

Appendix 9

(Chapter 9-Orders & Appeals)

1. **Sample Orders.**
2. **Forms for Appeal to Full Commission.**
3. **Forms for Appeal to Circuit Court.**

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File # 9809004
Carrier File # _____
Carrier Code # _____
Employer FEIN _____

Appellant's Name _____ SSN _____
Address _____ City _____ State _____ Zip _____
(803) _____ (803) _____
Home Phone # _____ Work Phone # _____
Jon P. Popowski, Esq. (803) 799-2100
Preparer's Name _____ Phone # _____

Georgia-Pacific Corporation
Employer's Name
PO Box 149 Prosperity SC 29127
Address City State Zip
Georgia-Pacific Corporation
Insurance Carrier
Jon P. Popowski, Esq. (803) 799-2100
Phone # _____

Request for Commission Review by claimant employer (check one)

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).

see attached sheet listing grounds for review.

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

I certify that I have served this document pursuant to R.67-212 by delivering a copy to Grady L. Beard Esquire
Name

Bank of America Tower Suite 901, 1301 Gervais Street Columbia SC
Address
on the day of March, 2000 by first class mail; personal service; certified mail.
[Signature] Attorney for the Claimant 03/02/20
Preparer's Signature Title Date

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

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of the appeal and serve this form on the opposing party. R.67-701B. Otherwise, file the original and 8 copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commission decision. R.67-205D. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-711 for additional information.

vs. Georgia Pacific

GROUND FOR REVIEW

1. The Hearing Commissioner erred in only awarding disability benefits under 42-9-30 to both of Mrs. [redacted] legs, the error being that Mrs. [redacted] is permanently and totally disabled and should have received such an award.
2. The Commissioner erred in concluding that there is no legal authority in South Carolina that an injured claimant who is employed receiving wages cannot be totally and permanently disabled when an employer provides a "benevolent" job and the record shows that without that job the claimant would be unemployable. The error being that such legal authority does exist in South Carolina, especially when the Commissioner found that Mrs. [redacted] suffered a loss of earning capacity.
3. The Commissioner erred in limiting the award to each leg, the error being that the Commissioner found that the light duty job which Mrs. [redacted] was performing was provided by the employer to be benevolent; that after so finding the Commissioner should have found Mrs. [redacted] was permanently and totally disabled because she cannot obtain a job in a reasonable competitive and open labor market or sell her services in her injured condition based on her age, education, impairments, and lack of transferable skills.
4. The Commissioner erred in limiting the award to each leg, the error being that after the Commissioner found that the Defendants made no effort whatsoever to retrain Mrs. [redacted] but have simply created a job where she collects a paycheck, the Commissioner should have found, under the law that Mrs. [redacted] is permanently and totally disabled because she cannot obtain a job in a reasonably competitive and open labor market or sell her services in her injured condition based on her age, education, impairments, and lack of transferable skills.
5. The Commissioner erred in limiting the award to each leg, the error being that the Commissioner found that Mrs. [redacted] has made every effort to continue working, but without the job that was created for her by the Defendants the Commissioner should have then found that Mrs. [redacted] would be unemployable and could not obtain a job in a reasonably competitive and open labor market and then held that Mrs. [redacted] was permanently and totally disabled.
6. The Commissioner erred in limiting the award to each leg, especially after the Commissioner found that if the Defendants had not provided this benevolent job, Mrs. [redacted] would have a loss of earning capacity, the error being that after so finding, the Commissioner should have found under the law that Mrs. [redacted] was permanently and totally disabled because she could not obtain a job

in a reasonably competitive and open labor market in her injured condition or sell her services based on her age, education, impairments, and lack of transferable skills.

7. The Commissioner erred in not concluding Mrs. [redacted] was permanently and totally disabled by reference to the law of other jurisdictions that have just and reasonable decisions impacting Mrs. [redacted] case; the error being that the Commissioner, even if she could find no law in South Carolina directly on point, should have looked to the law of other jurisdictions in conjunction with long-standing South Carolina law to achieve a just result in this case, especially in view that any doubt concerning compensability should be resolved in favor of the Claimant.

8. The hearing Commissioner further erred in only awarding disability to both lower extremities when in fact she should have awarded 500 weeks of benefits and provided lifetime medical under Section 42-9-10; the error being that in a reasonably competitive labor market, Mrs. [redacted] would have been deemed permanently and totally disabled and should have received an award of 500 weeks of compensation and lifetime medical benefits.

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 9645649

ALBERT JOYNER, CLAIMANT

verses

HUGER CONSTRUCTION COMPANY, INC., EMPLOYER
AND
WAUSAU INSURANCE COMPANIES, CARRIER, DEFENDANTS

Hearing: Held in Columbia, South Carolina
on October 29, 1998

Appearances: Claimant represented by Jon P.
Popowski of Popowski and Callas,
Columbia, South Carolina

Defendants represented by Vernon
F. Dunbar, Esquire of Turner,
Padgett, Graham and Laney of
Columbia, South Carolina

Purpose of Hearing: To determine issues as set forth
in Forms 50 and 51.

Decision and Order: By Roland S. Corning,
Commissioner

Filed:

STIPULATIONS

At the call of the case, the attorneys representing the respective parties stipulated as follows:

1. That both parties were subject to and bound by the terms and conditions of the South Carolina Workers' Compensation Act.
2. Jurisdiction, venue and sufficiency of notice of the hearing were admitted by both parties.
3. The applicable compensation rate as \$437.79 which was the maximum compensation rate for 1996.

MEDICAL EVIDENCE / RATINGS - APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence:

I. As Joint APA Submissions:

| <u>Exhibit No.</u> | <u>Description</u> | <u>No. of Pages</u> |
|--------------------|--------------------------------------|---------------------|
| APA A | Dr. Green Neal's reports and records | 40 |
| APA B | Roper Hospital, Charleston, S.C. | 20 |

II. Mr. Joyner's Additional Reports:

| <u>Exhibit No.</u> | <u>Description</u> | <u>No. of Pages</u> |
|--------------------|---|---------------------|
| APA "A" | Albert Joyner's graph indicating work history for Huger Construction Company | 1 |
| APA "B" | Dr. Green Neal's affidavit, amended affidavit, and vitae | 6 |
| APA "C" | Transcripts of the meetings of Huger Construction Company and Federal Government - 8-23-95, 1-17-96 | 2 |
| APA "D" | Lisa Smith Kohn, PHD | 4 |
| APA "E" | Huger Construction Company time/payroll records designated as "NOAA Project Time Sheets" | 15 |

| | | |
|---------|--|-----|
| APA "F" | Huger Construction Company payroll records designated as DD Form 879 | 114 |
| APA "G" | Letter from Dr. Paul M. Deaton dated 10/12/98 | 1 |

III. Defendants Additional Reports:

| <u>Exhibit No.</u> | <u>Description</u> | <u>No. of Pages</u> |
|--------------------|---|---------------------|
| APA "A" | Dr. Michael Foster vitae and report | 5 |
| APA "B" | Huger Construction Company personnel file | 32 |
| APA "C" | South Carolina Climatologist report | 2 |
| APA "D" | Dr. Paul M. Deaton letter | 1 |

All of these APA Submissions were received into evidence without objection.

In addition, the following exhibits were marked and received as evidence at the hearing without objection:

| <u>PLANTIFF'S EXHIBIT NO.</u> | <u>DESCRIPTION</u> |
|-------------------------------|---|
| 1 | Progress Meeting Transcripts of 8/23/95 and 1/17/96 which were included in the APA Submissions |
| 2 | Graph showing hours worked by Al Joyner (which was also included in the APA submissions) |
| 3 | NOAA time records and two forms previously included in the APA Submissions |
| 4 | Cassette tapes of meeting with Huger Construction and representatives of the Federal Government dated 8/23/95 and 1/17/96 |
| 5 | NOAA project time sheets and DD Form 879 introduced during the cross examination of Mr. James Smalls |

The Defendants introduced no exhibits.

MEDICAL OPINIONS

1. Dr. Green B. Neal (claimant's treating physician for over ten years). "It is my opinion that his stroke was most probably caused and triggered by the increase in hours and responsibilities which Mr. Joyner described to me and the concomitant pressure and stress he felt as a result of this". (Statement of Green B. Neal; Green B. Neal's deposition of 10/28/98).

Mr. Joyner suffered physical brain damage as a result of the stroke of 5/5/96, and is unable to work and unemployable. (Statement of Dr. Green B. Neal; Green B. Neal's deposition of 10/28/98).

2. Dr. Michael Foster (one time referral by defendants) expressed the opinion that stress on Mr Joyner "...was likely a contributor..." (Statement of Dr. Foster).

3. Dr. Paul Deaton who is Mr. Joyner's primary treating physician in the hospital in Charleston after his stroke "...his primary care physician in Columbia (Dr. Neal) would be more qualified than I to comment on what he thought the impact of his job might be".

CLAIMANT BIOGRAPHICAL

| | |
|-----------------|--|
| Age: | 59 years old |
| Weight: | 208 pounds |
| Height: | 5'8" |
| Sex: | Male |
| Marital Status: | Not Married |
| Children: | All grown |
| Work History: | Labor, working foreman and foreman of construction crews, job superintendent of projects |
| Education: | Eleventh grade education |

STATEMENT OF THE CASE

The claimant seeks benefits under the South Carolina Workers' Compensation Act because of a stroke brought on by a dramatic increase in hours and responsibilities as an employee of Huger

Construction Company. The evidence is uncontradicted that he was rendered permanently and totally disabled.

At the hearing, it was Mr Joyner's position that he suffered a compensable stroke under Section 42-1-160 because of an increase in hours and responsibilities. It was also Mr. Joyner's position that because he has suffered physical brain damage as a result of this stroke that he is entitled to life time benefits under the statute.

The evidence was uncontradicted that there was a dramatic increase in Mr. Joyner's hours and responsibilities in early October of 1995. Up until that time, Mr. Joyner had been working a forty hour week. After October of 1995, his hours escalated dramatically (as shown by the graph). As the graph shows, Mr. Joyner's hours increased so that by the time of his stroke on May 6, 1996, he had worked a seventy hour work week some three weeks prior to the stroke which occurred on the job site. It was also uncontradicted: That Al Joyner had never worked on a job this stressful before in his life as a superintendent; that even Anthony Hunter, his boss, admitted that he had never worked on such a stressful job and he put extreme unreasonable pressure on Al Joyner to finish the project because of the pressure that was being placed on him by Mr. Smalls (the Employer); that the project was intentionally bid too low by Huger Construction Company thinking they would get the second contract and have more time to complete the work. This didn't occur and Huger Construction Company ended up having a limited amount of time to complete what was

uncontradicted as the most complicated job that Construction Company ever had. It was further uncontradicted that the scope of the contract was increased, but not the time to complete it. It was also uncontradicted that Mr. Joyner had to supervise an increasingly larger number of employees as the job progressed. It was likewise uncontradicted that Huger decided in October of 1995, to have everyone work Fridays and Saturdays and overtime because they had fallen behind schedule and had failed to meet at least five deadlines. It was also uncontradicted that Huger never hired a site engineer (as usually occurs) to sort through the blue prints and that a number of problems were encountered with the blue prints and the steel and the additional responsibilities of sorting out these blue prints fell on Al Joyner. The defendant himself described the job as a "nightmare".

This was the first renovation project for Huger Construction Company and there was a lack of qualified help available in the Charleston area at this time. The job actually needed two superintendents and Mr. Hunter testified that additional responsibilities of this other superintendent had to be placed on Al Joyner. It is uncontradicted that it became evident that Al Joyner's health deteriorated while on the job. Mr. James Smalls (the employer) recognized this deterioration and that help was needed.

Mr. Al Joyner also testified that he was under an extreme amount of stress, that his hours increased dramatically from October 1995 until the stroke occurred in 1996; that his

responsibilities also increased and the number of individuals he had to supervise increased. He further testifies this was extremely unusual and that he had never worked at a job like this before that was this stressful.

After reviewing the Commissioner file, the APA submissions, the exhibits and depositions, this Commissioner makes the following findings of fact and conclusions of law by a clear preponderance of evidence on the record as a whole.

FINDINGS OF FACT

1. The parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulation and admissions of the parties.

2. I find that jurisdiction and venue and sufficiency of notice is proper. I base this finding upon the stipulation of the parties.

3. I find the applicable compensation rate is \$437.79, which is the maximum rate for 1996. I base this finding upon the evidence in the file and the stipulation of the parties.

4. I find that on May 6, 1996, Albert Joyner suffered a compensable work related stroke while he was on the job for his employer. I find that this arose out of and in the course and scope of his employment with the defendant because of a dramatic increase in responsibilities and hours and the concomitant stress placed upon Mr. Joyner which triggered a work related stroke. I base this finding on the uncontradicted testimony at the hearing,

Dr. Neal's deposition, as well as the APA submissions.

5. I find that all three witnesses who testified spoke of the extreme difficulties of the Charleston renovation (NOAA) job. I base this finding on the uncontradicted testimony at the hearing.

6. I further find that the job was intentionally bid too low with the idea that the company would be awarded the second phase of the contract and have more time to complete the work but this did not occur. This resulted in the company trying to do a huge amount of work in a short amount of time and passing along the pressure ultimately to the job superintendent who was Al Joyner. I find that at least five deadlines were missed and hundreds of thousands of dollars lost which resulted in the owner, Mr. Smalls, placing more pressure and demanding more of Al Joyner, the job superintendent.

I further find that there were problems with the blue prints and drawings not matching the physical features of the building. There were structural steel problems and also this was the first renovation project for Mr. Smalls, the owner and general contractor with Huger Construction Company. Further, there was a lack of qualified help available in the Charleston area which exacerbated the situation.

The recipient of the stress of these job deficiencies was Al Joyner who was the job superintendent and extreme pressure was placed upon him by Anthony Hunter and James Smalls which resulted in an increase in hours that Mr. Joyner worked and responsibilities he had to bear. I base this finding upon the uncontradicted

testimony at the hearing as well as the deposition testimony of Dr. Green B. Neal and the APA submissions.

7. I further find that this was the most complicated job Huger Construction Company had ever undertaken and that even James Smalls, who appeared at the hearing for the defendant described the job as a "nightmare". I base this finding on the uncontradicted testimony of James Smalls.

8. I further find that there was a need for additional help for Al Joyner, that the job actually required two job superintendents rather than one but Al Joyner was actually performing the job of the two supervisors; that there was an increase in additional supervisory responsibilities which also resulted in greatly increased work hours on the part of Mr. Joyner particularly after September of 1995, which resulted in greatly increased stress on Al Joyner. I base this finding upon the uncontradicted testimony, the deposition of Dr. Green B. Neal, and the APA submissions.

9. I further find that all three witnesses who testified at the hearing whose testimony is essentially uncontradicted, were credible. There was some dispute between Mr. Smalls and Mr. Hunter about whether additional helpers were offered and refused or never offered but there was no dispute about the increase in hours worked by Mr. Joyner, increased responsibilities placed upon him, increased job pressures on him, loss of money on the contract with the delays, refusal of the Government to extend the time for completion, etc. Increased hours on the chart introduced into

evidence by claimant speak for themselves and speak dramatically of the unusual increase and pressure on Albert Joyner. I base this finding upon my view of the witnesses, the uncontradicted testimony of the witnesses, the deposition of Dr. Neal, and the APA Submissions.

10. I further find that while Mr. Joyner had high blood pressure for a number of years pre-existing the stroke that this high blood pressure was under control prior to any increase in the job duties and responsibilities. Mr. Joyner was also a known diabetic since 1993. I base this finding upon the uncontradicted testimony of Mr. Joyner, the deposition of Dr. Green B. Neal, as well as the APA Submissions.

11. I further find that the employer stressed a need to increase worker numbers and extend the work week to include Friday and Saturday which resulted in a dramatic increase in Mr. Joyner's hours in October of 1995, as shown by the graph which has been admitted into evidence without objection. I further find that Mr. Joyner's work hours correspond to those of the worker Dunbar and it was uncontradicted that Mr. Joyner worked at least as many hours as Mr. Dunbar and that the graph is based on Mr. Joyner's testimony and recollection and the hours that Mr. Dunbar worked which correspond to those of Mr. Joyner and the NOAA time records submitted from the job site. I base this finding on the uncontradicted testimony and the APA Submissions.

12. I further find as a matter of fact that more weight should be given to Albert Joyner's treating physician of over ten

years, Dr. Green B. Neal, as to the affect of the job stress on Mr. Joyner and I hereby give more weight to that opinion. Dr. Neal testified and stated that the stroke was most probably caused by the increase in hours and duties and the concomitant stress which caused the stroke, and I so find. I give more weight to that opinion than I do to the one time evaluation by Dr. Michael Foster to whom the claimant was sent by the insurance company. I base this finding upon the fact that Dr. Neal had treated Mr. Joyner since at least 1985 and was much more familiar with him than a doctor who merely saw him for 1/2 hour on one occasion. I also note though, that even Dr. Foster believes that stress was a factor in this case. I base this finding upon the APA Submissions, the deposition of Dr. Neal, the testimony of the claimant, and my experience in evaluating evidence and credibility.

13. I further find that Mr. Joyner sustained physical brain damage as a result of the work related stroke of May 6, 1996. I base this finding on the deposition of Dr. Neal, which is corroborated by the report of Lisa Smith Kohn, PHD of 1/12/97, both of which are uncontradicted, and the APA submissions.

14. I further find that Mr. Joyner is permanently and totally disabled as a result of his physical brain damage. It is clear from the uncontradicted APA's including the Kohn report, the Neal deposition and opinions expressed therein as well as in Dr. Neal's statement, and my observation of Mr. Joyner at the hearing that he is totally and permanently disabled.

15. I further find that Mr. Joyner is permanently

unemployable and unable to work and earn wages in any position because of his physical limitations coupled with his age, education, experience and lack of transferable skills. I base this finding upon the uncontradicted deposition of Dr. Neal, Dr. Kohn, and the APA Submissions.

CONCLUSIONS OF LAW

Accordingly, it is the determination and finding of this Commissioner that:

1. This Commissioner has jurisdiction in the case since jurisdiction, venue, and all issues of notice in this case have been stipulated as being proper.

2. Section 42-1-120 defines disability, Section 42-1-160 defines injury and personal injury, and Section 42-9-10 governs compensation for permanent and total disability and 42-15-60 governs medical. Finally, Section 42-1-160 governs compensation for physical brain damage rendering one disabled.

3. Mr. Joyner suffered an accident arising out of and in the course of his employment and is covered under the provision of the South Carolina Workers' Compensation Act.

4. Mr. Joyner incurred an unusual and excessive increase in his work schedule, an increase in hours and responsibilities sufficient to constitute an unusual and extraordinary condition of employment causing a compensable work related stroke.

5. Under Section 42-1-160, Mr. Joyner suffered physical brain damage as a result of this work related stroke which has resulted in Mr. Joyner being rendered permanently and totally

disabled.

AWARD

IT IS THEREFORE ORDERED that the defendants are to pay the claimant, Albert Joyner, compensation at the rate of \$437.79 for the remainder of his natural life.

IT IS FURTHER ORDERED that the defendants shall pay back due compensation at this rate from May 6, 1996, through the date of this award through the office of the claimant's attorney.

IT IS FURTHER ORDERED that the defendants shall pay all medical, hospital, surgical, doctors and nurses bills incurred and shall furnish and continue to furnish medical care and treatment in accordance with Section 42-15-60 for the remainder of the claimant's life.

AND IT IS SO ORDERED

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

By: _____
Roland S. Corning
Commissioner

Columbia, South Carolina

_____ day of _____, 1998

ORDER
OF
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
FILE NO.: 9801207

JANET S. HOLSONBACK, EMPLOYEE/CLAIMANT,

VS.

TEKNOR APEX CAROLINA, EMPLOYER/DEFENDANT,

AND

TRAVELERS INSURANCE COMPANY, CARRIER/DEFENDANT.

Hearing: Held in Greenville, South Carolina on October 7, 1999.

Appearances: Claimant represented by M. Terry Haselden.

Defendants represented by Jeffrey S. Jones.

Purpose of Hearing: To determine issues set forth in the Form 21 and the hearing notice.

Decision and Order: Roland S. Corning, Commissioner.

Date:

STIPULATIONS

Counsel for all parties stipulated at the hearing to the following issues:

(1) The purpose of the hearing is to determine the issues set forth in the hearing notice and issues pled in the Form 21, and any other issues which may timely come before the commissioner.

(2) Notice of the hearing was timely and properly served upon all parties of interest.

(3) The claimant's average weekly wage is \$ 324.10 per week. The compensation rate is \$ 216.08 per week.

(4) Venue, set in Greenville County, is proper as agreed by all parties.

(5) The claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an admitted accidental injury that occurred on or about January 20, 1998, while in the employ of the employer/defendant, and, therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

(6) Without objection, and with the exception of any self-serving statements or unstipulated medical reports, the Commission's file was made a part of the record.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act, South Carolina Code Ann. § 1-23-320 et. seq., and Regulation 67-612, the parties submitted the following items as evidence in support of their cases:

Jointly Offered Exhibits

1. Records of Dr. Philip Wessinger covering the period 2/13/98 to 2/27/98.
2. Records of VBS & Associates Physical Therapists covering the period of 2/13/98 to 2/20/98.
3. Records of Dr. John S. Millon dated 3/6/98.
4. Records of Dr. Timothy Brown covering the period 6/2/98 to 8/17/99.
5. Records of Greenville Hospital System dated 6/29/98.
6. Records of Dr. John R. Satterthwaite covering the period 4/23/98 to 8/2/99.

Claimant's Exhibits.

7. Records of Dr. Waters dated 2/12/98.
8. Records of Dr. John R. Satterthwaite dated 9/8/99.
9. Records of Rock Weldon, Vocational Expert, dated 9/28/99.

Defendants' Exhibits

10. Records of Rock Weldon, Vocational Expert, dated 9/22/99.
11. Records of Dr. John R. Satterthwaite dated 9/17/99.
12. Records of Dr. Timothy Brown dated 9/27/99.

CLAIMANT BIOGRAPHICAL

AGE: 39.

SEX: Female.

MARITAL STATUS: Separated.

CHILDREN: Two, ages 17 and 19.

WORK HISTORY: Claimant became employed with defendant in approximately October of 1995. Previous work experiences include nurse's aide, teacher's aide, and secretary.

EDUCATION: Completed 11th grade, but later obtained a GED. Certified as a nursing assistant.

STATEMENT OF THE CASE

This matter is before me upon a Form 21 filed by the defendants. Defendants allege that claimant reached maximum medical improvement on June 25, 1999. They seek credit for temporary total paid after June 25, 1999. They deny that claimant is permanently and totally disabled.

Claimant agrees that she has reached maximum medical improvement. She alleges that she is permanently and totally disabled as the result of permanent disabilities to both arms. In the alternative, she seeks an award for permanent partial loss of use of

both arms. She seeks an order requiring defendants to pay for continuing medical treatment as prescribed by Dr. Satterthwaite.

The parties have stipulated a compensation rate of \$ 216.08 per week. They agree that claimant has been underpaid at the rate of \$ 187.88 per week and should be compensated for the difference between the two rates.

EVIDENCE OF THE CASE

Claimant began working for defendant, Teknor Apex Carolina, in October of 1995. Teknor Apex Carolina manufactures garden hoses. Claimant was employed as a winder. This job involved cutting and winding hoses. It also involved placing ferrules, or end pieces, on the hoses. In late 1997 or early 1998, claimant began to experience symptoms of carpal tunnel syndrome in both hands and arms. She also developed reflex sympathetic dystrophy (RSD) in both arms. Defendants accepted these problems as covered under the workers' compensation act, provided medical treatment, and paid temporary total compensation.

Claimant's primary medical treatment has come from Dr. Timothy Brown and Dr. John R. Satterthwaite. On June 29, 1998, Dr. Brown performed a surgical release of the right carpal tunnel. Due to claimant's reflex sympathetic dystrophy, Dr. Satterthwaite assisted with the surgery and inserted an indwelling axillary catheter.

Claimant was released by Dr. Brown on August 17, 1998. However, she has continued under Dr. Satterthwaite's care due to continued problems with RSD. On June 25, 1999, Dr. Satterthwaite indicated that he felt claimant had a 5-6% permanent partial impairment to each hand due to residuals of her RSD. At that time he did not address the issue of impairment caused by her bilateral carpal tunnel syndrome. His report also indicated that claimant would have to remain under his care and continue to take medications indefinitely.

By work excuse dated August 2, 1999, Dr. Satterthwaite indicated that the claimant could return to work with the following restrictions: light duty; no repetitive motion with hands; no temperature extremes; no lifting over 10 lbs.

By letter dated September 8, 1999, Dr. Satterthwaite elaborated on claimant's medical condition. He reaffirmed his previous opinion that she had reached maximum medical improvement. However, he made it clear that claimant would have to remain under his care and continue to take medication indefinitely. He indicated that if claimant stopped taking the medication, her condition would deteriorate, and her disability would increase.

Dr. Satterthwaite also indicated that under Table 16 of the AMA Guides, Fourth Edition, claimant has a 10% permanent partial impairment to each arm due to mild carpal tunnel syndrome. These ratings are in addition to the 5-6% impairment ratings previously assigned to each hand due to the RSD.

By office note dated September 27, 1999, Dr. Brown indicated that he did not feel claimant had any permanent impairment as a result of her bilateral carpal tunnel syndrome. He also imposed no permanent work restrictions.

Defendants referred claimant to Rock Weldon, a vocational expert, for evaluation. Mr. Weldon opined that there were jobs in the national economy which claimant could do with the restrictions assigned by Dr. Satterthwaite. In response to written questions by claimant's attorney, he agreed that there would be no jobs which claimant could do if her pain and/or medications interfered with her ability to concentrate on work related tasks.

Claimant testified at length regarding the continuing problems she has with her hands and arms. She indicated that she has almost constant pain in her hands, up her arms, and into her shoulders. She has much numbness and tingling. She has difficulty gripping things. Her hands tend to "fall asleep" at times. She has difficulty writing. She has difficulty performing housework and yard work. Cold and damp weather tend to aggravate her pain. She has trouble with zippers and jewelry. She cannot roll or braid her hair.

Claimant now takes seven (7) different medications as prescribed by Dr. Satterthwaite. She testified that some of these medications tend to make her spastic and clumsy. However, they do afford her some relief. She testified that she would be in severe pain without them. Other than the medications, there is very little else which

affords the claimant relief from her pain. Heating pads have helped some. She has tried splints, and even magnets, without relief.

Claimant testified that she does not feel that she could return to any of her prior jobs. However, she indicated that she would very much like to return to some form of work, preferably with the defendant/employer. Unfortunately, the employer apparently does not have an available job within the restrictions assigned by Dr. Satterthwaite.

FINDINGS OF FACT

IT IS FOUND AS A FACT:

(1) The parties to this proceeding are subject to and bound by the South Carolina Workers' Compensation Act, with Janet S. Holsonback, employee, Teknor Apex Carolina, employer, and Travelers Insurance Company, carrier.

(2) The claimant is 39 years old. She completed the 11th grade and later obtained a GED.

(3) The claimant sustained an injury by accident arising out of and in the course of her employment on or about January 20, 1998, said injury being carpal tunnel syndrome and reflex sympathetic dystrophy of both hands and arms.

(4) Proper notice of the accident was given.

(5) The claim was timely filed.

(6) Defendants have paid temporary total at the rate of \$187.88 per week.

(7) As stipulated by the parties, the correct average weekly wage and compensation rate are \$ 324.10 and \$ 216.08, respectively.

(8) In light of this recalculation of the compensation rate, claimant is entitled to receive an additional \$28.20 per week, the difference between the \$ 187.88 per week she was previously paid and the revised rate of \$ 216.08 per week, retroactive from the date she initially became disabled to the date of maximum medical improvement.

(9) Claimant reached maximum medical improvement on June 25, 1999.

(10) Claimant was temporarily totally disabled until June 25, 1999.

(11) As a direct and proximate result of her injury, claimant required the surgery on her right arm performed by Dr. Brown and Dr. Satterthwaite, as well as other treatment by the additional medical providers previously mentioned in this order. The treatment thus far has been reasonable and necessary and has tended to lessen the period of claimant's disability.

(12) As a direct and proximate result of her injury, claimant now takes seven (7) different medications prescribed by Dr. Satterthwaite.

(13) As a direct and proximate result of her injury, claimant will need to remain under the care of Dr. Satterthwaite, and continue to take the medication he has prescribed, indefinitely.

(14) Without the medication recommended by Dr. Satterthwaite, claimant's condition would deteriorate and her disability would increase.

(15) The medication and treatment recommended by Dr. Satterthwaite are reasonable and necessary and will tend to lessen the period of claimant's disability.

(16) Dr. John R. Satterthwaite has rated the claimant as having a 5-6% permanent partial impairment of both hands due to her work related reflex sympathetic dystrophy.

(17) Dr. John R. Satterthwaite has rated the claimant as having a 10% permanent partial impairment of both arms due to her work related carpal tunnel syndrome.

(18) Dr. John R. Satterthwaite has indicated that claimant has the following permanent restrictions: light duty; no repetitive motion with hands; no temperature extremes; no lifting over 10 lbs.

(19) As a direct and proximate result of her injury claimant has sustained a 40% permanent partial loss of use of her right arm. This finding is based on the medical evidence and opinions as to impairment and limitations, the testimony of the claimant with regard to her symptoms and limitations, and the observation of the claimant by this commissioner.

(20) As a direct and proximate result of her injury claimant has sustained a 35% permanent partial loss of use of her left arm. This finding is based on the medical

evidence and opinions as to impairment and limitations, the testimony of the claimant with regard to her symptoms and limitations, and the observation of the claimant by this commissioner.

RULINGS OF LAW

Upon the foregoing findings of fact, and under the Code of Laws of South Carolina, as amended, it is concluded that:

(1) Under § 42-1-160, claimant sustained an injury by accident arising out of and in the course of her employment, said injury being to both hands and arms.

(2) Under § 42-15-20, proper notice of the injury was given.

(3) Under § 42-15-40, the claim was filed in a timely manner.

(4) Under § 42-15-60, claimant has received medical care for her injury in order to lessen the period of her disability.

(5) Under § 42-15-60, claimant is entitled to continued medical treatment as recommended by Dr. Satterthwaite because such treatment would tend to lessen the period of disability. See Dykes v. Daniel Construction Company, 202 S.E. 2d 646 (1974); Rice v. Froehling & Robertson, Inc., 226 S.E.2d 705 (1976); Williams v. Boyle Construction Co., 166 S.E.2d 550 (1969).

(6) Under § 42-9-10 and Regulation 67-503, claimant has been paid temporary total at the incorrect rate of \$ 187.88 per week.

(7) Under § 42-1-40, the correct compensation rate is \$ 216.08 per week.

(8) Under §§ 42-1-40 and 42-9-10, and Regulations 67-503 and 67-1603, claimant is entitled to an additional \$28.20 per week for all weeks of temporary total paid prior to June 25, 1999.

(9) Under §§ 42-9-10 and 42-1-120, claimant has reached maximum medical improvement.

(10) Under §§ 42-9-10 and 42-1-120, claimant was temporarily totally disabled until June 25, 1999.

(11) Under §§ 42-9-30(13) and 42-9-30(18), having been found to have sustained a 40% permanent partial loss of use of the right arm, claimant is entitled to an additional 88 weeks of compensation at the rate of \$216.08 per week.

(12) Under §§ 42-9-30(13) and 42-9-30(18), having been found to have sustained a 35% permanent partial loss of use of the left arm, claimant is entitled to an additional 77 weeks of compensation at the rate of \$216.08 per week.

(13) Under § 42-9-210, defendants are entitled to a credit for any temporary total previously paid at the rate of \$ 187.88 per week subsequent to the date of maximum medical improvement on June 25, 1999.

ORDER

IT IS THEREFORE ORDERED:

(1) Defendants' application to stop payment of temporary total compensation is granted.

(2) Defendants shall pay claimant an additional 88 weeks of compensation at the rate of \$ 216.08 per week as compensation for the 40% permanent partial loss of use of her right arm.

(3) Defendants shall pay claimant an additional 77 weeks of compensation at the rate of \$ 216.08 per week as compensation for the 35% permanent partial loss of use of her left arm.

(4) Defendants shall pay claimant an additional \$ 28.20 per week for each week of temporary total disability prior to June 25, 1999, said sum representing underpaid back temporary total.

(5) Defendants shall be allowed to deduct all payments of temporary total made subsequent to June 25, 1999 from the underpaid back temporary total and/or permanent partial loss of use award due claimant.

(6) Defendants shall pay for all causally related medical treatment incurred to date, and shall continue to pay for all treatment and medication recommended by Dr. John R. Satterthwaite until further order of the commission.

- (7) Defendants shall reimburse claimant for mileage pursuant to Regulation 67-1601.
- (8) No hearing costs are assessed.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Roland S. Corning, Commissioner

ORDER
OF
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
FILE NO.: 9239382

**HARRY PATTERSON, EMPLOYEE/CLAIMANT,
VS.
G & H HOME SERVICES, EMPLOYER/DEFENDANT,
AND
U. S. FIDELITY AND GUARANTY COMPANY, CARRIER/DEFENDANT.**

Hearing: Held in Spartanburg, South Carolina on April 18, 1995.

Appearances: Claimant represented by C. Robert Faucette of the
Faucette Law Firm.

Defendants represented by William E. Shaughnessy, of
Haynsworth, Marion, McKay and Guerard.

Purpose of Hearing: To determine issues set forth in Form 21, and any other
issues which may timely come before the commissioner.

Decision and Order: Roland S. Corning, Commissioner

Dated: _____

STIPULATIONS

Counsel for all parties stipulated at the hearing to the following issues:

(1) The purpose of the hearing is to determine the issues set forth in the hearing notice and issues pled in the defendants' Form 21, Application to Stop Payment, and any other issues which may timely come before the commissioner.

(2) Notice of the hearing was timely and properly served upon all parties of interest.

(3) Venue, set in Spartanburg County, is proper as agreed by all parties.

(4) The claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an admitted accidental injury which occurred on August 25, 1992, while in the employ of the employer/defendant, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-320 et. seq., and Regulation 67-612, the parties submitted the following items as evidence in support of their cases:

1. Records of Spartanburg Regional Medical Center covering the period 8/27/92 to 11/22/94.
2. Records of Dr. Lee Arnett covering the period of 9/28/92 to 2/10/95.
3. Records of Dr. R. Blake Dennis covering the period 8/27/92 to 3/4/93.
4. Records of Dr. Cavert McCorkle covering the period 9/12/92 to 12/30/92.
5. Records of Dr. Talley Parrot, et. al. of Midlands Orthopaedics covering the period of 4/7/93 to 10/20/93.
6. Records of Dr. Robert G. Schwartz covering 2/3/94.

7. Records of Dr. Katherine F. Jeter covering the period of 1/22/93 to 2/9/93.
8. Records of Dr. George Webster, Duke University Medical Center, covering 6/29/93.
9. Records of Rehabilitation Center covering the period 5/26/93 to 10/19/93.
10. Records of Dr. Wendell Tiller covering 8/29/94.
11. Records of Dr. Pamela Davenport covering 1/10/95.
12. Records of The Mayo Clinic covering the period 10/25/94 to 10/27/94.
13. Records of Dr. Robert Pendley covering the period 6/28/93 to 7/26/93.

CLAIMANT BIOGRAPHICAL

AGE: 61

SEX: Male

MARITAL STATUS: Married for 31 years.

CHILDREN: Three children, ages 24, 22, and 20.

WORK HISTORY: Process engineer/maintenance engineer for W.R. Grace for 17 years. Maintenance manager at Brevard College for 2 years. Engineer for Milliken and Company. At the time of his accident, claimant operated his own company, G & H Home Services, rebuilding homes damaged by fire or water.

EDUCATION: Claimant has a degree in mathematics and science from Western Carolina University. He also attended a one and one half year training program in engineering while employed at Milliken.

STATEMENT OF THE CASE

This matter is before me upon application of the carrier to be allowed to stop payment of temporary total compensation. Carrier alleges that claimant

reached maximum medical improvement on December 12, 1994. They seek a credit for all temporary total paid since that date. They have paid temporary total on a Form 15 at the rate of \$379.82. However, they question whether this is the correct amount.

Claimant denies that he has reached maximum medical improvement. He further alleges that even if he is determined to have reached maximum medical improvement, he is totally and permanently disabled. He contends that the maximum compensation rate is applicable.

EVIDENCE OF THE CASE

The carrier rested its application to stop payment on the medical records submitted pursuant to the APA. Testimony was received from the claimant, Harry Patterson. At the time of his accident Harry Patterson was self-employed, doing business as G & H Home Services. This company rebuilt homes damaged by fire or water. The company started operation in 1991. In 1992 the company had income of \$22,512 through August 25, 1992, the date of injury.

Mr. Patterson was injured when a ladder slipped out from under him and he fell 19 or 20 feet and landed on a concrete floor. His primary injury was a "Burst fracture L1 with incomplete spinal cord-conus lesion." Dr. Blake Dennis, an orthopedic surgeon, performed a fusion of the T10 through L3 vertebrae. Unfortunately, Mr. Patterson's spinal injury also caused severe neurological problems including total loss of bladder control and sexual function.

Mr. Patterson's testimony about his current condition was most compelling. His injury has left him with no feeling in the buttocks, penis, and groin area. (TR.20). He has decreased strength in his legs. (TR.20-21). He has difficulty getting out of chairs. He walks slowly, shuffling and dragging his feet. (TR.21). The muscles in his calves and buttocks areas have diminished. (TR.22). He

cannot spread his toes apart voluntarily. (TR.23). He has difficulty climbing stairs. (TR.23). He can only sit for 15-20 minutes before he begins to feel increased pressure in his spine. He can only stand for 15-30 minutes. (TR.24). At night his left leg sometimes shakes violently. (TR.25).

Mr. Patterson has no bladder control or sexual function. He wears adult diapers which he has to change 6-8 times a day. (TR.26). He takes three different drugs for his bladder function, some of which cause side effects such as grogginess and dry mouth. He has to take this medication every three hours, day and night. He has to set his alarm clock to wake him up during the night. (TR.26-29).

Mr. Patterson has to catheterize himself every 3 to 4 hours, day and night. He must use a new catheter each time. Each catheterization takes 20-25 minutes if he is at home and 20-30 minutes if he is in a public rest room. At times the catheterization causes bleeding. Claimant also suffers from frequent urinary tract infections. He also takes daily medication for infection. (TR.29-31).

As a result of his injury, Mr. Patterson also has some bowel dysfunction. He testified that he has 35-40% bowel control. At times he has bowel movements without being aware of it. (TR.32). At other times he becomes so constipated that he has to use a plastic glove and probes to dislodge the obstruction. (TR.35).

Claimant has undergone a great deal of medical treatment. The records of Dr. Lee Arnett verify that claimant is impotent and has permanent loss of normal bladder function. Arnett's records also indicate that claimant has 52% of right kidney function and 48% of left kidney function. His medical condition will have to be monitored for the rest of his life. (See 12/12/94 letter and 12/5/94 office note.)

By letter dated October 20, 1993, Dr. J. Talley Parrott indicated that he felt the claimant had a 20% permanent partial impairment to the whole man as a result of his back injury. However, Dr. Parrott made it clear that this rating did not take

into account the neurological dysfunction which was causing claimant's bladder and bowel problems.

Claimant was evaluated by Dr. Robert G. Schwartz on February 3, 1994. In addition to the problems mentioned above, Schwartz also noted that claimant had signs of radiculopathy into his legs as well as wasting of the gluteus maximus muscles. He also noted a moderate problem with lower extremity gait function. Dr. Schwartz indicated that pursuant to the AMA Guides, 4th Edition, claimant has a 55% permanent impairment to the whole person.

Claimant recently sought further evaluation and treatment at the Mayo Clinic. He underwent a number of tests at the Mayo Clinic but needs to return there for the remainder of the evaluation. He paid for this treatment on his own because the carrier refused authorization.

FINDINGS OF FACT

IT IS FOUND AS A FACT:

(1) That the parties to this proceeding are subject to and bound by the South Carolina Workers' Compensation Act, with Harry Patterson, employee, G & H Home Services, employer, and U.S. Fidelity and Guaranty Company, carrier.

(2) That the claimant sustained an injury by accident arising out of and in the course of his employment on August 25 1992, said injury being to his back but also affecting his bladder, rectum, penis, kidneys and both legs.

(3) That the appropriate compensation rate in this case is \$379.82, the maximum for 1992. This finding is based on the fact that claimant had income of \$22,512 from January through August of 1992: Assuming 4.33 weeks per month, this would yield an average weekly wage of \$649.88 and a compensation rate of \$433.25, which of course would be reduced to the 1992 maximum of \$379.82. Even though it has been paying temporary total at the rate of \$379.82, the carrier

now disputes this method of calculation. They point out that claimant's income was considerably less in 1991, the year he started G & H Home Services, than it was in 1992 when he was injured. In my opinion it would be unfair to the claimant to reduce his compensation rate by considering the limited income earned in 1991 while starting up the business. I believe that the method I have used "will most nearly approximate the amount which the injured employee would be earning were it not for the injury."

(4) That proper notice of the accident was given.

(5) That the claim was timely filed.

(6) That the claimant reached maximum medical improvement on December 12, 1994. In light of the finding of total disability set forth below, the carrier's requests to be allowed to stop payment, and for a credit, are moot.

(7) That as a direct and proximate result of his on the job injury, claimant has sustained a permanent partial loss of use of more than 50% of his back. This finding is based on the medical evidence and opinions as to impairment and limitations, the testimony of the claimant with regard to his symptoms and limitations, and the observation of the claimant by this commissioner.

(8) That even if he did not have a 50% permanent loss of use of his back, claimant is also totally disabled due to the combined effect of his back, bladder, rectum, and leg (both) problems, the need to catheterize himself every three hours, and the side effects of the medications he must take. These disabilities combine to destroy his earning capacity.

(9) That as a direct and proximate result of his on the job injury, claimant has sustained permanent partial loss of use of other parts of his body besides the back, including both kidneys, the bladder, the rectum, the penis, and both legs. Were this not a case of total disability, the following awards of permanent partial

loss of use would be in order:

(a) right leg---25% (48.75 weeks) permanent loss of use;

(b) left leg----25% (48.75 weeks) permanent loss of use;

(c) penis-----100% (350 weeks) permanent loss of use;

(d) bladder---100% (250 weeks) permanent loss of use;

(e) rectum----60% (150 weeks) permanent loss of use.

(f) left kidney----52% (208 weeks) permanent loss of use;

(g) right kidney--48% (192 weeks) permanent loss of use.

(10) That claimant will need continued medical treatment for the rest of his life.

(11) In light of the nature and severity of his conditions, and the fact that the carrier refused authorization, claimant was justified in seeking evaluation and treatment at the Mayo Clinic. The carrier should reimburse claimant for the expenses incurred thus far. Carrier should also authorize and pay for the remainder of the evaluation at the Mayo Clinic as well as any treatment which the doctors there might recommend.

(12) That claimant's testimony was credible.

RULINGS OF LAW

Upon the foregoing findings of fact and under the Code of Laws of South Carolina, as amended, it is concluded that:

(1) Under § 42-1-160, claimant sustained an injury by accident arising out of and in the course of his employment, said injury being to his back, bladder, rectum, penis, kidneys and both legs.

(2) Under § 42-15-20, proper notice of the injury was given.

(3) Under § 42-15-40, the claim was timely filed.

(4) Under § 42-15-60, claimant has received medical care for his injury.

(5) Under § 42-9-10 and 42-1-120, claimant has been paid temporary total compensation in the amount of \$379.82 per week.

(6) Under § 42-1-40, the appropriate compensation rate in this case is \$379.82 per week.

(7) Under § 42-9-10 and § 42-1-120, claimant reached maximum medical improvement on December 12, 1994.

(8) Under § 42-9-30(19), having been found to have sustained permanent partial loss of use of greater than 50% of the back, claimant is entitled to be compensated for permanent and total disability pursuant to § 42-9-10.

(9) Under § 42-9-10 and the caselaw decided thereunder, having been found to have sustained multiple causally related disabilities which destroy his earning capacity, claimant is permanently and totally disabled.

(10) Under § 42-15-60, having been found to be permanently and totally disabled, claimant is entitled to lifetime medical benefits for his causally related medical problems. Even if claimant was not totally and permanently disabled, he would nonetheless be entitled to lifetime medical pursuant to this code section as applied in Dykes v. Daniel Const. Co., 262 S.C. 98, 202 S.E.2d 646 (1974).

(11) Under § 42-15-60, defendants shall also be responsible for the costs of all medical treatment at the Mayo Clinic.

ORDER

IT IS THEREFORE ORDERED:

(1) That defendants shall continue to pay claimant compensation at the rate of \$379.82 per week for permanent and total disability until such time as they have paid a total of 500 weeks of compensation, with credit for temporary total previously paid on this claim.

(2) That the defendants shall pay for all causally related medical expenses during the life of the claimant without regard to any limitation in this title, including the maximum compensation limit.

(3) That the defendants shall reimburse the claimant for all expenses incurred in relation to the treatment performed to date at the Mayo Clinic. Defendants shall also authorize and pay for the remainder of the Mayo Clinic evaluation and any treatment which the doctors there might recommend.

(4) No hearing costs are assessed.

**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**

Roland S. Corning, Commissioner

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 9555021

Raymond O. Simmons,)
)
 Claimant,)
)
 vs.)
)
 City of Charleston,)
)
 Employer,)
)
 and)
)
 Sedgewick James of the)
 Carolinas)
)
 Carrier.)
)
)
 _____)

ORDER

Pursuant to due notice, this cause came on before this Commissioner for a hearing on May 5, 1999, to determine the issues as set forth in the Forms 50 and 51. This is a denied case. Claimant submitted his Notice of Witnesses and Written Medical Reports to be introduced as direct evidence. Additional evidence offered by Claimant was his testimony.

The Employer/Carrier offered no evidence, no APA submissions, and no witnesses. The parties submitted Forms 58.

Based upon the submissions of the parties, and the testimony of the Claimant, this Commissioner makes the following:

FINDINGS OF FACT

1. At the time of the injury, on or about August 24, 1995 (Form 20 indicates date of injury as August 25, 1995), Claimant was employed by the City of Charleston Fire Department as a fireman and had been so employed for a period of twenty-five years. He had attained the rank of Captain.

2. At the time of the hearing, Claimant was 58 years old and has a ninth grade education.

3. Claimant has been afflicted with diabetes and hypertension for many years. He uses physician-prescribed medications for both of these medical conditions.

4. Claimant weighs approximately 260 pounds.

5. The Claimant was injured on or about August 24, 1995, while performing duties in connection with his job as a fireman for the City of Charleston, South Carolina.

6. The Claimant was bitten by a brown recluse spider on or about August 24, 1995, when he inserted his feet into his fireman's boots in emergent preparation for responding to a fire alarm. Unknown to Claimant, a brown recluse spider had previously entered the boot and bit Claimant when he inserted his foot.

7. The garage doors at the fire station are kept open a large majority of the time so that fire engines can exit the facilities expeditiously in the event of a fire

alarm. The doors were open on the date Claimant was bitten by the brown recluse spider.

8. The firemen, including Claimant, routinely leave their fireman's boots, coat, and other equipment in the open garage area of the fire station immediately adjacent to the fire engine in order to aid in rapid deployment in the event of a fire alarm.

9. Spiders and other insects have open access into the fire station garage, and the Claimant had observed a number of spiders in and around the fire station a number of times over the years.

10. At his personal residence the Claimant does not keep his personal clothing, shoes, and other apparel outside the home or in exposed areas, they are kept inside in closets.

11. Other firemen employed by the City of Charleston have been bitten by spiders at the fire station in connection with their duties as firemen.

12. The condition of the wound from the spider bite worsened, and within a few days after the spider bite, the Claimant sought medical attention from his regular physician. His physician immediately diagnosed the injury as most probably a brown recluse spider bite and referred Claimant to a surgeon, Robert S. Cathcart, III, M.D., where he was seen on August 28, 1995.

13. On August 28, 1995 Dr. Cathcart observed an ulceration of the skin with necrotic base on the Claimant's lower leg, posteriorly on the right.

14. Dr. Cathcart testified by deposition that the ulceration on the leg was most probably the result of a bite by a brown recluse spider, and this Commissioner so finds. Nothing in the record is to the contrary.

15. As a consequence of the injury from the spider bite, Dr. Cathcart instructed Claimant to remain out of work. On August 28, 1995, Claimant presented his supervisor with an out of work slip from Dr. Cathcart and reported the job injury to his supervisor at that time, all within a few days of the injury.

16. As a consequence of the injury from the spider bite, on October 13, 1995, Dr. Cathcart performed a skin graft surgery at the wound site, but the surgery failed. On November 29, 1995, Dr. Cathcart performed another skin graft surgery which also failed.

17. As a consequence of the injury from the spider bite, on December 18, 1995, Dr. Cathcart performed an additional skin graft surgery, and in combination with hyperbaric oxygen treatment, the tissue began to heal.

18. Because of the problems with the right leg, the surgeries, pain, and medical treatment, the Claimant favored that leg in ambulating, placing excessive weight and stress on the opposite (left) leg.

19. By March 15, 1996, the brown recluse spider bite wound itself had practically healed, but on April 8, 1996, the Claimant reported to Dr. Cathcart who observed ulcerations on the opposite foot caused by excessive weight bearing on that limb as a direct consequence of favoring the limb which suffered the brown recluse spider bite.

20. Because Claimant was a diabetic, he was suffering from peripheral neuropathy in the lower extremities. The symptoms of peripheral neuropathy are loss of sensation and impairment of circulation. Therefore, according to medical testimony, it is likely that the trauma and ulcerations to the left leg went unrecognized for some time prior to presentation to the treating physician, and this Commissioner so finds.

21. Diabetes increases the rate of atherosclerosis.

22. Diabetes enhances the likelihood of obesity, and Claimant was and is obese.

23. According to Dr. Cathcart's testimony, and this Commissioner so finds, the problem occasioned by favoring the right leg and thereby increasing the weight bearing and stress on the left created ulcerations and an overwhelming infection in the left leg which ultimately resulted in amputation of the left leg below the knee on May 31, 1996. The amputated leg stump was in such poor condition medically that a skin graft was necessary which was performed in August 1996 by Dr. Cathcart.

24. At the time of the hearing, Claimant had been fitted with a prosthesis on the amputated leg.

25. At the hearing, this Commissioner observed massive swelling in the lower leg and ankle on the right which substantially incapacitated Claimant from ambulating in all but the most awkward and obviously painful fashion.

26. Claimant has not worked since August 28, 1995, except for 3 days. Claimant's last day of work was April 8, 1996.

27. Claimant has not been paid any temporary total benefits even though he has been out of work the requisite number of days to entitle him to such payments.

28. The employer/carrier has not paid any of the medical expenses associated with the treatment for the spider bite and its consequences. At the time of the hearing those medical expenses totaled \$79,946.58.

29. The employer/carrier's Form 58 was filed with proof of service via fax on April 26, 1999. The hearing was held on May 5, 1999. Claimant filed and served a Motion to Strike the employer/carrier's Form 58 on May 5, 1999 on the grounds that the employer/carrier's Form 58 was untimely pursuant to R67-611. Alternatively, Claimant moved to strike paragraph 5 of the employer/carrier's Form 58 on the grounds that it constituted an attempt to amend the Form 51 in violation of R67-610B, and that it constituted an incorrect statement of the applicable law.

30. In determining employability, it is necessary to consider many factors. These factors include age, educational background, past work experience, and physical limitations and pain. Claimant is 58 years of age, and according to the uncontroverted report of the vocational consultant, can be considered an individual of advanced age. As an individual in this age category, age likely affects his ability to adjust to a significant number of jobs in the national economy. Claimant left school in the ninth grade, and this is considered limited education. Limited education refers to competence in reading, arithmetic, and language skills which do not provide the

individual with the educational qualifications necessary to perform the majority of more complex duties involved in semi-skilled or skilled work.

31. This Commissioner finds that significant past work experience for claimant has been as a fire captain/firefighter and as a stock clerk. Work as a fire captain is defined as medium, skilled work, and as a firefighter as very heavy, skilled work. Medium work requires the ability to lift 50 pounds and to frequently carry 25 pounds. Very heavy work is defined as having the ability to lift more than 100 pounds and to carry more than 50 pounds. Skilled work is defined as work which requires judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of work to be produced. It entails being able to understand specifications, make computations, implement mechanical adjustments, and supervise people. Claimant engaged in all of these activities, specifically inspecting the station house, buildings, grounds, and facilities; examined fire trucks and equipment to ensure compliance with departmental maintenance standards; responded to fire alarms and determined from observation the nature and extent of the fire, condition of the buildings, danger to adjacent buildings, availability of water supply, and directed firefighting crews. The position also entailed training subordinates in the use of equipment and methods of extinguishing all types of fires in addition to personnel efficiency ratings. The position also includes preparing various reports, rendering first aid, and the recommendations for the elimination of fire hazards.

32. The stock clerk position involved inventories, re-stocking, and examining merchandise, unpacking cartons and crates, labeling, and transferring

merchandise from place to place. Claimant's past work experience was consistent with all of these definitions.

33. Claimant has significant physical limitations. For example, he has an extremely awkward gait as observed by this Commissioner, and according to the vocational consultant, he is unable to stand, sit, kneel, stoop, crawl, climb, or lift and carry. As a result of the amputation on the left, coupled with his pre-existing health conditions, and the spider bite wound with multiple skin graft surgeries, Claimant has massive swelling in the lower leg afflicted with the job injury.

34. The services, if any, which the Claimant might be able to perform in the open competitive employment market are either non-existent or so limited in quality and/or quantity and dependability that no reasonably stable market exists for them, given the Claimant's severe limitations of education, training, experience, and physical abilities.

35. This Commissioner finds that the Claimant certainly is incapable of performing any sort of common labor, and because of his severe physical and educational limitations, he is totally disabled.

36. The agreed upon compensation rate is \$382.98.

Based upon these Findings of Fact, this Commissioner makes the following:

CONCLUSIONS OF LAW

1. This Commissioner has jurisdiction of the subject of this action and the parties hereto.

2. Claimant was injured in the course and scope of his employment on or about August 24, 1995, and, in compliance with applicable law, timely reported same to his supervisor within few days thereafter.

3. Under South Carolina law, Code Section 42-1-160, an Employee is entitled to compensation if he is injured by accident arising out of and in the course of employment. An "accident" means an unlooked for and untoward event which is not expected or designed by the person who suffers it. Sharpe v. Case Produce Company, 495 S.E.2d 790 (SC App. 1997). There is no requirement of a fortuitous event or accident, the unexpected result is all that is necessary, and it may be due to a purely accidental cause, or may be due to oversight, negligence, carelessness, fatigue, or miscalculation of effects of a voluntary action. An "injury" by accident includes not only the injury, the means or the cause of which is an accident, but also the ***injury which is itself an accident***, that is, an injury occurring unexpectedly from the operation of internal or subjective conditions, without the prior occurrence of any external event of an accidental nature. Sharpe, supra.

An injury arises out of and in the course of employment, for worker's compensation purposes, when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto. Baggott v. Southern Music, Inc., 496 S.E.2d 852 (SC 1998). Stated another way, an accident "arises out of" employment within the meaning of the Act when it arises because of the employment, as when the employment is a contributing proximate cause. Sharpe, supra.

4. Claimant was performing duties incident to his employment, duties which were integral to his employment, at the time of the injury, that is, he was donning his official fireman's boots in response to an emergency call. Claimant could not respond to the emergency call, he could not perform that portion of his official duties without having placed his boots upon his feet. In so doing, he suffered an injury which ultimately led to the amputation of his leg, as the uncontroverted medical evidence proved, and this Commissioner so concludes.

5. According to the uncontroverted report of the vocational consultant, and this Commissioner so concludes, the Claimant has suffered a very substantial impairment to his earning capacity. He is unable to return to his most recent work as a fire captain/firefighter, or to his past relevant work as a stock clerk. Based upon the uncontroverted report of the vocational consultant and the fact that parts of Claimant's body in addition to the injured limb have been affected by the job injury, this Commissioner concludes that the Claimant is and remains unemployable. Because of his age, educational background, and physical limitations, he is not an appropriate candidate for vocational rehabilitation or occupational re-training. It is, therefore, concluded that Claimant is unable to compete in the open job market, is unable to perform simple, sedentary tasks in a reliable or dependable fashion, and is unable to perform substantial gainful work activity. Nothing in the record supports any conclusions to the contrary. Claimant's incapacity for work resulting from the injury is total and permanent, and he is, therefore, totally disabled and is entitled to receive compensation for a period of 500 weeks pursuant to South Carolina Code Section 42-

9-10 and 42-9-400(d). Wynn v. Peoples Natural Gas Co., 118 SE 2d 812 (1961);
Madden v. Greenville General Hospital, 207 SE 2d 81 (1974).

6. R67-611(B) provides that a Form 58 and proof of service shall be filed at least ten (10) days before the hearing. The hearing was scheduled for May 5, 1999, but the employer/carrier's Form 58 was not served until April 26, 1999, less than ten (10) days before the hearing. Claimant moved to strike the Form 58 from consideration on the grounds that it was untimely filed and served. This Commissioner concludes that the employer/carrier's Form 58 was untimely filed and served, and therefore, concludes that same should be stricken.

7. Even if the employer/carrier's Form 58 should be considered, the matters raised in paragraph 5 of the Form 58 do not constitute the law of the State of South Carolina and are not an adequate defense. In paragraph 5 of its Form 58, the employer/carrier asserts that for an insect bite to be compensable, it must be shown that the claimant, by reason of his employment, was at a greater risk of being stung than the public generally. No authority for such proposition was cited to this Commissioner. Under South Carolina law, Code Section 42-1-160, an employee is entitled to compensation if he is injured by accident arising out of and in the course of employment. An "accident" means an unlooked for and untoward event which is not expected or designed by the person who suffers it, as discussed above. An injury arises out of and in the course of employment when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto.

Baggott, supra. Claimant's injury was, as this Commissioner has found, within the period of his employment at a place where he was reasonably expected to be in the performance of his duties and while fulfilling those duties.

The employer seeks to graft further language into Section 42-1-160 by requiring an increased risk of injury while on the job, that is, whether the employment peculiarly exposed the employee to a risk of injury greater than that of other persons in the community. This is not the statutory law in South Carolina, and no South Carolina case so holds. If this were the law in South Carolina, an employer could deny benefits to an employee who suffers injuries in a traffic accident while on the job. The employee is not necessarily at an increased risk of a traffic accident just because of being on the job, but injuries sustained in traffic accidents are routinely compensable pursuant to South Carolina law where they occur while an employee is performing job related tasks. This Commissioner concludes that the so-called increase risk requirement is not the law in South Carolina.

The employer here seeks to single out insect bites for special treatment and a special limitation on the employee's right to compensation. The employer asserts that insect bites are somehow different from other job injuries, and that there is an increased burden on the employee, not founded upon any case or statute, to prove that he is at an increased risk of injury from the job in order to be entitled to benefits. If the legislature intended this result, it certainly could have so stated; it has not.

Though South Carolina courts have not addressed this issue, other jurisdictions have. In Standard Fire Insurance Company v. Quellar, 468 S.W.2d 880

(Tex App. 1971), the Court specifically rejected the so-called increased risk test where a furniture delivery employee was stung by an insect while the employee was operating the company vehicle with the window down. The allegation that the employee must be at a risk greater than that of other persons in the community was emphatically rejected, and since the employee was stung while in the performance of his duties, the injury was compensable. Other courts have held likewise, see City of North Wildwood v. Cirelli, 35 A2d 893 (N.J. 1944) and Cohrs v. Meadows, 342 So. 2d 1172 (La. App. 1977). Another persuasive case is Avis v. Electrolux Corp., 151 N.Y.S.2d 542 (Sup. Ct 1956) where an employee lost the use of an eye when struck by the talon of an owl which flew close to his head while he was engaged in his customary occupation. While that case did not deal with insect bites, it did deal with an incident involving an animal.

Compensability was found. Since the old Field Code of South Carolina is patterned upon New York law, special deference is customarily extended by the South Carolina courts to those of New York, especially where no authority exists in the State of South Carolina.

This Commissioner, therefore, concludes that the so-called "increased risk" requirement advanced by the employer/carrier in this case is not the law of South Carolina, and same is therefore rejected. Nevertheless, even if the "increased risk" requirement were the law in South Carolina, this Commissioner concludes that the Claimant in this matter was, in fact, at an increased risk for injury from insect bites as a result of his job requirements. This is because his job requirements entailed leaving his official clothing, boots, and other fireman's gear in an

area of the fire station garage which was constantly open to exposure to the elements and outdoor environmental influences such as insects and other vermin. Poisonous insects would therefore have easy and ready access to the Claimant's boots and other official items of clothing, apparel, and equipment, conditions that do not exist for the public generally or for the Claimant when he was not engaged in the duties of his employment. The Claimant does not leave his personal clothing, boots, and the like exposed to the elements, they are kept securely protected on the inside of his home in closets. Therefore, because of the peculiar requirements of his employment as a fireman, Claimant was at an increased risk of injury from insect bites than the public generally.

Because of this disposition of the substantive issue raised by the employer/carrier's Form 58, it is not necessary to reach claimant's contention that paragraph 5 of the employer/carrier's Form 58 constitutes an untimely attempt to amend the Form 51 in violation of R67-610(B).

8. Pursuant to South Carolina Code Section 42-15-60, Claimant is entitled to reasonable and necessary medical, prosthetic, and other related services as enumerated in said statute for his lifetime since he is totally and permanently disabled.

Accordingly, based upon the above Findings of Fact and Conclusions of Law, it is,

ORDERED, that the employer/carrier shall forthwith pay unto claimant the sum of One Hundred Ninety One Thousand Four Hundred Ninety and 00/100

(\$191,490.00) Dollars represented by Claimant's compensation rate of \$382.98 for a period of 500 weeks; it is further,

ORDERED, that the employer/carrier shall forthwith pay unto the claimant the sum of \$79,946.58 representing the medical expenses incurred as a consequence of the injury; and it is further,

ORDERED that the employer/carrier shall, pursuant to SC Code section 42-15-60, provide reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital and other treatment or care for Claimant's life.

DONE and ORDERED this 4th day of June, 1999, at Chesler, South Carolina.

[Signature]
W. Lee Catoe, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order upon the above captioned parties upon all parties to this order. A copy of this order is being served by first class mail addressed to the parties. All parties are advised that the order is addressed to the undersigned.

WBR
AEB

This 9th day of June, 1999.
BY C. D. Mason
Administrative Assistant to the Commissioner

PRESTON F. McDANIEL
ATTORNEY AND COUNSELOR AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SC 29201

PRESTON F. McDANIEL

(803) 7

(date)

Name of Clerk
Clerk of Court
Address
City, State, Zip

Re: Name of Case and WCC #

Dear Clerk's Name:

Please find enclosed for filing with the Circuit Court the (name of document) in the above referenced matter along with Affidavit(s) of Service of the same on all concerned parties. I would appreciate it if you would clock in and certify the additional copy and return it to me for my file. Enclosed is a check in the amount of \$50.00 for the filing fee and a stamped, self-addressed envelope for returning the copy to me.

Also by copy of this letter to the South Carolina Workers' Compensation Commission, I am requesting that they forward WCC File No: (number of file) to you in readiness for this matter to be heard.

Thank you for your assistance. I hope this is sufficient for filing this matter with the Court; however, if additional information is needed, please feel free to contact me at your convenience.

Sincerely yours,

Your Name

(initials)

Enclosures

CC: SC Workers' Compensation Commission
Defense Attorney

9-53