identified a labral tear, but did not document any biceps pathology (See e.g., Record, pages 149, 175, and 403);

(d) For Claimant's first surgery (January 2009), a right shoulder arthroscopy, the pre-operative diagnosis was "right shoulder pain" and SLAP tear; the post-operative diagnosis is the same. During surgery, the authorized surgeon specifically examined Claimant's biceps tendon and documented the fact that "*The biceps tendon itself was intact*" and that "Care was taken to avoid undue tension on the biceps tendon;" the anesthesiologist also refers to Claimant's surgery as "*right shoulder arthroscopy*" [emphasis added] (Record, e.g., pages 144, 153, and 401);

(e) As to the August 2009 MRI, Dr. Jaskwhich (the authorized treating orthopedist) interpreted the MRI as showing, other than the labral pathology, "no other abnormality noted except for some tendinosis in the rotator cuff;" although the radiologist had noted some "mild" tendinopathy of the intra-articular portion of the biceps tendon, Dr. Jaskwhich did not so opine, and Claimant's subsequent surgery (as referenced in the next item) showed that the tendon was intact with no documented issue (Record, pages 146 and 169);

- (f) Claimant's second surgery (October 2009) was also labeled a "*right shoulder*" arthroscopy during which surgery the biceps tendon itself was examined again and found to be "intact," and the biceps was also "intact with no evidence of tearing" [emphasis added] (Record, page 142);
- (g) On the intake sheet Claimant completed at his first visit with Dr. DeMarco (2010), Claimant wrote that as to the "Location" of his "problem/injury" was his "right shoulder." As to the description of his problem, Claimant wrote "shoulder pain;" under "nature of the injury," Claimant wrote "shoulder pain, pressure, popping." Under "Other medical problems:" Claimant did not write "arm" or "biceps;" he left this line blank. To the question, "What is the most active thing you do with your arms, *i.e.*, sports, chores, home repair or work related activity?", Claimant wrote "*work on computer, bowling, fishing*" [emphasis added] (Record, *e.g.*, pages 134-136; Hearing Transcript, page 32, lines 2-3, as contained in Record, page 562, as to Claimant's right hand dominance).
- (h) During the 2010 shoulder surgery (Claimant's 3rd—the first one performed by Dr. DeMarco), Dr. DeMarco documented that "The biceps was pulled and the joint seemed to be completely normal." Some scar tissue interfered with the biceps gliding in and out of the bicipital groove, but after "good debridement," he was "able to see that in full internal and external rotation there was no undue pulling on the biceps like it was at the beginning of the case prior to the resection." (Record, pages 140-141 and pages 421-423). Dr. DeMarco later wrote (Record, page 114) that during this 3rd surgery, he had "pulled in as

much of the biceps into the joint, and this is typically what we do, and in that region it appeared normal and so I did not decide to look further or release anything" (See *also* page 98, wherein Dr. Hughes also noted that during this 3rd surgery, the intra-articular biceps tendon was found to be "intact");

- (i) Because Claimant was left with some causally-related bicep pain after the 3rd surgery, Dr. DeMarco performed a 4th surgery: the Appellate Panel finds instructive the fact that Dr. DeMarco wrote that the 4th surgery (including the "right shoulder long head biceps tenodesis") is "absolutely the last thing that can be done *in the shoulder...*" [emphasis added]. During the surgery, Dr. DeMarco noted a "very small area" of grade II changes of the upper anterior humeral head, but the remainder of the cartilage was within normal limits. He noted some tendinopathic changes of the biceps and in his repair, "applied gentle fixation to the tendon" (Record, pages 114, 138-139, and 406);
- (j) On January 21, 2011, the date of Dr. DeMarco's first impairment rating, he assigned an 11% permanent **right shoulder** impairment and converted to/from both a 7% right upper extremity and 4% whole person rating (Record, pages 118-119, 331, and 408);
- (k) In May 2011 (after Claimant's 3rd shoulder surgery), Dr. DeMarco assigned a second impairment rating, as stated on the Commission's Form 14B, as 11% to the **"right shoulder" with no other body part listed as affected** [emphasis added] (Record, page 100);
- (l) After Claimant's 4th shoulder surgery, his condition improved, a finding we base upon the clinical treatment findings of Dr. DeMarco in his last two

narrative treatment notes (June 26, 2012, and August 7, 2012--date of MMI).

On June 26, 2012, Claimant was using Celebrex and Flector patches but reported that his pain was "*minimal*" but with some "*spasms*" around his bicep; however, Dr. DeMarco's "Assessment" and "Treatment" both refer to Claimant's shoulder only, as "The upper extremity was grossly neurologically and vascularly intact. Motor function was also intact distally" (Record, pages 105-106). On August 7, 2012—the date of MMI and the last date Claimant saw Dr. DeMarco—Dr. DeMarco also found Claimant's upper extremity gross neurologically and vascularly intact. Dr. DeMarco's only "Assessment" on this date (located on page 2 of this record) was "**Shoulder pain**" [emphasis added]. Claimant reported that he was "doing well" (Record, pages 103-104);

- (m) In his narrative note of August 7, 2012 (after the last of Claimant's shoulder surgeries), Dr. DeMarco assigned a 9% impairment rating, of which rating Dr. DeMarco attributed 3% to biceps atrophy. We find instructive that Dr. DeMarco again refers to Claimant's last surgery as the second surgery Dr. DeMarco performed on "*this shoulder*" [emphasis added] (Record, pages 103-104);
- (n) On September 4, 2012, Dr. DeMarco completed the Commission's Form 14B, which states that as to "**Body part(s) injured,**" Dr. DeMarco wrote "**Rt. Shoulder,**" and under "**Body part(s) affected,**" Dr. DeMarco listed no others (*i.e.*, the line is left blank as to other body parts affected). Dr.

DeMarco specifically converted Claimant's 9% right upper extremity impairment rating to a 15% shoulder rating (Record, page 449);

- (o) We find instructive Claimant's statement to his vocational expert that in the mechanics of the injury, Claimant "felt a 'pop' with significant pain in his *right shoulder*" [emphasis added] (Report of Hutchinson, page 2, dated October 12, 2011, as contained in Record, page 87). As of the time of the evaluation, the vocational expert goes on to say that Claimant "continues to have pain in his *right shoulder* that he described as 'stabbing' with 'sharp' pain *radiating up to the top of his shoulder*" (Page 2 of the Report, as contained in Record, page 87); by contrast, the check-the-box questionnaires provided by Claimant inconsistently state that Claimant's shoulder pain radiates *downward* "into his right biceps" [emphasis added] (Record, pages 101-102);
- (p) All four surgeries that Claimant underwent are, in their captions/descriptions, labeled both pre- and post-operatively as "*Right shoulder*" procedures (including but not limited to "Right shoulder long head of biceps tendinopathy"); similarly the pre- and post-operative diagnoses begin with the words "*Right shoulder*" [emphasis added] (Record, pages 138-145 and 421-423);
- (q) We give great weight to the fact that Claimant has not returned for treatment with Dr. DeMarco since August 2012 for his right "arm" or "bicep." Nor is there any other evidence in the record that Claimant has sought any further treatment whatsoever with any other physician for his right "arm" and/or "bicep" (Record in its entirety);

- (r) We considered Claimant's "check-the-box" questionnaires, sent by Claimant to the authorized treating physician, but note that these questionnaires were not part of or in response to or accompanied by any clinical treatment visit. We are mindful of the fact that these questionnaires do state that there was an injury and/or aggravation to the right biceps, but then qualify that statement by saying the affect is radiating pain and tenderness "into" the right biceps; the Appellate Panel finds this check-off response inconsistent with Claimant's subjective complaint to his vocational expert, whose 2011 report states that Claimant reported that his pain radiates upwards. The questionnaires are also inconsistent with Dr. DeMarco's 14B's to which we give great weight (Record, pages 87, 100-102, and 449);
- (s) During the time of Claimant's one-time IME (2011), Claimant was still taking Celebrex; however, after the 4th and final surgery, Claimant had stopped taking Celebrex. By May 2012, in a narrative treatment note, Dr. DeMarco states that Claimant has stopped taking Celebrex, that he was "doing very well and is making improvements;" the assessment is "shoulder pain;" and Claimant was still, however, using Flector patches for *morning* pain over the biceps [emphasis added]. By the date of his deposition (2013), Claimant was no longer taking Celebrex. By the date of the Hearing in 2013, Claimant was not using prescription pain medication, including any prescribed by his family physician, although Claimant undergoes treatment with his family physician for other maladies and illnesses (e.g., Hearing Transcript, page 39, as contained in Record, page 569; Record, pages 107-108);

- (t) We also considered and are therefore mindful of the fact that Claimant received an injection into his biceps tendon—in May 2010 (prior to his third surgery). This injection was administered after Claimant reported pain after *working in his yard and “thinks he may have aggravated the shoulder”* [emphasis added] (Record, page 164); and
- (u) As far as any practical or functional limitations are concerned, Claimant’s condition has clearly improved since the date of his vocational assessment in 2011: Claimant told the vocational evaluator that he is no longer able to bowl or fish, a statement inconsistent with Claimant’s abilities as later expressed to other providers that he has returned to recreational activities (2012) and an admission at his deposition (2013) that he has “sort of cut down on [fishing]” and that jetties are “*where I like* [present tense] *to go*”—i.e., not “*liked*” to go or “*used*” to go [emphasis added]. Additionally, we note that Claimant told Dr. Hughes that he does in fact bowl (Record, page 98), but just 4 days later Claimant inconsistently told his vocational evaluator (Record, pages 87-88) he cannot bowl and even “*cannot allow his right arm to swing naturally*” [emphasis added] (e.g., Record, pages 86-93, dated 2011; Record, page 98: able to do some bowling, dated 2011; page 223: returned to recreational activities, dated 2012; and page 456, dated 2013).

9. As to any other part of the right arm (i.e., not the biceps area), Dr. DeMarco found that Claimant’s “elbows, wrists, and neuro reveal full range of motion appropriate for the patient’s age without tenderness, effusion, instability, ecchymosis, edema, atrophy or spasticity.” After Claimant’s final surgery, there are no deficits noted at the elbows or

wrists; Dr. DeMarco in treatment records found the *upper extremity* to be "neurologically and vascularly intact. Motor function was also intact distally" [emphasis added] (Record, e.g., pages 106-108, 110, 112, and 114).

10. As to both the right arm and right clavicle, we give the greatest weight to the treatment records accompanied by a clinical visit, rather than to check-the-box questionnaires sent by Claimant and for which there was no accompanying clinical visit and/or narrative treatment note. For instance, in the last narrative treatment note from Dr. DeMarco of August 7, 2012 (the date of maximum medical improvement), Dr. DeMarco's "Assessment" was "Shoulder pain" (under this particular heading), and the "Treatment" heading lists only "Shoulder Pain" as well. As part of the impairment rating to the right shoulder, Dr. DeMarco assigned 3% for biceps atrophy and 1% for pain/spasm [emphasis added]. This appears to the Appellate Panel to be the extent of any incidental involvement regarding the arm with nothing specifically regarding the clavicle (Record, pages 103-104 and 404-405).

11. As to both the right arm and right clavicle, we considered Claimant's one-time IME opinion (Dr. Hughes—who provided no treatment in this case), but find that (a) the report was created prior to Claimant's final surgery and recovery; and (b) we cannot ignore or overlook the fact that Dr. Hughes specifically states in his opening paragraph under "HISTORY OF PRESENT ILLESS [SIC]:" "I have been asked to perform an independent medical evaluation for the right *shoulder*"—as to the situs of the injury, we find it instructive that Dr. Hughes was not asked to perform an independent medical

evaluation for the "clavicle" or "arm" or "biceps." [emphasis supplied; emphasis added]. Dr. Hughes in the second paragraph of the report states that Claimant "*injured the shoulder*" (i.e., no other body parts are referenced in this narrative as injured) when Claimant was lifting weights at work [emphasis added]. In an accompanying "check-the-box" questionnaire dated October 6, 2011 (the same date as the right shoulder IME evaluation), Dr. Hughes checked off that Claimant's injuries to his right shoulder, right upper extremity, right biceps and right clavicle were caused by and/or aggravated by the accident. In the next "check the box" statement, Dr. Hughes clarifies that the right shoulder injury "*affects the right upper extremity by way of pain and tenderness into his right biceps and clavicle,*" which we interpret as radiating pain and tenderness from the shoulder. However, Dr. Hughes provides no impairment in the blank after "RIGHT UPPER EXTREMITY" (as to any percentage for arm/biceps) and rates the right clavicle as to the "A-C joint" as 10% to the upper extremity [emphasis added] (Record, pages 94-99).

12. As to the right arm and right clavicle, when Claimant was deposed in late April 2013 (approximately 8 months after he reached MMI and received his last treatment with any physician), Claimant initially answered the question "Now, have you injured any other body parts other than your right shoulder?" Claimant did not answer arm, biceps, or clavicle, and instead only answered "right shoulder" and his previous (unrelated) left shoulder workers' compensation injury. Only in later testimony did Claimant add his right biceps, but he did not include his right clavicle (Claimant's Deposition, page 24, lines 6-8, as contained in Record, page 455; Deposition, page 25, as contained in

Record, page 456; Cf. pages 37-38 of the deposition, when Claimant was later questioned by his counsel; See also Hearing Transcript, pages 34-35, as contained in Record, pages 564-565).

13. As to the right arm and right clavicle, when Claimant was completing his state disability form in November 2010, Claimant was asked "What is your injury or sickness?" Claimant wrote "torn labrum" which occurred while "lifting weights" at work. Claimant did not mention or list his arm, biceps, biceps tendon, or clavicle (Record, e.g., page 232).

14. As to the right arm and right clavicle, when Claimant reached MMI (August 7, 2012), the last narrative treatment (See "History of present illness"), Claimant presented for follow up on his right *shoulder*—not his right clavicle and/or biceps. Claimant was noted to be doing well, and that his only issues were some muscles [sic] spasms and pain "*if he leans on his arm* but nothing terrible;" Claimant had already stopped taking the Celebrex but was still using Flector patches [emphasis added] (Record, page 103).

15. As to the right arm and right clavicle, by the date of the 2013 Hearing, Claimant was not using any prescription pain medication (Hearing Transcript, page 39, as contained in Record, page 569).

16. As to the right arm and right clavicle, we find that there is no functional disability or loss of use in addition to that which Dr. DeMarco encompassed within his 15%

shoulder rating, and which we find included in our 35% award (\$69,435.45) to the right shoulder. Even prior to the 4th surgery, Claimant is documented as able to engage in recreational bowling, one of Claimant's hobbies (Record, e.g., page 98). As of the date of the Hearing, Claimant continues to work at a bowling alley where he has done so for the previous 12 years (Hearing Transcript, pages 35, 39, and 43, as contained in Record, pages 565, 569, and 573). As Claimant's specific duties as front desk clerk at the bowling alley require him to check customers in, rent shoes, and coordinate leagues—nowhere in the record is there any evidence that Claimant is required to bowl or demonstrate any bowling technique—the greater weight of the evidence shows that Claimant bowls on a voluntary, recreational basis—and not as a requirement of employment. Similarly, according to the physical therapy discharge records after Claimant's 4th and final shoulder surgery, Claimant "demonstrates a return to his recreational activities," evidence to which we give greater weight than self-serving statements, previous statements, or testimony at the Hearing to the contrary. For instance, one physical therapy record dated prior to the 4th surgery states that Claimant bowled with a 12-lb. ball during which activity Claimant felt "stiff but no [increased] pain." In contrast to the physical therapy discharge notes stating that Claimant had returned to recreational activities, Claimant inconsistently told his vocational evaluator in October 2011 that he is no longer able to bowl or fish, which statement we find unsupported by the records cited in this finding as well as by Claimant's deposition testimony in which he testified that he has "cut back" on fishing. Alternatively, we find that Claimant's condition greatly improved after the date of his vocational evaluation. It does not seem reasonable to the Appellate Panel that a person who (a) is able to bowl with his injured

arm (as even Dr. Hughes documented in 2011), and (b) has returned to bowling recreationally (as physical therapists documented in 2012), has a physical deficit of significance with regard to either Claimant's right arm or right clavicle. We give greater weight to these physical therapy records as to Claimant's functional improvement and abilities than we give to any self-serving statements/testimony to the contrary. The treatment records speak to the shoulder as the (a) situs/source of Claimant's injury/condition, (b) labeled operative procedures which Claimant underwent, and (c) diagnostic testing Claimant underwent (medical evidence in its entirety; See also e.g., Claimant's Deposition, pages 7-9, as contained in Record, pages 451-452; Claimant's Deposition, page 26, as contained in Record, page 456; Record, e.g., pages 86-93, 98, 223, and 234).

17. As to the right arm and right clavicle, we also find it instructive as to any additional impairment or involvement of another body part that the record before the Panel is devoid of any evidence that Claimant has returned to Dr. DeMarco since August 7, 2012 (MMI), with any complaints and/or for treatment for either the right arm or right clavicle, although Dr. DeMarco had advised Claimant to return for treatment as needed. In fact, Claimant admits that he has not returned to Dr. DeMarco for treatment for his shoulder (or biceps/arm or clavicle). Nor is there any other treatment record in evidence from any other physician—whether personal, authorized, or IME—showing that Claimant has sought treatment for either his right arm or right clavicle since he was released at maximum medical improvement (Hearing Transcript, page 39, lines 15-20, as contained in Record, page 569; Record in its entirety).

18. Claimant has an average weekly wage of \$1,174.20, making for a compensation rate of \$661.29, the maximum compensation rate for 2008.

19. Claimant was 51 years old at the time of the 2013 hearing.

20. Claimant is a high school graduate (1979).

21. Claimant is a US Army veteran who was honorably discharged.

22. All of Claimant's jobs prior to his work at the fire department were physical in nature.

23. Claimant's job at the fire department which he held for over twenty-two years is physical by description.

24. Dr. James DeMarco, the authorized treating physician, states on the Form 14B (dated 05/16/11) that Claimant is unable to return to work at his employment with the St. John's Fire District Commission.

25. Dr. DeMarco's opinion is corroborated by Jean R. Hutchinson, M.Ed., who is a certified rehabilitation counselor and is certified in vocational evaluation. Dr. Charles

Hughes (Claimant's IME) also opines that he does not think the Claimant can return to his prior employment.

26. Defendants did not submit a vocational evaluation. However, as we are specifically instructed to make findings regarding the right shoulder, we find that Claimant's right shoulder has improved since the date of the 2011 vocational evaluation, based upon evidence from 2012 (e.g., physical therapy notes) and 2013, as referenced herein, although not to the extent that Claimant can return to his heavy job with Employer.

27. Claimant reached maximum medical improvement as of August 7, 2012.

28. Claimant has suffered 35% permanent partial disability to his right shoulder, equating to an award of \$69,435.45.

29. Based upon the evidence set forth herein, we conclude that any effect of Claimant's right shoulder injury on Claimant's right clavicle and/or right arm is (a) incidental, and (b) functionally inconsequential, and in any event a part of and encompassed within our 35% award to the right shoulder.

30. The Hearing Commissioner's prior Orders with regard to (a) future medical care as recommended by the authorized treating physician, and (b) his other findings not inconsistent with the findings in this Appellate Panel Order, are hereby affirmed.

31. As to the location of any evidence in the Record referenced herein, the Commission will provide, upon the Court's request, any additional citations for the Court's convenience and review prior to the issuance of the Court's order. See *Burnette v. City of Greenville*, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012): "*Because no evidence indicates ... we are forced to conclude ...*" [emphasis added].

32. As to temporary partial disability benefits, we find that Claimant is entitled to temporary partial disability benefits in the amount of \$29,824.18 for the period of September 26, 2011 through August 7, 2012, the date of maximum medical improvement. This finding is based upon the following: Claimant executed a Form 17 stating that the carrier paid temporary total disability benefits from October 18, 2010 through September 25, 2011. Because Claimant received temporary total disability benefits for more than 150 days, the carrier was required to continue paying indemnity benefits absent a Commission Order to the contrary pursuant to S.C. Code Ann. § 42-9-260 (F)(2021) and 67 S.C. Code Regs. 506D (2021). There is no record in the Commission file indicating that the carrier filed a Form 21 to stop-pay benefits. Claimant is not entitled to receive both temporary total disability and temporary partial disability benefits concurrently. See S.C. Code Ann. § 42-9-10 (2021) and S.C. Code Ann. § 42-9-20 (2021). In addition to his employment with St. John's Fire District Commission, Claimant was also employed by AMF Bowling lanes from at least January 21, 2011 through May 10, 2013. He received \$1,781.03 in gross wages from AMF Bowling Lanes from September 30, 2011 through August 7, 2012 per the wage records submitted. This amounts to approximately \$39.49/ week during this 45.1 week period of employment.

Therefore, per S.C. Code Ann. § 42-9-20, Claimant's average weekly wage is calculated by subtracting the weekly amounts he received while working for AMF Bowling Lanes (\$39.49/week) from his pre-injury wages (\$1,174.21). Under this calculation, Claimant's average weekly wage equals: \$1,134.72. He is entitled to weekly compensation that is 66 2/3 % of the difference between his pre-injury wages and the wages he is able to earn thereafter but not more than the state maximum for 2008. $\$1,134.72 \times .6667 = \$756.51$ (reduced to the state maximum \$661.29). S.C. Code Ann. § 42-9-20 (2021). Therefore, as previously stated, Claimant is entitled to temporary partial disability benefits until the date of maximum medical improvement in the amount of \$29,824.18 ($\$661.29 \times 45.1 = \$29,824.18$).

33. In addition to his permanency award of \$69,435.45 for the right shoulder, Claimant is entitled to \$29,824.18 in temporary partial disability benefits.

RULINGS OF LAW

The following sections of the South Carolina Code of Law give the appropriate definition of divisions of the South Carolina Workers' Compensation Act as applicable to this case:

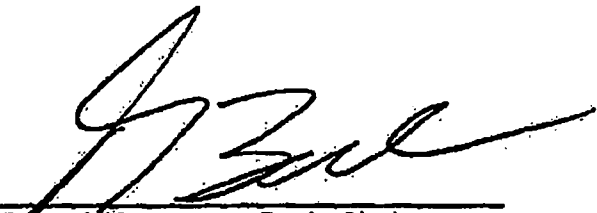
1. S.C. Code Ann. Regs. 67-712 requires that "[t]he prevailing party shall . . . notify the Commission in writing when a final order issued by the courts on appeal remits jurisdiction to the Commission."

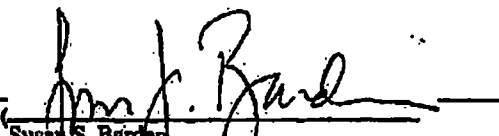
2. S.C. Code Ann. § 42-1-40 is applicable as it defines 'average weekly wages'.
3. S.C. Code Ann. § 42-9-20 provides the amount of compensation for partial disability. South Carolina Code Section 42-9-30 governs schedule of period of disability and compensation.
4. S.C. Code Ann. § 42-9-30(14) provides the scheduled period of disability for the loss of use of the shoulder.

ORDER

IT IS HEREBY ORDERED AND DECREED that Claimant is awarded 35% permanency to the right shoulder (105 weeks of compensation) equating to \$69,435.45. This award encompasses and includes any incidental effect on Claimant's right clavicle, right bicep, and/or right bicep tendon. Claimant is not entitled to receive separate awards for either the right arm or right clavicle.

IT IS HEREBY ORDERED AND DECREED that Claimant is additionally entitled to temporary partial disability benefits in the amount of \$29,824.18.

By: 
Commissioner Scott Beck, Chair

By: 
Susan S. Barden

By: 
Commissioner Aisha Taylor



STEPHEN B. SAMUELS
P. JASON REYNOLDS
ATTORNEYS AT LAW

February 3, 2021

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Re: Thomas Contreras v. St. John's Fire District Commission
WCC File No. 0822640

Dear Ms. Bracy:

Please find attached an Opinion of the Court of Appeals in the above referenced case. The Court of Appeals remanded and vacated the Commission's order with instructions. I am forwarding the Opinion to you for disposition by the Appellate Panel pursuant to the remand instructions. By copy of this letter, I am serving same upon the Respondents as indicated by the attached Certificate of Service.

Thank you for your assistance with this matter. If you need further information, please do not hesitate to contact me. I look forward to receiving the new Order from the Full Commission.

Sincerely yours,

A handwritten signature in dark ink, appearing to be "SBS", is written over a horizontal line.

Stephen B. Samuels

SBS/wp
Enclosures

cc w/encl.: James G. Christmas, Esquire
Margaret M. Urbanic, Esquire
Page S. Hilton, Esquire
Erin Farthing, Esquire

WE WORK FOR THE PEOPLE WHO WORK

1320 RICHLAND STREET, COLUMBIA, SC 29201 | P: (803) 779.4000 | F: (803) 779.4004 | WWW.SAMUELSREYNOLDS.COM

Order Served via E-Mail:

Margaret M. Urbanic Clawson & Staubes purbanic@clawsonandstaubes.com	James G. Christmas Christmas Law Firm gc@gchristmaslaw.com
Erin Farthing State Accident Fund efarthing@saf.sc.gov	Stephen B. Samuels Samuels Reynolds Law Firm stephen@samuelsreynolds.com

Order Served via USPS

The Honorable Jenny Kitchings
Clerk of Court
P.O. Box 11629
Columbia, SC 29211

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on June 4, 2021

South Carolina Workers' Compensation Commission
P.O. Box 1715 v 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0822610
Carrier File # 2008-004604
Carrier Code # 500-3F
Employer FEIN 576CD8015

B7

Thomas Contreras 117-58-7473
363 Lantana Drive, Charleston, SC 29407

ST JOHN'S FIRE DIST COMM
P.O. Box 56, Johns Island, SC 29557

(843) 524-5387 (home) (843) 769-4429 (work)

Preparer's name: Fay Jennings (803) 896-5853 State Accident Fund, Insurance Carrier

Date of injury: 10/08/2018

1. Temporary Compensation Paid:

TT

Number of Weeks	From	To	Amount
16 Wk	18-OCT-10	04-SEP-11	\$0,419.34

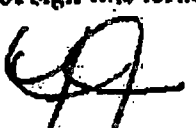
More on page two...

2. The claimant returned to work on CLAIMANT REACHED MMI ON 6-31-2011
() With restrictions but at a salary not less than before the injury
() Without restrictions.

3. The claimant agrees he or she was able to return to work on.

I agree that I was disabled for the period(s) indicated and I was paid compensation as shown above. I UNDERSTAND THAT MY WEEKLY TEMPORARY COMPENSATION CHECKS WILL STOP; HOWEVER, I GIVE UP NO RIGHTS TO COMPENSATION FOR FUTURE DISABILITY, FOR PERMANENT DISABILITY, DISFIGUREMENT, OR MEDICAL CARE. The effect of this form has been fully explained to me, and I have received a copy of it. I understand that I should not sign this form until 15 days after I have returned to work or agree I was able to return to work.


Claimant's Signature


Employer's Representative Signature

☐ Witness ☐ Claimant's Attorney

Date Agreement Signed

File this form with the Claims Department no later than 31 days from the date the claimant returned to work to terminate temporary compensation after the first 150 days after employer's notice of the injury according to R.67-505. Within the 150 day period, obtain a Form 17 to document that claimant agrees he or she is able to return to work.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
P. O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715

WC File #: 0822640

Carrier File #:

Carrier Code #:

Employer FEIN #:

Claimant's Name: Mr. Thomas Contreras SSN: 117-58-7473

Employer's Name: St Johns Fire Dist Comm

Address: 363 Lantana Drive

Address: PO Box 56

City: Charleston State: SC Zip: 29407

City: Johns Island State: SC Zip: 29457

Home Phone: (843) 324-5387 Work Phone: ()

Insurance Carrier: State Accident Fund

Preparer's Name: James G. Christmas

Law Firm: Howell & Christmas, LLC

Preparer's Phone Number: (843) 849-2800

Complete each information blank. To request a hearing, checking box 13b., indicate the kinds of benefits claimed by check the box(es) at lines 6, 7, 8, and 9, and file this form in duplicate.

A Claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: October 08, 2008

☒ Injury ☐ Illness ☐ Repetitive Trauma

1 a. The claimant sustained an injury to his right shoulder, right upper extremity, right glenohumeral ligament, right clavicle, right scapula, right lateral deltoid, right bicep and right distal clavicle on October 08, 2008 in Charleston County, state of South Carolina.

1 b. Body part(s) affected are: See number 1 a. above.

Briefly describe how the accident occurred: Claimant was performing daily workout by way of lifting weights causing injury to himself.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the employer on 10/08/2008 in the following manner:
Claimant informed his supervisor. month/day/year

☒ 6. Due to injury, the claimant is in need of (check one):

☒ (a) medical examination and treatment for those injuries indicated in #1a above.

☒ (b) additional medical examination and treatment for those indicated in #1a above.

☒ 7. Due to injury, claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: to be determined

☒ 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)

☐ (1) General Disability ☐ Total ☐ (2) Specific Disability ☐ Total

☐ (3) Wage Loss ☐ Partial ☒ To be determined ☐ Partial

☐ 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of:

10 a. At the time of injury, the claimant was paid weekly wages of \$Form 20 Requested, and demands accounting of days worked and wages earned as provided by law.

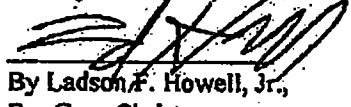
10 b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident:
Upon information and belief; employer.

11 a. Further grounds of claim:

To determine whether Claimant's injuries to his right shoulder, right upper extremity, right glenohumeral ligament, right clavicle, right scapula, right lateral deltoid, right bicep and right distal clavicle were caused by and/or were aggravated by his October 8, 2008, accident at work. To determine whether Claimant's injuries to his right shoulder affects his right upper extremity as a result of his October 8, 2008, accident at work. To determine whether Claimant sustained permanent partial wage loss pursuant to S.C. Code Ann. §42-9-20, 334 SC 574, 514 SE2d 593 (Ct. App. 1999). To determine Claimant's correct average weekly wage and compensation rate. To determine whether Claimant is entitled to the difference between his correct and incorrect compensation rate for all the periods he has been paid benefits to date. To determine whether Claimant is entitled to reimbursement for traveling to and from causally related medical treatment and whether he is entitled to reimbursement for any and all out of pocket expenses. Claimant requests the Commission to approve allocation of proposed settlement proceeds over his/her life expectancy pursuant to Section 19-1-150 of the South Carolina Code of Laws, and Section 42-9-10 of the South Carolina Workers' Compensation Act, 1976, as amended, and as interpreted by the South Carolina Supreme Court in the decision of *Utica-Mohawk Mills vs. Orr*, 227 SC226, 87 SE2d 589. Claimant and Claimant's attorney seek a lump sum payment of any Award. To determine whether Claimant is entitled to any and all other benefits due under the Act.

- 11 b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident.
- 11 c. To the best of your knowledge, did you have any prior permanent disability? Upon information and belief, left shoulder.
If yes, describe:
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13 a. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 13 b. I am requesting a hearing. A \$25.00 fee is required.
14. Estimated time needed for Hearing: 30 minutes.

I verify the contents of this form are accurate and true to the best of my knowledge.



By Ladson F. Howell, Jr.,
For Gary Christmas

Attorney For Claimant gc@howell&christmas.com
Title E-Mail

October 28, 2011
Date

Preparer's Signature

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the
Commission's Claims Department.

WCC FORM # 50

Rev. Date 9/07

50

Employee's Notice of Claim
and/or Request for Hearing

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0822640

Mr. Thomas Contreras,
Claimant,

vs.

St Johns Fire Dist Comm,

Employer,

and

State Accident Fund,

Carrier, Defendants.

CERTIFICATE OF SERVICE

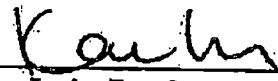
I, the undersigned, do hereby certify that I have served the following documents, by placing a copy of same in a postage paid envelope and depositing in a United States mailbox, on the date shown below addressed as follows:

Documents Served: Form 50 - Request for Hearing

Persons Served: ATTN: Elaine Boyd for Commissioner Avery B. Wilkerson
SC Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Ms. Margaret M. Urbanic
Clawson & Staubes
126 Seven Farms Drive,
Suite 200
Charleston SC 29492

Date of Service: October 28, 2011


Kara Irvin, Paralegal
Howell & Christmas, LLC
Post Office Box 1896
Mt. Pleasant, South Carolina 29465-1896
Telephone: (843) 849-2800
Facsimile: (843) 884-2007



Claimant's Name: Thomas Contreras SSN: 117-58-7473 Employer's Name: St. Johns Fire District
Address: 363 Lantana Drive Address: Post Office Box 56
City: Charleston State: SC Zip: 29407 City: Johns Island State: SC Zip: 29457
Home Phone: () - Work Phone: () - Insurance Carrier: State Accident Fund
Preparer's Name: Stephen B. Samuels Law Firm: Samuels Law Firm Preparer's Phone #: (803) 779-4000

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 10/08/2008

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Please see Attachment to Form 30.

(Check one) Oral argument ☐ Is ☒ Is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Ellen Goodwin, Esq., PO Box 102100, Columbia, SC 29221 and Margaret M. Urbanic, Esq., 126 Seven Farms Dr., Ste. 200, Charleston, SC 29492-8144 on the 4th day of November 2015, by ☐ first class postage ☐ certified mail ☐ personal service.

[Signature]
Preparer's Signature

Attorney for Claimant
Title

Stephen@samuelslawfirm.net
Email

November 4, 2015
Date

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

ATTACHMENT TO FORM 30

Thomas Contreras v. St. John's Fire District and State Accident Fund
WCC File No. 0822640

Grounds of Appeal:

- A. Issues regarding Order from Single Commissioner on Remand:**
1. Whether the Single Commissioner on remand erred as a matter of fact and law in finding that the instructions on remand limited his findings to a permanent partial disability award under § 42-9-30 when the vacating of the previous Order required additional findings to be made regarding temporary partial disability and temporary total disability?
 2. Whether the Single Commissioner on remand erred as a matter of fact and law in failing to include, affirm or otherwise determine the amount of temporary partial disability compensation due?
 3. Whether the Single Commissioner on remand erred as a matter of fact and law making a disability award which was unsupported by the evidence and failed to take into account Claimant's actual loss of earnings capacity?
 4. Whether the Single Commissioner on remand erred as a matter of fact and law in determining Claimant reached MMI on September 4, 2012?
 5. Whether the Single Commissioner on remand erred as a matter of fact and law in failing to make specific and detailed findings of fact sufficient for appellate review?
- B. Issues regarding previous Appellate Panel Order reversing Single Commissioner Order and remanding to the Jurisdictional Commissioner:**
1. Whether the Appellate Panel erred in reversing the Single Commissioner § 42-9-20 disability award and finding the injury was limited to the shoulder, when Appellant suffered a permanent loss of earnings capacity from distinct injuries resulting in physical affect and impairment to multiple scheduled body parts (shoulder, arm, and clavicle)?

2. Whether the Appellate Panel erred in finding "That the Single Commissioner did not find the clavicle compensable and that issue was not appealed," when the issue was not specifically addressed nor decided with finality by the Single Commissioner nor required to be appealed by the prevailing party at trial?
3. Whether the Appellate Panel erred in vacating various findings by the original Single Commissioner, yet failing to give instructions on remand allowing those necessary findings to be made, such findings including the average weekly wage and amount of temporary partial disability compensation due?
4. Whether the Appellate Panel erred by remanding to the jurisdictional commissioner and failing to make its own factual findings on all issues when the Appellate Panel bears the ultimate responsibility of making factual findings, such error also resulting in an interlocutory order?
5. Whether the Appellate Panel erred as a matter of fact and law in failing to make specific and detailed findings of fact sufficient for appellate review?
6. Whether the Appellate Panel erred as a matter of fact and law in failing to affirm the original Decision and Order of the Single Commissioner?

South Carolina Workers' Compensation Commission
1612 Marion Street P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739
www.wcc.sc.gov

WCC #: 0822640
Carrier File #: 2008-4604
Carrier Code #: 500 SF
Employer FEIN #: 576008015

Thomas Contreras	117-58-7473	St. Johns Fire District Commission	
Claimant's Name	SSN	Employer's Name	
363 Lantana Drive	Charleston, SC 29407	P.O. Box 58 Johns Island, SC 29457	
Address	City State Zip	Address	City State Zip
843-769-4429		State Accident Fund	
Home Phone #	Work Phone #	Insurance Carrier	
Margaret M. Urbanic	CLAWSON AND STAUBES, LLC	(843) 577-2026	
Preparer's Name	Law Firm	Phone #	

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer-insurance carrier in answer to the claim, respectfully shows:

1. It is (Admitted) that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: Admit as to right shoulder only.
2. It is (Admitted) that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: Admit as to right shoulder only.
3. It is (Admitted) that the relationship of employer and employee existed at the time in question. The reasons for denial are: As to right shoulder only.
4. It is (Admitted) that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: Admit as to right shoulder only.
5. It is (Admitted) that notice of injury was given the employer. The reasons for denial are: As to right shoulder only.
6. It is (Denied) that the employee (needs) (is entitled to additional) medical care as a result of injury. The reasons for denial are: Claimant has been treated and released.
7. It is (Denied) that the employee is entitled to temporary total disability for the period(s) of: Carrier requests credit for overpayment as appropriate.
8. It is (Denied) that the employee is permanently disabled. The reasons for denial are: Permanency, if any, to be determined.
9. It is (Denied) that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$ Form 20 applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: See attached.
12. Estimated time needed for hearing: One hour

I certify that I have served this document pursuant to R.67-212 by delivering a copy to :

Gary Christmas, Esquire, Howell & Christmas, LLC, P.O. Box 1898, Mt. Pleasant, SC 29465

Name Address

on the 28 day of November, 2011 by ☒ first class mail; ☐ personal service, ☐ certified mail.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Attorney
Title

Purbanic@clawsonandstaubes.com
Email

11/28/11
Date

Refer to R.67-205 and R.67-801 through R.67-815. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-608, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form #51 Rev. Date 9/07

Employer's Answer to Request for Hearing.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 28 day of November, 2011.

Rhonda J. Huchalec

Ms. Virginia Crocker
Judicial Director
S.C. Worker's Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Gary Christmas, Esquire
Howell & Christmas, LLC
P.O. Box 1896
Mt. Pleasant, SC 29465

ATTACHMENT TO FORM 51

Thomas Contreras v. St. Johns Fire District Commission

W.C.C. NUMBER 0822640

11. Further contentions or grounds of defense are: All affirmative and specific defenses (see Reg. 67-603), including, but not limited to §42-1-360, § 42-9-60, § 42-15-20, § 42-15-40, § 42-17-90; and, upon information and belief, fraud in the application for employment pursuant to Cooper v. McDevitt & Street Co., 260 S.C. 463, 196 S.E.2d 833 (1973); election of remedies; intervening trauma; no compensable injury by accident under § 42-1-160; upon information and belief, the degree of disability, if any, attributable to this injury is speculative; upon information and belief, claimant's problems are personal in nature and not work-related; defendant-insurer reserves the right to amend this Answer and plead any applicable additional defenses.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
P. O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715

W/C File #: 0822640

or File #:

Carrier Code #:

Employer FEIN #:

Claimant's Name: Mr. Thomas Contreras SSN: 117-58-7473

Employer's Name: St Johns Fire Dist Comm

Address: 363 Lantana Drive

Address: PO Box 56

City: Charleston State: SC Zip: 29407

City: Johns Island State: SC Zip: 29457

Home Phone: (843) 324-5387

Work Phone: ()

Insurance Carrier: State Accident Fund

Preparer's Name: Gary Christmas

Law Firm: Howell & Christmas, LLC

Preparer's Phone Number: (843) 849-2800

Complete each information blank. To request a hearing, checking box 13b., indicate the kinds of benefits claimed by check the box(es) at lines 6, 7, 8, and 9, and file this form in duplicate.

A Claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: October 08, 2008

☒ [X] Injury ☐ [] Illness ☐ [] Repetitive Trauma

1 a. The claimant sustained an injury to his right shoulder, right upper extremity, right glenohumeral ligament, right clavicle, right scapula, right lateral deltoid, right bicep and right distal clavicle on October 08, 2008 in Charleston County, state of South Carolina

1 b. Body part(s) affected are: See number 1 a. above.

Briefly describe how the accident occurred: Claimant doing daily workout lifting weights causing injury to himself.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the employer on 10/8/2008 in the following manner:
Claimant informed employer.

month/day/year

☒ [X] 6. Due to injury, the claimant is in need of (check one):

☒ [X] (a) medical examination and treatment for those injuries indicated in #1a above.

☐ [X] (b) additional medical examination and treatment for those indicated in #1a above.

☒ [X] 7. Due to injury, claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: to be determined

☒ [X] 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)

☐ [] (1) General Disability ☐ [] Total

☐ [] (2) Specific Disability ☐ [] Total

☐ [] (3) Wage Loss ☐ [] Partial

☒ [X] To be determined ☐ [] Partial

☐ [] 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of:

10 a. At the time of injury, the claimant was paid weekly wages of \$Form 20 Requested, and demands accounting of days worked and wages earned as provided by law.

10 b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident:
Upon information and belief, employer, vending machine tender and bowling alley.

11 a. Further grounds of claim:

To determine whether Claimant's injuries to his right shoulder, right upper extremity, right glenohumeral ligament, right clavicle, right scapula, right lateral deltoid, right bicep and right distal clavicle were caused by and/or were aggravated by his October 8, 2008, accident at work. To determine whether Claimant's injuries to his right shoulder affects his right upper extremity as a result of his October 8, 2008, accident at work. To determine whether Claimant sustained permanent partial wage loss pursuant to S.C. Code Ann. §42-9-20. Claimant is seeking past and future medical care and treatment pursuant to §42-15-60 and/or Dodge vs. Brucoli, Clark, Layman, Inc., 334 SC 574, 514 SE2d 593 (Ct. App. 1999). To determine Claimant's correct average weekly wage and compensation rate. To determine whether Claimant is entitled to the difference between his correct and incorrect compensation rate for all the periods he has been paid benefits to date. To determine whether Claimant is entitled to reimbursement for traveling to and from causally related medical treatment and whether he is entitled to reimbursement for any and all out of pocket expenses. Claimant requests the Commission to approve allocation of proposed settlement proceeds over his/her life expectancy pursuant to Section 19-1-150 of the South Carolina Code of Laws, and Section 42-9-10 of the South Carolina Workers' Compensation Act, 1976, as amended, and as interpreted by the South Carolina Supreme Court in the decision of Utica-Mohawk Mills vs. Orr, 227 SC 226, 87 SE2d 589. Claimant and Claimant's attorney seek a lump sum payment of any Award. To determine whether Claimant is entitled to any and all other benefits due under the Act.

11 b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: AOH Occupational Health, LLC, "Industrial Medicine Specialists", P.O. Box 62945, North Charleston, SC 29419-2945, Bon Secours St. Francis Hospital, 2095 Henry Tecklenburg Drive, Charleston, SC 29414, Charleston Physical Therapy, 349 Folly Rd., Charleston, SC 29412, Rehabilitation Centers of Charleston, RCC - Lone Tree, 586 Lone Tree Dr., (All Med Rec Regs to Lone Tree), Mt. Pleasant SC 29464, Roper Hospital, 316 Calhoun Street, Charleston, SC 29401, Sports Plus - Tricom North Charleston, 2880 Tricom Street Suite B, North Charleston SC 29406, Tricounty Radiology Assoc - Tricom Diagnostic, 2851 Tricom Street, Charleston SC 29406, Dr. James DeMarco, Palmetto Orthopaedics of Charleston, 180 Wingo Way, Suite 301, Mt. Pleasant SC 29464, Dr. Marshall Hay, Palmetto Orthopaedics of Charleston, 615 Wesley Drive, #100, Charleston SC 29407, Dr. Charles Hughes, Hughes Orthopedic Consultants, LLC 950 Houston Northcutt Blvd., Ste. 101, Watermark Plaza, First Floor, Mt. Pleasant SC 29464, Dr. David Jaskwich, Lowcountry Orthopaedics, 2880 Tricom Street, North Charleston, SC 29406, Jean Hutchinson, Vocational Consultant, 715 North Godfrey Park Place, Charleston, SC 29407, Suzanne Wilds, D.C., 1649 Savannah Hwy, Ste E, Charleston SC 29407.

11 c. To the best of your knowledge, did you have any prior permanent disability? Upon information and belief, left shoulder.
If yes, describe:

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13 a. I am filing a claim. I am not requesting a hearing at this time.

☒ 13 b. I am requesting a hearing. A \$25.00 fee is required.

I verify the contents of this form are accurate and true to the best of my knowledge.

<u>Preparer's Signature</u>	<u>Attorney For Claimant</u>	<u>gc@howellandchristmas.com</u>	<u>February 12, 2013</u>
	<u>Title</u>	<u>E-Mail</u>	<u>Date</u>

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC FORM # 50

Rev. Date 9/07

50

Employee's Notice of Claim
and/or Request for Hearing

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739
www.wcc.sc.gov



WCC File #: 0822640
Carrier File #: 2008-4604
Carrier Code #:
Employer FEIN #:

Claimant's Name: Thomas Contreras SSN: 117-58-7473
Address: 363 Lantana Drive
City: Charleston State: SC Zip: 29407
Home Phone: () Work Phone: ()
Date of Injury: 10/08/08
Preparer's Name: Ellen Goodwin, Esq. Law Firm: State Accident Fund
Employer's Name: St. Johns Fire District Commission
Address: P.O. Box 56
City: Johns Island State: SC Zip: 29457
Insurance Carrier: State Accident Fund
Preparer's Phone #: (803) 896-5891

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

Date of Injury or Illness: 10/08/08

1. It is Admitted the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Defendants admit injury to the right shoulder only; however, extent of injury and all other body parts affected are denied.
2. It is Admitted both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is Admitted the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is Admitted at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is Admitted notice of injury was given the employer. The reasons for denial are:
6. It is Denied the employee Needs / Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
Claimant rated by Dr. DeMarco on 08/07/12.
7. It is Denied the employee is entitled to temporary total disability for the period(s) of :
To be determined.
8. It is Denied the employee is permanently disabled. The reasons for denial are:
Disability, if any, to be determined by W.C.C.
9. It is Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$993.49 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
12. Estimated time needed for hearing: 30 minutes

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: Gary Christmas, Esquire

Judicial Director, SCWCC

Address: P.O. Box 1896, Mt. Pleasant, SC 29465

P.O. Box 1715, Columbia, SC 29202-1715

on the 28th day of February, 2013 by ☒ first class mail ☐ personal service ☐ certified mail.
I verify the contents of this form are accurate and true to the best of my knowledge.

Ellen Goodwin
Preparer's Signature

Asst. Chief Counsel
Title

Egoodwin@saf.sc.gov
Email

Feb. 28, 2013
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 9/07

51

Employer's Answer to Request for Hearing

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 0822840
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Thomas Contreras SSN: 117-58-7473 Employer's Name: St. Johns Fire Dist Comm
Address: 363 Lantana Drive Address: PO Box 56
City: Charleston State: SC Zip: 29407 City: Johns Island State: SC Zip: 29457
Home Phone: 843-324-5387 Work Phone: _____ Insurance Carrier: State Accident Fund
Preparer's Name: Margaret M. Urbanic Law Firm: Clawson and Staubes, LLC Preparer's Phone #: 843-577-2026

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ Employer (check one) Date of Injury or Illness: 10/08/2008 (m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Whether the Single Commissioner erred in Finding of Fact #9 as it is not supported by substantial evidence.

Whether the Single Commissioner erred in Finding of Fact # 19 as it is not supported by substantial evidence.

Whether the Single Commissioner erred in Finding of Fact # 21 as it is not supported by substantial evidence.

Whether the Single Commissioner erred in Finding of Fact # 22 as it is not supported by substantial evidence.

Whether the Single Commissioner erred in Finding of Fact # 23 as it is not supported by substantial evidence.

Whether the Single Commissioner erred in Finding of Fact # 24 as it is not supported by substantial evidence.

Whether the Single Commissioner erred in Finding of Fact # 25 as it is not supported by substantial evidence.

Whether the Single Commissioner erred in Finding of Fact # 26 as it is not supported by substantial evidence.

Whether the Single Commissioner erred in Finding of Fact # 28 as it is not supported by substantial evidence.

Whether the Single Commissioner erred in ordering that the Claimant suffered permanent partial wage loss.

Whether the Single Commissioner erred in ordering the calculation of the permanent partial wage loss.

See attachment.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Gary Christmas, Esquire
address P.O. Box 1698 Mt. Pleasant, SC 29405 on the 3rd day of September, 2013
by first class postage ☐ certified mail ☐ personal service.

Preparer's Signature

Attorney
Title

purbanic@clawsonandstaubes.com
Email

9/3/2013
Date

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

WCC Form # 30
Revised 7/13

30

SCWCC

REQUEST FOR COMMISSION REVIEW

SEP 05 2013

JUDICIAL

Attachment to Form 30

Whether the Single Commissioner erred in ordering temporary partial wage loss as a Form 17 had been signed and filed with the Commission.

Whether the Single Commissioner erred in the calculation of temporary partial wage loss.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.WCC.SC.GOV



WCC File #: 0822640
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Thomas Contreras SSN: 117-58-7473 Employer's Name: St. Johns Fire District
Address: 363 Lantana Drive Address: Post Office Box 56
City: Charleston State: SC Zip: 29407 City: Johns Island State: SC Zip: 29457
Home Phone: () - Work Phone: () - Insurance Carrier: State Accident Fund
Preparer's Name: Stephen B. Samuels Law Firm: Samuels Law Firm Preparer's Phone #: (803) 779-4000

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 10/08/2008

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Please see Attachment to Form 30.

(Check one) Oral argument ☐ is ☒ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Ellen Goodwin, Esq., PO Box 102100, Columbia, SC 29221 and Margaret M. Urbanic, Esq., 126 Seven Farms Dr., Ste. 200, Charleston, SC 29492-8144 on the 4th day of November 2015, by ☐ first class postage ☐ certified mail ☐ personal service.

Preparer's Signature _____ Attorney for Claimant _____ Stephen@samuelslawfirm.net _____ November 4, 2015 _____
Title _____ Email _____ Date _____

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

ATTACHMENT TO FORM 30

Thomas Contreras v. St. John's Fire District and State Accident Fund

WCC File No. 0822640

Grounds of Appeal:

A. Issues regarding Order from Single Commissioner on Remand:

1. Whether the Single Commissioner on remand erred as a matter of fact and law in finding that the instructions on remand limited his findings to a permanent partial disability award under § 42-9-30 when the vacating of the previous Order required additional findings to be made regarding temporary partial disability and temporary total disability?
2. Whether the Single Commissioner on remand erred as a matter of fact and law in failing to include, affirm or otherwise determine the amount of temporary partial disability compensation due?
3. Whether the Single Commissioner on remand erred as a matter of fact and law making a disability award which was unsupported by the evidence and failed to take into account Claimant's actual loss of earnings capacity?
4. Whether the Single Commissioner on remand erred as a matter of fact and law in determining Claimant reached MMI on September 4, 2012?
5. Whether the Single Commissioner on remand erred as a matter of fact and law in failing to make specific and detailed findings of fact sufficient for appellate review?

B. Issues regarding previous Appellate Panel Order reversing Single Commissioner Order and remanding to the Jurisdictional Commissioner:

1. Whether the Appellate Panel erred in reversing the Single Commissioner § 42-9-20 disability award and finding the injury was limited to the shoulder, when Appellant suffered a permanent loss of earnings capacity from distinct injuries resulting in physical affect and impairment to multiple scheduled body parts (shoulder, arm, and clavicle)?

2. Whether the Appellate Panel erred in finding "That the Single Commissioner did not find the clavicle compensable and that issue was not appealed," when the issue was not specifically addressed nor decided with finality by the Single Commissioner nor required to be appealed by the prevailing party at trial?
3. Whether the Appellate Panel erred in vacating various findings by the original Single Commissioner, yet failing to give instructions on remand allowing those necessary findings to be made, such findings including the average weekly wage and amount of temporary partial disability compensation due?
4. Whether the Appellate Panel erred by remanding to the jurisdictional commissioner and failing to make its own factual findings on all issues when the Appellate Panel bears the ultimate responsibility of making factual findings, such error also resulting in an interlocutory order?
5. Whether the Appellate Panel erred as a matter of fact and law in failing to make specific and detailed findings of fact sufficient for appellate review?
6. Whether the Appellate Panel erred as a matter of fact and law in failing to affirm the original Decision and Order of the Single Commissioner?

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0822640

Thoomas Contreras,
Claimant,
vs.
St. Jones Fire District
Commission, Employer,
and
State Accident Fund, Carrier,
Defendants.

TRANSCRIPT OF PROCEEDINGS

May 14, 2013

This hearing was held before Commissioner Gene McCaskill, reported by Kimberly T. Power, Court Reporter and Notary Public in and for the State of South Carolina; said proceedings were held at the South Carolina Workers' Compensation Commission, 500 North Main Street, County Services Building, Summerville, South Carolina, on Tuesday, May 14, 2013, commencing at 2:20 p.m.

APPEARANCES

ATTORNEYS FOR THE CLAIMANT

HOWELL & CHRISTMAS
BY: JAMES G. CHRISTMAS, ESQUIRE
Post Office Box 1896
Mt. Pleasant, South Carolina 29465

ATTORNEYS FOR THE DEFENDANT

CLAWSON & STAUBES, LLC
BY: MARGARET M. URBANIC, ESQUIRE
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492

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1 THE COURT: Today's date is May 14, 2013.

2 This is the case of Thomas Contreras vs. St. Johns Fire
3 District Commission. The carrier is the State Accident
4 Fund. The claimant is represented by James G.
5 Christmas, and the carrier/employer is represented by
6 Margaret M. Urbanic. The Workers' Compensation
7 Commission File Number is 0822640.

8 The date of the accident is October 8, 2008.
9 There are -- there are issues concerning average weekly
10 wage and comp rate which we discussed in the
11 pre-hearing conference, so that's yet to be determined.
12 This is an admitted claim?

13 MS. URBANIC: It's admitted to the right
14 shoulder.

15 THE COURT: Admitted to the right shoulder.
16 All right. Objections to APAs, jurisdiction, venue?

17 MR. CHRISTMAS: None from the claimant.

18 MS. URBANIC: Commissioner, I have an
19 objection to the claimant's Tab 14, which is Pages 274
20 to 299 of their APAs as I just received it yesterday,
21 so it's untimely. Payroll records from the bowling
22 alley and the bowling alley Form 20.

23 MR. CHRISTMAS: Commissioner, if I could just
24 speak to that. The Form 20 has been -- should have
25 been made a part of the Commission file and sent in

1 under a separate cover letter. These are the actual
2 wages from the bowling alley. We just got them. We
3 produced them as soon as we got them. It only goes to
4 the issue of temporary partial disability. And as we
5 discussed off the record, we have no objection to the
6 defendants having a day or two to review those numbers,
7 meet with us and try to get a consensus on that if
8 there is any good faith dispute to those. Whatever the
9 numbers are, they are and we don't see any prejudice
10 there. We just ask that they be moved into evidence,
11 please.

12 THE COURT: All right. Ms. Urbanic, we're
13 going to note your objection for the record. But as we
14 discussed in the pre-hearing conference, you do have
15 time to review these records. And if you have
16 concerns, we certainly can reconvene in some fashion
17 whether that be a conference call or actually reconvene
18 a hearing if we need to to address your concerns.

19 MS. URBANIC: Thank you.

20 THE COURT: Any other objections?

21 MR. CHRISTMAS: No, Your Honor.

22 MS. URBANIC: No.

23 THE COURT: All right. The Commission file
24 becomes a part of the record with the exception of
25 self-serving declarations and unstipulated medical

1 reports.

2 All right. Mr. Christmas, if you could,
3 please, sir, put your client's position on the record.

4 MR. CHRISTMAS: Thank you, Your Honor. It's
5 claimant's position that he is permanently partially --
6 or suffered permanent partial wage loss as a result --
7 under Section 42-9-20 as a result of sustaining
8 injuries to his right shoulder, right upper extremity,
9 specifically the right bicep being the second body part
10 that's affected.

11 The analysis for the wage loss argument is
12 authorized treating orthopedic surgeon, Dr. Demarco,
13 has said that claimant is not able to return to his old
14 job, that is APA No. 3, Page 15, as a firefighter. The
15 two body parts are from authorized treating physician,
16 Dr. James Demarco. He mentions the right shoulder,
17 right upper extremity, and specifically the right
18 bicep. He says that the right shoulder affects the
19 right upper extremity as well. That is APA No. 3,
20 Pages 16, 17, and 18.

21 Also he in giving his global impairment which
22 included the shoulder and the upper extremity assigned
23 three percent specifically to the right bicep which is
24 APA No. 3, Page 20. And there's also notation
25 throughout the medical records with Demarco and

1 Jacowitz who is another authorized treating orthopedic
2 surgeon talking about the biceps. The fourth surgery
3 that the claimant had -- he's had four surgeries in
4 this case -- was also to repair the bicep. That's APA,
5 I think we mentioned it earlier, No. 4, Pages 54 and
6 55. And also there is an opinion from another
7 orthopedic surgeon, Dr. Charles Hughes, that also
8 states that the right shoulder affects the right upper
9 extremity, mentions the right shoulder, right upper
10 extremity, and right bicep, and that's APA No. 2, Page
11 9.

12 With regard to wage loss, there is also a
13 vocational report from Jean Hutchinson, it's APA No. 1,
14 Page 8, that finds the claimant has sustained permanent
15 partial wage loss. There also are his actual earnings
16 which are APA No. 13, Page 20 with the fire department
17 and also APA 13, Page 27 with regard to the bowling
18 alley.

19 He was duly employed. We need to talk about
20 that as well. He has a Form 20 that I don't believe is
21 disputed from the fire department that has an average
22 weekly wage of \$993.49, a compensation rate of \$662.86
23 which is the max -- which would reach the maximum
24 compensation rate for 2008 on its own. But given this
25 is a permanent partial wage loss case, we do need to

1 consider the second employment to determine that
2 correct average weekly wage. APA No. 12, Page 270 is
3 the Form 20 that should be part of the Commission file
4 and also has been submitted as an APA exhibit that has
5 the average weekly wage of being an additional \$180.72
6 with a new comp rate of \$120.49. When you combine the
7 work for the fire department with the work with the
8 bowling alley, the new combined average weekly wage is
9 \$1,174.21, and we would ask that that number be used in
10 determining his permanent partial wage loss under
11 42-9-20.

12 He's asking for, you know, past and future
13 medical care and treatment. Specifically authorized
14 treating physician Demarco at APA No. 3, Page 16 has
15 recommended medications, pain management, injections,
16 TENS unit, repeat diagnostics, physical therapy, and
17 office visits. We are also seeking a period of
18 temporary partial disability from January 21, 2011,
19 which is the date that the claimant was terminated by
20 the St. Johns Fire Department, up through May 16, 2011
21 for a total of 17 weeks. That's the date he reached
22 maximum medical improvement per authorized treating Dr.
23 James Demarco.

24 We are asking that he be paid his money in a
25 lump sum. And we are also asking that, just out of

1 abundance of caution, while he is working for the
2 bowling alley that we be allowed to have James vs. Anne
3 and Utica Mohawk language for apportionment in the
4 event that he is unable to work in the future.

5 Because of the pre-trial and the notes, I
6 went a little faster on that. If you need me to repeat
7 any of that, I'll be happy to do that.

8 THE COURT: All right. Ms. Urbanic.

9 MS. URBANIC: Commissioner, we've admitted
10 this claim to the right shoulder only. Gary referenced
11 the surgical record from surgery number four which is
12 on Pages 56 and 57 of the claimant's APA submissions.
13 You will note the pre-operative and post-operative
14 diagnosis is -- are regard to the right shoulder.
15 There is reference to the bicep, that the bicep
16 attaches to the right shoulder. And we would argue if
17 you look at the reports and records, you will see the
18 pain to the shoulder.

19 The most recent 14B which is from
20 Dr. Demarco, the most recent authorized treating
21 physician, which is on Page 56, Tab 8 of defendant's
22 APA submissions, references the 9 percent impairment
23 rating to the right upper extremity which converts to
24 15 percent radiating to the right shoulder. And just
25 because Dr. Demarco in his note from August of 2012

1 references the biceps as part of his radiating to the
2 right upper -- to the upper extremity, doesn't mean
3 it's a separate body part. It's just included because
4 that was attached to the right shoulder and part of the
5 surgery. So we think it should be limited to a 42-9-30
6 award to the right shoulder only.

7 With regards to the contention under 42-9-20
8 you should rely on Jean Hutchinson's report, we would
9 point out that report is from the fall of 2011. One,
10 it doesn't accurately reflect the amount of money
11 Mr. Contreras is currently earning from the bowling
12 alley. I believe he is earning a little over \$9 an
13 hour. And Mr. Contreras testified in his deposition
14 about some various jobs he's applied for and the type
15 of work he is capable of doing which I don't believe
16 it's appropriate to the vocational report of Jean
17 Hutchinson and we would argue that they fail to meet
18 their burden of proof with regards to that.

19 If for some reason you decide it shouldn't be
20 a 42-9-30 case with regard to the additional income
21 from the bowling alley and comp rate issue, you have
22 given me a few extra days to look at the documents that
23 Gary just sent over, so I would take the opportunity to
24 reply then just to go through the numbers and double
25 check ours to that.

1 As to the lump sum and allocation language,
2 Mr. Contreras is not on Social Security, he's not
3 applied for Social Security, and we don't think that's
4 appropriate for him to get that allocation language.

5 THE COURT: What's your position on the lump
6 sum?

7 MS. URBANIC: The lump sum, we would argue
8 that he has to show that he needs a lump sum. It's
9 always more appropriate for claimants to receive
10 benefits as a weekly check which is the State Accident
11 Fund's position in regards to that. I want to make
12 sure that's everything in there. And I believe that's
13 -- that covers everything.

14 MR. CHRISTMAS: Commissioner, I left one
15 thing out. Just in an the alternative to protect the
16 record, while we do believe this is a permanent partial
17 wage loss case under 42-9-20, in the alternative it
18 would be 42-9-30, Subsection 14, for the shoulder for
19 the 15 percent, also there's a rating of 10 percent to
20 the clavicle which we would be asking for disability on
21 under 67-11-01, Regulation 67-11-01, that's through
22 Dr. Hughes.

23 And also with regard to the evidence issue of
24 the Hutchinson report. There's nothing that has
25 physically changed in claimant's impairment or his

1 restrictions from any physician, authorized or
2 otherwise, since that report was created. There's
3 nothing in claimant's employment that has changed since
4 that report was created. The defendants have offered
5 absolutely no vocational evidence of any kind to
6 support their contention that he is employable at a
7 greater wage than he has actually earned.

8 In addition to that report, we don't have
9 speculative wage loss here. We have actual wage loss
10 that is demonstrated by loss of employment with the
11 fire department and demonstrated by his ability to only
12 work for 15 or 14 hours at the bowling alley.

13 MS. URBANIC: Just briefly in response.
14 Dr. Hughes is not an authorized treating physician.
15 He's an IME doctor that Mr. Christmas sent his client
16 to several years ago. The clavicle is not an accepted
17 body part. There would have to be a finding of
18 compensability in regards to that. We're not aware of
19 Dr. Demarco ever addressing that.

20 The one thing I forgot to mention was the
21 thing about ongoing medical treatment. We obviously
22 want that as related by the authorized treating
23 physician, Dr. Demarco, for causally-related medicals
24 and issues which I don't think is an issue.

25 THE COURT: Anything else, Mr. Christmas?

1 MR. CHRISTMAS: No, Your Honor.

2 THE COURT: All right. Ready to hear from
3 your witness?

4 MR. CHRISTMAS: Thank you.

5 (THOMAS CONTRERAS, JR., being duly sworn to
6 tell the whole truth, testified as follows:)

7 THE COURT: Please state and spell your full
8 name for the record.

9 THE WITNESS: Thomas Contreras, Jr. Thomas,
10 T-H-O-M-A-S, C-O-N-T-R-E-R-A-S.

11 THE COURT: Two requests for you. One, this
12 is a council chamber, not a hearing room. So it's a
13 little large for our purposes, but we're happy to have
14 it. I ask that you speak up. It's imperative that
15 young lady sitting right there who is making the record
16 hear you, but it's also equally important that the two
17 attorneys and I hear you. So if you -- the P.A. system
18 is not on, so you will need to speak up. Okay?

19 THE WITNESS: Yes.

20 THE COURT: The second is if you're asked a
21 yes or no question, please respond with yes or no. If
22 you shake or nod your head, she actually has to put
23 that in the record and sometimes that can be
24 misunderstood. An answer of yes or no is clearly
25 understood. So if it's a yes or no question, please

1 answer that way. All right?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. Mr. Christmas.

4 MR. CHRISTMAS: Thank you.

5 DIRECT EXAMINATION

6 BY MR. CHRISTMAS:

7 Q Tommy, how old are you now?

8 A Fifty-one.

9 Q Okay. And how far did you go in school?

10 A High school, 12.

11 Q What year did you graduate?

12 A What year did I graduate?

13 Q Yes, sir.

14 A 1979.

15 Q Okay. And your current -- your past employment
16 with the fire department, how long had you been working with
17 them?

18 A Twenty-two years and seven months.

19 Q And is that the St. Johns Fire Department?

20 A Yes.

21 Q Is that the employer with which you were working
22 when you were injured?

23 A Yes.

24 Q Have you ever had any write-ups for dishonesty
25 with the St. Johns Fire Department or any other employer?

1 A No.

2 Q And, again, make sure you speak up for the court
3 reporter and for Ms. Urbanic. Do you have any criminal
4 record of any kind?

5 A No.

6 Q Do you have any history of drug or alcohol abuse
7 or treatment?

8 A No.

9 Q Do you have any military experience?

10 A Yes.

11 Q What branch were you in?

12 A Army.

13 Q And how many years were you in the service?

14 A Four years and three months.

15 Q Were you honorably discharged?

16 A Yes.

17 Q And when you were discharged, what was your final
18 rank there, your class?

19 A I was an E4.

20 Q All right. In terms of your work with the fire
21 department, I know you were there for over 22 years. In
22 that time, did you have any awards or anything given to you
23 by the department or by the community for your service?

24 A I was given most improved one year, and also I was
25 given a citizens award from Bank of America.

1 Q Ultimately did you rise to the level of being
2 captain of the department?

3 A Yes.

4 Q And before we get into that job description, I
5 want to ask you, are you married?

6 A Yes.

7 Q Okay. And how long have you been married?

8 A Twenty-eight years.

9 Q Do you have any kids?

10 A Two.

11 Q And what are their ages?

12 A Twenty-eight and 24.

13 Q Do you have any type of four year degree?

14 A No.

15 Q Any type of two year degree?

16 A No.

17 Q Do you have any type of technical college
18 certificates or training of any kind?

19 A No.

20 Q In terms of computer skills, I imagine almost
21 everybody can get on the internet and probably shoot an
22 e-mail. But do you have any computer training of any kind?

23 A No.

24 Q Have you ever been trained in QuickBooks?

25 A No.

1 Q Have you ever been trained in Excel?

2 A No.

3 Q Have you ever been trained in, you know,
4 PowerPoint or Adobe?

5 A No.

6 Q Have you ever worked in any type of office job in
7 the last 23, 25 years where you had any on-the-job training
8 for QuickBooks, Excel, Outlook, PowerPoint, anything like
9 that?

10 A No.

11 Q Okay. Now, before we get into your job
12 description with the fire department, what was your past
13 employment before working for the fire department? What
14 other types of jobs had you done?

15 A I worked for Domino's Pizza delivering pizza and
16 making pizza also. I worked at Home Depot. I've worked at
17 the bowling alley, and I did install fireplaces also.

18 Q And the jobs that you're talking about, past
19 employment before the fire department, were those physical
20 jobs?

21 A Yes.

22 Q Did they require to use both of your arms?

23 A Yes.

24 Q And how so?

25 A Well, the fireplace job, we had to carry the

1 fireplaces and we had to put them in the hole that they
2 made, you know, for the fireplace. We had to run pipes for
3 the chimney. So we had to hold the pipes and stick them
4 together.

5 Q How about with the pizza job with the delivering
6 and with making the pizzas?

7 A With the pizzas, I had to drive. I also had to
8 make boxes -- the boxes for the pizza. And if I was helping
9 make pizza, I had to grab the dough and flatten dough and
10 throw cheese on it.

11 Q Okay. And in terms of those jobs with the
12 injuries and the work restrictions you have now, do you
13 think you would be able to go and do that type of work now?

14 A No.

15 Q What would keep you from doing the -- putting in
16 the fireplaces work?

17 A The lifting and holding anything overhead.

18 Q How about with the pizza job, what would keep you
19 from doing that job?

20 A The pizza job, there's also some lifting. When
21 the truck comes in, you've got to pick stuff up. And with
22 moving around a lot, folding the boxes and stuff like that,
23 it will hurt afterwards.

24 Q Okay. In terms of your work restrictions, what's
25 your understanding of what your work restrictions are from

1 Dr. Demarco?

2 A As far as?

3 Q Let's say weight -- what weight can you lift
4 according to him?

5 A Fifteen, 20 pounds.

6 Q And what about do you have any restrictions with
7 the use of your right arm?

8 A My right arm? No overhead.

9 Q Okay. And I want to talk a little bit about your
10 job with the fire department. I know that you were a
11 captain. As a captain, did you also have to do the same
12 type of work that every other firefighter does?

13 A Yes.

14 Q Did you have to meet the same physical
15 requirements?

16 A Yes.

17 MR. CHRISTMAS: And in the APAs Page 228
18 through 230, Commissioner, we submitted a copy of the
19 job description.

20 BY MR. CHRISTMAS:

21 Q When it says you have to have the ability to meet
22 physical standard NFPA, what does that mean?

23 A Whatever the policy was for NFPA, which was as far
24 as it includes hearing, lifting, seeing.

25 Q What amounts of weight do you have to lift to meet

1 those physical requirements?

2 A The weights were up to at least a 165 pound dummy
3 that we had that we had to drag for the physical fitness
4 test.

5 Q Is that dummy supposed to simulate a human being
6 that you're saving from a fire?

7 A Yes.

8 Q In your job, would your job also require you to
9 have the ability to actually save a real person in a fire?

10 A Yes.

11 Q Whatever weight they happen to be?

12 A Whatever weight, yes.

13 Q Okay. It says that you also have to have the
14 ability to function, react quickly, calmly and so forth, and
15 that you also have to have the abilities for standard for
16 fire officer. Those physical requirements that are required
17 of you as a -- as a fire department firefighter, are you
18 physically able to do those now after this work accident and
19 your injuries?

20 A No.

21 Q Okay. What specifically can you not do as a
22 result of your work restrictions and your impairments?

23 A I can't lift ladders. I can't raise ladders.
24 When we had to carry the generator, I couldn't carry that.

25 Q Okay. I know this is an admitted accident, but I

1 want you to please tell the Commissioner briefly what
2 happened on October 8th of 2008.

3 A We went out -- at four o'clock we have to do
4 physical training. We usually run on the treadmill for a
5 little bit and then we would lift weights. I was lifting.
6 I was bench pressing. And when I went up, I heard something
7 pop, and my arm just dropped and I couldn't lift it back up.

8 Q Okay. As a result of this work accident, from
9 head to toe, if you could please describe to the
10 Commissioner what all was injured?

11 A My shoulder.

12 Q Which shoulder?

13 A My right shoulder and my bicep.

14 Q Which bicep?

15 A My right bicep.

16 Q If you could describe for me where it is in the
17 shoulder, what area are we talking about? Show the
18 Commissioner, please.

19 A It's right -- (Witness indicates.) I don't know
20 what you call it.

21 Q Just let the record reflect that you're pointing
22 to the top part of your shoulder in about the center?

23 A Yes.

24 Q Okay. On a pain scale of zero to ten, zero being
25 no pain and ten being the worse pain, what's it like in the

1 right shoulder?

2 A Seven.

3 Q Okay. What's it like on your worse days?

4 A On my worse days, seven.

5 Q What's it like on your best days?

6 A Five.

7 Q Okay. And in terms of the right bicep that you
8 were talking about, if you can show the Commissioner where
9 that hurts.

10 A The bicep hurts in the front and in the back.

11 (Witness indicates.)

12 Q Okay. And let the record reflect the claimant is
13 pointing to the front of his bicep near the bend of his
14 elbow and the front and the backside of his right arm.

15 And so in that area with the bicep, on that same
16 pain scale of zero to ten, zero being no pain and ten being
17 the worse pain, what does it feel like in your right bicep?

18 A About a seven.

19 Q And what's it like on your best days with that?

20 A Five.

21 Q Okay. In the bicep area what, if any, symptoms do
22 you have other than the pain?

23 A Spasms sometimes and sometimes it gets tight.

24 Q Okay. Is there ever a time where your right
25 shoulder injury is completely gone, you can't feel it?

1. A No.

2. Q Is it always there?

3. A Yes.

4. Q And in the right bicep, is there ever a time when
5. your right bicep injury is always gone and you can't feel
6. it?

7. A No.

8. Q Is it always there?

9. A Yes.

10. Q Okay. Now, with regard to your right shoulder and
11. your right bicep and right arm, have you ever had any prior
12. accidents at work or anywhere before this work accident
13. we're here for today?

14. A Yes.

15. Q On your right shoulder?

16. A Oh, not on my right shoulder, no.

17. Q Did you have one on your left shoulder?

18. A On my left shoulder.

19. Q So listen to my question again. On the right
20. shoulder, right arm, and right bicep, have you ever had any
21. prior work accidents or any other type of accident to the
22. right side before this work accident?

23. A No.

24. Q Okay. With regard to the one to the left
25. shoulder, how did that happen?

1 A Left shoulder was the same thing. I was lifting
2 weights and my shoulder popped.

3 Q Was that also when you were at work?

4 A Yes.

5 Q Okay. With regard to your medical treatment, I'm
6 going to let most of the medicals speak for themselves, but
7 did you have any injections in your shoulder and bicep?

8 A From the injury?

9 Q Yes.

10 A Yes.

11 Q How many injections do you think you had?

12 A Probably had about three.

13 Q After those injections, did you go on to have
14 surgeries?

15 A Yes.

16 Q How many surgeries did you have?

17 A Total four.

18 Q In terms of the four surgeries, and I know you
19 probably don't know the medical jargon, but do you know what
20 the surgeries were designed to do?

21 A I had -- well, up here he called it a tore labrum.
22 He just cut it and stitched it together.

23 Q What about your fourth surgery, your last surgery?

24 A The fourth surgery was the bicep where he cut it
25 up right in here and moved it and screwed it to the bone.

1 (Witness indicates.)

2 Q And let the record reflect the claimant is
3 pointing to the top of his bicep and talking about moving
4 the tendon over, you know, to try to repair the area.

5 So with regard to the four surgeries, did that
6 take away -- any of them take away all your pain in your
7 right shoulder and your right bicep?

8 A No.

9 Q Are you still having the permanent problem in your
10 right shoulder and right bicep?

11 A Yes.

12 Q Okay. Now, I know that you were terminated by the
13 fire department. What was the last date of work that you
14 did there?

15 A Dr. Demarco released me January 21st.

16 MR. CHRISTMAS: And, Commissioner, I just
17 point you to APA No. 10, Page 231 where he was
18 terminated on January 31st -- excuse me, 21st, 2011.

19 BY MR. CHRISTMAS:

20 Q At the time of your accident, were you working any
21 other jobs other than the St. Johns Fire Department?

22 A I was working at the bowling alley.

23 Q Okay. And I'm looking at APA No. 11, Page 2,
24 looks like 66. This was a Form 20 that was produced by the
25 St. Johns Fire Department. It has your four quarters of

1: what you earned and it has you having an average weekly wage
2: of \$993.49 and a compensation rate of \$662.36. Can you
3: review that and I'm just going to ask you a few questions.

4: In terms of the quarters and what you earned, does
5: that look about right to you as to what you earned in the
6: first, second, third, and fourth quarter in 2008 and 2007?

7: A Yes.

8: Q Okay. And this average weekly wage of \$993.49,
9: does that look accurate to you?

10: A Yes.

11: MR. CHRISTMAS: Commissioner, I'm looking at
12: APA No. 12, Page 270.

13: BY MR. CHRISTMAS:

14: Q And this was a Form 20 that was submitted by the
15: bowling alley that showed what you earned for your quarters
16: to determine your average weekly wage. Can you look at
17: those quarters and also the amounts and I'm going to ask you
18: a few questions when you're ready.

19: These quarters when it shows what you earned for
20: the first, second, third, and fourth quarters in 2008 and
21: 2007, does that appear accurate to you?

22: A Yes.

23: Q And the average weekly wage of \$180.72, does that
24: appear accurate to you as well?

25: A Yes.

1 Q Okay. Now, in January of 2013, did your hours
2 increase at the bowling alley?

3 A Yes.

4 Q Okay. And what did they increase to at that time?

5 A It went from like 4 to 14, 17 hours.

6 Q Okay. Have you --

7 A Excuse me, 17 hours.

8 Q What do you typically get a week?

9 A Fourteen hours.

10 MR. CHRISTMAS: And so, Commissioner, I'm
11 looking at APA No. 13, Page 272.

12 BY MR. CHRISTMAS:

13 Q This is the reporting of what you earned at the
14 beginning of 2013, January through March, and it has you at
15 \$1,610.08. Is that accurate?

16 A Yes.

17 Q And in terms of the number of hours. I think you
18 testified it was 14, what are you earning per hour in that
19 job?

20 A It's \$9.18 an hour.

21 Q Now, with regard to that job, are you working any
22 other employment other than the bowling alley?

23 A I have a little snack route I take care of.

24 Q So tell the Commissioner about that. Do you earn
25 any money from that snack route?

1 A I don't make nothing off that snack route, really.

2 Q Where is the snack route? Where are the machines?

3 A At fire stations and I don't charge that much
4 money, so I put the money back -- back into it.

5 Q Did you also run that snack route back when you
6 were injured?

7 A Yes.

8 Q Okay. So you've had that both before and after
9 the accident?

10 A I've had it since '95.

11 Q And are you claiming any extra average weekly wage
12 from the snack route?

13 A No.

14 Q Okay. With regard to your attempts to find work,
15 I know that the -- you were terminated by the fire
16 department and you're working for the bowling alley. Have
17 you looked for work anywhere else?

18 A Yes.

19 Q Okay. What other types of places, if you can tell
20 the Commissioner, have you tried to find work?

21 A I've looked at Wal-Mart, Carmax. I've looked in
22 the federal job listing to try to find something in there.

23 Q Okay. Have you applied for jobs?

24 A Yes.

25 Q Okay. Has anyone hired you?

1 A No.

2 Q Okay. Is -- are you earning the same type of
3 money now that you were earning at the time of the accident
4 when employed by the fire department?

5 A No.

6 Q Okay. Are you earning less now?

7 A Yes.

8 Q Okay. Have you tried to find employment to become
9 fully employed and make the most money you can since being
10 let go by the fire department?

11 A Yes.

12 Q If you were physically able to return to work at
13 the fire department, would you have returned there?

14 A Yes.

15 Q Were you physically able to return there?

16 A No.

17 Q And why not?

18 A Because I couldn't -- I couldn't pass the physical
19 agility test. And the training that they had, I couldn't do
20 that training.

21 Q If Wal-Mart or these government jobs or any of the
22 places you've applied, any of them had hired you, would you
23 have tried your best to work in those jobs?

24 A Yes.

25 Q Have you done everything you know how to do to try

1 to become fully employed?

2 A Yes.

3 Q With those jobs like the ones at Wal-Mart and so
4 forth, do you know as you sit here now whether you would
5 really be able to do those jobs or not?

6 A I won't know unless I try.

7 Q Okay. If you were -- if there was some other job
8 that was made available to you that was within your
9 restrictions, would you be working at it now?

10 A Yes.

11 Q Has any job offer been made to you within your
12 work restrictions?

13 A No.

14 Q All right. I want to talk about your range of
15 motion. And what I mean by that is your ability -- first,
16 let's talk about being able to put your arm completely up
17 over your head. Prior to this work accident, did you have
18 any problems with your range of motion in your right
19 shoulder?

20 A No.

21 Q Do you have any problems with the range of motion
22 there now?

23 A Yes.

24 Q How so?

25 A I can't go straight up and hold it, but like -- or

1 swinging, like if I'm going to swing my arm up, I have to
2 swing it around.

3 Q Okay. Did you have those limitations before the
4 work accident?

5 A No.

6 Q And the limitations you have now, is that from
7 your injury from the work accident?

8 A Yes.

9 Q I want to talk about the strength in your right
10 shoulder and right arm. Did you have any problem with the
11 strength in it prior to the work accident?

12 A No.

13 Q And do you have any problems with the strength in
14 it now as a result of the work accident?

15 A Yes.

16 Q What kind of problems, if you could tell the
17 Commissioner, are you having with the strength?

18 A Just with lifting when I go to lift or hold
19 something up, my shoulder will hurt and the bicep will spasm
20 real bad.

21 Q Okay. Did you ever get spasms in the bicep before
22 this work accident?

23 A No.

24 Q And the spasms that you have in your right bicep,
25 does that come from the injury in the work accident?

1 A Yes.

2 Q Are you right or left hand dominant?

3 A Right hand.

4 Q And in terms of your ability to lift with the

5 right arm before this work accident, did you have any

6 restriction or limitation on your ability to lift before

7 this work accident?

8 A On my right arm?

9 Q Yes, sir.

10 A No.

11 Q Do you have restrictions on what you can lift with

12 your right arm now as a result of the work accident?

13 A Yes.

14 Q What's the most -- I know what the doctors think

15 you can lift. What's the most you'll attempt to lift?

16 A The most I'll attempt to lift is about 25 pounds

17 I'll try. But when I lift, I don't raise everything up

18 high.

19 Q Okay. Now, talking about -- moving to the area of

20 what you used to do around the home. Are there any

21 activities inside the home or outside the home that you used

22 to do that you are now limited in any way as a result of the

23 accident?

24 A I used to vacuum and dust and clean windows. I

25 don't do that no more.

1 Q Why not?

2 A My shoulder when raising up and the bicep just
3 hurts. I stop.

4 Q How about in terms of your ability to get dressed?
5 Do you have any problems dressing yourself?

6 A No.

7 Q How about driving, any problems driving?

8 A I drive left-handed now. I don't keep my right
9 hand on the steering wheel no more.

10 Q And why not?

11 A Moving it back and forth, it hurts.

12 Q Okay. Now, with regard to medical treatment,
13 Dr. Demarco has recommended a series of treatments including
14 medications, pain management, injections, TENS unit, repeat
15 diagnostics, physical therapy, office visits, and so forth.
16 Are you interested in continuing in having that medical
17 treatment going forward?

18 A Yes.

19 Q And with regard to the issue of lump sum, are you
20 in charge of your own bank account?

21 A Yes.

22 Q Do you handle your own financial affairs?

23 A Yes.

24 Q Do you make decisions for yourself on food,
25 clothing, shelter, things of that nature?

1 A Yes.

2 Q Could you use the money in this case in a lump sum
3 to help pay for food, clothing, shelter, debt, things of
4 that nature?

5 A Yes.

6 Q And have you ever been deemed by a court of
7 competent jurisdiction to be incompetent?

8 A No.

9 MR. CHRISTMAS: That's all I have,
10 Commissioner.

11 THE COURT: All right. Ms. Urbanic.

12 MS. URBANIC: Thank you. Commissioner, one
13 thing I failed to point out earlier was the last note
14 from August of 2012 from Dr. Demarco referenced some of
15 that ongoing medical care. But on the 14B from
16 September of 2012, which is Tab 8, Page 56 of the
17 defendant's APAs, he actually checked the box that he
18 would not need future medical care. So I just wanted
19 to point that out.

20 CROSS-EXAMINATION

21 BY MS. URBANIC:

22 Q Mr. Contreras, you mentioned briefly on direct
23 examination that you injured your left shoulder I think it
24 was back in 2006?

25 A Yes.

1 Q And it was the exact same thing lifting weights at
2 the fire station?

3 A Yes.

4 Q And you had a workers' compensation claim for that
5 as well?

6 A Yes.

7 Q And you actually received \$19,000 for the injury
8 to your left shoulder?

9 A Yes.

10 Q I understand you've worked at the bowling alley
11 for approximately 12 years?

12 A Yes.

13 Q You said in January your hours went up to about 14
14 hours a week?

15 A Yes.

16 Q And you had actually thought you were going to get
17 the manager position at the bowling alley; is that right?

18 A No. That was my goal when I retired as a fire
19 firefighter, to go right into management.

20 Q Okay. Well, didn't that position come up recently
21 at the bowling alley and it went to somebody else?

22 A They transferred a manager from a bowling alley
23 that closed to that one, so they never advertised or
24 anything.

25 Q You've been looking for work in the past couple of

1 months; is that right?

2 A Yes.

3 Q Okay. Because you mentioned the Wal-Mart job; is
4 that right?

5 A Yes.

6 Q And you didn't get that job because Wal-Mart makes
7 you take a test?

8 A I took a test and I didn't pass.

9 Q You didn't pass the test. Okay. And that was
10 about turning in employees if somebody was stealing a soda
11 kind of thing?

12 A Something like that, yeah.

13 Q I've never taken a test for Wal-Mart, so I don't
14 know firsthand. And you also applied at Carmax as a finance
15 clerk; is that right?

16 A Yes.

17 Q Okay. And you mentioned a couple of jobs with the
18 federal government; is that correct?

19 A Yes.

20 Q And one of them was immigration?

21 A I was looking into that, yes.

22 Q Because you're fluent in Spanish; is that right?

23 A Yes.

24 Q And the immigration job, what was the range of
25 salary in that position?

1 A I think it was from 58 to 90.

2 Q And the other job at the federal government was a
3 finance clerk position?

4 A Yes.

5 Q And what was that range?

6 A Forty-nine -- 30 or 49.

7 Q And you have not heard back with regards to either
8 one of those federal jobs?

9 A No. I didn't -- the finance clerk job was in
10 North Carolina, so -- but I was hoping to get one in
11 Charleston and never came through.

12 Q All right. But those would all be sitdown behind
13 a desk type position; is that right?

14 A Yes.

15 Q And you think you can do that type of sitdown
16 behind the desk type job?

17 A Yes.

18 Q And you mentioned briefly about your snack machine
19 business. Can you explain what exactly that entails?

20 A I have about six machines that I take care of. I
21 sell snacks out of them or soda and they're in the fire
22 stations.

23 Q So you deliver the snacks to the fire stations and
24 restock the machines?

25 A Yes.

1 Q You order the snacks?

2 A I go to Sam's or Cosco.

3 Q You go buy the snacks?

4 A Uh-huh.

5 Q Is that yes?

6 A Yes.

7 THE COURT: Do you own these machines?

8 THE WITNESS: Yes.

9 BY MS. URBANIC:

10 Q And you keep track of the books on these machines?

11 A Yes.

12 Q And I think you told me in your deposition that
13 because you're selling them at fire stations, you don't
14 charge a lot money for the snacks?

15 A I can't because they're not going to buy it. I
16 don't charge them for it.

17 Q All right. So you've never -- you've only broken
18 even on this business?

19 A They notice if I go up a nickel. Oh, you went up
20 a nickel on the Snickers.

21 Q And you've been doing that for how many years?

22 A Since '95.

23 Q And how many weeks do you devote to that business?

24 A How many weeks?

25 Q How many hours a week? Excuse me.

1. A Maybe three -- three hours.

2. Q And you work at the bowling alley about 14 hours a
3. week?

4. A Yes.

5. Q And I think you told me in your deposition you
6. have a two-year-old granddaughter you help take care?

7. A I help while my daughter is in school.

8. Q And is that on a daily basis?

9. A No, that's just -- you know, she'll call me and
10. tell me, Can you watch her tomorrow?

11. Q I think you also told me your mother lives with
12. you and you spend time driving her to appointments during
13. the day?

14. A Yes.

15. Q You haven't been back to Dr. Demarco since August
16. of 2012; is that correct?

17. A Yes.

18. Q You haven't been to a doctor for your shoulder
19. since then?

20. A No.

21. Q And you're not taking any -- currently taking any
22. pain medication for your right shoulder?

23. A No.

24. Q And you talked about some things you can and can't
25. do around the house on direct, but you're able to do some

1 yard work; is that right?

2 A Yes.

3 Q Rake leaves?

4 A Yes.

5 Q You mentioned trimming, cutting bushes?

6 A I tried that. I don't do that.

7 Q Are you able to wash your car?

8 A Yes.

9 Q Okay. Do dishes in the house for your wife?

10 A Sometimes, yeah.

11 Q I believe up until the time of your deposition,
12 you had been going to the gym; is that right?

13 A I signed up for the gym, but I haven't been in a
14 long time.

15 Q In your deposition you mentioned it had been about
16 three weeks since you had gone to the gym.

17 A The last time I went, yeah.

18 Q And you stopped going to the gym because you lose
19 weight when you go to the gym?

20 A Right -- no, I gain weight.

21 Q You gain weight when you go in the gym, but you
22 lose weight when you stop going, right?

23 A Yes.

24 Q We all want that diet.

25 THE COURT: I was going to say, I want that

1 diet.

2 BY MS. URBANIC:

3 Q And you used to run on the treadmill at the gym?

4 A Yes.

5 Q And when I asked you about whether or not you had
6 thought about going back to school in your deposition, you
7 mentioned about possibly going back to study human
8 resources?

9 A Yes.

10 Q Is that something you thought about?

11 A Something I like, yeah.

12 Q And the reason you haven't gone back is because it
13 cost money to go back to school?

14 A Yes.

15 Q But you think you can do that type of work if you
16 got training for it?

17 A Yes.

18 Q You've never applied for Social Security
19 disability?

20 A No.

21 Q And your plan for the future is to get a full-time
22 job; is that correct?

23 A Yes.

24 Q You only saw Dr. Hughes once; is that right? He
25 was the doctor I think up in Orangeburg.

1 A Orangeburg? I went to Mt. Pleasant.

2 Q Okay. Well, maybe he has an office in Mt.
3 Pleasant. And the voc report that was done by Jean
4 Hutchinson, you hadn't seen her since 2011; is that correct?

5 A Yes.

6 Q Since 2011 you actually had surgery number four on
7 your right shoulder. Does that sound right? Your surgery
8 was in March of 2012?

9 A I know it was in March.

10 Q 2012, though, right? Your last surgery was about
11 a year ago?

12 A Yes.

13 MS. URBANIC: Okay. I believe that's all the
14 questions I have for Mr. Contreras.

15 THE COURT: All right. Mr. Christmas.

16 MR. CHRISTMAS: Thank you. I'll be brief,
17 Commissioner.

18 REDIRECT EXAMINATION

19 BY MR. CHRISTMAS:

20 Q Okay. When you had the left shoulder -- not the
21 right shoulder we're here for today, but the left shoulder
22 injury back in 2005, were you able to return to duty full
23 duty?

24 A Yes.

25 Q With the fire department?

1 A Yes.

2 Q Full-time?

3 A Yes.

4 Q Without restrictions?

5 A Yes.

6 Q Able to do all the job requirements that they
7 required of you?

8 A Yes.

9 Q Okay. Are you able to do that with your right
10 shoulder?

11 A No.

12 Q Okay. With regard to the bowling alley, you were
13 asked about I know your goal maybe was to become manager
14 there. When the opportunity came up and they were looking
15 for a manager, did they hire you to do it?

16 A No.

17 Q What did they do?

18 A The took -- the bowling alley closed in Savannah
19 and they moved that manager to Charleston. He lived in
20 Charleston anyway.

21 Q Even though you had been there for all those
22 years?

23 A Yes.

24 Q How many years you been working there?

25 A Twelve.

1 Q Okay. If they would have tried to give you a
2 chance to do that, would you have tried to do that job?

3 A Yes.

4 Q Did they think you were ready for that job and
5 hired you to do it?

6 A No.

7 Q You were asked about Wal-Mart, Carmax, the
8 government jobs and so forth. Just to be clear, have any of
9 these potential employers offered you any employment of any
10 kind?

11 A No.

12 Q At any salary of any kind?

13 A No.

14 Q And you were asked about if you thought you could
15 do these type of jobs. Until you get there and do those
16 jobs, can you really know what you're capable of doing?

17 A No.

18 Q Now, with the snack machines that I think you said
19 you do about three hours a week, how long you been doing
20 that again?

21 A Since '95.

22 Q You making any money on these machines?

23 A No. I've actually lost money whatever I could
24 have made because I was out injured with the shoulder.

25 Q If you were able to turn that into a profitable

1 business any time between 1995 and today, would you have
2 done that?

3 A Not with the machines at the station -- fire
4 station.

5 Q My point is this: Is there any -- in your view,
6 is there any prospect of this turning into any type of real
7 income for you in the future?

8 A Yes, it could be.

9 Q It could be?

10 A It could be.

11 Q Okay. Has it been in the last, let me do my math,
12 13 years?

13 A No.

14 Q Or, excuse me, 18 years. Has it made you any
15 money in the last 18 years?

16 A No.

17 Q When you were asked about the yard work and doing
18 dishes and washing the car and doing things of that nature,
19 did you have any problems with pain or restrictions doing
20 those activities prior to this work injury?

21 A Yes. Yard work when I rake, it hurts and I just
22 stop for a while.

23 Q I'm asking before -- before this work accident,
24 did you have any problems doing those activities?

25 A No.

1 Q With the left shoulder or right shoulder, did you
2 have any problems doing the dishes, washing the car, yard
3 work before this work accident?

4 A No.

5 Q Do you have problems doing those activities now?

6 A Yes.

7 Q Are you able to do those activities pain-free?

8 A No.

9 Q Okay. Tell me about that.

10 A Just like with raking, when I'm raking and pulling
11 on the leaves, it's just -- just from moving back and forth,
12 my shoulder will get stiff and my bicep will start hurting.

13 Q Okay. And do you have to take breaks when you do
14 these activities?

15 A Yes, I take breaks.

16 Q How often you take breaks?

17 A Thirty, 40 minutes until it stops hurting.

18 Q Did you have to take breaks doing any of these
19 activities before this work accident?

20 A No.

21 Q Now, you were asked about school trying to go and
22 study human resources and I commend you on that goal. Do
23 you have the money or ability to pay to go get educated in
24 human resources?

25 A No.

1 Q Are you in school for human resources right now?

2 A No.

3 Q And, again, until you got in and tried that
4 program, do you even know if you would be capable of doing
5 that?

6 A No, I wouldn't know.

7 Q You testified that your plan was to try to find a
8 full-time job. Has that been your plan since the fire
9 department terminated you back in January of 2011?

10 A Yes.

11 Q Okay. And we're now over two years past that
12 point. Has anyone hired you to do full-time work?

13 A No.

14 Q You were asked about when you saw Jean Hutchinson.
15 Has your condition to your shoulder -- right shoulder or
16 right arm, has it improved in any way since you last saw
17 Ms. Hutchinson?

18 A No.

19 MR. CHRISTMAS: That's all I have. Thank
20 you, Commissioner.

21 MS. URBANIC: Just briefly, Commissioner.

22 RECROSS-EXAMINATION

23 BY MS. URBANIC:

24 Q Mr. Contreras, you mentioned when Gary was doing
25 redirect that you thought you could make money off the snack

1 machines at some point?

2 A If I bought more machines.

3 Q If you bought more machines. Okay. Have you
4 looked into that at all?

5 A Yes.

6 Q Is that something you're planning on doing?

7 A Am I planning on doing it? It's possible.

8 Q And the jobs we talked about you applied for,
9 Carmax, Wal-Mart, and the federal positions, that's all been
10 within the last two months roughly; is that correct?

11 A Yes.

12 Q That's when you started looking for work?

13 A I started looking for work, yeah. Yes.

14 MS. URBANIC: That's all the questions I
15 have.

16 THE COURT: Anything else, Mr. Christmas?

17 MR. CHRISTMAS: Just one.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. CHRISTMAS:

20 Q Had you been looking for other work other than
21 those specific jobs prior to that with the bowling alley and
22 other places?

23 A Yes.

24 Q Since you were released by the fire department in
25 January of 2011?

1 A Yes.

2 MR. CHRISTMAS: That's all I have.

3 THE COURT: Anything else?

4 MS. URBANIC: No, Commissioner.

5 THE COURT: All right. Thank you, sir. Any
6 other witnesses, Mr. Christmas?

7 MR. CHRISTMAS: No, Your Honor.

8 THE COURT: That's your case?

9 MR. CHRISTMAS: That's our case.

10 THE COURT: Any witnesses, Ms. Urbanic?

11 MS. URBANIC: No, Your Honor.

12 THE COURT: That's your case?

13 MS. URBANIC: Yes, Your Honor.

14 THE COURT: All right. Then that concludes
15 this hearing.

16 (The hearing concluded at 3:09 p.m.)
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25

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 0822640

Thomas Contreras,)
Employee/Claimant,)
v.)
St. John's Fire District)
Commission,)
Employer/Defendant,)
and)
State Accident Fund,)
Carrier/Defendants.)
-----)

COPY

FULL COMMISSION HEARING

Monday, December 16, 2013
3:00 p.m. - 3:30 p.m.

The Commission Hearing before Commissioner Susan S. Barden; Commissioner Aisha Taylor; and Commissioner T. Scott Beck, Chair, was taken at 1333 Main Street, Suite 500, Columbia, South Carolina on the 16th day of December, 2013 before Jennifer Nottle, Court Reporter and Notary Public in and for the State of South Carolina.



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EXHIBITS

(There were no exhibits marked during the hearing.)



CREEL COURT REPORTING, INC.
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1 **THE COURT REPORTER:** Today is Monday, December 16th,
2 2013. This is South Carolina Workers'
3 Compensation case number 0822640. This is the
4 case of Thomas Contreras, Claimant versus St.
5 John's Fire District Commission, Employer and
6 State Accident Fund, Carrier. The Appellant is
7 the Defendant represented by Margaret Urbanic
8 and Respondent is represented by Gary
9 Christmas. Each side is allowed ten minutes
10 for oral arguments and the Appellant three
11 minutes in reply. You are requested to argue
12 the grounds of exception and stay within the
13 record.

14 **COMMISSIONER BECK:** Mr. Urbanic.

15 **ARGUMENT BY MS. URBANIC:**

16 **MS. URBANIC:** Thank you. We've appealed this claim
17 on several grounds. One of the first issues is
18 where the commission ordered some back TPD, and
19 let me give you a little background on the
20 hearing. This hearing was back in May. This
21 Claimant had two jobs. He worked as a fire
22 fighter for my employer, the fire district, and
23 he also had a second job at a bowling alley
24 working 12 to 14 hours a week there.

25 **COMMISSIONER BECK:** Let me stop you for just a



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1 second. We do not, apparently, have a
2 transcript of this proceeding.

3 MS. URBANIC: Oh, I've got -- I think I have an
4 extra copy, and I don't think I wrote on this
5 one.

6 COMMISSIONER BECK: Thank you.

7 COMMISSIONER BARDEN: Thank you so much.

8 MS. URBANIC: So, the Claimant had two jobs, the
9 main job as the fire fighter, he's a captain at
10 the fire department. And he also had a second
11 job where he'd worked for many years, I think
12 actually he's still working there, at the
13 bowling alley. And the day before the hearing
14 I was sent over by Mr. Christmas' office the
15 information with regards to his wages from the
16 bowling alley, a Form 20, a printout of his
17 payroll records. At the hearing, at the pre-
18 hearing conference with the commissioner, I
19 objected to that information as not being
20 timely. The commission allowed that
21 information but let me have a couple of days to
22 take a look at it and respond to it in any way
23 I needed to respond to it. And Mr. Christmas'
24 office had emailed the commissioner's office,
25 Kelly, a case Hudson versus Ports Authority.



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1 And I emailed, on May 21st, to Kelly, copied
2 Mr. Christmas, our position on the wages from
3 the bowling alley and the TPD issue with regard
4 to it asking, you know, pursuant to what the
5 commissioner told me, about giving me time to
6 respond and making it part of the record. And
7 at that time, because I wasn't aware until the
8 hearing that there was this issue of TPD from
9 the bowling alley and some back TT, and I
10 attached a Form 17 that had been filed and was
11 part of the commission's record. Although I
12 think it was signed by the Claimant before he
13 was represented by his attorney. Which on that
14 Form 17 indicated TT was paid from October 18th
15 of 2010 through September 4th of 2011. And
16 actually it continued until September 25th, I
17 believe, because of the date of filing of the
18 17. So one of the things that the commission
19 had ruled and ordered was a period of -- he
20 ordered back TPD from January 1st, 2011,
21 through August 7th, 2012. Well from January
22 21st, 2011, we had paid him TT. He was given
23 the max comp rate. He was the captain at the
24 fire department and made a very good wage. He
25 was at the max comp rate for the year of his



1 injury, and we continued that until September
2 25th, 2011. So he's already got TT for that
3 time period for the max comp rate pursuant to
4 the 17 so we don't think it's appropriate for
5 that to be ordered. He signed a 17 and was
6 evidenced. And, as every single hearing we all
7 have ever been to, one of the things you all
8 say is the commission's file is then part of
9 the record. It was part of the record, he
10 signed it. Certainly the Claimant should've
11 been aware that he'd signed it and was put in
12 -- so there's never been a request since then
13 to start up TT. So therefore, we think that
14 should've been stopped during that time frame
15 or it should not have been awarded for that
16 time frame. I know it's a little bit confusing
17 with all the dates and the overlap and all
18 that. One of the things, and I know y'all just
19 got a copy of the transcript, was -- and I went
20 back and looked at the 58s and I didn't see
21 specific dates on his 58 for TT. But he
22 indicated on page eight at the hearing they
23 were seeking temporary partial from January
24 21st, 2011, through May 16th, 2011. Those are
25 the only dates I saw in the hearing, on the



transcript that were actually requested, and again those were dates that were covered in the Form 17 that were actually paid for temporary total. And I went through it and I didn't see any other dates requested but that's with regards to the back. It's finding of fact number 26, I believe, of the order that really addresses all that in the order. We don't believe we owe that time period back, temporary partial as the max comp rate as paid for TT. The bigger issue in this case is that the Claimant suffered an injury to his right shoulder. He did it while lifting weights at the firehouse. All the firefighters workout lot. Unfortunately, he had to have four surgeries to his shoulder over the course of several years. Three of them were by Dr. Demarco who was the main treating physician. Dr. Demarco rated him, actually, I believe, more than once, most recently rated him on 2012 -- August 7th of 2012, where he gave him a nine percent rating. And he said, in his rating -- he broke it out as to how he got to nine percent, three percent for biceps, three percent loss of internal rotation, two percent



1 loss of flexion and one percent for pain and
2 muscle spasm. However, the rating is nine
3 percent for his shoulder. We believe it's only
4 a shoulder injury. The last surgery that the
5 Claimant had it did involve his biceps tendon
6 and how they attached it to the shoulder. When
7 you look at the notes, all the treatment is to
8 his shoulder. Dr. Demarco, on the request of
9 the Claimant's attorney, did do a questionnaire
10 that was sent over. He checked a variety of
11 things off and he did check off in there that
12 the bicep was part of it. We would -- we would
13 argue that's all part of the right shoulder.
14 This is a check the box kind of questionnaire.
15 And the interesting thing is in the order there
16 was an issue with regards to something that was
17 in the 14B versus the check the box
18 questionnaire and the commissioner noted there
19 was a check the box questionnaire and relied on
20 the 14B. I know it's in here. So we point out
21 that the medical records are probably a little
22 bit more reflective of the actual injury. The
23 injury was in fact to the right shoulder. The
24 Claimant also claimed an injury to the
25 clavicle. Up here it's collarbone. The only



1 doctor to give an opinion with regards to the
2 clavicle was Dr. Hughes. He was a doctor
3 giving an independent medical examination as
4 requested by the Claimant's attorney. There
5 was no information from Dr. Demarco that that
6 was part of his injury. We believe Dr.
7 Demarco's opinion should be considered more
8 heavily than Dr. Hughes' opinion. Therefore,
9 we believe it's only an injury to the right
10 shoulder. It should be found under 42-930 with
11 regards to any disability. The Claimant's
12 attorney did have a vocational report done by
13 Gene Hutchinson. That report was done in 2011.
14 The Claimant, as I said, he was a captain at
15 the fire department, had been there a number of
16 years and obviously had done well to rise to
17 that high level of rank. He is also fluent in
18 Spanish and when I took his deposition he had
19 applied for various jobs with the federal
20 government, one of them being an interpreter
21 and some other jobs at Car Max and a few other
22 places. That was all within a few months prior
23 to the hearing. So it's not a situation where
24 even though he left the fire department in
25 2011, where he'd been looking for work for



1 years and years and hadn't been successful in
2 finding work. He'd actually just started
3 looking for work and actually was looking for
4 some pretty decent paying jobs. There was a
5 federal government pay scale and had a good
6 salary range within it, and during this time
7 frame he continued working at the bowling
8 alley. In that job, he was earning \$9.18. The
9 lost wage analysis that was done uses minimum
10 wage, which is \$7.25. So the information we
11 have right now on the job he's been holding for
12 years and is still working at, he's actually
13 able to earn more than minimum wage. He hoped
14 to become a manager there but they closed
15 another alley and brought a manager in from the
16 old alley. So he didn't get the management
17 position there but it seemed very inconsistent
18 with us that the lost wage calculation wasn't
19 even using the earnings that he is currently
20 using.

21 **COMMISSIONER BARDEN:** What was his current earnings
22 at the bowling alley, what did you say?

23 **MS. URBANIC:** Nine dollars and 18 cents, and that is
24 what he testified at the time of the hearing.
25 The vocational report said he could earn



1 between 7.25 and \$8 an hour, although we did
2 not have a vocational report done. One because
3 we felt like it was a 42-930 case and two
4 because, even without it, we felt like, you
5 know, somebody who has been a captain at a fire
6 department may have more skills than just that
7 of somebody who could lift a person out of a
8 burning building. He's had an administrative
9 level job. He's had a management job and
10 supervised people. He's had to make, you know,
11 decisions very quickly in stressful situations
12 as a captain of the fire department. He's
13 admittedly fluent in Spanish. He has expressed
14 interest in going back to school and we felt
15 like his own testimony was very persuasive and
16 he was very persuasive in person as to what he
17 was capable of doing.

18 **COMMISSIONER BECK:** Okay. Mr. Christmas?

19 **COMMISSIONER BARDEN:** Mr. Christmas -- and I'm maybe
20 taking this, reading the 26 -- can you first
21 address the issue of the temporary partial, the
22 dates, the -- page eight of the transcript
23 versus the number ---

24 **MR. CHRISTMAS:** Yeah, I think whenever I was ---

25 **COMMISSIONER BARDEN:** I may have my wires crossed.



1 MR. CHRISTMAS: In the pretrial, we had asked for
2 temporary partial as a general prayer -- I
3 mean, in the 58. And in the pretrial, I had
4 said the end date as the wrong end date. The
5 evidence was before the commissioner, we asked
6 them to rule upon, was in the record, and it
7 went to a period where the Claimant actually
8 reached maximum medical improvement which was a
9 few months later, in August.

10 COMMISSIONER BARDEN: Okay, in August.

11 MR. CHRISTMAS: Yes, ma'am.

12 COMMISSIONER BARDEN: Okay, thank you.

13 ARGUMENT BY MR. CHRISTMAS:

14 MR. CHRISTMAS: Just to address that briefly. With
15 regard to the issue of, you know, credit or
16 being paid temporary partial disability during
17 that period of time, the Defendant's didn't
18 bring it up in their form 58. They didn't
19 bring it up in the pretrial. They didn't bring
20 it up in the latter post trial with the
21 commissioner, and they didn't bring it up in
22 the Form 30. It was not raised. It was not
23 ruled upon and it would be improper to rule
24 upon, at this level, something that wasn't
25 raised and ruled upon at a level below. If



1 there are questions on it, we'll be happy to
2 entertain them. Since my time is brief, I want
3 to get to the 42-920 argument. Specifically,
4 this is a fireman who worked there -- for the
5 Employer for 22 years. He has a high school
6 education, only. He has no computer skills,
7 he's 52 years old. Post working for the fire
8 department he has been working for a bowling
9 alley, 14 hours per week at 9.18 per hour.
10 That's all he's been able to find, he's been
11 looking for two and a half years. Despite the
12 contention that he just started working a few
13 months before the hearing, I quoted in the
14 brief and actually laid out the testimony in
15 the transcript where he says he has been
16 looking since he was let go by the fire
17 department.

18 **COMMISSIONER BECK:** Mr. Christmas, the first step is
19 getting out of 30.

20 **MR. CHRISTMAS:** Yeah. Let me address that.

21 **COMMISSIONER BECK:** The order only addressed right
22 shoulder and right upper extremity, that I see.
23 I don't see anything in here with regard to the
24 clavicle.

25 **MR. CHRISTMAS:** Yes, sir. Let me address that.



1 COMMISSIONER BECK: Your argument that the clavicle,
2 as another body part, while it may be
3 dispositive at a hearing, it's sort of -- the
4 law of the case is not in here.

5 MR. CHRISTMAS: Sure.

6 COMMISSIONER BECK: Would you disagree with that?

7 MR. CHRISTMAS: I would not disagree with that.

8 COMMISSIONER BECK: So we've got right shoulder and
9 right upper extremity. And I assume, by the
10 right upper extremity, you're referring to the
11 bicep?

12 MR. CHRISTMAS: Yes, sir.

13 COMMISSIONER BECK: Was it a detached bicep tendon
14 that was reattached to the shoulder?

15 MR. CHRISTMAS: I believe the fourth surgery, the
16 one from March 29th, did address just the bicep
17 by itself. It was different from the previous
18 three shoulder surgeries.

19 COMMISSIONER BECK: What did they do in that
20 surgery?

21 MR. CHRISTMAS: Your Honor, I know there was a
22 surgery to the bicep, whether they reattached
23 it or whether they -- the specifics or the
24 detail of what they did in that I'm not sure
25 of.



1 COMMISSIONER BECK: Okay. And that's something that
2 may be, I don't know about my colleagues, but
3 may be important to me ---

4 MR. CHRISTMAS: Sure.

5 COMMISSIONER BECK: --- in determining whether or
6 not it's outside of 30 or whether it stays
7 within 30. Because if it's all focused on the
8 shoulder, that's one thing. If there's a
9 separate and distinct injury to the bicep, it's
10 a whole different story.

11 MR. CHRISTMAS: Sure. If I could address it in
12 three ways.

13 COMMISSIONER BECK: Yes, sir.

14 MR. CHRISTMAS: First, the Claimant's testimony, when
15 he pointed out to the commissioner, was his
16 shoulder here (indicating) and the biceps at
17 the bend of the elbow. One of the four
18 surgeries was to the biceps and the authorized
19 treating physician's impairment rating was not
20 only to the shoulder -- I had attached it to
21 the brief that I ---

22 COMMISSIONER BARDEN: Separate rating to the arm.

23 MR. CHRISTMAS: Separate rating to the arm for the
24 biceps and then, also, the IME doctor also
25 found two separate ratings, one to the shoulder



1 and one to the arm, based upon the bicep
2 injury. And so, you know, with the surgery
3 being the bicep, one of the four, with his
4 showing the commissioner two different places
5 where he's having the injury. Plus, also, Dr.
6 Demarco and Dr. Hughes also found that the
7 shoulder effects -- but not only found it,
8 there are different ratings to the second body
9 part. That's APA number one pages seven
10 through eight, APA number three page 15, APA
11 number eight and APA number two page 14.
12 Getting out of 30, then you go to whether or
13 not he is you know suffered wage loss. Since
14 the accident, he has looked for work, but just
15 like the court pointed out in Hudson, the
16 Defendants made the same argument, citing
17 Sellers v Pine Dale, that testimony of the
18 Claimant is going to show that he might be able
19 to earn more money. But the vocational report
20 I point out Defendants did not depose Dr.
21 Demarco to find out about the two different
22 impairments, did not depose Dr. Hughes to ask
23 about the two separate impairments, did not
24 depose Claimant's vocational expert to
25 challenge those opinions, did not offer a



1 defense vocational report, did not offer a
2 defense EME to counter any of this evidence.
3 And so you know, respectfully, you know, the
4 wage loss was there. So the fact that he
5 applied for some jobs and then was not hired by
6 them -- Car Max, Wal-Mart, he gave a list of
7 them. The fact that he has applied, as the
8 court pointed out in Hudson, he shouldn't be
9 punished just for applying. He should, you
10 know, be speculative. Not only substantial
11 evidence but barely evidence of whether he
12 would even be able to do those jobs when he got
13 to them. He testified that he applied, was not
14 hired. Even if he was hired, he didn't know if
15 he would be able to do them. So, you know,
16 he's in a wage loss situation. He's in an
17 actual situation where he's only working 14
18 hours a week at 9.18 per hour. And so the
19 commissioner, I think, just did a balancing
20 test and said, based on the vocational opinion,
21 he's at or near minimum wage which is what that
22 is. And he found, based upon a 40 hour week,
23 if you actually did it on the -- he's only
24 working 14 hours a week. If you went to a 40
25 hour work week for the hours he's completely



1 missing, it would actually go up. I think he
2 was trying to do balancing and kind of split
3 the baby on what the loss would be. So if it's
4 -- if it's not -- if that's not a fair balance
5 then go to what it actually is, which actually
6 is higher, which is, he's working 14 hours a
7 week at 9.18 per hour. He has tried to find
8 work. You know, the gentleman was in the
9 military, was a captain for the fire
10 department. He did work there for 22 years.
11 He has no write-ups for dishonesty. He has no
12 criminal record and his credibility is there.
13 So when he tells the commission that, you know,
14 he's got a problem here (indicating) and here
15 (indicating), in two separate places, and he
16 tells the commission I really did look for work
17 and this is the best I can do. You know, this
18 isn't a speculative situation. It's an actual
19 wage loss. He's actually experiencing it and
20 has been experiencing it since he was let go by
21 the fire department.

22 **COMMISSIONER BECK:** tell me who did the surgery on
23 the biceps. Demarco do all of them?

24 **MR. CHRISTMAS:** I believe Demarco did all four, Your
25 Honor, and I believe the date on that -- let



1 me find it, is -- it was on March 29th, and
2 it's APA number four page 54.

3 COMMISSIONER BECK: Thank you.

4 MR. CHRISTMAS: Yes, sir. So, to conclude, the
5 evidence as it exists under the current case
6 law Hudson and that was developed in the
7 record, you know, shows that he does have
8 partial wage loss and we respectfully ask this
9 finding of the hearing commissioner be upheld.

10 COMMISSIONER BECK: Mr. Christmas?

11 MR. CHRISTMAS: Yes, sir.

12 COMMISSIONER BECK: The APA you just cited me to,
13 looking at the preoperative diagnosis, the
14 postoperative diagnosis, everything shows right
15 shoulder.

16 MR. CHRISTMAS: Okay. The -- and I do not have the
17 brief with me. The ---

18 COMMISSIONER BECK: It addresses some bicep
19 tendinopathy but it's right shoulder, long head
20 of bicep tendinopathy.

21 MR. CHRISTMAS: Right. So long head of bicep
22 tendinopathy -- the bicep is a separate body
23 part from the shoulder which has the -- you
24 know, the other mechanisms of the shoulder.
25 And so if it goes into that area, it is a



1 separate body part. It also is affected by the
2 shoulder injury itself and it also was
3 independently rated based upon the significance
4 of the injury.

5 COMMISSIONER BECK: Okay.

6 MR. CHRISTMAS: I guess if the standard is that he
7 has to have a surgery to the second body part,
8 I guess I would be ---

9 COMMISSIONER BECK: Well, it has to be impaired or
10 injured.

11 MR. CHRISTMAS: Right. and I think a three percent
12 impairment ---

13 COMMISSIONER BECK: And injured, I think.

14 MR. CHRISTMAS: Yes, Your Honor, and I would say
15 that a three percent impairment from the
16 authorized treating physician after four
17 surgeries recognizing the two separate injuries
18 should rise to the level of two body parts.

19 COMMISSIONER BECK: All right.

20 MR. CHRISTMAS: Thank you, Your Honor.

21 COMMISSIONER BECK: Thank you. Ms. Urbanic?

22 REPLY BY MS. URBANIC:

23 MS. URBANIC: Thank you. A few things in response.
24 With regards to this issue of whether or not we
25 preserved the Form 17 and the requesting credit



1 for overpayment, as Mr. Christmas said,
2 initially on his 58, he said a generic
3 statement about TT. And it wasn't, as I said,
4 until we got the records the day before the
5 hearing, I objected to them and the
6 commissioner gave me additional time, were we
7 aware there was any real issue with regards to
8 temporary total benefits. And that's when the
9 commissioner graciously gave me a couple of
10 days to look at it and give him a response,
11 which I did by email to his assistant and a
12 copy to Mr. Christmas, on that, back on May
13 21st, 2013, bringing intent to the Form 17,
14 which is obviously part of y'all's record, the
15 workers' comp commission's record, and laid out
16 our position with regards to that. And on our
17 Form 30, it was raised. It was, though, on the
18 second page. I've had so many issues on appeal
19 we did, see attachment and it ended up on page
20 two. But we also, on the first page, raised an
21 objection to the finding of fact number 26,
22 which is the finding that dealt with all this
23 which showed it encompassed that as well. One
24 of the statements I also wanted to clarify was
25 on page 48 of the transcript ---



1 COMMISSIONER BARDEN: Well, can you address the TPD
2 through the date of MMI versus May. Mr.
3 Christmas said he misspoke and he believes it's
4 August. Can you just address that?

5 MS. URBANIC: You know, I went back through it this
6 morning because I'm trying to line up the dates
7 with everything and unfortunately I couldn't
8 find my notes from the actual hearing. Because
9 I will admit, in my email that I sent back on
10 May 21, 2013, I actually had included -- sorry,
11 January 20 -- I think Gary just said until
12 August.

13 COMMISSIONER BARDEN: It was August, right. He says
14 that May was just a mistake.

15 MS. URBANIC: August of 2000?

16 COMMISSIONER BARDEN: Eleven.

17 MS. URBANIC: Eleven. And the date of our MMI was -
18 - I apologize. I'm getting myself confused
19 with all these dates and now I can't find my
20 58. We had a date of MMI from the 14B from Dr.
21 Demarco of September 14th, 2012. So, you know,
22 if Mr. Christmas' position is now it should've
23 been through August of 2011 that still would be
24 in the time -- and maybe I'm mixing up these
25 years and I apologize but that still would be



1 in the time period covered under the Form 17
2 because those benefits ran through September
3 25th of 2011. So I think that's where I'm
4 getting confused commissioner. I apologize.
5 I'm not trying to confuse y'all with it. One
6 other thing, one second. The rating that's on
7 page 12 of my APA's and I know it's also on his
8 APA submissions as well, but it's the final
9 rating from Dr. Demarco the authorized doctor.
10 He gives a nine percent and then he says what
11 it -- how he got to the nine percent. So it's
12 nine -- it's not nine percent plus three
13 percent for the biceps, three percent for the
14 loss of internal rotation. He is saying how he
15 got to the nine percent because the following
16 ratings add up to nine percent. And if you
17 read it the way it's written he has a permanent
18 partial impairment of nine percent, period.
19 Three percent for biceps, three percent for
20 loss of internal rotation, et cetera, et
21 cetera. So our contention is the nine percent
22 actually includes the biceps as commissioner
23 Beck noted. It wasn't a separate surgery for
24 the biceps. It wasn't detached. It was biceps
25 -- not tendinitis. Not tendinitis but close --



1 a word close to that but I can't say it, was
2 part of the fourth surgery with regard to that
3 and really all the injury is that of the right
4 shoulder. Thank you.

5 COMMISSIONER TAYLOR: Thank you.

6 COMMISSIONER BECK: Thank you. This concludes the
7 proceeding.

8 (There being nothing further, the proceeding
9 concluded at 3:30 p.m.)

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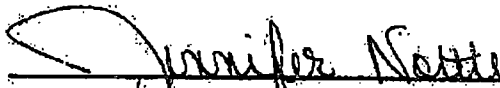
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CERTIFICATE

This is to certify that the within hearing consisting of twenty-four (24) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

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

IN WITNESS WHEREOF I have hereunto set my hand and seal on June 25, 2014.


Jennifer Nottle
Court Reporter

Notary Public for South Carolina
My Commission Expires: 7/11/2023

Claimant's Name: <u>Mr. Thomas Contreras</u> SSN: <u>117-58-7473</u>	Employer's Name: <u>St Johns Fire Dist Comm</u>
Address: <u>363 Lantana Drive</u>	Address: <u>PO Box 56</u>
City: <u>Charleston</u> State: <u>SC</u> Zip: <u>29407</u>	City: <u>Johns Island</u> State: <u>SC</u> Zip: <u>29457</u>
Home Phone: <u>(843) 324-5387</u> Work Phone: <u>()</u>	Insurance Carrier: <u>State Accident Fund</u>
Preparer's Name: <u>James G. Christmas</u> Law Firm: <u>Howell & Christmas, LLC</u>	Preparer's Phone Number: <u>(843) 849-2800</u>

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$782.83, which equates to the maximum compensation rate for the year of 2008, in the amount of \$661.29, as Claimant was dually employed at the time of his October 8, 2008, accident at work.
2. Average Weekly Wage: \$1,174.20
Date of accident: October 08, 2008
3. Type of injury and body part(s): Right shoulder (SURGERY 1 on January 29, 2009, for right shoulder pain and superior labral tear with bursitis and right shoulder superior labral tear, anterior-posterior consisting of right shoulder arthroscopy with extensive debridement of bursa, synovium, labrum and bone; and arthroscopic repair of superior labrum anterior-posterior tear) (SURGERY 2 on October 1, 2009, for right shoulder pain and impingement status post labral repair consisting of right shoulder arthroscopy with extensive debridement of suture, labrum, bursa and bone) (SURGERY 3 on October 11, 2010, for right shoulder thickening of middle glenohumeral ligament and superior coracohumeral ligament, right shoulder intra-articular synovitis, right shoulder type 1 superior labrum anterior to posterior tear, right shoulder subacromial impingement syndrome and bursitis and right shoulder acromioclavicular joint osteoarthritis consisting of right shoulder subacromial decompression and bursectomy; right shoulder acromioclavicular joint resection; and right shoulder major debridement of a superior labrum anterior to posterior tear, intra-articular synovitis and release of middle glenohumeral and superior coracohumeral ligaments and rotator interval tissue) (SURGERY 4 on March 29, 2012, for right shoulder coracoid impingement, right shoulder intra-articular synovitis and adhesions, right shoulder subacromial impingement with adhesions and right shoulder long head of biceps tendinopathy consisting of right shoulder major debridement of intra-articular synovitis with coracoid decompressor; right shoulder subacromial decompression and bursectomy; and right shoulder long head of the biceps tenodesis), right upper extremity, right glenohumeral ligament, right clavicle, right scapula, right lateral deltoid, right bicep, and right distal clavicle.
4. Facts in controversy: To determine whether Claimant sustained permanent partial wage loss pursuant to S.C. Code Ann. §42-9-20. To determine whether Claimant is entitled to past and future medical care and treatment pursuant to S.C. Code Ann. §42-15-60 and/or Dodge vs. Brucoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999). To determine Claimant's correct average weekly wage and compensation rate as Claimant was dually employed at the time of his October 8, 2008, accident at work. To determine whether Claimant is entitled to the difference between his correct and incorrect compensation rate for all the periods he has been paid benefits to date. Claimant is seeking reimbursement for any and all out of pocket expenses and mileage reimbursement for traveling to and from causally related medical care and treatment. To determine whether Claimant is entitled to reimbursement for mileage traveling to and from authorized medical appointments and whether Claimant is entitled to reimbursement for any and all out of pocket expenses. Claimant requests the Commission to approve allocation of proposed settlement proceeds over his /her life expectancy pursuant to Section 19-1-150 of the South Carolina Code of Laws, and Section 42-9-10 of the South Carolina Workers' Compensation Act, 1976, as amended, and as interpreted by the South Carolina Supreme Court in the decision of James vs. Anne's, Inc., Opinion number 26762 (S.C. 2010) and/or Utica-Mohawk Mills vs. Orr, 227 SC 226, 87 SE2d 589 (Ct. App. 2006). Claimant and Claimant's attorney request a lump sum payment of any award. To determine whether Claimant is entitled to any

and all other benefits due under the Act. In the alternative, to determine the extent of Claimant's disability pursuant to S.C. Code Ann. §42-9-30.

5. Legal issues involved: See number 4 above.
6. Unusual aspects: None.
7. Witnesses (designate if expert): * Claimant, Thomas Contreras and witness, Geneva McCaully. Claimant reserves the right to call any and all witnesses listed by defendant. Claimant reserves the right to supplement the Form 58 with a Form 20 - Statement of Earnings of Injured Employee, from Claimant's second employer, AMR Triangle Lanes.
8. Exhibits: Please see attached.
9. Medical evidence (indicated report pursuant to R.67-612; deposition or appearance): Please see attached.
10. Name, address, and specialty, if any, of the treating physician: Please see attached.
11. Impairment rating(s); body part(s); physician and date of opinion:

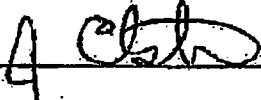
Vocational Specialist opines on October 12, 2011, that "[I]n considering these aforementioned factors, approaching advanced age, high school level of education with training through the Fire Department, past work experience as a fire department chief, bowling alley clerk, vending machine tender, and landscape laborer, and significant physical limitations and ongoing pain of more than three years' duration, I am of the opinion that [Claimant] is unable to perform the required job tasks of his former work as a fire department chief, is unable to return to his past employment as a landscape laborer, and does not have transferable skills to perform other work that is within his residual functional capacity. I am of the opinion that [Claimant] is able to continue working as a bowling alley clerk and he indicated that he earns approximately \$8.00 per hour and is currently working five hours per week. He noted that he continues to work as a vending machine tender (vending machines in fire stations) once per month. [Claimant] continues to be employed on a part-time basis, limited basis despite his injury and subsequent physical limitations and restrictions. This continued employment is contingent upon accommodations by the current employer upon which [Claimant] cannot count on for which there is no contract. These accommodations may end at any time if the accommodated situation is not of benefit to the employer. [Claimant] cannot expect this type of accommodation or treatment by subsequent employers. I am of the opinion that he has therefore sustained a loss as to his competitiveness and access to the open job market when compared to other non-injured job seekers. With the restrictions placed on him by his physicians, he is appropriate for selected work at the sedentary exertional level. [Claimant] is fortunate to have an understanding employer who has tailored a job to meet his physical restrictions. Should this job cease, should his supervisor or job duties change, or should his physical problems become worse, I am of the opinion that [Claimant] would be in jeopardy with regard to locating suitable employment and would incur a loss of future earning capacity. [Claimant] continues to experience significant physical limitations and pain. Should these issues resolve to the point where he has more function and stamina, he may be appropriate for further job placement in sedentary positions. [Claimant] can expect to earn at or near minimum wage (\$7.25 - \$8.00 per hour) and would continue to experience a significant loss of earning capacity" (APA #1).

Dr. Charles Hughes opines on October 6, 2011, that he does not think Claimant will be able to return to his prior occupation as a Firefighter. He opines that Claimant has permanent work restrictions to include no pushing with his right upper extremity for more than 1 minute at a time, no pulling with his right upper extremity for more than 1 minute at a time, no horizontal lifting with the right upper extremity for more than 1 minute at a time, no lifting more than 10 pounds, restricted climbing, restricted pushing, restricted horizontal lifting, restricted overhead activities and restricted pulling. He opines that Claimant sustained a 14% permanent impairment to his right shoulder and an additional 10% permanent impairment to his upper extremity for his distal clavicle injury (a-c joint). He opines that Claimant will require future medical care and treatment as a result of his October 8, 2008, accident at work to include follow up visits with orthopaedic surgeon, injections, physical therapy, anti-inflammatory medications, repeat diagnostics and pain management clinic. Dr. Hughes opines that Claimant's injuries to his right shoulder, right upper extremity, right biceps and right clavicle were caused by and/or were aggravated by his October 8, 2008, accident at work. He further opines that Claimant's injuries to his right shoulder affects his right upper extremity by way of pain and tenderness into his right biceps and right clavicle as a result of his October 8, 2008, accident at work (APA #2).

Authorized treating physician, Dr. James DeMarco, opines on May 16, 2011, via a 14B - Physician's Statement, that "The Claimant is unable to return to work at his or her current employment." He further opines on October 24, 2012, that Claimant will require future medical care and treatment to include medications, pain management clinic, injections, tens unit, repeat diagnostics, physical therapy and follow up visits with his office. He further opines that Claimant's injuries to his right shoulder, right upper extremity and right biceps were caused by and/or were aggravated by his October 8, 2008, accident at work. He also opines that Claimant's injuries to his right shoulder affects his right upper extremity by way of radiating pain and tenderness into his right biceps as a result of his October 8, 2008, accident at work. He opines that Claimant sustained an 11% permanent impairment to his right shoulder as a result of his October 8, 2008, accident at work (APA #3).

12. I am amending my Form 50/51 in the following manner: _____

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: 

E-Mail: gc@howellandchristmas.com

Date of Hearing: May 14, 2013, @ 2:30 p.m.

Time needed for Hearing: 30 minutes

On Behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-611 and R. 67-212. Do not send medical reports.

*Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form #58.

Rev. Date 9/07

58

Pre-Hearing Brief

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0822640

Thomas Contreras,
Claimant,
vs.
St Johns Fire Dist Comm,
Employer,
and
State Accident Fund,
Carrier, Defendants

NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS TO BE
INTRODUCED AS DIRECT EVIDENCE
ON BEHALF OF THOMAS
CONTRERAS

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
MARGARET URBANIC, ESQUIRE, ATTORNEY FOR EMPLOYER/CARRIER:

YOU ARE HEREBY NOTIFIED THAT THE Employee, pursuant to the provisions of the
South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as
amended), herewith submits the following medical reports as direct evidence on behalf of the
Employee, to wit:

<u>APA</u>	<u>NOTICE OF PHYSICIAN/OTHER</u>	<u>DATE OF REPORT</u>	<u># OF PAGES</u>
1	Jean Hutchinson, Vocational Evaluator	10/12/11	8 (1-8)
2	Dr. Charles Hughes, Hughes Orthopaedics	10/6/11	6 (9-14)
3	Dr. James DeMarco	10/24/12 - 8/6/10	39 (15-53)
4	Diagnostic Medical Reports	3/29/12 - 3/8/06	24 (54-73.8)

5	Dr. David Jaskwhich	5/5/10 - 12/19/08	11 (78-88)
6	Dr. James Spearman	12/3/08	1 (89)
7	Atlantic Occupational Health	11/19/08 - 10/14/08	3 (90-93)
8	Roper St. Francis	03/24/11 - 11/17/05	42 (94-135)
9	Physical Therapy	7/19/12 - 10/30/08	98 (136-224)

EXHIBITS

<u>APA</u>		<u>DATE</u>	<u># OF PAGES</u>
10	State Budget and Control Board and Other Selected Documents From Claimant's Personnel File	2011 - 2008	40 (225-264)
11	Claimant's Wage Information	2012 - 2007	5 (265-269)

Claimant requests that the Commission file be made a part of the record; Claimant reserves the right to offer rebuttal evidence and exhibits.

YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the employee,

Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Employee: Claimant, Thomas Contreras and witness, Geneva McCauly. Claimant reserves the right to call any and all witnesses listed by Defendant.

HOWELL & CHRISTMAS, LLC



Gary Christmas, Esquire

Post Office Box 1896

Mt. Pleasant, South Carolina 29465

Telephone: (843) 849-2800

Facsimile: (843) 884-2007

E-mail: gc@howellandchristmas.com

ATTORNEYS FOR CLAIMANT

Dated this 29th day of April, 2013
Mt. Pleasant, South Carolina.

JEAN R. HUTCHINSON, MLED., CRC, CVE
Vocational Consultant

715 N. Godfrey Park Place
Charleston, S.C. 29407

(843)766-1418
Fax (843)763-0501

EMPLOYABILITY EVALUATION

PERSONAL DATA:

Name: Thomas Conteres
Date of Birth: September 25, 1961 (50 years of age)
Marital Status: Married
Height: 5'8"
Weight: 215 pounds
Date of Injury: October 8, 2008
Date Interviewed: October 10, 2011
Date of Report: October 12, 2011

EDUCATIONAL BACKGROUND:

Mr. Conteres stated that he graduated from high school and took numerous training courses through the Fire Department. He served in the United States Army for four and one-half years. Mr. Conteres has a current driver's license, but noted increased pain when driving longer distances.

WORK HISTORY:

Mr. Conteres reported the following work experience: After his discharge from the United States Army, he worked as a painter, fireplace installer, newspaper deliverer, and pizza deliverer. Mr. Conteres then worked as a carpet cleaner and painter. He next worked for the St. Johns Fire Department for twenty-two years, last working as captain. Mr. Conteres also worked part-time as a landscape laborer for approximately ten years, as a vending machine tender ten years, and as a front desk clerk at a bowling alley for eight years. Mr. Conteres last worked for the St. Johns Fire Department in October, 2010. He continues to work as a vending machine tender once per month and as a desk clerk at a bowling alley five hours per week.

Conteres, Thomas
Employability Evaluation
Page Two

DESCRIPTION OF ACCIDENT/INJURY/CONDITION:

Mr. Conteres was injured on October 8, 2008, while employed as a fire fighter. He stated that as he was exercising as required on his shift and lifting weights, he felt a "pop" with significant pain in his right shoulder. Mr. Conteres went to the ER at the hospital and has since undergone physical therapy, shoulder injections, left shoulder arthroscopy with SLAP repair and debridement on January 26, 2009, right subacromial injections, corticosteroid injection in the right bicipital groove and anterior subacromial space, right shoulder arthroscopy with extensive debridement of bursa, synovium, labrum, and bone and arthroscopic repair of superior labrum anterior-posterior SLAP tear on January 29, 2009, right shoulder arthroscopy with extensive of suture, labrum, bursa, and bone debridement on October 1, 2009, and right shoulder major debridement of a superior labrum anterior to posterior tear, intra-articular synovitis and release of middle glenohumeral and superior coracohumeral ligaments and rotator interval tissue, right shoulder subacromial decompression and bursectomy, and right shoulder acromioclavicular joint resection on October 11, 2010. He has diagnoses (right shoulder) of mild articular-sided irregularity of the supraspinatus and infraspinatus tendon suggesting low grade articular-sided partial tear versus prior resurfacing, mild tendinopathy of the supraspinatus and infraspinatus tendons, irregularity of the glenoid labrum suggesting prior repair or resurfacing versus a nondisplaced labral tear, mild tendinopathy of the intra-articular portion of the biceps tendon, mild to moderate osteoarthritis of the acromioclavicular joint and mild osteoarthritis of the glenohumeral joint, right superior labral tear - anterior-posterior with bursitis, thickening of middle glenohumeral ligament and superior coracohumeral ligament, intra-articular synovitis, type I superior labrum anterior to posterior tear, subacromial impingement syndrome and bursitis, and acromioclavicular joint osteoarthritis.

At the present time, Mr. Conteres states that he continues to have pain in his right shoulder that he described as "stabbing" with "sharp" pain radiating up to the top of his shoulder. He also noted "aching" pain in his left shoulder from overuse. Mr. Conteres stated that any increase in activity or movement of his right arm will cause an increase in pain as will rainy weather. For limited and temporary relief of pain, he noted that he takes medications, uses ice packs, and props/supports his arm while sitting.

With regard to functional activities, Mr. Conteres reported the following: In walking, he noted that he now cannot allow his right arm to swing naturally. Mr. Conteres stated that he now cannot run, jump, negotiate rough or uneven terrain, climb a ladder, reach up, out, or

Conteres, Thomas
Employability Evaluation
Page Three

around to the back without pain, or lift/carry more than approximately ten pounds from table/waist level. He noted that he is more comfortable sitting if his right arm can be supported.

With regard to activities of daily living, Mr. Conteres stated that he now performs some light cooking tasks. He noted difficulty sleeping in that he "tosses and turns" and he cannot sleep through the night, resulting in fatigue and irritability. Mr. Conteres reported that he remains independent in self-care tasks, but requires more time to perform them. He stated that he now performs some light yardwork tasks, but has difficulty using vibrating tools. Mr. Conteres noted that he now cannot perform home maintenance or auto repair tasks or enjoy his former hobbies of bowling and fishing.

DESCRIPTION OF USUAL OCCUPATIONS:

Most recently and for approximately twenty-two years, Mr. Conteres worked as a fire fighter, last working as chief. In this work, he drove three types of fire trucks, kept logs and wrote reports, trained new workers, and fought fires. Mr. Conteres' department covered Johns Island, Wadmalaw Island, Kiawah Island, and Seabrook Island. Additionally, it was necessary for him to pass a physical fitness test each year and accomplish such tasks as dragging a one-hundred-sixty-five pound dummy. The 1991 Edition determine the Dictionary of Occupational Titles defines this job as:

FIRE CAPTAIN (373.134-010)

"Supervises and coordinates activities of company of FIRE FIGHTERS assigned to specific firehouse: Inspects station house, buildings, grounds, and facilities, and examines fire trucks and equipment, such as ladders and hoses, to ensure compliance with departmental maintenance standards. Responds to fire alarms and determines from observation nature and extent to fire, condition of building, danger to adjacent buildings, and source of water supply, and directs fire fighting crews accordingly. Trains subordinates in use of equipment and methods of extinguishing all types of fires. Evaluates efficiency of personnel. Inspects commercial establishments in assigned district and reports fire hazards or safety violations to FIRE INSPECTOR. Compiles report of each fire call, listing location, type, probable cause, estimated damage, and disposition. May respond to emergency calls to render first aid. May recommend corrective measures for fire hazards or safety violations to building owners. May conduct fire drills for occupants of buildings. May supervise and coordinate

Conteres, Thomas
Employability Evaluation
Page Four

activities of fire companies fighting multiple alarm fire until relieved by superiors. May write and submit proposal for new equipment or modification of existing equipment to superiors..."

FIRE FIGHTER (373.364-010)

"Controls and extinguishes fires, protects life and property, and maintains equipment as volunteer or employee of city, township, or industrial plant: Responds to fire alarms and other emergency calls. Selects hose nozzle, depending on type of fire; and directs stream of water or chemicals onto fire. Positions and climbs ladders to gain access to upper levels of buildings or to assist individuals from burning structures. Creates openings in buildings for ventilation or entrance, using ax, chisel, crowbar, electric saw, *core cutter*, and other power equipment. Protects property from water and smoke by use of waterproof salvage covers, smoke ejectors, and deodorants. Administers first aid and artificial respiration to injured persons and those overcome by fire and smoke. Communicates with superior during fire, using portable two-way radio. Inspects buildings for fire hazards and compliance with fire prevention ordinances. Performs assigned duties in maintaining apparatus, quarters, buildings, equipment, grounds, and hydrants. Participates in drills, demonstrations, and courses in hydraulics, pump operation and maintenance, and firefighting techniques. May fill fire extinguishers in institutions or industrial plants. May issue forms to building owners, listing fire regulations violations to be corrected. May drive and operate firefighting vehicles and equipment. May be assigned duty to marine division of fire department and be designated Firefighter, Marine."

Other significant work experience for Mr. Conteres has been as a bowling alley clerk, vending machine tender, and landscape laborer. The 1991 Edition of the Dictionary of Occupational Titles describes these jobs as:

DESK CLERK, BOWLING FLOOR (340.367-010)

"Assigns bowling alleys to patrons and collects fees: Reserves alleys for bowling league or individual. Issues score sheets and alley numbers to patrons. Inspects alleys to ensure that bowling equipment is available. Observed players to determine misuse of alleys or other equipment. Records number of games played and receipts collected. Rents bowling shoes to patrons."

VENDING MACHINE COIN COLLECTOR (292.483-010)

"Drives truck over established route to collect money from and refill coin-operated

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Conteres, Thomas
Employability Evaluation
Page Five

amusement-game machines, jukeboxes, and vending machine that dispense merchandise, such as cigarettes, coffee, food, beverages, and candy: Loads truck with supplies according to written or verbal instructions. Drives truck to establishment, collect coins, refills machine, cleans inside of machines that dispense food or beverages, and records amount of money collects. Turns in money to cashiering department at completion of route and unload truck. Reports malfunctioning machine to maintenance department for repair. May perform minor repairs or adjustments on machines, using handtools, to correct malfunctions. May promote installation of new or additional coin-operated machine at locations of customers or potential customers. May be designated according to type of machine serviced..."

LABORER, LANDSCAPE (408.687-014)

"Moves, soil, equipment, and materials, digs holes, and performs related duties to assist LANDSCAPE GARDNER in landscaping grounds: Digs holes for plants and trees, using pick and shovel. Mixes fertilizer or lime with dirt in bottom of holes to enrich soil, places plants or trees in holes, and adds dirt to fill holes. Attaches wires from planted trees to stakes to support trees. Hauls or spreads topsoil, using wheelbarrow and rake. Waters lawns, trees, and plants, using portable sprinkler system, hose, or watering can. Spreads straw over seeded soil to prevent movement of seeds and soil. Builds forms for concrete borders, using lumber, hammer, and nails. Mixes and pours cement for garden borders. Places decorative stones and plants flowers in garden areas. Mows lawns, using power mower."

Mr. Conteres' past work experience is consistent with these definitions.

EVALUATION SUMMARY:

In determining employability, it is necessary to consider many factors. These factors include age, educational background, past work experience and transferable skills, and physical limitations and pain.

Mr. Conteres is fifty years of age. His age may affect his ability to adjust to a significant number of jobs in the national economy.

Mr. Conteres graduated from high school and had training through the Fire Department. Education at this level refers to abilities in reasoning, arithmetic, and language skills that would enable the individual to perform the required job tasks of semi-skilled through skilled work.

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Conteres, Thomas
Employability Evaluation
Page Six

Relevant past work experience for Mr. Conteres has been as fire department chief, bowling alley clerk, vending machine tender, and landscape laborer. The 1991 Edition of the Dictionary of Occupational Titles further defines these jobs as follows:

Work as a fire department chief is defined as very heavy, skilled work. Very heavy work involves lifting objects weighing more than one hundred pounds at a time with frequent lifting or carrying of objects weighing fifty pounds or more. Skilled work requires qualifications in which an individual uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustment to control or regulate the work. Dealing with people, facts, or figures or abstract ideas at a high level of complexity may be required as well.

Work as a bowling alley clerk is defined as light, semi-skilled work. Light work is defined as the ability to lift twenty pounds occasionally and up to ten pounds frequently. The abilities to walk and stand to a significant degree, to sit and push or pull arm or leg controls, or to work at a production rate are also required. Semi-skilled work is work which needs some skills, but does not require the more complex work duties. Semi-skilled work may require alertness and close attention to watching machine processes; inspecting, testing, or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage, or injury. Coordination and dexterity may be necessary in the performance of repetitive tasks as well.

Work as a vending machine tender is defined as medium, semi-skilled work. Medium work requires the ability to lift fifty pounds and to frequently carry twenty-five pounds. Semi-skilled work is work which needs some skills, but does not require the more complex work duties. Semi-skilled work may require alertness and close attention to watching machine processes; inspecting, testing, or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage, or injury. Coordination and dexterity may be necessary in the performance of repetitive tasks as well.

Work as a landscape laborer is defined as heavy, unskilled work. Heavy work involves lifting no more than one hundred pounds at a time with frequent lifting and carrying of objects weighing up to fifty pounds. Unskilled work is work which needs little or no

Conteres, Thomas
Employability Evaluation
Page Seven

judgement in the performance of simple duties that can be learned on the job in a short period of time. No acquired work skills can be attributed to unskilled work.

Transferability of skills applies to work skills which a person has demonstrated in vocationally relevant past jobs that can be used to meet the requirements of other jobs. Transferability of skills is most probable and meaningful among jobs requiring similar skills, when similar tools and machines are utilized, and when similar processes and services are involved. Jobs of transferability for Mr. Conteres may include other work in protective service, delivery driving, stocking, and inventory.

Mr. Conteres has significant physical limitations. In an office note dated July 14, 2010, Dr. David H. Jaskwisch indicates that Mr. Conteres has permanent restrictions of twenty-five pounds maximum overhead lifting and occasional fifty pounds lifting from waist level. Dr. Jaskwisch is of the opinion that Mr. Conteres would be unable to pass his physical agility test which requires him to be able to drag about one hundred seventy-five pounds. In an office note dated August 6, 2010, Dr. James R. DeMarco indicates that Mr. Conteres has restrictions of light duty with no overhead lifting, no lifting of more than twenty-five pounds to shoulder level, and no lifting of more than fifty pounds to waist level. Dr. DeMarco notes that he is unsure if Mr. Conteres will be able to go back to being a firefighter or not.

On a form dated January 21, 2011, Dr. DeMarco indicates that Mr. Conteres may not return to work and this is permanent. In an office note dated January 21, 2011, Dr. DeMarco notes that Mr. Conteres is not going to be able to return to being a firefighter. On a Physician's Statement Form 14B dated May 16, 2011, Dr. DeMarco indicates that Mr. Conteres is unable to return to work at his current employment.

On a Questionnaire dated October 6, 2011, Dr. Charles Hughes indicates that Mr. Conteres has restrictions to include climbing, pushing, pulling, and horizontal lifting for one minute at a time, overhead activities, and lifting more than ten pounds with the right arm. Dr. Hughes also noted that Mr. Conteres is limited in strength and endurance secondary to his right arm impairment and AC joint resection and will need further medical treatment to include office visits, injections, physical therapy, and medications.

In considering these aforementioned factors, approaching advanced age, high school level of education with training through the Fire Department, past work experience as a fire department chief, bowling alley clerk, vending machine tender, and landscape laborer, and

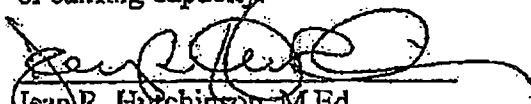
Conteres, Thomas
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significant physical limitations and ongoing pain of more than three years' duration, I am of the opinion that Mr. Conteres is unable to perform the required job tasks of his former work as a fire department chief, is unable to return to his past employment as a landscape laborer, and does not have transferable skills to perform other work that is within his residual functional capacity. I am of the opinion that Mr. Conteres is able to continue working as a bowling alley clerk and he indicated that he earns approximately \$8.00 per hour and is currently working five hours per week. He noted that he continues to work as a vending machine tender (vending machines in fire stations) once per month.

Mr. Conteres continues to be employed on a part-time, limited basis despite his injury and subsequent physical limitations and restrictions. This continued employment is contingent upon accommodations by the current employer upon which Mr. Conteres cannot count or for which there is no contract. These accommodations may end at any time if the accommodated situation is not of benefit to the employer. Mr. Conteres cannot expect this type of accommodation or treatment by subsequent employers. I am of the opinion that he has therefore sustained a loss as to his competitiveness and access to the open job market when compared to other non-injured job seekers. With the restrictions placed on him by his physicians, he is appropriate for selected work at the sedentary exertional level.

Mr. Conteres is fortunate to have an understanding employer who has tailored a job to meet his physical restrictions. Should this job cease, should his supervisor or job duties change, or should his physical problems become worse, I am of the opinion that Mr. Conteres would be in jeopardy with regard to locating suitable employment and would incur a loss of future earning capacity.

Mr. Conteres continues to experience significant physical limitations and pain. Should these issues resolve to the point where he has more function and stamina, he may be appropriate for further job placement in sedentary positions. Mr. Conteres can expect to earn at or near minimum wage (\$7.25 - \$8.00 per hour) and would continue to experience a significant loss of earning capacity.


Jean R. Hutchinson, M.Ed.
Certified Rehabilitation Counselor
Certified in Vocational Evaluation
October 12, 2011

October 4, 2011
Page 1

RE: Client: Thomas Contreras
DOB: 09-25-1961
SS #: 117-58-7473
D/A: On Or About October 8, 2008

- (1) Most probably and to a reasonable degree of medical certainty, Mr. Contreras' injuries to his right shoulder, right upper extremity, right biceps and clavicle are caused by and/or aggravated by the injuries he sustained in his October 8, 2008, accident at work;

☒ YES NO ☐

Explain, if necessary: _____

- (2) Most probably and to a reasonable degree of medical certainty, Mr. Contreras' injuries to his right shoulder affects his right upper extremity by way of pain and tenderness into his right biceps and clavicle as a result of his October 8, 2008, accident at work;

☒ YES NO ☐

Explain, if necessary: _____

- (3) Most probably and to a reasonable degree of medical certainty, Mr. Contreras has permanent physical restrictions to his right shoulder, right upper extremity, right biceps and clavicle as a result of the injuries he sustained at work on October 8, 2008 (please specifically address Mr. Contreras' limitations with regard to lifting, pushing, pulling, climbing, walking);

☒ YES NO ☐

RESTRICTIONS

Bending	_____	Walking	_____
Twisting	_____	Running & Cutting	_____
Squatting	_____	Sitting/Standing	_____
Climbing	☒	Horizontal Lifting	☒
Stooping	_____	Overhead Activities	☒
Pushing	☒	Pulling	☒

No lifting over 1, 5, 10, 15, 20, 25, 50 lbs. Right arm Sedentary Work Only

Explain, if necessary: _____

Limited strength and endurance
secondary to Right arm impairment
and A-C jt. resection

October 4, 2011
Page 2

RE: Client: Thomas Contreras
DOB: 09-25-1961
SS #: 117-58-7473
D/A: On Or About October 8, 2008

- (4) Most probably and to a reasonable degree of medical certainty, Mr. Contreras has limitations to his right shoulder, right upper extremity, right biceps and clavicle as a result of his October 8, 2008, accident at work, as follows:

PUSHING for 1 minutes at a time
PULLING for 1 minutes at a time
HORIZONTAL LIFTING for 1 minutes at a time
MUST CHANGE POSITION every 1 minutes

☒ YES NO ☐

Explain, if necessary: _____

- (5) Most probably and to a reasonable degree of medical certainty, Mr. Contreras has permanent impairment to his right shoulder, right upper extremity, right biceps and clavicle as a result of his October 8, 2008, accident at work, as follows:

RIGHT SHOULDER 14 %
RIGHT UPPER EXTREMITY %
RIGHT BICEPS %
Distal CLAVICLE (A-C jt) 10 % upper extremity

☒ YES NO ☐

Explain, if necessary: _____

October 4, 2011
Page 3

- (6) Most probably and to a reasonable degree of a medical certainty, Mr. Contreras will need continued medical care and treatment to his right shoulder, right upper extremity, right biceps and clavicle (surgery, medications, pain management clinic, injections, tens unit, repeat diagnostics, physical therapy, follow up visits with your office) and whether this treatment would "tend to lessen his period of disability;"

☒ YES NO ☐

Explain, if necessary: may need f/u visits with
orthopedic surgeon, injections, PT, NSAIDs
No surgery in foreseeable future.

Charles Hughes
Dr. Charles Hughes

10/6/2011
Date

Hughes Orthopaedic Consultants, L.L.C.

Charles H. Hughes Jr., M.D., F.A.A.O.S.

Board-certified Orthopaedic Surgeon

INDEPENDENT MEDICAL EVALUATION

PATIENT NAME: THOMAS CONTRERAS
DATE OF BIRTH: September 25, 1961
DATE OF EXAM: October 6, 2011
DATE OF INJURY: October 8, 2008
ATTORNEY: James G. Christmas

HISTORY OF PRESENT ILLNESS: This patient is a 50-year-old gentleman on whom I have been asked to perform an independent medical evaluation for the right shoulder. I have reviewed provided records, including office notes from Dr. Jaskwhich of Lowcountry Orthopaedics and Dr. James DeMarco. I have also reviewed intraoperative findings, MRI reports, and office notes involving the care for the above-named patient.

This patient is a 50-year-old gentleman who was a fire fighter for 23 years for the Charleston Fire Department. He was lifting weights, which is a job requirement for one hour daily, when he injured the shoulder. This occurred in 2008. He was evaluated in the emergency room and subsequently referred to Atlantic Occupational Health Center. He underwent physical therapy and was then referred to Dr. Jaskwhich for evaluation. The date of the original injury was 10/08/2008.

The patient underwent an MRI scan, which demonstrated a probable superior labral tear. He underwent surgery by Dr. Jaskwhich on 09/29/2009. At that time, he had a repair of the SLAP tear as well as debridement of the bursa, synovium, labrum, and bone. The patient underwent further physical therapy, but continued to have pain and catching of the shoulder. He then underwent a second operation by Dr. Jaskwhich on 10/01/2009. At that time, Dr. Jaskwhich removed the previous sutures and performed more extensive debridement of the labrum. A repair of the labrum was not performed at that time.

During this time, the patient was on light duty, mainly performing clerical work around the Firehouse, but no physical activities. He underwent further physical therapy. He was last seen on 07/14/2010 by Dr. Jaskwhich. During his treatment, it was noted that he had AC joint arthritis and pain over the AC joint, but no surgery was performed on this area. He was also noted to have longhead of the biceps pain. Intraoperatively, the articular side was normal on both arthroscopies. During both surgeries, the rotator cuff was normal and no rotator cuff tears were seen.

The patient subsequently sought a second opinion with Dr. DeMarco, who is also an orthopaedic surgeon. The patient was seen and evaluated on 08/06/2010. At that time, he continued to have significant pain and extreme limitation of internal rotation. He had further work-up, which included review of an MRI scan, which was done on 08/26/2009. There was a partial low-grade articular-sided partial tear of the supraspinatus and tendinopathy of the biceps tendon. There was mild to moderate osteoarthritis of the AC joint. After attempted injections for pain relief and physical therapy, Dr. DeMarco felt as though the patient was not responding adequately and recommended another operation.

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(continued)



Hughes Orthopaedic Consultants, L.L.C.

Charles H. Hughes Jr., M.D., F.A.A.O.S.

Board-certified Orthopaedic Surgeon

CONTRERAS, THOMAS

DOB: 09/25/1961

IME: 10/06/2011

PAGE TWO

This surgery was performed on 10/11/2010, it was noted that the intraarticular biceps tendon to be intact. The undersurface of the rotator cuff was within normal limits. The previously debrided SLAP tear was further debrided, but was not repairable. There was some superficial irritation noted on the rotator cuff, but no full thickness tear was noted. During this operation, the AC joint was examined and noted to be quite osteophytic. There was no cartilage present. Therefore, a distal clavicle resection of 10 to 12 millimeters of the distal clavicle was carried out. The subacromial space was also further decompressed and bursectomy carried out. The patient continued physical therapy.

The patient's last visit with Dr. DeMarco was on 01/21/2011. At that time, he was released from a worker's compensation standpoint, but instructed to return for further injections as needed. At that time, he was told that he would not be able to return to work as a fire fighter as a result of his permanent restrictions. He was assigned an 11% right shoulder impairment by Dr. DeMarco. He was told that if he had exacerbations of his pain, he may need injections, anti-inflammatories or repeat physical therapy.

REVIEW OF SYSTEMS: The patient has a lot of pain in the morning as well as pain with overhead activities. He has very little ability to use his arm before it becomes fatigued. He is able to do some underhand bowling, but very little overhead or forward work. He retired with disability on 01/21/2011 after he was unable to perform the physical agility test or physical fitness, which is required in order to continue his job as a fire fighter.

PAST MEDICAL HISTORY: The patient had no previous right shoulder problems prior to this accident. He did have a left shoulder surgery the year before by Dr. Jaskwhich, with a satisfactory outcome.

MEDICATIONS: Celebrex 200 mg once a day, which he gets from his primary care physician. He takes Advil as needed with Biofreeze and ice.

PHYSICAL EXAMINATION: The patient is alert and oriented x 3.

NECK: Supple. No lateralizing sign. He has full flexion, extension, as well as side-to-side movement of the neck.

HEENT: Pupils are equal and reactive to light and accommodation.

CHEST: Chest wall is nontender.

ABDOMEN: Soft.

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(continued)



Hughes Orthopaedic Consultants, L.L.C.

Charles H. Hughes Jr., M.D., F.A.A.O.S.

Board-certified Orthopaedic Surgeon

CONTRERAS, THOMAS

DOB: 09/25/1961

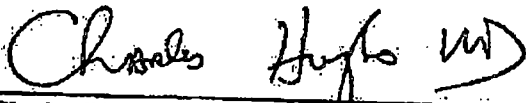
IME: 10/06/2011

PAGE FOUR

WORK RESTRICTIONS: I do not believe the patient will ever return to his former occupation as a fire fighter due to the vigorous nature of his job. He will always be limited with regards to climbing, pushing, pulling, and overhead activities. It is my recommendation that he not lift more than 10 pounds with the right upper extremity. It is my medical opinion, to a reasonable degree of medical certainty, that these restrictions are permanent and will not improve with time.

FUTURE MEDICAL TREATMENT: As far as medical care, I do believe the patient will need follow-ups with an orthopaedic surgeon with possible injections, physical therapy, nonsteroidal anti-inflammatories. I do not believe any surgery is indicated in the foreseeable future.

Thank you for your attention concerning this patient. Please let me know if there are any further questions.



Charles H. Hughes, M.D., F.A.A.O.S.

CHH/cjs

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Watermark Plaza
950 Houston Northcutt, Suite 101
Mount Pleasant, SC 29464



Office: 843.478.5156
Fax: 866.457.8335
HughesIME@yahoo.com



Physician's Statement

Claimant's Name: Thomas Contreras

Physician's Name: James R DeMarco

Practice/Clinic: Palmetto Orthopaedics

Preparer's Name: Fay Jennings

Phone: (803)896-5853

Employer's Name: ST JOHNS FIRE DIST COMM

Insurance Carrier: State Accident Fund

SCWCC File No: 0822640

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: 10/08/2008

Date of first office visit: _____

Date of last visit: _____

Diagnosis or nature of injury or illness: _____

Body part(s) injured: _____

Body part(s) affected: _____

Date of Maximum Medical Improvement: _____

Based on the AMA Guidelines, the claimant has sustained a 11 % medical impairment to R.16H7 injured body part(s) and a _____ % medical impairment to _____ other affected body part(s).

____ The claimant is able to return to work without restriction.

____ The claimant is able to return to work with the following restrictions:

☒ The claimant is unable to return to work at his or her current employment.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

☒ will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

____ will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

[Signature]
treating Physician

5/16/11
Date

10/23/2012 17:03 7632868
OCT-23-2012 16:49 From:

17:08 PM 10/24/2012

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PODC

To: 7632868

PAGE 02/02

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October 5, 2012
Page 1

RE: Client: Thomas Contreras
DOB: 09-25-1961
SS #: 117-58-7473
D/A: On Or About October 8, 2008

- (1) Most probably, and to a reasonable degree of medical certainty, Mr. Contreras' injuries to his right shoulder and right upper extremity, (right biceps) are caused by and/or aggravated by the injuries he sustained in his October 8, 2008, accident at work;

☒ YES NO []

Explain, if necessary:

- (2) Most probably and to a reasonable degree of medical certainty, Mr. Contreras' injuries to his right shoulder affects his right upper extremity by way of radiating pain and tenderness into his right biceps as a result of his October 8, 2008, accident at work;

☒ YES NO []

Explain, if necessary:

- (3) Most probably and to a reasonable degree of a medical certainty, Mr. Contreras will need continued medical care and treatment to his right shoulder, right upper extremity, right biceps and clavicle (surgery, medications, pain management clinic, injections, tens unit, repair diagnostics, physical therapy, follow up visits with your office) and whether this treatment would "tend to lessen his period of disability;"

☒ YES NO []

Explain, if necessary: Surgery NOT within A reasonable degree of medical certainty


Dr. James DiMarco

10-24-12
Date

RE:

Client: Thomas Contreras
DOB: 09-25-1961
SS #: 117-58-7473
D/A: On Or About October 8, 2008

(1) Most probably, and to a reasonable degree of medical certainty, Mr. Contreras' injuries to his right shoulder and right upper extremity, (right biceps) are caused by and/or aggravated by the injuries he sustained in his October 8, 2008, accident at work;

☒ YES ☐ NO

Explain, if necessary:

(2) Most probably and to a reasonable degree of medical certainty, Mr. Contreras' injuries to his right shoulder affects his right upper extremity by way of radiating pain and tenderness into his right biceps as a result of his October 8, 2008, accident at work;

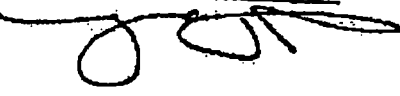
☒ YES ☐ NO

Explain, if necessary:

(3) Most probably and to a reasonable degree of a medical certainty, Mr. Contreras will need continued medical care and treatment to his right shoulder, right upper extremity, right biceps and clavicle (surgery, medications, pain management clinic, injections, tens unit, repeat diagnostics, physical therapy, follow up visits with your office) and whether this treatment would "lead to lessen his period of disability;"

☒ YES ☐ NO

Explain, if necessary:


Dr. James DeMaso
Date 10/8/12



CONTRERAS, THOMAS J

50 Y old Male, DOB: 09/25/1961
363 LANTANA DR, CHARLESTON, SC-29407

Home: 843-324-5387 /

Guarantor: CONTRERAS, THOMAS J Insurance: THOMAS

COOPERTIC Payer ID: PAPER

Appointment Facility: Palmetto Ortho Of Chas W Ashly

08/07/2012

JAMES R DEMARCO, MD

Current Medications

Flector 1.3 % Patch cut and apply 1 patch to affected area every 12 hours
Medication List reviewed and reconciled with the patient

Past Medical History

No Medical History.

Surgical History

right shoulder scope 20120329
right shoulder scope 20101011

Family History

Daughter(s): alive
Son(s): alive
Spouse: alive

Social History**Work History**

Current Work Status

Patient is employed but not currently working

Job Title Firefighter

Tobacco Use:

Tobacco Use/Smoking

Are you a nonsmoker

Drugs/Alcohol:

Alcohol Screen

Did you have a drink containing alcohol in the past year? Yes

How often did you have a drink containing alcohol in the past year? 2 to 3 times a week (3 points)

How many drinks did you have on a typical day when you were drinking in the past year? 1 or 2 drinks (0 point)

How often did you have 6 or more drinks on one occasion in the past year? Never (0 point)

Points 3

Interpretation Negative

Allergies

PENICILLINS

Latex

Hospitalization/Major**Reason for Appointment**

1. EST PATIENT WC

History of Present Illness**Symptom(s):**

Mr Contreras is here for follow up on his right shoulder. On 3/29/12, he had arthroscopic major debridement of intra-articular synovitis with coracoid decompression, subacromial decompression and bursectomy, and long head of biceps tenodesis. This is the second surgery we have done on this shoulder. On 10/11/10, he has an arthroscopic SAD and excision of glenohumeral ligament from a previous SLAP repair and debridement. This is all result of a workers comp injury that took place on 10/8/2008. He has finished up supervised PT at Charleston PT on Wesley Drive and is doing well. He still gets some muscles spasms and pain if he leans on his arm, but nothing terrible. He uses Flector Patches, but has stopped the Celebrex.

Other Medical Providers/Suppliers:

CC Note to Workers Comp and Charleston PT Wesley Drive.

Examination**Shoulder Exam:****ROM**

Right ATE 145

Right ER at 0 45

Right IR at 0 L2

Right ER at 90 90

Right IR at 90 45

Rotator Cuff

Right IS 5/EXT 50/ADD 60

Right Napoleon 5

Right SS 5

Impingement

Right Hawkins Negative

Right Reverse Hawk's Negative

General Examination:

The patient's shoulder was examined. The wounds were clean and dry. There is no evidence of infection. There was expected ecchymosis and mild edema. There is no evidence of DVT in the upper extremity. The upper extremity was grossly neurologically and vascularly intact.

Patient: CONTRERAS, THOMAS J DOB: 09/25/1961 Progress Note: JAMES R DEMARCO, MD 08/07/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

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Diagnostic Procedure

No Hospitalization History.

Review of Systems**General/Constitutional:**

Sleep disturbance denies. Weight change denies.

Endocrine:

Thyroid problem denies.

Respiratory:

Shortness of breath denies.

Cardiovascular:

Leg/ankle Swelling denies. Blood clots in lungs denies. Dizziness denies.

Gastrointestinal:

Reflux denies.

Hematology:

Bleeding problems denies.

Musculoskeletal:Comments See HPI for details.**Neurologic:**

Seizures denies. Weakness denies.

Numbness denies.

Psychiatric:

Depression denies. Anxiety denies.

Dermatology:

Skin rash denies. Poor wound healing denies.

Motor function was also intact distally.

Assessments

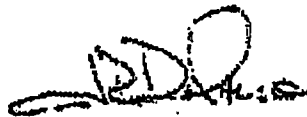
1. Shoulder pain - 719.41 (Primary), Status post arthroscopic major debridement of intra-articular synovitis with coracoid decompression, subacromial decompression and bursectomy, and long head of biceps tenodesis. Date of surgery March 28, 2012 DOI 10/8/2008-work comp

Treatment**1. Shoulder pain**

At this point the patient is at MMI and has permanent partial restrictions of less than 40 pounds of overhead lifting with both hands and no more than 20 pounds with his right arm overhead. Less than 50 pounds of two-handed carrying and pushing and pulling. he can do a light to medium level job. He has permanent partial impairment of 9%. 3% for biceps atrophy, 3% for loss of internal rotation, 2% for loss of forward flexion and 1% for pain and muscle spasm. I do not predict any further surgical intervention in the next year however if he regresses with his pain he may need repeat corticosteroid injections, anti-inflammatories and/or physical therapy. this is all within a reasonable degree of medical certainty and is determined by the evaluation of permanent impairment fifth edition AMA press.

Follow Up

prn



Electronically signed by JAMES DEMARCO MD, MD on
08/07/2012 at 04:27 PM EDT

Sign off status: Completed

Palmetto Ortho Of Chas W Ashly
615 WESLEY DR
CHARLESTON, SC 29407-7206
Tel: 843-884-0302
Fax: 843-606-8053

Patient: CONTRERAS, THOMAS J DOB: 09/25/1961 Progress Note: JAMES R DEMARCO,
MD 08/07/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

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CONTRERAS, THOMAS J

50 Y old Male, DOB: 09/25/1961
363 LANTANA DR, CHARLESTON, SC-29407

Home: 843-324-5387

Guarantor: CONTRERAS, THOMAS J Insurance: THOMAS

COOPERTTC Payer ID: PAPER

Appointment Facility: Palmetto Ortho Of Chas W Ashly

06/26/2012

JAMES R DEMARCO, MD

Current MedicationsCelebrex 200 MG Capsule 1 capsule Once a day
Flector 1.5 % Patch cut and apply 1 patch to affected area every 12 hours
Medication List reviewed and reconciled with the patient**Past Medical History**

No Medical History.

Surgical Historyright shoulder scope 20120329
right shoulder scope 20101011**Family History**Daughter(s): alive
Son(s): alive
Spouse: alive**Social History**Work History:

Current Work Status

Patient is employed but not currently working

Job Title Firefighter

Tobacco Use:

Tobacco Use/Smoking

Are you a nonsmoker

Drugs/Alcohol:

Alcohol Screen

Did you have a drink containing alcohol in the past year? Yes

How often did you have a drink containing alcohol in the past year? 2 to 3 times a week (3 points)

How many drinks did you have on a typical day when you were drinking in the past year? 1 or 2 drinks (0 point)

How often did you have 6 or more drinks on one occasion in the past year? Never (0 point)

Points 3

Interpretation Negative

Allergies

PENICILLINS

Latex

Reason for Appointment

1. EST PATIENT WC

History of Present IllnessSymptom(s):

Mr Contreras is here for follow up on his right shoulder. On 3/29/12, he had arthroscopic major debridement of intra-articular synovitis with coracoid decompression, subacromial decompression and bursectomy, and long head of biceps tenodesis. This is the second surgery on this shoulder. On 10/11/10, he has an arthroscopic SAD and excision of glenohumeral ligament from a previous SLAP repair and debridement. This is all result of a workers comp injury that took place on 10/8/2008. He has been attending supervised physical therapy with Charleston PT on Wesley Drive and uses Celebrex and Flector patches to help with pain. Today he comes in doing really well. he's been working with Jesse in PT who he loves. His pain is minimal but she has been getting spasms around his bicep.

Other Medical Providers/Suppliers:

CC Note to Workers Comp and Charleston PT Wesley Drive.

ExaminationShoulder Exam:

ROM

Right ATE 145

Right ER at 0 45

Right IR at 0 L2

Right ER at 90 90

Right IR at 90 45

Rotator Cuff

Right IS 5/EXT 50/ADD 60

Right Napoleon 5

Right SS 5

Impingement

Right Hawkins Negative

Right Reverse Hawk's Negative

General Examination:

The patient's shoulder was examined. The wounds were clean and dry. There is no evidence of infection. There was expected ecchymosis and mild edema. There is no evidence of DVT in the upper extremity.

Patient: CONTRERAS, THOMAS J DOB: 09/25/1961 Progress Note: JAMES R DEMARCO, MD 06/26/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

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Hospitalization/Major Diagnostic Procedure

No Hospitalization History.

Review of Systems

General/Constitutional:

Sleep disturbance denies. Weight change denies.

Endocrine:

Thyroid problem denies.

Respiratory:

Shortness of breath denies.

Cardiovascular:

Leg/ankle Swelling denies. Blood clots in lungs denies. Dizziness denies.

Gastrointestinal:

Reflux denies.

Hematology:

Bleeding problems denies.

Musculoskeletal:

Comments See HPI for details.

Neurologic:

Seizures denies. Weakness denies.

Numbness denies.

Psychiatric:

Depression denies. Anxiety denies.

Dermatology:

Skin rash denies. Poor wound healing denies.

The upper extremity was grossly neurologically and vascularly intact. Motor function was also intact distally.

Assessments

1. Shoulder pain - 719.41 (Primary), Status post arthroscopic major debridement of intra-articular synovitis with coracoid decompression, subacromial decompression and bursectomy, and long head of biceps tenodesis. Date of surgery March 28, 2012 DOI 10/8/2008-work comp

Treatment

1. Shoulder pain

Continue Flector Patch, 1.3 %, cut and apply 1 patch to affected area, Transdermal, every 12 hours
He continues doing very well. Continue with physical therapy for the next 4-6 weeks Charleston PT. Follow up with me in 6 weeks at that point he should be at MMI that right shoulder with an impairment it looks like it's going to be around 5-7% to the right upper cavity. Pulley to review his permanent partial restrictions on his return.

Referral To: Physical Therapy Charleston (WA) Physical Therapy

Reason:

2. Others

Continue Celebrex Capsule, 200 MG, 1 capsule, Orally, Once a day

Follow Up

6 Weeks

[Handwritten signature]

Electronically signed by JAMES DEMARCO MD, MD on 06/26/2012 at 04:19 PM EDT

Sign off status: Completed

Palmetto Ortho Of Chas W Ashly
615 WESLEY DR
CHARLESTON, SC 29407-7206
Tel: 843-884-0302
Fax: 843-606-8053

Patient: CONTRERAS, THOMAS J DOB: 09/25/1961 Progress Note: JAMES R DEMARCO, MD 06/26/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

22

ROPER ST FRANCIS

Physician Partners

CONTRERAS, THOMAS J

50 Y old Male, DOB: 09/25/1961
363 LANTANA DR, CHARLESTON, SC-29407

Home: 843-324-5387
Insurance: THOMAS

Guarantor: CONTRERAS, THOMAS J
COOPERTTC Payer ID: PAPER

Appointment Facility: Palmetto Ortho Of Chas W Ashly

05/14/2012

JAMES R DEMARCO, MD

Current Medications

Celebrex 200 MG Capsule 1 capsule Once a day
Medication List reviewed and reconciled with the patient

Past Medical History

No Medical History.

Surgical History

right shoulder scope 20120329
right shoulder scope 20101011

Family History

Daughter(s): alive
Spouse: alive

Social History

Tobacco Use:
Tobacco Use/Smoking
Are you a nonsmoker

Drugs/Alcohol:

Alcohol Screen

Did you have a drink containing alcohol in the past year? Yes

How often did you have a drink containing alcohol in the past year? 2 to 3 times a week (3 points)

How many drinks did you have on a typical day when you were drinking in the past year? 1 or 2 drinks (0 point)

How often did you have 6 or more drinks on one occasion in the past year? Never (0 point)

Points 3

Interpretation Negative

Allergies

PENICILLINS

Latex

Hospitalization/Major

Diagnostic Procedure

No Hospitalization History.

Review of Systems

General/Constitutional:

Reason for Appointment

1. ESTABLISHED PAT

History of Present Illness

Symptom(s):

Mr Contreras is here for his post op on his right shoulder. On 3/29/12, he had arthroscopic major debridement of intra-articular synovitis with coracoid decompression, subacromial decompression and bursectomy, and long head of biceps tenodesis. This is the second surgery on this shoulder. On 10/11/10, he has an arthroscopic SAD and excision of glenohumeral ligament from a previous SLAP repair and debridement. This is all result of a workers comp injury that took place on 10/8/2008. In his last visit we set him up with supervised PT at Charleston PT on Wesley Drive. He is taking Celebrex to help with pain. He is doing very well and is making improvements. He has done 2 supervised PT visits.

Other Medical Providers/Suppliers:

CC Note to Workers Comp and Charleston PT Wesley Drive.

Examination

Shoulder Exam:

ROM

Right ATE 140

Right ER at 0 45

Right IR at 0 15

Right ER at 90 80

Right IR at 90 40

Rotator Cuff

Right IS 5

Right Napolean 5

Right SS 4

Impingement

Right Hawkins Negative

Right Reverse Hawk's Negative

General Examination:

The patient's shoulder was examined. The wounds were clean and dry. There is no evidence of infection. There was expected ecchymosis and mild edema. There is no evidence of DVT in the upper extremity. The upper extremity was grossly neurologically and vascularly intact.

Patient: CONTRERAS, THOMAS J. DOB: 09/25/1961 Progress Note: JAMES R DEMARCO, MD 05/14/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Sleep disturbance denies. Weight change denies.
Endocrine:
 Thyroid problem denies.
Respiratory:
 Shortness of breath denies.
Cardiovascular:
 Leg/ankle Swelling denies. Blood clots in lungs denies. Dizziness denies.
Gastrointestinal:
 Reflux denies.
Hematology:
 Bleeding problems denies.
Musculoskeletal:
 Comments See HPI for details.
Neurologic:
 Seizures denies. Weakness denies. Numbness denies.
Psychiatric:
 Depression denies. Anxiety denies.
Dermatology:
 Skin rash denies. Poor wound healing denies.

Motor function was also intact distally.

Assessments

1. Shoulder pain - 719.41 (Primary), Status post arthroscopic major debridement of intra-articular synovitis with coracoid decompression, subacromial decompression and bursectomy, and long head of biceps tenodesis. Date of surgery March 28, 2012 DOI 10/8/2008-work comp

Treatment

1. Shoulder pain

Start Flector Patch, 1.3 %, cut and apply 1 patch to affected area, Transdermal, every 12 hours, 30, Refills 03
 He is doing very well. Continue with therapy. He feels like he is not getting as much therapy as he did prior is he reports that not doing ice or heat or manual massage. I wrote an note for them to continue to do that or add it if need be. I gave him prescription for fleck or patches for a morning pain over the biceps and anterior shoulder. Followup with me in 5-6 weeks.

Referral To: Physical Therapy Charleston (Wesley Dr) Physical Therapy

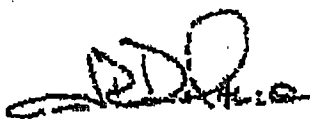
Reason:

2. Others

Continue Celebrex Capsule, 200 MG, 1 capsule, Orally, Once a day

Follow Up

6 Weeks



Electronically signed by JAMES DEMARCO MD, MD on 05/15/2012 at 08:19 AM EDT

Sign off status: Completed

Palmetto Ortho Of Chas W Ashly
 615 WESLEY DR
 CHARLESTON, SC 29407-7206
 Tel: 843-884-0302
 Fax: 843-606-8053

Patient: CONTRERAS, THOMAS J DOB: 09/25/1961 Progress Note: JAMES R DEMARCO, MD. 05/14/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

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ROPER ST FRANCIS

Physician Partners

CONTRERAS, THOMAS J

50 Y old Male, DOB: 09/25/1961
363 LANTANA DR, CHARLESTON, SC-29407

Home: 843-324-5387

Guarantor: CONTRERAS, THOMAS J Insurance: THOMAS

COOPERTTC Payer ID: PAPER

Appointment Facility: Palmetto Ortho Of Chas W Ashly

04/23/2012

JAMES R DEMARCO, MD

Current Medications

Celebrex 200 MG Capsule 1 capsule Once a day
Celebrex capsules
Medication List reviewed and reconciled with the patient

Past Medical History

No Medical History.

Surgical History

right shoulder scope 20120329
right shoulder scope 20101011

Family History

Daughter(s): alive
Spouse: alive

Social History

Tobacco Use:
Tobacco Use/Smoking
Are you a nonsmoker

Drugs/Alcohol:

Alcohol Screen

Did you have a drink containing alcohol in the past year? Yes

How often did you have a drink containing alcohol in the past year? 2 to 3 times a week (3 points)

How many drinks did you have on a typical day when you were drinking in the past year? 1 or 2 drinks (0 point)

How often did you have 6 or more drinks on one occasion in the past year? Never (0 point)

Points 3

Interpretation Negative

Allergies

PENICILLINS
Latex

Hospitalization/Major

Diagnostic Procedure

No Hospitalization History.

Review of Systems

Reason for Appointment

1. ESTABLISHED PAT-rt shld

History of Present Illness

Symptom(s):

Mr Contreras is here for his post op on his right shoulder. On 3/29/12, he had arthroscopic major debridement of intra-articular synovitis with coracoid decompression, subacromial decompression and bursectomy, and long head of biceps tenodesis. This is the second surgery on this shoulder. On 10/11/10, he has an arthroscopic SAD and excision of glenohumeral ligament from a previous SLAP repair and debridement. This is all result of a workers comp injury that took place on 10/8/2008. He unfortunately had an incident two weeks ago where he moved his arm a certain way, heard a pop, and experienced some additional swelling and bruising. We told him there was unfortunately not much that could be done about it. Other than that he is doing very well. He has done the 5 post op exercises and is ready to start supervised PT. He had previously gone to Charleston PT in Mt Pleasant.

Other Medical Providers/Suppliers:

CC Note to Workers Comp and Charleston PT Wesley Drive.

Examination

Shoulder Exam:

ROM

Right ATE 90

Right ER at 0 40

Right IR at 0 Sacrum

Right ER at 90 50

Right IR at 90 30

Rotator Cuff

Right IS 4

Right Napoleon 3

Right SS 3 No deformity to the long head of the biceps.

Impingement

Right Hawkins Negative

General Examination:

The patient's shoulder was examined. The wounds were clean and dry. There is no evidence of infection. There was expected ecchymosis

Patient: CONTRERAS, THOMAS J DOB: 09/25/1961 Progress Note: JAMES R DEMARCO, MD 04/23/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

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General/Constitutional:

Sleep disturbance denies. Weight change denies.

Dermatology:

Skin rash denies. Poor wound healing denies.

Endocrine:

Thyroid problem denies.

Respiratory:

Shortness of breath denies.

Cardiovascular:

Leg Swelling denies. Blood clots denies. Dizziness denies.

Gastrointestinal:

Reflux denies.

Hematology:

Bleeding problems denies.

Musculoskeletal:

Comments See HPI for details.

Neurologic:

Seizures denies. Weakness denies.

Numbness denies.

Psychiatric:

Depression denies. Anxiety denies.

and mild edema. There is no evidence of DVT in the upper extremity. The upper extremity was grossly neurologically and vascularly intact. Motor function was also intact distally.

Assessments

1. Shoulder pain - 719.41 (Primary), Status post arthroscopic major debridement of intra-articular synovitis with coracoid decompression, subacromial decompression and bursectomy, and long head of biceps tenodesis. Date of surgery March 28, 2012 DOI 10/8/2008-work comp

Treatment

1. Shoulder pain

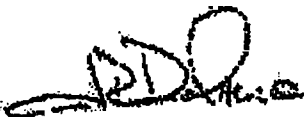
He is doing well right now. Continue to protect that arm and the long head of the biceps t.i.d. since. Physical therapy Charleston PT a note was written for at least the next 8-10 weeks. See him back in about 3-4 weeks. In a sling for the next couple weeks. He can do a light duty/sedentary job.

Referral To: Physical Therapy Charleston (WA) Physical Therapy

Reason: **PLEASE CALL PATIENT TO SCHEDULE APPOINTMENT** PLEASE CALL/FAX APPOINTMENT DETAILS TO OFFICE.

Follow Up

4 Weeks



Electronically signed by JAMES DEMARCO MD, MD on 04/23/2012 at 04:47 PM EDT

Sign off status: Completed

Palmetto Ortho Of Chas W Ashly
615 WESLEY DR
CHARLESTON, SC 29407-7206
Tel: 843-884-0302
Fax: 843-606-8053

Patient: CONTRERAS, THOMAS J DOB: 09/25/1961 Progress Note: JAMES R. DEMARCO, MD 04/23/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

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Cheryl P
Wally P

PALMETTO ORTHOPAEDICS OF CHARLESTON, P.A.
Waddell H. Gilmore, III, M.D. * Z. Marshall Hay, M.D. * James R. DeMarco, M.D. * Heather McIntosh, M.D.

180 Wings Way, Suite 301
Mt. Pleasant, SC 29464
(843) 884-0502
(843) 849-9308 Fax

615 Wesley Drive, Suite 100
Charleston, SC 29407
(843) 763-2837
(843) 763-2868 Fax

PALMETTO ORTHOPAEDICS SHOULDER THERAPY PRESCRIPTION

Name: Thomas Contreras Date: 4-23-12

Diagnosis: Left Rotator Cuff Tear / Tendinitis ☐ Infraspinatus ☐ Supraspinatus ☐ Subscapularis ☒ Biceps

Surgery: _____ Date of Surgery: _____
☒ PENDULUMS ☒ TABLE/WALL STRETCHES ☒ PULLEYS ☒ SUPINE STICKS

ROM: ☒ FROM ☒ AAROM ☒ AAROM without gravity (supine) ☒ AROM vs. gravity @ 6 weeks

RESTRICTIONS/GOALS:

☒ FORWARD FLEXION SUPINE/SITTING
☒ EXTERNAL ROTATION @ 0° ABDUCTION
☐ EXTERNAL ROTATION @ 90° ABDUCTION
☒ INTERNAL ROTATION @ 0° ABDUCTION (behind back)
☐ INTERNAL ROTATION @ 90° ABDUCTION
☒ ABDUCTION IN SCAPULAR PLANE

> 130° @ 6 weeks post-op
> 40° @ 6 weeks post-op
_____ @ _____ weeks post-op
L3-4 level @ 6 weeks post-op
_____ @ _____ weeks post-op
> 100° @ 6 weeks post-op

STRENGTHENING:	ISOMETRICS	ISOTONICS	ISOKINETICS	GO SLOWEST AND PROTECT
SUPRASPINATUS	☒	If surgery	If surgery	☐
INFRASPINATUS	☒	Start at	Start at	☐
SUBSCAPULARIS	☒	6 weeks	10 weeks	☐
BICEPS	☒	post-op	post-op	☐
SCAPULAR STABILIZERS	☒			☐

SCAPULAR RHYTHM STABILIZATION:
SCAPULAR RHYTHM, RETRACTION & DEPRESSION, POSTURE
JOINT MOBILIZATIONS
CLOSED/OPEN CHAIN SCAPULAR STABILIZATION
CORE EXERCISES
POSTERIOR CAPSULAR STRETCHING (sleeper, IR, crossover)

SPORTS SPECIFIC ACTIVITIES: _____

HANDS ON MANUAL STRETCHING FOR ADHESIVE CAPSULITIS/ CONTRACTURES ☐

MODALITIES: ☒ HEAT ☐ CRYOTHERAPY ☐ EDEMA CONTROL
☐ ULTRASOUND ☐ E-STIM ☐ TENS
☐ IONTOPHORESIS ☐ TRANSVERSE FRICTION MASSAGE
☐ SOFT TISSUE/SCAR MOBILIZATION ☐ TAPING

FREQUENCY 2-3 TIMES A WEEK FOR 8 WEEKS.
Unless otherwise stated, goals for ROM and motor function should be equal to the uninjured side.

Signature: _____

ROPER ST FRANCIS

Physician Partners

CONTRERAS, THOMAS J

50 Y old Male, DOB: 09/25/1961
363 LANTANA DR, CHARLESTON, SC-29407

Home: 843-324-5387
Insurance: THOMAS
COOPER/TC Payer ID: PAPER
Appointment Facility: Palmetto Ortho Of Chas W Ashly

04/03/2012

JAMES R DEMARCO, MD

Current Medications

Celebrex capsules
Medication List reviewed and reconciled with the patient

Past Medical History

No Medical History.

Allergies

PENICILLINS
Latex

Review of Systems

General/Constitutional:

Sleep disturbance denies. Weight change denies.

Dermatology:

Skin rash denies. Poor wound healing denies.

Endocrine:

Thyroid problem denies.

Respiratory:

Shortness of breath denies.

Cardiovascular:

Leg Swelling denies. Blood clots denies. Dizziness denies.

Gastrointestinal:

Reflux denies.

Hematology:

Bleeding problems denies.

Musculoskeletal:

Comments: See HPI for details.

Neurologic:

Seizures denies. Weakness denies.

Numbness denies.

Psychiatric:

Depression denies. Anxiety denies.

Reason for Appointment

1. POST OPERATION-rt shoulder

History of Present Illness

Symptom(s):

Mr Contreras is here for his post op on his right shoulder. On 3/29/12, he had arthroscopic major debridement of intra-articular synovitis with coracoid decompression, subacromial decompression and bursectomy, and long head of biceps tenodesis. This is the second surgery on this shoulder. On 10/11/10, he has an arthroscopic SAD and excision of glenohumeral ligament from a previous SLAP repair and debridement. This is all result of a workers comp injury that took place on 10/8/2008. He is doing fairly well at this point. he is using the thermotech machine for pain and has stopped taking his percocet.

Examination

General Examination:

The patient's shoulder was examined. The wounds were clean and dry. There is no evidence of infection. There was expected ecchymosis and mild edema. There is no evidence of DVT in the upper extremity. The upper extremity was grossly neurologically and vascularly intact. Motor function was also intact distally.

Assessments

1. Shoulder pain - 7/10 (Primary), Status post arthroscopic major debridement of intra-articular synovitis with coracoid decompression, subacromial decompression and bursectomy, and long head of biceps tenodesis. DOI 10/8/2008-work comp

Treatment

1. Shoulder pain

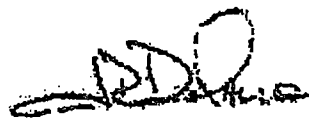
We discussed the surgical procedure with the patient. We discussed the patient's need for pain management. We went over the appropriate restrictions. They are going to do the standard postop exercises. We did not go over the patient's intraoperative pictures. we will need to do that next time. We went over 4 of the 5 postop exercises but did not include internal rotation exercises. CC a note the workers comp.

Follow Up

3 Weeks

Patient: CONTRERAS, THOMAS J DOB: 09/25/1961 Progress Note: JAMES R DEMARCO, MD 04/03/2012

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)



Electronically signed by JAMES DEMARCO MD, MD on
04/03/2012 at 04:51 PM EDT

Sign off status: Completed

Palmetto Ortho Of Chas W Ashly
615 WESLEY DR
CHARLESTON, SC 29407-7206
Tel: 843-884-0302
Fax: 843-606-8053

Patient: CONTRERAS, THOMAS J DOB: 09/25/1961 Progress Note: JAMES R DEMARCO,
MD 04/03/2012

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**Palmetto Orthopaedics
of Charleston**

ROPER ST. FRANCIS PHYSICIANS

James R. DeMarco, MD

Patient Name: CONTRERAS, THOMAS

DOB: 9/25/1961

CHART: 3-64-06-7

615 Wesley Drive

Suite 100

Charleston, SC 29407

(843) 763-2857 Office

(843) 763-2868 Fax

Date of Service: 11/22/2011

MR 7473

CHIEF COMPLAINT: Status post right shoulder SAD and excision of glenohumeral ligament from a previous SLAP repair and debridement. Date of surgery 10/11/2010. Worker's comp. Mr. Contreras returns today. He was having a flareup of pain. I last saw him in May. He ran out of Celebrex, started hurting some more. Thera-Band exercises seemed to be a bit of a nuisance with him; can help or they can flare him up. He did some yardwork this past weekend, and his shoulder has become somewhat painful. He still has pain over the anterior aspect of the shoulder even when he just hangs it down or reaches behind him in extended position. It gets flared up by the simplest of procedures, whether it is lifting or doing light yardwork; even if he comes off the Celebrex, he continues to have pain and discomfort.

PHYSICAL EXAM: General cervical shoulder shows ATE of 140. ER 50. IR to L3 with some pain. SARER 85. SIR of 55. Extension 55 with pain. Abduction 110. Adduction 60. Supraspinatus 4+. He has continued tenderness over the long head of the biceps and coracoid. Positive coracoid impingement symptoms. Tenderness over the AC joint, 1. Infraspinatus 5. Subscap 5. Hawkins 0. Reverse Hawkins 0. Elbows, wrists and neuro reveal full range of motion appropriate for the patient's age without tenderness, effusion, instability, ecchymosis, edema, atrophy or spasticity.

PLAN: At this point, Mr. Contreras continues to complain persistently of long head of the biceps and bicipital groove pain. There is approximately a 5 cm section of the long head of the biceps that we are unable to visualize arthroscopically on a routine arthroscopy; however, on selected patients with persistent pain in this area, we will go and take down the transverse ligament and the bursal sac in this area and visualize the long head of the biceps and certainly at this point do a biceps tenodesis on him. I would also do a coracoid decompression to take off the impingement that he is getting from his coracoid onto the anterior subscapularis and bicipital groove area. He has failed injections, it has been over a year, he continues having pain, and the 1 thing about him is that he has been completely consistent with where his pain is, directly over the bicipital groove. We looked at his biceps in the intraarticular portion. I pulled in as much of the biceps into the joint, and this is typically what we do, and in that region it appeared normal and so I did not decide to look further or release anything. We did remove his previous sutures from his previous repair and did a bursectomy and decompression, an AC joint resection. This did help with some of the other pain, but he is left with biceps pain which now needs to be addressed. This is still considered as worker's comp injury as directly and causally related to his injury on 10/08/2008. This is absolutely the last thing that can be done in the shoulder, and after doing a tenodesis, a coracoid decompression, I told him whatever pain or discomfort is left in the shoulder he will have to live with. We will need to get clearance from worker's comp, and his postoperative course would be similar with physical therapy a couple times a week starting around 4-5 weeks postoperatively and going for about 6 or 8 weeks. If we can get this done, I will see him in the end of December for the surgery.

James R. DeMarco, MD



JRD/jf

DD: 11/22/2011 4:38:00 PM

DT: 11/23/2011 8:20:45 AM

16122350

cc: Worker's comp
David Seignious, MD

30

1 of 1

Palmetto Orthopaedics
of Charleston
ROPER ST. FRANCIS PHYSICIANS

Date: 1-22-11

Patient Name: Thomas Contreras was seen in our office on July with a diagnosis of Heart Shunt

Work Related Injury? NO
YES, DOI: 10-8-2002
 RETURN TO WORK STATUS:

 FULL DUTY RESTRICTED DUTY - SEE RESTRICTIONS BELOW

 RETURN DATE

MAY NOT RETURN TO WORK UNTIL Follow-up

 RETURN APPOINTMENT FOR RE-EVALUATION

MAY RETURN TO WORK WITH THE FOLLOWING RESTRICTIONS:

___NO LIFTING MORE THAN___ LBS.

 NO OVERHEAD LIFTING

____GROUND LEVEL WORK ONLY, NO LADDERS, STEPS, ETC.

___ NO REPEATED BENDING, STOOPING, SQUATTING, AND/OR PUSHING

___ NO CONTINUOUS OR PROLONGED STANDING AND/OR SITTING

*****NO MORE THAN _____ HOURS/DAY*****
 _____ MINIMUM WALKING, CLIMBING (INCLUDING STAIRS)
 *****NO MORE THAN _____ HOURS/DAY*****

 LIMITED USE OF:

 NO USE OF :

SCHOOL EXCUSE:

RETURN TO SCHOOL ON:

____NO PE AND/OR SCHOOL SPORTS UNTIL

ADDITIONAL COMMENTS:

PHYSICIAN SIGNATURE:

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Almetto Orthopaedics
of Charleston
ROPER ST. FRANCIS PHYSICIANS

CONTRERAS, THOMAS

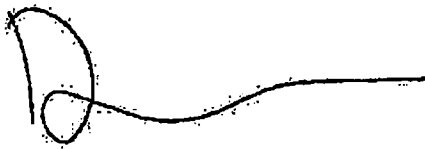
DATE OF BIRTH: 09/25/1961

05/31/11

PAGE 2

PLAN: He has had a flare up of pain and we talked about his sleeping position. He has some bicipital tendinitis and anterior shoulder stiffness. We provided a corticosteroid injection and I recommended an exercise program with Thera-Bands. He is using hand weights and I want him to use Thera-Bands in addition to the light weights. I don't want him using 10-pound weights right now. He will work on rotator cuff strengthening with either 5- or 7-pound weights. He will continue with ice treatments and anti-inflammatories and we will see him back on a p.r.n. basis. There are no changes in his work restrictions and his permanent partial impairment.

James R. DeMarco, M.D. /af
CC: Workers' Compensation
DD: 05/31/11
DT: 06/01/11



7473 WA

CONTRERAS, THOMAS

DATE OF BIRTH: NOT PROVIDED

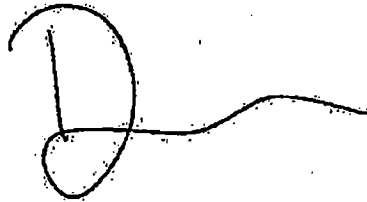
01/21/11

ADDENDUM: Mr. Contreras has an 11% permanent shoulder impairment and a 7% right upper extremity impairment, which is converted to a 4% whole person impairment.

James R. DeMarco, M.D. /af

DD: 03/01/11

DT: 03/02/11



5-31-11: f/w rt shld
DAS 10/14/12
- still very sore

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Almetto Orthopaedics
of Charleston
ROPER ST FRANCIS PHYSICIANS

7473 WA

CONTRERAS, THOMAS

01/21/11

DOB: 09/25/1961

CHIEF COMPLAINT: Unchanged from previous. DOS: 10/11/10 WC.
HISTORY: Mr. Contreras shoulder is doing fairly well. He is about 4-5 weeks away from retirement at this point. His paper work is in. He feels he is still unable to go back to work. His inflammation and discomfort from being shocked has gone down. He is finishing up his therapy.

PHYSICAL EXAM: He has ATE of 140, ER 50 and IR to L2. SAR ER is 90, SAR IR 55. He has extension of 55, abduction 110 and adduction 60. Rotator cuff strength is 5/5. Supraspinatus is 4+, infraspinatus and subscap are 5. He has some tenderness over the long head of the biceps and anterior clavicle. There is a well healed incision. He is neurologically and vascularly intact.

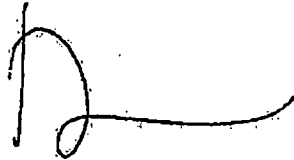
PLAN: I will keep him out of work. He is in the last 4-5 weeks of retirement and I don't want him to go back and get re-injured. He is doing well at this point. He is not going to be able to return to being a fire fighter. If he needs final permanent restrictions, then he would have to undergo a functional capacity evaluation. He has permanent partial impairment of 7 percent to the right upper extremity, as defined by *The AMA Guides to the Evaluation of Permanent Impairment*, Fifth Edition. This converts to 11 percent right shoulder impairment. There is no foreseeable intervention required within the next year for surgery. If he has any other exacerbation of his pain, he may need injections, anti-inflammatories or repeat physical therapy. I will see him back on a prn basis.

James R. DeMarco, M.D. /lm

CC: Workers' Compensation
Charleston PT

DD: 01/21/11

DT: 01/24/11



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Palmetto Orthopaedics
of Charleston
ROPER ST. FRANCIS PHYSICIANS

7473 WA

CONTRERAS, THOMAS

12/17/10

DOB: 09/25/1961

CHIEF COMPLAINT: Status post right shoulder SAD and excision of glenohumeral ligament from previous SLAP repair and debridement. DOS: 10/11/10 WC.

HISTORY: Mr. Contreras is doing therapy and his motion is progression. He still has pain and discomfort around the long head of his biceps and lateral deltoid. He has pain getting behind his back. He actually got shocked by his light switch and pulled his arm back. This created more pain, inflammation and discomfort.

PHYSICAL EXAM: He has ATE of 130, ER 45 degrees and IR to L3 with pain. His rotator cuff is intact except for supraspinatus of 4+. Infraspinatus and subscap are 5. He has tenderness over the long head of his biceps.

PLAN: He is out of work until I see him back in 4-5 weeks. We will continue him in therapy. He is getting really near retirement and has retirement papers. I have opted to keep him out of work until we can get this straightened out. There is no reason to send him back at any level if he is going to be retiring in 2-4 weeks. However, if his paperwork gets stalled and he hasn't retired, we will send him back to light duty on his return. He will continue therapy until I see him back.

James R. DeMarco, M.D. /lm
CC: Workers' Compensation
Charleston PT

DD: 12/17/10

DT: 12/20/10

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Palmetto Orthopaedic
of Charleston
ROPER ST. FRANCIS PHYSICIANS

7473 WA

CONTRERAS, THOMAS

11/10/10

DOB: 09/25/1961

CHIEF COMPLAINT: Status post right shoulder SAD and excision of the glenohumeral ligament with previous SLAP repair and debridement. DOS: 10/11/10. WC.

HISTORY: Mr. Contreras continues doing well. He has been doing his five post-op exercises with no severe pain or discomfort.

PHYSICAL EXAM: Exam shows table stretch to 125 degrees, ER 45 degrees and IR to L4. His rotator cuff is grossly intact. He is neurologically and vascularly intact.

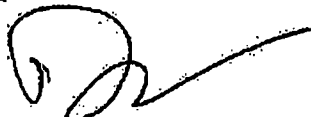
PLAN: We will get him into supervised PT with Charleston PT. He has his restrictions. He will remain out of work until I see him back in about four weeks. I don't think he is going to be able to go back to being a full-time, full-duty firefighter. I think that after both his shoulders were injured he will not be able to do heavy lifting. However, on his return in four weeks, we will get him back to a light duty desk job activity, no lifting more than 10 lb and minimal overhead lifting.

James R. DeMarco, M.D. /lm

CC: Workers' Compensation
Charleston PT

DD: 11/10/10

DT: 11/11/10



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Palmetto Orthopaedic
of Charleston
ROPER ST. FRANCIS PHYSICIANS

7473WA

CONTRERAS, THOMAS

10/20/10

DOB: 09/25/1961

CHIEF COMPLAINT: Status post right shoulder SAD and excision of
glenohumeral ligament with previous SLAP repair and debridement. DOS:
10/11/10. WC.

HISTORY: Mr. Contreras is doing well. He has been using his ice machine
and has had minima pain and discomfort. He has no new complaints.

PHYSICAL EXAM: He has well healed incisions with no evidence of
infection. There is the expected amount of ecchymosis, no evidence of DVT.
He is neurologically and vascularly intact distally.

PLAN: We did not go over his intra-op pictures. We will need to do that
next time. We did go over his restrictions. He is out of work until I see him
back in three weeks. He has enough pain medication. We went over his five
post-op exercises. We will see him back in three weeks for recheck.

James R. DeMarco, M.D. /im

CC: Workers' Compensation

DD: 10/20/10

DT: 10/21/10

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Palmetto Orthopaedics
of Charleston
ROPER ST. FRANCIS PHYSICIANS

7473 MP

CONTRERAS, THOMAS

09/24/10

DOB: 09/25/1961

CHIEF COMPLAINT:

1. Right shoulder loss of internal rotation, status-post SLAP repair and removal of sutures with debridement.
2. Long head of the biceps tendinopathy by exam.
3. No evidence of significant rotator cuff pathology.
4. Significant impingement syndrome. DOI: 10/08/08 WC.

HISTORY: Mr. Contreras is still having pain and discomfort in his right shoulder. He is at the point where he is about to give up on getting back into being a firefighter. He has had discomfort that is certainly worse on the right than the left. He still has a little bit on the left. He wants to talk about non-surgical vs. surgical options. He has been doing some physical therapy but really hasn't progressed well with that. He takes some over-the-counter medications. He has some pain with sleep. He is still on restrictions at work.

PHYSICAL EXAM: Exam is recorded on the shoulder exam sheet and is basically unchanged from previous exams. He has ATE of 155, IR to L3-4 and ER 45. SAR ER is 80, SAR IR 20. His rotator cuff strength is 5. Hawkin's is 1, reverse Hawkin's 0 and O'Brien's 0. Partial tear is 0. His elbows and wrists are normal. He is neurologically and vascularly intact. Skin and lymphatics are normal. DTRs are equal bilaterally.

PLAN: The risks and benefits of non-surgical vs. surgical treatment were discussed. The patient has undergone and failed several conservative measures, including a home exercise program, therapy, injections, medications and activity modification. I feel that the benefits of surgery outweigh the risks involved. The patient agrees with this. We talked about the details of the surgical procedure. The patient was given handouts and we discussed the risks and benefits of surgery. We talked about the pre-, peri-op and post-op course and the expected intra-operative and post-operative experience and rehab. I went over the need for pre-operative medical clearance. We gave the patient handouts detailing all of this and all questions were answered. He is as good as he is going to get if he doesn't have surgery. I think he deserves one additional look. He is stiff.

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7473

CONTRERAS, THOMAS

08/06/10

CHIEF COMPLAINT: Right shoulder injury. DOI: 10/08/08. WC
HISTORY: Mr. Contreras is a 49-year-old gentleman who has been seen previously by Dr. Jaskwich at Lowcountry Orthopedics for an on-the-job injury from 10/08/08. He originally injured it at the fire station where he worked lifting weights. He now has pain over the right shoulder. He describes the pain as being sharp throughout the day. It is worse in the morning. If he does anything significant with the shoulder it bothers him. MRI was performed at Lowcountry that showed no evidence of full thickness tear. There was a possible superior labral tear. He then underwent surgery for that. He continued to have pain despite therapy, activity modification and work restrictions. Dr. Jaskwich took him back to the OR on 10/01/09 and did a debridement of the sutures, labrum and intra-articular synovium and bursa. He did not reattach the labrum and felt there was enough attachment to be adequate. No other abnormalities were noted. There were no rotator cuff tears. Mr. Contreras comes in today with continued pain and discomfort, as noted. On May 5, 2010, he was restricted in his physical training. There was no recommendation for any further surgical intervention.

PAST MEDICAL HISTORY: His past medical history, past surgical history, medications, family history, social history and review of systems is recorded on the patient information sheet and has been reviewed by me. He is on Allegra, Advair, Celebrex, and Lovastatin. He has high blood pressure, high cholesterol, asthma and diabetes. Social history shows he is a firefighter and is married. He does not smoke or drink.

ALLERGIES: Penicillin, Latex.

PHYSICAL EXAM: He is an alert, pleasant male in no apparent distress. The cervical, thoracic and lumbar spine is evaluated and shows normal range of motion with normal alignment without obvious scoliosis, step off, deformity, edema, atrophy or muscle spasm. He has negative Spurling's, axial compression and Lhermitte's. The cervical spine and the right and left shoulders were examined for tenderness, range of motion, scapular dyskinesia, rotator cuff strength, biceps injury, impingement signs, slap lesions and instability and are recorded in detail on the shoulder assessment sheet. In summary, the pertinent findings reveal tenderness in the AC joint of 1, bicipital groove 1. He has ATE of 155, IR to L3 and ER 45. SAR ER is 90, SAR IR 20. Supraspinatus, infraspinatus and Napoleon's are 5. Partial tear is 0, O'Brien's 0, Hawkins's 1 and reverse Hawkins's 0.

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7473

CONTRERAS, THOMAS

08/06/10

PAGE 2

His elbows and wrists are normal. He is neurologically and vascularly intact. Skin and lymphatics are normal. DTRs are equal bilaterally. Gait and station are normal.

IMAGING: MRI from 08/26/09 is reviewed and shows mild edema in the subscapularis. The subscapularis is intact. There is significant thickening of the glenohumeral ligament. AC joint is intact. There is no evidence of significant anterior or posterior labral injury. No rotator cuff tear is noted. There are some abnormalities of the angle of the biceps but it does appear attached on the most superior side. It appears to be fairly normal except for that small fragmentation inferiorly, likely post-surgical or it could be a suture. The biceps is within the groove. There is no atrophy of the cuff noted. The intra-articular portion of the biceps is within normal limits.

X-rays of his right shoulder show normal glenohumeral joint space. There is moderate AC joint narrowing with some sclerosis. There are no acute fractures, avulsions or dislocations. There are no blastic or lytic lesions.

PROCEDURE: After sterilely prepping the anterior bicipital groove and anterior subacromial space, we injected 80 mg of Depo-Medrol. We split it between the two areas. He tolerated this procedure well.

ASSESSMENT:

1. Right shoulder loss of internal rotation, status-post SLAP repair and then removal of sutures with debridement.
2. Long head of the biceps tendinopathy by exam.
3. No evidence of significant rotator cuff pathology.

PLAN: We provided him with a corticosteroid injection in the bicipital groove and anterior subacromial space. His main problem is loss of internal rotation. He lacks internal rotation in both the abducted position and in the neutral position. He has decreased anterior quadrant flexibility and decreased excursion of the anterior deltoid, pectoralis and long head of the biceps. I don't feel he needs surgical intervention at this point. I think he needs therapy to work on stretching, almost all stretching of the anterior quadrant, pectoralis, long head of the biceps and internal rotation stretching, including sleeper stretches and internal rotation and behind-the-back stretching with cross over stretching as well.

u1

7473

CONTRERAS, THOMAS

08/06/10

PAGE 3

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This was all written in a PT note. He will continue on light duty with no overhead lifting, no lifting more than 25 lb to shoulder level and no lifting more than 50 lb. to waist level. We will keep him off the truck. I am not sure he will be able to go back to being a firefighter or not. Both of his shoulders are involved and both are painful and he has some weakness issues. We will know over the next 6-12 weeks whether he will be disabled from a full line of duty. He may need to retrain into a lighter demand job.

James R. DeMarco, M.D. /lm

CC: Workers' Compensation

David Seignious, M.D. 557. 1050

David Jaskwich, M.D. 797. 3633

Palmetto Orthopaedics
of Charleston
ROPER ST. FRANCIS PHYSICIANS

Date: 1-21-11

Patient Name: Thomas Contreras was seen in our office on
today with a diagnosis of the shoulder

Work Related Injury? NO

RETURN TO WORK STATUS:

YES, DOI: Oct. 2008

 FULL DUTY RESTRICTED DUTY - SEE RESTRICTIONS BELOW

 RETURN DATE

☒ MAY NOT RETURN TO WORK UNTIL PERMANENT

 RETURN APPOINTMENT FOR RE-EVALUATION

MAY RETURN TO WORK WITH THE FOLLOWING RESTRICTIONS:

 NO LIFTING MORE THAN LBS.

 NO OVERHEAD LIFTING

 GROUND LEVEL WORK ONLY, NO LADDERS, STEPS, ETC.

 NO REPEATED BENDING, STOOPING, SQUATTING, AND/OR PUSHING

 NO CONTINUOUS OR PROLONGED STANDING AND/OR SITTING

*****NO MORE THAN HOURS/DAY*****

 MINIMUM WALKING, CLIMBING (INCLUDING STAIRS)

*****NO MORE THAN HOURS/DAY*****

 LIMITED USE OF:

 NO USE OF:

SCHOOL EXCUSE:

 RETURN TO SCHOOL ON:

 NO PE AND/OR SCHOOL SPORTS UNTIL

.....
ADDITIONAL COMMENTS:
.....

PHYSICIAN SIGNATURE: [Signature]

1-21-11

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43

615 Wesley Drive, Suite 100, Charleston, South Carolina 29407
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Palmetto Orthopaedics
of Charleston
ROPER ST. FRANCIS PHYSICIANS

Date: 12-17-10

Patient Name: Thomas Contreras was seen in our office on
today with a diagnosis of flu right shoulder

Work Related Injury? NO YES, DOI: 10/18/08
RETURN TO WORK STATUS:

FULL DUTY RESTRICTED DUTY - SEE RESTRICTIONS BELOW

RETURN DATE _____

MAY NOT RETURN TO WORK UNTIL after eval in next appt

RETURN APPOINTMENT FOR RE-EVALUATION 4 weeks

MAY RETURN TO WORK WITH THE FOLLOWING RESTRICTIONS:

NO LIFTING MORE THAN _____ LBS.

NO OVERHEAD LIFTING

GROUND LEVEL WORK ONLY, NO LADDERS, STEPS, ETC.

NO REPEATED BENDING, STOOPING, SQUATTING, AND/OR PUSHING

NO CONTINUOUS OR PROLONGED STANDING AND/OR SITTING

*****NO MORE THAN _____ HOURS/DAY*****

MINIMUM WALKING, CLIMBING (INCLUDING STAIRS)

*****NO MORE THAN _____ HOURS/DAY*****

LIMITED USE OF: _____

NO USE OF: _____

SCHOOL EXCUSE:

RETURN TO SCHOOL ON: _____

NO PE AND/OR SCHOOL SPORTS UNTIL _____

.....
ADDITIONAL COMMENTS:

PHYSICIAN SIGNATURE: _____

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Palmetto Orthopaedics
of Charleston
ROPER ST. FRANCIS PHYSICIANS

Date: 11/10/10

Patient Name: Thomas Contreas was seen in our office on
today with a diagnosis of fract. shoulder

Work Related Injury? NO YES, DOI: 10/8/08
RETURN TO WORK STATUS:

 FULL DUTY RESTRICTED DUTY - SEE RESTRICTIONS BELOW

 RETURN DATE

1 MAY NOT RETURN TO WORK UNTIL after followup appointment
in 3 weeks

 RETURN APPOINTMENT FOR RE-EVALUATION

MAY RETURN TO WORK WITH THE FOLLOWING RESTRICTIONS:

 NO LIFTING MORE THAN LBS.

 NO OVERHEAD LIFTING

 GROUND LEVEL WORK ONLY, NO LADDERS, STEPS, ETC.

 NO REPEATED BENDING, STOOPING, SQUATTING, AND/OR PUSHING

 NO CONTINUOUS OR PROLONGED STANDING AND/OR SITTING

*****NO MORE THAN HOURS/DAY*****

 MINIMUM WALKING, CLIMBING (INCLUDING STAIRS)

*****NO MORE THAN HOURS/DAY*****

 LIMITED USE OF:

 NO USE OF:

SCHOOL EXCUSE:

 RETURN TO SCHOOL ON:

 NO PE AND/OR SCHOOL SPORTS UNTIL

ADDITIONAL COMMENTS:

will re-evaluate @ then 3 weeks

PHYSICIAN SIGNATURE:

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Palmetto Orthopaedics Physical Therapy Prescription

Waddell H. Gilmore, MD

R. Marshall Hay, MD

James R. Demarco, MD

Name: Thomas Contreras

Date: 9-3-10

Diagnosis: S A W E

Surgery: _____

Date: _____

Evaluate & Treat

ROM:

☐

☐ PROM

☐ AROM

☐ As tolerated

☐ See Below

☐ AAROM

☐ As tolerated

☐ See Below

☐ As tolerated

☐ See Below

Stretching:

Strengthening:

Modalities:

☐ Heat

☐ Cryotherapy

☐ Edema Control

☐ Ultrasound

☐ E-Stim

☐ TENS

☐ Iontophoresis

☐ Phonophoresis

☐ Deep neuromuscular massage

☐ Traction

☐ Whirlpool

☐ Taping

☐ Soft tissue mobilization/scar massage

☐ Teach daily home exercise program

☐ Aquatic Therapy

☐ Back School

☐ Work Conditioning: Details _____

Specific areas:

☐ Shoulder:

ROM:

☐ Internal rotation @ 90° abduction - goal _____

☐ Forward flexion goal _____

☐ External rotation @ 90° abduction - goal _____

☐ Abduction goal _____

Muscles:

☐ Deltoid

☐ External Rotation

☐ Internal Rotators

☐ Scapular stabilizers

Misc:

☐ Long head of biceps

☐ Other _____

☐ Posterior capsular stretching

☐ Posture & scapular retraction training

☐ Other _____

☐ Hip:

ROM:

☐ Internal rotation goal _____

☐ External rotation goal _____

☐ Extension goal _____

☐ Abduction goal _____

☐ Flexion goal _____

Muscles:

☐ Hip flexors

☐ Hip Extensors

☐ Abductors

☐ Adductors

☐ Adduction goal _____

Misc:

☐ Gait training

☐ WB status _____

☐ Other _____

☐ Quads

☐ Hamstrings

☐ Knee:

ROM:

☐ Extension goal _____

☐ Flexion goal _____

Muscles:

☐ Quads

☐ VMO

☐ Hamstrings

☐ IT Band

☐ Gastroc/soleus

Misc:

☐ Patellar mobilization

☐ Short arc quad strengthening

☐ Straight leg raise

☐ No deep flexion exercises (>45°)

☐ KT 3000 measurements

☐ Other _____

☐ Ankle:

ROM:

☐ Dorsiflexion goal _____

☐ Plantar flexion goal _____

Muscles:

☐ Gastroc/soleus

☐ Anterior tibialis

☐ Posterior tibialis

☐ Peroneals

Special Recommendations: _____

Frequency: 2 times a week for 6-8 weeks.

Unless otherwise stated, goals for ROM & motor function should be equal to the uninjured side.

Signature: _____

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Charleston
PT
WA

615 Wesley Drive, Suite 100
Charleston, SC 29407
(843) 763-2857
(843) 763-2868 Fax

Name: Thomas Contreras Date: 11/10/10

☒ PENDULUMS ☒ TABLE/WALL STRETCHES ☒ PULLEYS ☒ SUPINE STICK

ROM: ☒ PROM ☒ AAROM ☒ AAROM without gravity (supine) ☒ AROM vs. gravity @ 6 weeks

☒ FORWARD FLEXION SUPINE/SITTING
☒ EXTERNAL ROTATION @ 0° ABDUCTION
☐ EXTERNAL ROTATION @ 90° ABDUCTION
☒ INTERNAL ROTATION @ 0° ABDUCTION (behind back)
☐ INTERNAL ROTATION @ 90° ABDUCTION
☒ ABDUCTION IN SCAPULAR PLANE

> 130° @ 6 weeks post-op
 > 40° @ 6 weeks post-op
 _____ @ _____ weeks post-op
 L3-4 level @ 6 weeks post-op
 _____ @ _____ weeks post-op
 > 100° @ 6 weeks post-op

STRENGTHENING: ISOMETRICS		ISOTONICS		ISOKINETICS		GO SLOWEST AND PROTECT	
SUPRASPINATUS	☒	If surgery		If surgery			☐
INFRASPINATUS	☒	Start at		Start at			☐
SUBSCAPULARIS	☒	6 weeks		10 weeks			☐
BICEPS	☒	post-op		post-op			☐
SCAPULAR STABILIZERS	☒						☐

SCAPULAR RHYTHM, RETRACTION & DEPRESSION, POSTURE

CLOSED/OPEN CHAIN SCAPULAR STABILIZATION

POSTERIOR CAPSULAR STRETCHING (sleeper, IR, crossover)

HANDS ON MANUAL STRETCHING FOR ADHESIVE CAPSULITIS/ CONTRACTURES

TAPING

FREQUENCY 2-3 TIMES A WEEK FOR 6-8 WEEKS.
Unless otherwise stated, goals for ROM and motor function should be equal to the uninjured side.

Signature:

ROPER ST FRANCIS HEALTHCARE

Incident/Accident/Date of Onset Form

Information Required by HIPPA when Services are Related to any
Type of Accident/Injury/Incident or onset of Pain

Name of Patient: Thomas CONTRERAS

Patient's HPP Guarantor #: _____

Patient's HPP Account#: _____

Patient's Date of Birth: 8/25/1961

Type of Accident/Incident: Please check one:

☐ Auto Accident

Note: If auto accident, State where accident occurred is required: State: _____

☒ Employment Related

☐ None of the above (Example: Woke up with Back Ache)

☐ Other: Please specify: _____

Date of Accident/Incident: 10/20/88 Accident/Incident Information

If not accident: Date of Onset or Illness/Symptoms: _____

Approximate time of Accident/Incident: 1600

Where accident Occurred: (i.e.: grocery store, Car, Bus, etc.): FINE STATION

Brief description of how accident/incident occurred or how onset of symptoms occurred:
LIFTING WEIGHTS

Type of Injury/Illness: (include body part/s) Example: Sprain of foot:
TORN LABRUM

If employment related: Please provide us with the following information:

1. Name of Employer: ST. JOHNS F.D.
2. Name of Contact: (Name of person who handles work injuries at patient's work):
DIANE BIGGS
3. Contact Phone Number (include area code): 813-559-9144
4. Work Comp Policy/Claim #: _____
5. Name and address of Work Comp Carrier: _____

6. Name of Adjuster: PAUL JENNINGS

7. Work Comp Carrier Phone # (include area code): 803-896-5853

Name of person providing information: THOMAS CONTRERAS

Relationship to Patient: _____

Date: 8/16/10

Employee's Signature: T. CONTRERAS

(Examples of diagnosis requiring accident/onset date: fracture, sprain or strain, auto accident, work related injury, fall, confusion, wound, laceration, back pain, etc. all 800 to 900 Dx codes require this information)

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Patient Information

Last Name: CONTRERAS
First Name: THOMAS
Middle: _____
Marital Status: Married Single Separated Divorced Widowed
Student Status: Full Part N/A School: _____
Employment: Full Part None Employer: ST. JOHN'S F.O. Phone: () _____
Address: (This practice will send all correspondence to this address unless you provide us an alternate address below)
Street: 3327 MAYBANK HWY City: CHAS State: SC Zip: 29403
Phone: (843) 324-5387 (RSFH will contact you at this number unless you provide us an alternate number below)
May we leave a general voice message for appointment reminders at this contact phone number? Yes / No _____
May we leave a general voice message for normal test results at this contact phone number? Yes / No _____
In Case of Emergency Contact Name RENEE CONTRERAS
Relationship WIFE Home Phone (843) 367-8018 Work Phone (843) 721-6603

Guarantor/Responsible Party (if different from patient)

Last Name: ST. JOHN'S F.O.
First Name: _____
Middle: _____
Address: 3327 MAYBANK HWY
City: CHAS State: SC Zip: 29455
Phone: Home () _____
Phone: Work (843) 559-9194
Complete only if you want the Practice to communicate with you at an address/phone different than you provided above)
Alternate Address: _____
City: _____ State: _____ Zip: _____
Alternate Phone: () _____

Primary Insurance				Secondary Insurance			
Member/Policyholder (If different from patient)				Member/Policyholder (if different from patient)			
Member/Policyholder ID#		Date of Birth		Member/Policyholder ID#		Date of Birth	
Insurance Co. Phone Number		Group #		Insurance Co. Phone Number		Group #	
Insurance Co. Address (Street Address/ P.O. Box)				Insurance Co. Address (Street Address/ P.O. Box)			
City		State Zip		City		State Zip	

Chart # _____

NEW PATIENT INFORMATION

Name: THOMAS CONTINERAS

Date: 8/10/10

Age: 49

DOB: 9/25/61

Sex:

Male

Female

Family MD: D. SEGUNDO

Referring MD: WORKER COMP

CHIEF COMPLAINT / HISTORY OF PRESENT ILLNESS

Date of onset of injury/problem: 2008 10-8-2008

Describe your current orthopaedic problem/ injury: SHOULDER PAIN. I HAD TWO SURGERIES.

Is your problem/injury related to: (please check)

☐ Auto-accident

☒ Work-related accident

☐ Other accident

☐ Litigation pending

Location (Example bottom of foot, left hand, etc): RIGHT SHOULDER

Quality (Example: throbbing, numb, etc): SHARP PAIN

Severity (Example: intolerable, dull, sharp, etc): SHARP

Duration (Example: all day, few minutes, all night, etc): ALL DAY

Timing (Example: upon rising, at end of day, etc): A.M.

Context (Example: while typing, after exercising, etc): WHILE DOING ANYTHING

Modifying Factors (Example: what improves or worsens symptoms, etc): NOTHING

Associated Signs & Symptoms (Example: tingling, stiffness, etc): STIFF PRESSURE

MEDICATIONS

(Please list all long-term medications, current medications, over-the-counter drugs and herbal preparations)

ALLONGRA, DAVITA

PLEBAX, LOVASTATIN

Are you currently taking Coumadin, Plavix, Aspirin, or other blood thinner? YES ☐ NO ☒

ADVERSE & ALLERGIC DRUG REACTIONS (please check)

☐ None

☒ Penicillin

☐ Sulfa Drugs

☐ Other, please list:

Reaction: ITCHING HIVES

(OVER)

PAST MEDICAL HISTORY

Have you ever or do you currently have any of the following? Please check all that apply:

- | | | | |
|---|--|---|---|
| ☒ High Blood Pressure | ☐ Stomach Ulcers | ☐ Stroke | ☐ Rheumatoid Arthritis |
| ☒ High Cholesterol | ☐ GI Disease | ☐ Seizure/Epilepsy | ☐ Osteoarthritis |
| ☐ Congestive Heart Failure | ☐ Kidney Disease | ☐ Fibromyalgia | ☐ Gout |
| ☐ Heart Attack / MI | ☐ Hepatitis/Liver Disease | ☐ Anxiety | ☐ Psoriasis |
| ☒ Asthma | ☐ Thyroid Disease | ☐ Depression | ☐ Back/Neck Pain |
| ☐ Sleep Apnea | ☒ Diabetes | ☐ Cancer | ☐ Polio |
| ☐ Pneumonia | ☐ Blood Clots | ☐ MRSA | ☐ Lyme Disease |
| ☐ Tuberculosis | ☐ Pulmonary Embolus | ☐ HIV/AIDS | ☒ Latex Allergy |

Other medical problems: _____

Past Surgery/Procedures: (type and dates) SHOULDER LEFT + RIGHT
RIGHT FOOT, NASAL

Any problem with the following types of anesthesia? (please check)

☐ General ☐ IV Sedation ☐ Local ☐ Dental Anesthesia

If you checked any of the above types of anesthesia, please explain the problem:

FAMILY HISTORY (check any family illnesses)

☒ Diabetes ☐ Bleeding problems ☐ Anesthesia Problems ☐ Other (describe below): _____

SOCIAL HISTORY

Are you working now? ☒ YES ☐ NO What is your occupation? FINN FIGHTER

☐ Single ☒ Married ☐ Widowed ☐ Live Alone ☐ Live With Others

Do you smoke tobacco? YES ☒ NO ☐ How much? _____ # of years? _____
Do you drink alcohol? YES ☒ NO ☐ How much? _____ # of years? _____
History of substance abuse? YES ☒ NO ☐ If yes, please describe _____
Pregnant or could be pregnant? YES ☐ NO ☒

REVIEW OF SYSTEMS

Height: _____ Weight: 5008

Please circle and describe the symptoms that pertain to you:

YES ☒	Constitutional (fever, weight loss, night sweats, etc.):
YES ☒	HEENT (vision issue, dizzy/poor balance, head ache, etc.):
YES ☒	Heart (chest pain, murmur, irregular beats, etc.):
YES ☒	Vascular (edema, claudication, varicose veins, etc.):
YES ☒	Respiratory (asthma, shortness of breath, cough, etc.):
YES ☒	Gastrointestinal (GI) (appetite, diarrhea, constipation, etc.):
YES ☒	Urinary (problems urinating, incontinence, etc.):
YES ☒	Musculoskeletal (arthritis, stiffness, etc.):
YES ☒	Skin (acne, rash, sores, etc.):
YES ☒	Neurological (seizures, weakness, numbness, fainting, etc.):
YES ☒	Psychiatric (depression, mood liability, other):
YES ☒	Endocrine (hot/cold intolerance, excess sweating, etc.):
YES ☒	Hematologic (bleeding tendency, anemia):

Patient ID#: _____ AGE: 44 Occupation FINISHER

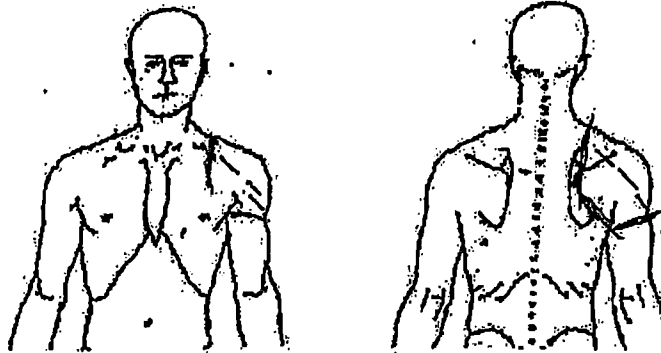
Are you right handed or left handed? (circle one) RIGHT LEFT

Date of onset of pain or injury (Give a specific date, if possible) 12/2008

Describe in detail the nature of the injury SHOULDER PAIN PRESSURE POTTING

Using these symbols, mark the area on your body where you feel the described sensations.

ACHING ||||| NUMBNESS ==== PINS & NEEDLES 0000 BURNING XXX OTHER ---



Rate your pain on the scale: (circle one) Lowest 1 2 3 4 5 6 7 8 9 10 Highest

What makes the pain worse? WHEN I ^{REST MY} ARM ON SOMETHING 6 USING A MOUSE ON A COMPUTER

What makes the pain better? NOTHING

Do you have pain at night? Describe it: YES SHARP

Do you have neck pain? (circle one) YES NO Numbness or tingling in your arms? (circle one) YES NO

Have you had any previous injuries to your shoulder, neck or elbow on this side? (circle one) YES NO
If yes, describe: _____

Have you previously had physical therapy for this particular problem? (circle one) YES NO
If yes, when and where was the therapy given? _____

Have you previously had injections for this problem? (circle one) YES NO
If yes, when and did the injection help? _____

What medications do you take for pain? (List all over-the-counter and prescription medications)
WATER

What is the most active thing you do with your arms, i.e. sports, chores, home repair or work related activity?
WORK ON COMPUTER, BOWLING, FISHING.

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ROPER ST. FRANCIS HEALTHCARE

Incident/Accident/Date of Onset Form

Information Required by HIPPA when Services are Related to any
Type of Accident/Injury/Incident or onset of Pain

Name of Patient: THOMAS CONTAMAS

Patient's HPP Guarantor #: _____

Patient's HPP Account#: _____

Patient's Date of Birth: 8/25/1961

Type of Accident/Incident: Please check one:

☐ Auto Accident

Note: If auto accident, State where accident occurred is required: State: _____

☒ Employment Related

☐ None of the above (Example: Woke up with Back Ache)

☐ Other: Please specify: _____

Date of Accident/Incident: 10/20/89 **Accident/Incident Information**

If not accident: Date of Onset or Illness/Symptoms: _____

Approximate time of Accident/Incident: 1600

Where accident Occurred: (i.e.: grocery store, Car, Bus, etc.): FLINE STATION

Brief description of how accident/incident occurred or how onset of symptoms occurred:
LEFTENL WEIGHTS

Type of Injury/Illness: (include body part/s) Example: Sprain of foot:
TORN LABRUM

If employment related: Please provide us with the following information:

1. Name of Employer: ST. JOHNS F.D.
2. Name of Contact: (Name of person who handles work injuries at patient's work):
DIANE BIGDA
3. Contact Phone Number (include area code): 843-559-9144
4. Work Comp Policy/Claim #: _____
5. Name and address of Work Comp Carrier: _____

6. Name of Adjuster: JAYE JENNINGS
7. Work Comp Carrier Phone # (include area code): 803-896-5853

Name of person providing information: THOMAS CONTAMAS

Relationship to Patient: _____

Date: 8/16/10

Employee's Signature: T. Contamas

(Examples of diagnosis requiring accident/onset date: fracture, sprain or strain, auto accident, work related injury, fall, contusion, wound, laceration, back pain, etc. all 800 to 900 Dx codes require this information)

Primary Physician:

Patient: CONTRERAS, THOMAS DOB: 09/25/1961 Sex: male Tel: 843-324-5387

Report Name: OPERATIVE REPORT

Accession ID: 2018614

REPORT

SERVICE: Orthopedics.

ATTENDING: Dr. James DeMarco

ASSISTANT: None.

PREOPERATIVE DIAGNOSIS (ES):

1. Right shoulder coracoid impingement.
2. Right shoulder intra-articular synovitis and adhesions.
3. Right shoulder subacromial impingement with adhesions.
4. Right shoulder long head of biceps tendinopathy.

POSTOPERATIVE DIAGNOSIS (ES):

1. Right shoulder coracoid impingement.
2. Right shoulder intra-articular synovitis and adhesions.
3. Right shoulder subacromial impingement with adhesions.
4. Right shoulder long head of biceps tendinopathy.

PROCEDURE(S) PERFORMED:

1. Right shoulder major debridement of intra-articular synovitis with coracoid decompression. (CPT code 29823)
2. Right shoulder subacromial decompression and bursectomy. (CPT code 29826)
3. Right shoulder long head of the biceps tenodesis. (CPT code 29828)

ANESTHESIA: General with interscalene block by Dr. Julius Ivester

ESTIMATED BLOOD LOSS: Minimal.

IMPLANTS: Arthrex 8 mm x 20 mm biceps tenodesis screw.

COMPLICATIONS: None.

INDICATIONS: Mr. Contreras is a 50-year-old gentleman who had an on the job accident and underwent previous shoulder arthroscopy. He continued to have anterior coracoid and long head of the biceps pain and has failed all conservative management. He understands the risks and benefits of surgical intervention and wishes to proceed.

DESCRIPTION OF OPERATION: The patient was brought to the operating room, induced with general anesthesia after receiving interscalene block. He was given preoperative antibiotics. DVT prophylaxis applied to the legs. A time out was called and confirmed. Exam under anesthesia showed forward flexion of 170 degrees, external rotation 90 degrees, and internal rotation

of 60 degrees. The right shoulder was then double prepped and draped in the usual sterile manner.

Standard anterior and posterior portals were established into the joint. The cartilage surfaces showed some grade II and III changes on the midportion of the glenoid. There was a very small area of grade III changes on the upper anterior humeral head. The remainder of the cartilage surfaces, glenoid and humeral head were within normal limits. The subscapularis looked completely normal. The undersurface of the rotator cuff looked normal. Biceps was seen to have some tendinopathic changes. The rotator interval showed some scar tissue adhesion as well as synovitis anteriorly, superiorly and posteriorly. There was some mild labral fraying posteriorly and inferiorly as well as superiorly.

Through an anterior portal with a 4.5 mm shaver and ArthroCare Wand, debridement was carried out of the synovium. The rotator interval was released and the adhesions released anteriorly as well. We then did a debridement around the coracoid until it was well delineated, and with a 5.5 mm bur, decompression of the coracoid was made taking off approximately 4-5 mm of bone until a space between the subscap and coracoid was adequate. When we had completed there, we then tenotomized the biceps and marked the rotator interval with a PDS suture. We went in the subacromial space. A mild amount of bursitis was encountered. This was removed through the posterolateral portal with the shaver and ArthroCare Wand. We recessed residual portion of the CA ligament. The rotator cuff was intact. We did an undersurface smoothing of the acromion and AC joint to take off any small rough areas, but the space was otherwise adequate. Then opened up the rotator interval with a 15 blade through an anterolateral portal and took the biceps out the portal and whipstitched it with a fiber whipstitch. We subsequently drilled an 18.5 mm tunnel _____ PassPort cannula and placed the tendon into the drill hole, affixing it to the hole with an 8 mm screw. We then over tied the whipstitch with one of the stay sutures within the screw. This covered up the screw and applied gentle fixation to the tendon. Then cleaned up the subacromial space, took final pictures, closed the portals with 3-0 nylon and large Steri-Strips. Dressed the wound sterily and awoke the patient and brought him to the recovery room in stable. No complication. Sponge and needle counts were correct. Total surgical time was 1 hour 15 minutes.

James DeMarco, MD

IR: ras JD: 03/29/2012 11:06 A TD: 03/29/2012 12:25 P JOB#: 00177708
cc: James DeMarco, MD DOC#: 2018614

Roper Hospital
OPERATIVE REPORT
10/11/2010

MSR# 11139235
CONTRERAS, THOMAS
000774899
James DeMarco, MD
Page 1

MP # 7473

W/C

SERVICE: Orthopedics.

ATTENDING: Dr. James DeMarco.

ASSISTANT: None.

PREOPERATIVE DIAGNOSES:

1. Right shoulder thickening of middle glenohumeral ligament and superior coracohumeral ligament.
2. Right shoulder intra-articular synovitis.
3. Right shoulder type 1 superior labrum anterior to posterior tear.
4. Right shoulder subacromial impingement syndrome and bursitis.
5. Right shoulder acromioclavicular joint osteoarthritis.

POSTOPERATIVE DIAGNOSES:

1. Right shoulder thickening of middle glenohumeral ligament and superior coracohumeral ligament.
2. Right shoulder intra-articular synovitis. 727.00
3. Right shoulder type 1 superior labrum anterior to posterior tear. 840.7
4. Right shoulder subacromial impingement syndrome and bursitis. 726.2 726.19
5. Right shoulder acromioclavicular joint osteoarthritis. 715.11

OPERATION:

- ③ Right shoulder major débridement of a superior labrum anterior to posterior tear, intra-articular synovitis and release of middle glenohumeral and superior coracohumeral ligaments and rotator interval tissue. (CPT code 29823)
- ② Right shoulder subacromial decompression and bursectomy. (CPT code 29826)
- ② Right shoulder acromioclavicular joint resection (CPT code 29824).

ANESTHESIA: General with interscalene block.
ANESTHESIOLOGIST: Dr. Elden Sherman.

ESTIMATED BLOOD LOSS: Minimal.

IMPLANTS: None.

COMPLICATIONS: None.

HISTORY: Mr. Contreras is a 49-year-old gentleman who had an on the job injury as a firefighter and still had pain and discomfort in the right shoulder despite two previous arthroscopies. He had a previous repair superior labrum that did not help. The hardware was then removed a débridement was carried out. He is continuing to have pain and discomfort over that area. He has failed all forms of conservative management including injections, therapy, anti-inflammatories, activity modifications and job restrictions. He has signed a consent and wishes to proceed.

James DeMarco, MD

10/8/8
G# 17-00070-9406
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coll

Roper Hospital
OPERATIVE REPORT
10/11/2010

CONTRERAS, THOMAS
000774899
James DeMarco, MD
Page 2

DESCRIPTION OF OPERATION: The patient was brought to the operating room, induced with general anesthesia after receiving an interscalene block. He was given preoperative antibiotics. DVT prophylaxis applied to legs. He was placed in the beach chair position. Time out was called and confirmed. His right arm was then double prepped and draped in the usual sterile manner.

Standard anterior and posterior portals were established into the joint. Chondral surfaces, humeral head and glenoid were within normal limits. He did show some grade 1 to 2 changes on the glenoid but he had normal bare spots on the glenoid and posterior humeral head. There was type 1 SLAP tear and fraying. There was no instability to the superior labrum. The biceps was pulled and the joint seemed to be completely normal. There was significant thickening of the middle glenohumeral ligament with induration of the tissues anteriorly. No previous hardware sutures could be found. The upper subscapularis was intact though again there was encasing of the subscapularis with the superior and middle glenohumeral ligaments keeping it from moving freely, and some of this tissue did interfere also with the biceps gliding in and out of the bicipital groove. The undersurface of the rotator cuff including supraspinatus, infraspinatus, teres minor, were all within normal limits. The axillary pouch showed no loose bodies and there was no significant synovitis inferiorly. Posteriorly there was some labral fraying but was otherwise within normal limits. Went through anterior portal. Good débridement was carried out of the synovium. The undersurface of the type 1 SLAP tear, the middle glenohumeral and superior coracohumeral ligaments were released back to a stable and much more flexible border. We were able to see that in full internal and external rotation there was no undue pulling on the biceps like it was at the beginning of the case prior to the resection. Once we were happy with the débridement within the joint in the subacromial space there was seen to be a mild amount of bursitis. This was removed with the shaver and ArthroCare Wand through both the posterior and lateral portal. The CA ligament was recessed and there was a type 2+ sloping acromion. There was some bursal sided rotator cuff fraying but no significant tearing into the cuff. There was no full thickness or significant partial thickness tear. We then used the 5.5 mm bur and acromioplasty was performed utilizing posterior chamfer technique. Once we were satisfied with the acromioplasty, the AC joint was examined and seen to be quite osteophytic and there was no cartilage present. Therefore, we did a distal clavicle resection taking out about 10 to 12 mm distal clavicle through posterior and then a direct anterior approach with the bur. We checked this from orthogonal views and made sure that the resection was complete and parallel. Once satisfied with that, went in the subacromial space, drained the area after doing a final cleanup, closed the portals with 3-0 nylon, large Steri-Strips. Took the arm through a full range of motion to make sure that was no restrictions and dressed the wound sterilely, awoke the patient and brought to the recovery room in stable condition. No complication. Sponge and needle counts were correct. Total surgical time was 1 hour and 15 minutes.

James DeMarco, MD

TR: res DD: 10/11/2010 2:35 P TD: 10/12/2010 1:17 P JOB#: 001464085 DOC#: 1828476
cc: James DeMarco, MD

James DeMarco, MD

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PATIENT: CONTRERAS, THOMAS
MEDICAL RECORD #: 2889
DATE OF SURGERY: 10/01/09
SURGEON: David Jaskwich, M.D.
ASSISTANT: Amy Stanton, PA-C
ANESTHESIA: General/Scalene block
PREOPERATIVE DIAGNOSIS: Right shoulder pain and impingement status post labral repair. (726.10)
POSTOPERATIVE DIAGNOSIS: Right shoulder pain and impingement status post labral repair. (726.10)
OPERATION: Right shoulder arthroscopy with extensive debridement of suture, labrum, bursa and bone. (29823)
ESTIMATED BLOOD LOSS: Minimal
FLUIDS: Less than 500

INDICATIONS: The patient is a 40-year-old gentleman who underwent a SLAP repair of the right shoulder. He continues to have pain and catching when he circumducts the shoulder.

PROCEDURE: The patient was taken to the operating room and anesthesia was administered. The right shoulder was prepped and draped in the usual sterile fashion after a block was administered. The posterior portal was then established. A survey of the joint was performed.

ARTHROSCOPIC FINDINGS: The glenohumeral cartilage surfaces were intact. The labrum was found to have evidence of repair. The suture was in good position overlaying the labrum. The underlying labrum had not healed itself although it was clearly opposed to the glenoid neck. There was mild synovitis around the suture anchor. The subscapularis was intact and the biceps tendon itself was intact. The biceps was pulled in the joint and found to be intact with no evidence of tearing.

An anterior portal was established. The suture was removed. The labrum was debrided taking it back away from the joint. Although the labrum was peeled back across the top of the glenoid, decision was made not to repair given the fact that a prior repair was done and the labrum did not seal. The glenoid neck was debrided. A limited synovectomy was carried out to remove the reddened tissue. The scope was then removed and the portals were closed with nylon. A sterile dressing was applied.

Lowcountry Outpatient Surgery Center
OPERATIVE REPORT

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10/05/2009 09:00 8432856001

LOWCOUNTRY SURGERY

Corvel Scan Date: 10/5/

PATIENT: CONTRERAS, THOMAS
MEDICAL RECORD #: 2889
DATE OF SURGERY: 10/01/09

The patient was then transferred to PACU in stable condition.
The first assistant was essential for completion of the case.

DAVID JASKWHICH, M.D.

DD: 10/01/09
DT: 10/02/09
DJ/ETS:ftw 1001-002

Lowcountry Outpatient Surgery Center
OPERATIVE REPORT
Page 2 of 2

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PATIENT: CONTRERAS, THOMAS

MEDICAL RECORD #: 2889

DATE OF SURGERY: 01/29/09

SURGEON: David Jaskwhich, M.D.

ASSISTANT: Jason Trigiani, PA-C

ANESTHESIA: Scalene block/General

PREOPERATIVE DIAGNOSIS: 1. Right shoulder pain and superior labral tear with bursitis. (726.10)
2. Right shoulder superior labral tear, anterior-posterior (SLAP).

POSTOPERATIVE DIAGNOSIS: 1. Right shoulder pain and superior labral tear with bursitis. (726.10)
2. Right shoulder superior labral tear, anterior-posterior (SLAP).

OPERATION: 1. Right shoulder arthroscopy with extensive debridement of bursa, synovium, labrum and bone. (29823)
2. Arthroscopic repair of superior labrum anterior-posterior (SLAP) tear. (29807)

ESTIMATED BLOOD LOSS: Minimal

FLUIDS: Less than 500

INDICATIONS: The patient is a 47-year-old gentleman with a superior labral tear and inflammation of the right shoulder who has failed conservative treatment.

PROCEDURE: The patient was taken to the operating room and anesthesia was administered. He was taken to the operating room and placed in the decubitus position. The right arm was suspended in 10 pounds of traction. The right arm was then prepped and draped in the usual sterile fashion. A posterior portal was established and a survey of the joint was performed.

ARTHROSCOPIC FINDINGS: The glenohumeral joint cartilage surfaces were intact. There was a superior labral tear with a Buford complex anteriorly and some fraying of the anterior labrum from the 3 o'clock to the 5 o'clock position. The biceps tendon itself was intact. The rotator cuff was intact. In the subacromial space there was evidence of a significant bursitis present and thickening of the bursa and redness.

A subacromial decompression was carried out with excision of bursa and excision of bone in the subacromial space. The cuff was inspected and found to be intact from the bursal side.

The subacromial space was entered. The labrum was débrided as was the neck of the glenoid and débrided back to stable tissue. The Buford complex was identified. The anterior labrum was débrided as well. The superior labrum was

PATIENT: CONTRERAS, THOMAS
MEDICAL RECORD #: 2889
DATE OF SURGERY: 01/29/09

debrided in the area of the superior labral tear and it appeared to be unstable. Decision was made to proceed with a limited repair of the SLAP tear.

A large working portal was placed anteriorly. A 2.9 Bioraptor anchor was placed at the 12 o'clock position and the superior labrum was secured with a suture anchor into its natural position. Care was taken to avoid undue tension on the biceps tendon and the Buford complex was not closed.

The scope was then removed. The portals were closed with nylon. A sterile dressing was applied.

The patient was transferred to PACU in stable condition.

The first assistant was essential for completion of the case providing assistance with retraction and positioning of the arm.

DAVID JASKWHICH, M.D.

DD: 01/29/09
DT: 01/30/09
DJ/ETS:ftw 0129-015

TriCounty Radiology Associates

(843) 529-0600
North Charleston
Summerville
West Ashley

PATIENT: Cooneras, Thomas
DOB: 9/25/1961
MRN: 412212
PHYSICIAN: David Jaskwisch, MD
DATE: 8/26/2009

EXAM: MRI OF THE RIGHT SHOULDER WITHOUT CONTRAST

HISTORY: Surgery in January with persistent pain. Injury to shoulder lifting weights one year ago. Surgery in January 2009. Continued pain.

TECHNIQUE: Following standard right shoulder arthrogram, axial T1 proton density, axial, sagittal and coronal, coronal T1-weighted with and without fat sat MRI images of the right shoulder obtained on a high-field 1.5 Tesla MRI.

CONTRAST: Please see report of right shoulder arthrogram for contrast dosing.

FINDINGS: The arthrogram and MRI procedures are both limited by motion artifact and several series repeated on the MRI secondary to motion. The fluid signal in the anterior aspect of the deltoid is related to anesthesia as the patient moved during the examination and approximately three attempts were made of arthrogram with the final attempt successful for an intra-articular injection. The amount of contrast in the joint had resorbed and decompressed prior to the MRI examination. Some of the contrast decompressed beneath the subscapularis muscle, and this can be seen as a variant of normal.

There is mild to moderate osteoarthritis of the acromioclavicular joint. The acromion is type II. No Hill-Sachs or Bankart deformities. Postoperative change identified of the labrum. There is thickening and irregularity of the anterior labrum and thickening of the middle glenohumeral ligament. This may be related to prior resection or a nondisplaced labral tear from the 2 o'clock through the 5 o'clock position. There is some contrast imbibement at the 2 o'clock through the 3 o'clock position. There is fluid in the subdeltoid bursa suggesting mild bursitis. No significant contrast in the subdeltoid bursa. The minimal contrast anteriorly is related to the injection site. Mild undersurface irregularity suggesting low grade articular-sided partial tear or prior resurfacing. Minimal increased signal in the supraspinatus and infraspinatus tendons consistent with tendinopathy. No significant brightening on the T2-weighted images. This is consistent with tendinopathy. The subscapularis and pectoralis minor tendons appear intact. The biceps tendon is in the expected location. The intra-articular portion of the biceps tendon demonstrates a mild increased signal and mild thickening suggesting tendinopathy. No significant muscular atrophy or edema of the supraspinatus, infraspinatus, subscapularis or pectoralis minor muscles. There is also irregularity of the superior labrum from the 9 o'clock to 12 o'clock position again suggesting prior repair or a nondisplaced tear. Mild osteoarthritis of the glenohumeral joint.

The MRI and the arthrogram portions of the examination were limited by motion artifact. Several series of the MRI were repeated secondary to motion artifact and several attempts at the arthrogram were made secondary to motion during that examination.

IMPRESSION:

1. Mild articular-sided irregularity of the supraspinatus and infraspinatus tendons suggesting low grade articular-sided partial tear versus prior resurfacing.
2. There is also mild tendinopathy of the supraspinatus and infraspinatus tendons. No full thickness tendon tear is seen.
3. Irregularity of the glenoid labrum from the 9 o'clock through the 5 o'clock position suggesting prior repair or resurfacing versus a nondisplaced labral tear. Recommend correlation with prior operative note.
4. Mild tendinopathy of the intra-articular portion of the biceps tendon.
5. Mild to moderate osteoarthritis of the acromioclavicular joint and mild osteoarthritis of the glenohumeral joint.
6. Postoperative changes noted.

Donald E. Olafson, DO
DO/1b

Page 1 of 2

le 2

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8/27/2009 11:04:44 AM

PAGE

3/003

Fax Server

Patient Name: Contreras, Thomas

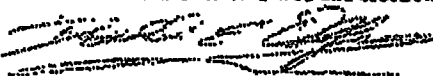
MRN: 412212

EXAM: MRI OF THE RIGHT SHOULDER WITHOUT CONTRAST

DD: 8/27/2009 / DT: 8/27/2009

JOB: 8784919

This document has been reviewed and electronically signed by



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TriCounty Radiology Associates

(843) 525-3600
North Charleston
Summerville
West Ashley

PATIENT: Contreras, Thomas
DOB: 9/25/1961
MRN: 412212
PHYSICIAN: David Jaskwich, MD
DATE: 8/26/2009

EXAM: ARTERIOGRAM RIGHT SHOULDER PRIOR TO MRI

HISTORY: Right shoulder pain.

PROCEDURE: During the patient interview and discussion, risks, benefits and indications of shoulder arthrogram were discussed. Risks including but not limited to bleeding, infection, and possible examination failure and need for repeat were discussed. The patient expressed understanding and gave verbal and written consent to proceed. Following standard sterile prep and drape and utilizing approximately 3 cc of 1% lidocaine without epinephrine for local superficial and deep soft tissue anesthesia, a 22-gauge needle was passed into the glenohumeral joint under fluoroscopic monitoring. Injection of approximately 1 cc of Isovue 300 iodinated contrast to ensure the intraarticular position of the needle. Then, injection of gadolinium contrast performed to achieve good glenohumeral joint distension. Approximately 10 cc of the standard gadolinium mixture was instilled into the shoulder joint. Standard gadolinium contrast mixture was obtained by combining 15 cc of gadolinium solution drawn of a mixture of 0.2 cc of Magnevist gadolinium contrast and 50 cc of normal saline at an approximate 1:200 dilution, and this was mixed with 5 cc of 0.25% bupivacaine. The needle was removed and hemostasis achieved. Limited FluoroSpot images were obtained to document the intraarticular contrast. The patient tolerated the procedure well with no immediate complications. The patient was dismissed to the MRI for subsequent imaging.

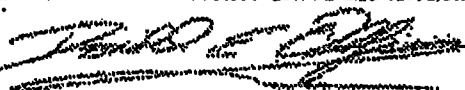
IMPRESSION:

1. Post right shoulder arthrogram. Please see report of MRI for complete dictation.
2. Difficult arthrogram secondary to mild patient motion during the examination. Small amount of iodine contrast instilled in the subdeltoid bursa and the gadolinium contrast was verified under direct fluoroscopic guidance to be within the glenohumeral joint.
3. The MRI was delayed by approximately 30 minutes secondary to technical factors and prolonged imaging of the patient prior to this examination. Some of the contrast resorb prior to the MRI images.

Donald E. Olofsson, DO
DO / lb

DD: 8/26/2009 / DT: 8/26/2009
JOB: 8779254

This document has been reviewed and electronically signed by



64

Lowcountry Orthopaedics and Sports Medicine

98 A Springview Lane
Summerville, SC 29485
Phone: (843)797-5050

NAME: CONTRERAS, THOMAS	DATE OF EXAM: 12/12/2008
DOB: 09/25/1961	Patient No: 105794
Physician: SPEARMAN, JAMES	

MRI RIGHT SHOULDER

HISTORY: Right shoulder rotator cuff tendinitis.

TECHNIQUE: Routine MRI of the shoulder was performed on a 1.0 Tesla GE MRI utilizing fat saturated axial PD, oblique coronal T1, oblique coronal fat saturated PD and T2, and oblique sagittal PD/T2 sequences.

FINDINGS: The patient was imaged in mild internal rotation. The anterior supraspinatus tendon demonstrates irregularity without a defect and no confirmation of a full-thickness rotator cuff tear. The appearance of the supraspinatus does suggest tendinitis. There is no atrophy of the rotator cuff muscles.

No glenohumeral joint effusion. No significant fluid in the subacromial/subdeltoid bursa.

The long head biceps tendon is grossly intact. Deformity of the superior glenoid labrum posterior to the biceps labral anchor is suspicious for a tear and there is question of a tiny para-labral cyst medial and superior. Remaining labrum is unremarkable.

The AC joint demonstrates moderate degenerative changes and hypertrophic bone formation. There is a curved acromion.

IMPRESSION:

1. Supraspinatus tendinitis. No evidence of a full-thickness rotator cuff tear.
2. Probable superior labral tear.
3. Moderate AC joint arthrosis.

James A. Thesing, D.O.
Electronic Signature - Final Report

DD: 12/12/2008/DT: 12/14/2008

Reports are Considered Preliminary until Marked with Electronic Signature

LS

Bon Secours St. Francis Hospital

Name: CONTRERAS, THOMAS
Exam Date: 10/08/08 2016
Ord. Phy.: TAYLOR-MD, STEVEN J

MR#: C000774899
DOB: 09/25/61
Pt. Phone#: (843) 769-4429
Ord. Phy.#: (843) 402-1037
Phy. Fax #: 8434021295

TAYLOR-MD, STEVEN J
2095 HENRY TECKLENBURG DR
DEPT OF EMERGENCY MED
CHARLESTON SC 29414

Acct_Nbr : C0828201311
Pat_Type : ERC

Chk-in # Order Exam
2084545 0001 30274 XR SHOULDER 2 VIEW MIN+R
Ord Diag: ;injury

RIGHT SHOULDER, THREE VIEWS: 10/08/08

COMPARISON: None

INDICATION: Injury, pain

FINDINGS:

No fracture, dislocation, lytic or sclerotic osseous lesion. No significant glenohumeral joint change. There is minimal hypertrophic change at the AC joint. The visualized thorax is normal.

IMPRESSION:

Minimal hypertrophic change at the AC joint; otherwise negative right shoulder series.

dk

Transcriptionist- DONNA L KAUTH
Reading Radiologist- MATTHEW J BRADY-MD
Releasing Radiologist- MATTHEW J BRADY-MD
Released Date Time- 10/08/08 2224

FINAL

Page 1

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PRINTED BY: franwe DATE 9/30/2011
270

Bon Secours St. Francis Hospital

Name: CONTRERAS, THOMAS J
Exam Date: 11/17/05 1931
Ord. Phy.: RENK-MD, GEOFFREY E

MR#: C000774899
DOB: 09/25/61
Pt. Phone#: (843) 769-4429
Ord. Phy.#: (843) 401-1037
Phy. Fax #: (843) 402-1295

RENK-MD, GEOFFREY E
2095 HENRY TECKLENBERG DR
DEPT OF EMERGENCY MED
CHARLESTON SC 29414

Acct_Nbr : C0532101274
Pat_Type : ERC

Chk-in # Order Exam
1375875 0001 30274 XR SHOULDER 2 VIEW MIN*L
Ord Diag: 719.49-JOINT PAIN-MULT JTS

LEFT SHOULDER: 11/17/05

CLINICAL HISTORY: Shoulder dislocation.

AP, oblique, and transscapular views of the left shoulder region demonstrate the bony structures in this area to be intact, without evidence of acute fracture/dislocation.

prj

Transcriptionist- PAULINE R JOHNSON
Reading Radiologist- FORREST C HAM-MD
Releasing Radiologist- FORREST C HAM-MD
Released Date Time- 11/18/05 1700

FINAL DUPLICATE

Page 1

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67

DATE: 7-29-69 ROOM 1

ANESTHESICS						DATE: 7-29-09		ROOM #:	
VENTILATION						PRE-PROCEDURE			
						☐ Patient Identified ☒ Chart reviewed ☒ Questioning ☒ Consent Signed			
MONITORS						OTHER			
☒ EKG ☒ O ₂ Monitor ☒ BP ☒ Pulse Ox ☒ EtCO ₂ ☒ Sulfoscopes ☒ Spirometer ☒ Temperature: iso / Arm / Head / Rectal ☒ Nerve Stimulator ☒ Eyes protected						☒ Mask GA ☒ LMA ☒ One Lung Vent. ☒ SB ☒ OLETT ☒ Intubation Slide Tube Sz Attempts ☒ Oral ☒ Blind ☒ Direct ☒ Nasal ☒ Fiberoptic ☒ Secured ☒ Uncuffed ☒ Leak ☒ Cuffed ☒ Equiv. Dist. breath sounds ☒ Auscultate ☒ ECG			
INDUCTION						WARNING MEASURES			
☒ Preoxygenation ☒ IV Induction ☒ Inhal Induct. ☒ RSJ						☒ FWD ☒ Corneal ☒ Blankets ☒ Mead cover ☒ Chlcut			
REMARKS:						1315 - pt. conscious no R/O/B of P.O.P. 410 pte. consented before bloodwork & WABC 1339 - pt. in O.R. 1346 - smooth IV volu 1346 - incision 15:04 - lwbk 2 15:06 - RTUP TO PULC 15:08 - 1st 12. Stand w/rt-PH			
NUMBERS FOR REMARKS:						Present at induction Present at Emergence Present at All Key Points			
IV FLUIDS									
WARMER									

DIAGNOSIS (2) SHOULDER D.I.D. on pat 471				PATIENT POSITION ☐ Supine ☐ Prone ☒ Left lateral decubitus ☐ Right lateral decubitus ☐ Upright				LIMBS RIGHT ☐ I/V ☐ N ☐ A-Line ☐ Swan Ganz ☐ CVP ☐ CITE				TIME: 15:08											
AGE: 47		HT: 5'6"		WT: 225		TEMP: 97.8		B/P: 130/80		P: 78		R: 78		EKG: NOMINAL		LOCATOR: 10/10/78							
HEART: RLL				LUNGS: CTAB				UOP: N/A				FLUIDS STARTED: (2) L.R. 1000cc				GIVEN: R/L							
ALLERGIES: PCN, Latex, Rubber				PATIENT SAFETY ☐ Machine Check ☐ Safety Ball On ☐ Airway Roll ☐ Airwayobstruction				☐ Arms Tucked ☐ Eye Care ☐ Chlormid ☐ Sterile Field ☐ Pressure points checked & padded				☐ Airboard <90° ☐ Foam bladder ☐ Prapped ☐ Bedside				REGIONAL ☐ Spinal ☐ Epidural ☐ Cerebral Nerve Block ☐ Other: ☐ Pre-Op Pain ☐ Sterile Prep ☐ Post-Op Pain ☐ Post-Op N/A Siten				APR: 16			
PRE-MED: ALCOBIN 100mg IV @ 1318																SPEC: 97							
REMARKS: ALCOBIN 100mg IV @ 1318																CHRONIC DISEASES (2) X-ROSTHELM Medicine: SYMPHONIA 2" SAMPLE Allergies: ☐ Drug ☐ Food ☐ Home ☐ CSF ☐ Pain ☐ Paracetamol Drugs:				CHRONIC DISEASES ☐ Asthma ☐ Diabetes ☐ Hypertension ☐ Heart Disease ☐ Kidney Disease ☐ Liver Disease ☐ Lung Disease ☐ Stomach Disease ☐ Throat Disease ☐ Urinary Disease ☐ Vascular Disease ☐ Other			
SURGEON: J. STEVEN, M.D.				CONSENTING: [Signature] 02-03-04				ANESTHESIA: [Signature] 01-02-03-04-05				TOTAL: [Signature]											
N/A				N/A				N/A				N/A				N/A							

Arise Begin	Arise End	Total	OP Start	OP End	QUAL C
11/3/5	15.12		1356	18.07	
OP DATES (C) MOULDER ANTHROPOLOGY LAB SCAR					CONTRERAS, THOMAS 383 LANTANA DR Charleston, SC 29407 (843) 769-4429 2889 Jaskwich MD, David H.

PREANESTHESIA EVALUATION			
Proposed Surgery: (R) SHOULDER ARTHROSCOPY		Age: 47	Sex: M
Allergies: PCN → hives, LATEX → hives		HT: 70"	WT: 225#
Current Medications: BENICAR, GLUCOPHAGE, ALICERA, TRICOR, SYMBICORT, PREVACID		Temp: 98.2	BP: 143/85
Comments:		LABORATORY STUDIES	
		PT: 14.3	PTT: 14.3
		INR: 1.1	Chol: 222
		ABG: 7.38	Xray: OK
		MOG: 94	Other: OK
History from: ☐ Patient ☐ Significant Other ☐ Communication/Language Problem ☐ Parent/Guardian ☐ Chief ☐ Poor Historian			
CARDIOVASCULAR		RESPIRATORY	
condone S/S		4/6 TOB	
transfusion Hx		INH	
ENDOCRINE - INCLUDING HEPATIC		GI	
liver		GERD - well managed	
thyroid		Prevacid	
DH x 10 yrs, Accublocks von		GU	
CENTRAL NERVOUS		PROPOSED ANESTHETIC	
S2 SHA PWA/TIA		GA + Propofol, blood	
DENTAL STATUS		DATE: 1-29-09	
OK		TIME: 1:15	
OCULAR STATUS		MO: OK	
OK		CNA: OK	
Tobacco Use: ☐ No ☐ Yes ☐ Packs/Day for ☐ Years ☐ Quit ☐ Date ☐ No ☐ Yes ☐ Frequency ☐ No ☐ Yes ☐ Frequency			
PRE-INDUCTION EVALUATION			
Vital Signs: ☐ Stable ☐ Unstable	Site Anesthesia Record: ☐ OK ☐ NG ☐ E	ASA: 1	
Physical Status Changes: None			
Risk/Benefit/Complications Explained and Understood: Yes			
Pre-induction check of equipment and supplies for availability, cleanliness, safety and proper functioning completed by: 1:29:09 1315			
POST-ANESTHESIA VISIT		PATIENT IDENTIFICATION	
PRESENCE OR ABSENCE OF COMPLICATIONS: AK, USS, P, PWA, TIA, A, OX, FE, MAR, NAWC 1:29:09 69/5, 20		CONTRERAS, THOMAS 363 LANTANA DR Charleston, SC 29407 (843) 769-4429 2889 Jacksonville MD, David H	

Bon Secours St. Francis Hospital Imaging Services

Name: CONTRERAS, THOMAS
Exam Date: 11/18/10 1638
Ord. Phy.: OHLSON-MD, BLAKE

MR#: C000774899
DOB: 09/25/61
Pt. Phone#: (843) 769-4429
Ord. Phy.#: (843) 958-2500
Phy. Fax #: 8439582680

OHLSON-MD, BLAKE
2093 HENRY TECKLENBURG DR
SUITE 200
CHARLESTON SC

29414

Acct_Nbr : C1032200100
Pat_Type : OPC

Chk-in #	Order	Exam	
2654161	0001	36228	MR EXT LWR ANY JT W/O CTRST MRI*L
			Ord Diag: OCP TALUS

MRI EXAMINATION OF THE LEFT FOOT: 11/18/10

TECHNICAL: Sagittal T1 FSE T2 fat saturation, axial T1 FSE T2 fat saturation, coronal T1 FSE T2 fat saturated images were obtained.

HISTORY: Evaluate for OCD of the talus.

FINDINGS:

There is no marrow signal abnormality or focal sclerosis in the talus to suggest OCD. The talar dome is intact. There is no other marrow signal abnormality. The medial flexor tendons are intact. Lateral peroneal tendons are intact. Achilles tendon intact. Plantar fascia unremarkable. Sinus tarsi unremarkable. No significant joint effusion. Anterior talofibular and posterior talofibular ligaments intact. Medial deltoid ligament intact.

IMPRESSION:

No evidence of osteochondritis dissecans of the talus. Otherwise unremarkable MRI examination of the left ankle.

sr

Transcriptionist- SHIRLEY RODGERS
Reading Radiologist- CATHERINE JOHNSON GOUGH-MD
Releasing Radiologist- CATHERINE JOHNSON GOUGH-MD
Released Date Time- 11/19/10 1710

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Page 1

Bon Secours St. Francis Hospital Imaging Services
2095 Henry Tecklenburg Drive, Charleston, S.C. 29414 * (843) 402-1079

Bon Secours St. Francis Hospital

Name: CONTRERAS, THOMAS
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MR#: C000774899
DOB: 09/25/61
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Phy. Fax #: 8437633038

PASTIS JR-MD, NICHOLAS
2097 HENRY TECKLENBURG
SUITE 305 WEST
CHARLESTON SC

29414

Acct Nbr : C0831900691
Pat_Type : OPC

Chk-in #	Order	Exam	
2111084	0001	35172	CT MAXILLOFACIAL W/O CONTRAST
			Ord Diag: CHRONIC SINUSITIS

CT SCAN OF THE PARANASAL SINUSES: 11/14/08

CLINICAL HISTORY: Chronic sinusitis

Helical axial CT images were obtained through the paranasal sinuses plus coronal reformatted images, without intravenous contrast.

There is mild mucosal thickening inferiorly in the right maxillary sinus, with focal sites of density, discrete convex margins at the inferior to lateral aspect of the right maxillary sinus as well (probable underlying mucous retention cysts). Only minimal mucosal thickening is visualized medially in the left maxillary sinus. Also minimal mucosal thickening anteriorly in the sphenoid sinus, otherwise clear. Mild mucosal thickening in the right frontal sinus with opacification at the right inferior frontal recess.

There are postsurgical changes with previous removal of the superior medial contours of the maxillary sinuses, including the uncinate processes, and ethmoidectomy. Remaining ethmoid cavities appear relatively clear. There is also apparent absence of portions of the anterior aspects of the inferior turbinates. The nasal septum approximates the midline, minimally to the right anteriorly. Just superior to the frontal sinus extending to the left of midline there appears to be a focal site of somewhat rounded increased density within the diploic space of the frontal calvarium (axial image #27, coronal image #8).

IMPRESSION:

1. Previous paranasal sinus surgery including middle meatal antrostomies and ethmoidectomy.
2. Mild mucosal thickening and probable associated mucous retention cysts in the right maxillary sinus.

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Page 1

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Bon Secours St. Francis Hospital

Name: CONTRERAS, THOMAS
Exam Date: 11/14/08 1019
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2097 HENRY TECKLENBURG
SUITE 305 WEST
CHARLESTON SC 29414

Acct_Nbr : C0831900691
Pat_Type : OPC

Checkin-Exam Code Summary
2111084-35172

3. Mild mucosal thickening at the right inferior frontal recess - remainder of the sinuses appear relatively clear with minimal mucosal thickening in the left maxillary and sphenoid sinuses.

4. Just superior to the left aspect of the frontal sinuses, there appears to be a rounded site of somewhat increased density in the diploic space of the frontal calvarium, nonspecific but possessing discrete benign appearing margins.

dk

Transcriptionist- DONNA L KAUTH
Reading Radiologist- FORREST C HAM-MD
Releasing Radiologist- FORREST C HAM-MD
Released Date Time- 11/14/08 1601

FINAL

Page 2

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Bon Secours St. Francis Hospital

Name: CONTRERAS, THOMAS
Exam Date: 09/27/07 1409
Ord. Phy.: RENK-MD, GEOFFREY E

MR#: C000774899
DOB: 09/25/61
Pt. Phone#: (843) 769-4429
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Phy. Fax #: (843) 402-1295

RENK-MD, GEOFFREY E
2095 HENRY TECKLENBERG DR
DEPT OF EMERGENCY MED
CHARLESTON SC

29414

Acct_Nbr : C0727000980
Pat_Type : ERC

Chk-in #	Order	Exam	
1825209	0001	30110	XR ANKLE 3 VIEW MIN+L Ord Diag: ;ANKLE PAIN

LEFT ANKLE: 09/27/07

COMPARISON: None

Three views were done. Significant soft tissue swelling is seen laterally. No fracture or dislocation is seen. Ankle mortise is intact.

IMPRESSION:

Soft tissue swelling with no fracture appreciated.

aw

Transcriptionist- MARY A WEST
Reading Radiologist- JAMES W MELTON-JR-MD
Releasing Radiologist- JAMES W MELTON-JR-MD
Released Date Time- 09/27/07 1656

FINAL

Page 1

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73
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277

Tricounty
 **RADIOLOGY
ASSOCIATES**
Specialists In Outpatient Imaging

105794

James Spearman, MD
2270 Ashley Crossing Drive
Charleston, SC 29414

PATIENT: Contreras, Thomas
Phone #: 843-769-4429
ID Number: 412212
Birthdate: 9/25/1961

EXAM: MRI OF THE LEFT HIP

EXAM DATE: 7/13/2006

CLINICAL HISTORY: Left hip pain. Labral tear.

TECHNIQUE: Coronal T1 weighted, coronal STIR, coronal double-echo proton density and T2 weighted fat saturation, axial double-echo proton density and T2 weighted, sagittal proton density fat saturation images were obtained.

FINDINGS:

Left hip joint: There is no evidence of hip joint effusion or loose body. No evidence of subchondral edema signal or cystic change at the left hip. No evidence of marrow edema signal to indicate fracture or stress reaction of the femoral neck. No evidence of abnormal fluid signal to indicate iliopsoas or trochanteric bursitis. I do not see any evidence of acetabular labral tear. Gluteus tendon insertions appear unremarkable.

Bones: No evidence of fracture or osseous contusion. Unremarkable appearance of the right hip joint. No other osseous abnormality is demonstrated.

Musculotendinous structures: There is no evidence of musculotendinous injury. Specifically, no evidence of muscle tear, hematoma, or other edema pattern. No evidence of abnormal muscle atrophy.

Intrapelvic contents: There is no free fluid within the pelvis. No evidence of a discrete intrapelvic mass.

Neurovascular structures: No evidence of cyst, mass, or other compression upon the portions visualized of left sciatic or femoral nerves.

IMPRESSION:

1. Unremarkable MRI examination of the left hip joint. Specifically, no evidence of a discrete acetabular labral tear.

P.O. BOX 70609 • CHARLESTON, SC 29415 • (843) 529-0600 / Fax (843) 747-6565
Ashley Crossing East Cooper North Charleston West Ashley

73.2
278

Tricounty
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ASSOCIATES**
Specialists In Outpatient Imaging

Contreras, Thomas ID#: 412212

2. No other abnormalities are identified.

Kevin Snyder, MD /nlg
Dictated on 07/13/2006

Job # 3144403

This document has been electronically reviewed and signed.

Kevin E. Snyder, M.D.

Page 2 of 1

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Ashley Crossing East Cooper North Charleston West Ashley

703.4

279

Tricounty
 **RADIOLOGY
ASSOCIATES**
Specialists In Outpatient Imaging

David Seignious, MD
3314 Maybank Hwy
Johns Island, SC 29455

PATIENT: Contreras, Thomas
Phone #: 843-769-4429
ID Number: 412212
Birthdate: 9/25/1961

EXAM: RADIOGRAPHS OF LEFT HIP AND LUMBAR SPINE

EXAM DATE: 5/23/2006

CLINICAL HISTORY: Left sciatic area pain. Left hip pain.

TECHNICAL INFORMATION: Frontal and frogleg lateral radiographs of the left hip.

FINDINGS:

No acute fracture or dislocation. Left hip joint space appears well-maintained. No other osseous or joint abnormalities.

IMPRESSION: Unremarkable radiographs of the left hip.

Lumbar Spine: Frontal and lateral radiographs of the lumbar spine. Three totals images were obtained.

Evaluation of vertebral body alignment is within normal limits. There is no fracture or paravertebral soft tissue swelling. Disc heights appear relatively well-maintained throughout the lumbar spine. Changes of spondylosis at L3-4 and L4-5. No other osseous or disc abnormalities.

IMPRESSION: Changes of degenerative spondylosis without significant disc height loss at the L3-4 and L4-5 levels.

Kevin Snyder, MD/rc
Dictated on 05/23/06

Job # 2991023

This document has been electronically reviewed and signed.

Kevin E. Snyder, M.D.

P.O. BOX 70609 • CHARLESTON, SC 29415 • (843) 529-0600 / Fax (843) 747-6565
Ashley Crossing East Cooper North Charleston West Ashley

73.6

165794

PATIENT: CONTRERAS, THOMAS
MEDICAL RECORD #: 2889
DATE OF SURGERY: 03/08/06
SURGEON: David Jaskwich, M.D.
ANESTHESIA: Scalene block/IV sedation
PREOPERATIVE DIAGNOSIS: Left shoulder pain with superior labrum anterior and posterior lesion (SLAP) tear. (840.7)
POSTOPERATIVE DIAGNOSIS: Left shoulder pain with superior labrum anterior and posterior lesion (SLAP) tear. (840.7)
OPERATION: Left shoulder arthroscopy with debridement and arthroscopic repair of superior labrum anterior and posterior lesion (SLAP) lesion. (29807)

INDICATIONS: The patient is a 44-year-old gentleman who felt a popping in his shoulder when lifting weights last year. He has had continuous pain.

PROCEDURE: The patient was taken to the operating room and placed in the decubitus position. A scalene block was administered to the left arm. The left arm was then suspended in ten pounds of traction. The left arm was prepped and draped in the usual sterile fashion.

A posterior portal was established and a survey of the joint was performed. The glenohumeral cartilage surfaces were intact. The rotator cuff was intact. The biceps tendon had an area that was partially frayed. The superior labrum, both anterior and posterior, appeared to be torn loose and peeled back from the glenoid and had an unstable appearance to it. There was some fraying underneath the labrum as well. An anterior portal was established. The labrum was debrided as was the neck of the glenoid to provide a bony bed. After probing the SLAP lesion it was determined that it was unstable and merited going forward with repair. The portion of the biceps tendon that was frayed was debrided as well. The subacromial space was then entered. A bursectomy was carried out. The rotator cuff was probed and found to be stable and intact.

Next, repair of the SLAP lesion was carried out. Through the anterior portal at the 11 o'clock position a bioabsorbable suture anchor, 2.9, was placed. Bioraptor was used. The 11 o'clock position on the labrum was then anchored at this point. Using an accessory superior portal another suture anchor was placed at the 1 o'clock position. This was again secured to the labrum and tightened down. The labrum was then probed and found to be stable.

The scope was then removed. The portals were closed with nylon. Sponge and needle counts were correct. The patient was awakened and transferred to PACU in stable condition.

DAVID JASKWICH, M.D.

DD: 03/08/06

DT: 03/08/06

DJ/ETS:bkf 0308-007

73.8
Lowcountry Outpatient Surgery Center

OPERATIVE REPORT

Page 1 of 1

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LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE
David H. Jaskwich, M.D.

PATIENT: Thomas Contreras
CHART NO: 105794
DOB: 9/25/61

PAGE: Seventeen

05/05/10 (Continued)

The only restriction would be no physical training test because that may put too much of a demand on his shoulder, both the right and left. I will see him back in six to eight weeks. We talked about the fact that he may be limited in his treatment and may not be able to get much better. I would certainly not recommend any additional surgery. I will see him back in six to eight weeks and see how he is doing. DHJ/ETS:kp (05/07) 0505-032/mih

07/14/10: **SUBJECTIVE:** The patient is here for followup of his bilateral shoulder surgery. He is about the same that he was on his last shoulder. It is sore from time to time. He is able to do most things but when he tries to pick up anything heavy the shoulder give him pain. He tried to bowl the other day and by the second game the shoulder was burning. He has pain over the AC joint of the shoulder.

IMPRESSION:

4. Right shoulder pain, status post right shoulder arthroscopy, superior labrum anterior and posterior lesion (SLAP) repair.
5. Status post right shoulder arthroscopy and debridement.
6. Status post left shoulder superior labrum anterior and posterior lesion (SLAP) repair.

PLAN: He has reached maximum medical improvement. I would recommend permanent restrictions of 25 pounds of maximum lifting overhead and occasional 50 pounds at waist level, certainly nothing more than that without causing more damage to his shoulder. This would include him not being able pass his physical agility test which requires him to be able to drag about 175 pounds. I am hoping that he will be able to find some work capacity in the fire department, otherwise he may need to be ported out. He will require a 10 percent impairment rating of the right shoulder, 60 percent of the whole person. This is based on the fact that he has persistent pain, soreness, and weakness in the right shoulder. I will see him back here as needed. DHJ/ETS:tw (07/18) 0714-054/lb

LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE
David H. Jaskwich, M.D.

PATIENT: Thomas Contreras
CHART NO: 105794
DOB: 9/25/61

PAGE: Seventeen

117587473

05/05/10 (Continued):

The only restriction would be no physical training test because that may put too much of a demand on his shoulder, both the right and left. I will see him back in six to eight weeks. We talked about the fact that he may be limited in his treatment and may not be able to get much better. I would certainly not recommend any additional surgery. I will see him back in six to eight weeks and see how he is doing. DHJ/ETS:kp (05/07) 0505-032/mh

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LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE

David H. Jaskwich, M.D.

PATIENT: Thomas Contreras
CHART NO: 105794
DOB: 9/25/61

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02/24/10: SUBJECTIVE: The patient is here for followup of his right shoulder SLAP repair, 10/01/09. He has been on 45 pounds of lifting. He is more comfortable. He did some lifting the other day at home and his shoulder was sore for a day or two. He feels like he may be ready to try full duty, but is still concerned about the PT test.

PHYSICAL EXAMINATION: Good range of motion of the shoulder. Mild discomfort but good strength.

PLAN: I am going to let him go to full duty. I do not want him taking a physical fitness test for another three or four months, until June 2010. I will see him back in four months for a recheck. Other than that he is back to full duty, with the exception of the PT test. He has not yet reached MMI. DHJ/ETS:tw (02/26) 0225-035

05/05/10: CHIEF COMPLAINT: Follow up on right shoulder pain.

HISTORY OF PRESENT ILLNESS: Thomas is back. He continues to have pain in the right shoulder. He has pain over the front of the deltoid. He is unable to do much in the way of heavy lifting. He was working in the yard the other day and thinks he may have aggravated the shoulder. It is not feeling better since his second surgery.

PHYSICAL EXAMINATION: He has tenderness over the anterior biceps tendon and some pain with flexion and mild popping noted there. He also complains of some discomfort when I move the left shoulder.

IMPRESSION:

Right shoulder pain, status post shoulder arthroscopy and débridement with superior labrum anterior and posterior (SLAP) repair times two.
Left shoulder pain, recurrent.

TREATMENT/PLAN: We talked a little bit about what may be going on with this shoulder. I do not believe he would benefit from any additional surgery. First of all, I think he is probably about as good as he is going to get. I am going to inject him today with Depo-Medrol and Marcaine under sterile conditions right along the biceps tendon. I will continue to have him work at full duty and he seems to be okay with that.

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10/28/09 (Continued):

PLAN: I will put him back to light duty with 10 pounds of lifting to waist level with nothing overhead. He can go ahead and drive. We will see him back here in five weeks. He can continue physical therapy for now. He has not reached MMI yet. DHJ/ETS:smh (11/02) 1030-002

11/30/09: **SUBJECTIVE:** Status post right shoulder scope and debridement.

HISTORY OF PRESENT ILLNESS: The patient is back, doing great. He is comfortable. He still has some soreness and some weakness in the arm. Most of the pain is anteriorly.

PHYSICAL EXAMINATION: He is able to abduct and flex nearly fully. He has mild tenderness anteriorly. Strength is 4+/5.

PLAN: He is to continue physical therapy and start a strengthening phase. Increase him to 25 pounds of lifting with nothing overhead. He has not reached MMI. I will see him back here in two months. DHJ/ETS:rw (12/02) 1201-001

01/27/10: **SUBJECTIVE:** The patient is back, improving. He has good motion and good strength. He still has some mild soreness and popping in the shoulder from time to time.

PHYSICAL EXAMINATION: Full range of motion of the shoulder, good strength, mild discomfort with abduction and flexion.

PLAN: I am going to continue to put him on restrictions with 25 pounds of lifting and occasional overhead. I do not want him doing the physical fitness test yet at work. I will see him back in a month, at which point we will anticipate the possibility of him going back to full duty. He has not yet reached MMI. DHJ/ETS:rw (01/28) 0127-024

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PATIENT: Thomas Contreras
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8/25/09 (Continued):

ordered at this time. The patient will proceed with surgery. We will see him back postoperatively in our clinic. AS/ETS:kp (09/28) 0928-010

10/09/09: The patient presents for a one-week postoperative of right shoulder scope with débridement done by Dr. Spearman.

HISTORY OF PRESENT ILLNESS: The patient is doing well. He has fairly good range of motion. The details of the procedure were discussed. Pictures were reviewed.

PHYSICAL EXAMINATION: The patient's incisions are healed nicely. There is no erythema, swelling, or drainage.

ASSESSMENT: Status post right shoulder scope with débridement.

PLAN: The patient is going to come out of the sling. He is going to go to some physical therapy to work on range of motion and we will have him follow up with Dr. Spearman in our clinic in three weeks. The patient has asked to be released to light duty; therefore, we will go ahead and put him on some light duty with specific instructions of what he can and cannot do. AS/ETS:kp (10/15) 1012-029

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PATIENT: Thomas Contreras
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09/02/09 (Continued):

PHYSICAL EXAMINATION: He has pain with forward flexion. Positive O'Brien test. Mild popping and discomfort as I circumduct the shoulder. There is a definite palpable pop in the shoulder as I bring the arm up from external rotation to internal rotation.

DIAGNOSTIC IMAGING: MRI is reviewed of the right shoulder. The anchor is in place. The labrum is in the proper position, although it does not appear to be fully healed at this point. No other abnormality noted except for some tendinosis in the rotator cuff.

IMPRESSION: Right shoulder pain, possible persistent labrum tear.

PLAN: He has definite symptoms and continues to have pain here seven months after surgery. There are a couple of options. Given the amount of discomfort that he is having at this point that is reproducible, we are going to go back in for a right shoulder arthroscopy for a second look with debridement. It may well be that the sutures is in place in the labrum, but the labrum has not fully healed and continues to catch. At which point, he will need the sutures removed and the labrum debrided back to a stable rim. He will be in a sling for about a week or two afterwards. I do not anticipate having to repair anything. I have given him Daryocet and some Celebrex for pain. I will see him back here at the time of surgery. He continues at full duty. He has not reached

09/25/09: **HISTORY OF PRESENT ILLNESS:** The patient is a 48-year-old male who presents for H&P prior to a right shoulder arthroscopy with debridement to be done by Dr. Jaskwich on 10/01/09.

PLAN: Risks and complications as well as the postoperative course have been discussed with the patient and all questions have been answered. The patient has signed an informed consent and it will be copied to the chart. Preoperative EKG will be obtained from the beginning of this year. The patient has been instructed to be NPO after midnight the night before surgery. Full H&P can be found written out in the Lowcountry Outpatient Surgery Center H&P sheet. No further preoperative has been

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PATIENT: Thomas Contreras
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9/25/09 (Continued):

ordered at this time. The patient will proceed with surgery. We will see him back postoperatively in our clinic. AS/ETS:kp (09/28) 0928-010

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PATIENT: Thomas Contreras
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09/02/09 (Continued):

PHYSICAL EXAMINATION: He has pain with forward flexion. Positive O'Brien test. Mild popping and discomfort as I circumduct the shoulder. There is a definite palpable pop in the shoulder as I bring the arm up from external rotation to internal rotation.

DIAGNOSTIC IMAGING: MRI is reviewed of the right shoulder. The anchor is in place. The labrum is in the proper position, although it does not appear to be fully healed at this point. No other abnormality noted except for some tendinosis in the rotator cuff.

IMPRESSION: Right shoulder pain, possible persistent labrum tear.

PLAN: He has definite symptoms and continues to have pain here seven months after surgery. There are a couple of options. Given the amount of discomfort that he is having at this point that is reproducible, we are going to go back in for a right shoulder arthroscopy for a second look with debridement. It may well be that the sutures is in place in the labrum, but the labrum has not fully healed and continues to catch. At which point, he will need the sutures removed and the labrum debrided back to a stable rim. He will be in a sling for about a week or two afterwards. I do not anticipate having to repair anything. I have given him Darvocet and some Celebrex for pain. I will see him back here at the time of surgery. He continues at full duty. He has not reached MMI. It will take a while just like any other business. DHJ/ETS:smh (09/03) 0902-004

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6/26/09 (Continued)

PLAN: He will continue with regular duty. I will see him back here in two months. We talked about the possibility of having the suture become impinged in the joint. He has not yet reached MMI. DHJ/tg (7/1)

08/05/09: SUBJECTIVE: The patient is here for followup of a right shoulder arthroscopy and SLAP repair done in January '09. He still has some soreness when he lifts the arm up overhead. He was disconnecting an extension cord the other day that was stuck and the jerking motion caused him some discomfort. He has pain when he wakes up in the morning. He has discomfort with both abduction and flexion. He is back to full duty, but says the shoulder is sore all of the time.

PHYSICAL EXAMINATION: He has a positive O'Brien test. There is a positive impingement sign. There is pain with abduction and flexion. The strength is 5/5.

IMPRESSION: Status post right shoulder superior labrum anterior and posterior lesion (SLAP) repair in January '09 with persistent pain.

PLAN: He may well have either a partial healing of the labrum or some impingement from one of the sutures. He seems to have plateaued over the last two months with no improvement. We talked about the option of continued conservative treatment. He says he is having daily pain. I really do not feel like he has improved at all over the last several weeks. My recommendation at this point would be to proceed with an arthrogram of the right shoulder and ensure that the labrum is actually fully repaired. I will see him back afterwards to go over the results. DHJ/ETS:tw (08/07) 0807-020

09/02/09: CHIEF COMPLAINT: Mr. Contreras continues to have a fair amount of pain in his shoulder.

HISTORY OF PRESENT ILLNESS: It pops and catches several times a day, especially when he lifts the arm up overhead or reaches in front. For example, he tried to put his jacket on the other day at work and felt a lot of pain at that point. He is not taking any medications except for Advil.

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Um# 117589473

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PATIENT: Thomas Contreras
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04/20/09: SUBJECTIVE: The patient is back, doing well. He is making slow progress, but still progress. He noticed the other day he was able to do some stuff that he has not been able to before.

PHYSICAL EXAMINATION: He has range of motion to about 130° or 140° with mild discomfort with overhead. The strength is 4+/5.

IMPRESSION: Right shoulder superior labrum anterior and posterior lesion (SLAP) repair on 01/29/09.

PLAN: He is making progress, but slow progress. He is to continue with physical therapy. I am going to continue to put him on restrictions at work with 15 pounds of lifting and limited overhead lifting. I will see him back here in six weeks. He has not yet reached MMI. DHJ/ETS:tw (04/21) 0421-016

06/01/09: SUBJECTIVE: The patient is back for follow up of his right shoulder. She is definitely making improvement. He is much more comfortable.

PHYSICAL EXAMINATION: He has good motion, still a little stiffness with internal rotation. His strength is improving.

PLAN: At this point he feels like he is ready to go back to full duty. The only concern is his RIT training. It sounds fairly physical and they have had several injuries with that training. I believe it is reasonable to hold him off of that. At this point I am going to put him back to full duty with the exception of RIT training. He can hold off on physical therapy for now. He can start a weightlifting program on his own as long he progresses slowly. I will see him back here in two months for follow up. He has not reached MMI. DHJ/ETS:tw (06/02) 0602-001

6/26/09: Thomas is back. He is having a little softness in the arm, especially lifting overhead or away from the body. He tried to reach forward the other day and it was uncomfortable. It still seems like there is a small hot spot in the shoulder. He actually had one episode the other day where the shoulder popped and he felt like something was getting caught. He has had full ROM with minimal pain.

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3/23/09 (Continued):

Continue with anti-inflammatories as well. We'll see him back in four weeks for recheck. DHJ/la (3/25)

04/20/09: **SUBJECTIVE:** The patient is back, doing well. He is making slow progress, but still progress. He noticed the other day he was able to do some stuff that he has not been able to before.

PHYSICAL EXAMINATION: He has range of motion to about 130 or 140 degrees with mild discomfort with overhead. The strength is 4+/5.

IMPRESSION: Right shoulder superior labrum anterior and posterior lesion (SLAP) repair on 01/29/09.

PLAN: He is making progress, but slow progress. He is to continue with physical therapy. I am going to continue to put him on restrictions at work with 15 pounds of lifting and limited overhead lifting. I will see him back here in six weeks. He has not yet reached MMI. DHJ/ETS:rw (04/21) 0421-016

06/01/09: **SUBJECTIVE:** The patient is back for followup of his right shoulder. She is definitely making improvement. He is much more comfortable.

PHYSICAL EXAMINATION: He has good motion, still a little stiffness with internal rotation. His strength is improving.

PLAN: At this point he feels like he is ready to go back to full duty. The only concern is his RIT training. It sounds fairly physical and they have had several injuries with that training. I believe it is reasonable to hold him off of that. At this point I am going to put him back to full duty with the exception of RIT training. He can hold off on physical therapy for now. He can start a weightlifting program on his own as long he progresses slowly. I will see him back here in two months for followup. He has not reached MMI. DHJ/ETS:rw (06/02) 0602-001

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