STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES PATRICK OVERLY, II,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 11-4167
	)	
EATON CORP.,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case on November 2 and 3, 2011, via video teleconference in Orlando and Tallahassee, Florida, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioner: Mike Hunsinger, Esquire[1/]
The Hunsinger Law Firm
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For Respondent: John J. Doyle, Jr., Esquire[2/]
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent committed an unlawful employment practice against Petitioner on the basis of

his medical disability in violation of the Florida Civil Rights Act of 1992, as Amended (FCRA of 1992).

PRELIMINARY STATEMENT

On January 2, 2011, James Patrick Overly, II (Petitioner), filed an Employment Complaint of Discrimination (Complaint) with the Florida Commission on Human Relations (FCHR) alleging that he was being discriminated against by his employer, Eaton Corporation (Respondent), based on the FCRA of 1992, the Age Discrimination in Employment Act, and/or the Americans with Disabilities Act. Following its investigation of the Complaint, FCHR entered a Determination: "No Cause" dated July 11, 2011.

On August 11, 2011, Petitioner timely filed a Petition for Relief (Petition) with FCHR, alleging Respondent had violated the FCRA of 1992 in the following manner:

- Respondent denied Petitioner a reasonable accommodation for employment;
- Respondent denied Petitioner his right to obtain training for new light duty job opportunities;
- Respondent denied Petitioner his annual merit increase in 2010, based on his 2009 evaluation; and
- Respondent denied Petitioner the use and possession of a company-leased vehicle.

On August 17, 2011, FCHR forwarded the Petition to the Division. The undersigned Administrative Law Judge was assigned to the case. Following one mutually agreed-upon continuance,

the final hearing was set and heard on the dates and at the locations indicated above.

At the final hearing, Joint Exhibits 1 through 4 were received into evidence. Petitioner testified on his own behalf. Petitioner's numbered Exhibits 1 through 6, 8 through 13, and 15 were admitted into evidence.[3/] Additionally, Petitioner offered Respondent's pre-numbered Exhibits 1 through 3, 20, and 21 into evidence. Without objection from Respondent, these five exhibits were admitted.[4/] Respondent called four witnesses to testify: Robert Costantino, Dianne Higgins, Brian Irish, and Brook Yost. In addition to the five exhibits admitted during Petitioner's case-in-chief, Respondent's Exhibits 4 through 14, 22, and 24 through 26 were admitted into evidence. The record was kept open to allow the deposition of James ("Yee") Leung (Mr. Leung). Mr. Leung's deposition Transcript, with three exhibits attached (Petitioner's Exhibits 8, 18, and 25), was received by the Division on December 2, 2011, and incorporated into the hearing record. The record in this case was closed on December 6, 2011.

The Transcript of the final hearing was filed on December 6, 2011. By rule, the parties are allowed ten days from the filing of the Transcript in which to submit proposed recommended orders (PROs). However, Respondent's counsel requested 30 days from the filing of the Transcript in which to

file PROs. That request was granted. Each party timely submitted a PRO, and each has been duly considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is a 41-year-old man who began his employment with Respondent in April 2006. Petitioner has been continuously employed in Respondent's Power Quality Services Division (PQSD) since April 2006. However, he has been on either short term disability (STD) since January 25, 2010, or long term disability (LTD) beginning on July 25, 2010.

2. Respondent is an international power service-related company. Respondent's PQSD has customer service engineers (CSE) throughout the nation who perform similar jobs in ten different geographic regions. Petitioner is located in Orlando, Florida, and worked in Respondent's southeast region, Central Florida division.

3. Sedgwick is the claims administrator for Respondent's STD, LTD, and workers' compensation programs. Employees who are in the STD or LTD programs need to communicate with and keep Sedgwick apprised of their disability and related physician directives. Respondent's employees are to contact Sedgwick to file the requisite claim(s) for STD or LTD benefits.[5/]

4. Prior to his disability leave, Petitioner worked for Respondent as a CSE. Petitioner's position required him to

perform scheduled maintenance (SM), emergency maintenance (EM), preventative maintenance (PM) on uninterruptible power supplies (UPS), start-up projects that included the installation of electrical equipment, and other related service activities. Part of Petitioner's job was to perform PM to catch issues before they became major problems for the customers. Petitioner also performed other field work that included emergency service calls, customer visits, and battery assessments of various UPS units.

5. Respondent's standard CSE's job description[6/] included the following areas: primary function, specific functions, dimensions, specialized knowledge, and additional information. In the additional information section, all CSEs had the following "Working Conditions" enumerated:

> Be able to lift up to 75 lbs
> Occasional over-night travel may be required
> Scheduled and unscheduled overtime required
> 24/7 on call position

Petitioner and Brian Irish (Mr. Irish)[7/] both agreed that this job description was an accurate description of a CSE's job. Further, Petitioner agreed that, in order "[t]o do 100 percent of the [CSE] job," a person has to be able to lift up to the 75 pounds as required.

6. Petitioner provided a spread sheet to demonstrate his PM activities for 2009. The spread sheet highlighted the seven

battery PM jobs that required a battery lift and tray puller[8/] in order to perform the service, the 29 battery PM jobs that did not require a battery lift, and the 74 UPS PM jobs that did not require a battery lift. The spread sheet failed to include Petitioner's scheduled maintenance work, the start-up jobs, or any of his EM or emergency work done in 2009. Thus, the spread sheet does not provide a complete picture of Petitioner's 2009 work performance.

7. Petitioner's duties made multiple physical demands of his body: from carrying his tool bag (with various screwdrivers, wrenches, sockets, drills and other assorted items), his laptop computer bag, and safety gear bag to the work site; to sitting on a stool or the floor to hookup his laptop in order to run the requisite diagnostic tests; to moving cabinet doors in order to actually work on the equipment. There were times when Petitioner used a two-wheeled dolly to transport the equipment that he needed to perform his duties.[9/]

8. Petitioner routinely carried his computer laptop bag with his laptop computer, some small hand tools, and assorted communication cables to download the UPS information into work sites. He also carried a cordless drill, a charger and/or a back-up battery, a Fluke multi-meter,[10/] leads for the meter, various sockets and adapters, a vacuum cleaner (if found to be necessary), a flashlight, a torque wrench (for battery jobs), an

infrared gun,[11/] and safety gear. Petitioner estimated the weight of the tools he typically used on a job at 14 to 15 pounds. Petitioner also estimated that his laptop bag with the laptop (which was an essential piece of equipment) weighed between 12 to 16 and one-half pounds. Petitioner did not offer a weight on the safety gear bag he was required to use; however, based on the demonstration provided, that gear weighed at least five pounds, if not more.[12/] On a routine service call, Petitioner would need to carry at least 26 to 31 pounds of equipment in order to perform the service call. Then he would have to actually perform the required service, which could entail additional physical demands.

9. Petitioner (as well as other CSEs) could remove the outer doors to the UPS cabinets which housed the various battery trays used in the computer system. Petitioner would use the steel toe of his boot to lift the outer door of the cabinet off its hinges. He would then put that edge of the door on the ground, pull his steel-toed boot out, and slide or shift this outer door to a safe location. Petitioner would repeat the process with the second outer door. He would then remove the inner doors ("dead front") in order to perform the required service. The two dead fronts were not as heavy as the outer doors. To replace the outer doors (after replacing the dead fronts), Petitioner would lift the outer door up on one end,

place his steel-toed boot under the door edge, then slide or shift this outer door back to the cabinet front, raise the door up, and guide the door back on to its hinges. He would repeat the process with the second outer door. Petitioner had to use his body to physically push, pull, slide, and/or lift and direct the outer doors to their appropriate resting location, as well as back on the hinges. There was credible testimony that these outer cabinet doors to the units that Petitioner serviced can weigh between 26 and 50 pounds per door.

10. Respondent provides leased vehicles to its active CSEs. Such vehicles could include a service van, a mini-van, a truck, or some other large vehicle that is easily adapted to carrying the equipment a CSE uses. CSEs pay approximately $120.00 a month for the unfettered use of the leased vehicle.[13/] Petitioner estimated that he used his leased vehicle 90 percent of the time for Respondent's business purposes and only ten percent for personal use.

11. Respondent initially provided Petitioner with a van. At the time he went on STD, Petitioner was driving a leased heavy-duty Dodge Ram truck, with a camper top enclosure.

12. During the calendar work year for 2009, Petitioner met his performance measures and was rated a perfect five on Respondent's performance scale. That high performance evaluation rating is undisputed.

13. Respondent provides merit pay increases to active employees who receive high performance marks for the preceding year.

14. Respondent provides training courses to active employees for them to maintain and/or obtain requisite training on the UPS models being offered at the time.

15. On or about November 19, 2009, while on his honeymoon, Petitioner suffered a back injury. Although Petitioner returned to work in late November, his work schedule for the remainder of 2009 was very light based on the multiple holidays and the difficulty in actually scheduling the various maintenance appointments.

16. Between his return to work in late November 2009 and January 13, 2010, Petitioner only completed two service calls in 2009 and a standby service call.[14/] Petitioner was contacted, around Thanksgiving 2009, about a customer wanting "standby service," and no one was available to take the call but Petitioner. Petitioner contacted Robert Costantino (Mr. Costantino), his immediate supervisor, telling him that Petitioner had hurt his back while on his honeymoon, but that Petitioner was willing to take the call. Mr. Costantino, who did not know the specifics of Petitioner's back injury, nor did he have any written medical restrictions regarding Petitioner,

cautioned Petitioner "to be very careful." Petitioner completed the standby service call without incident.

17. Sometime in early January 2010, Petitioner again spoke with Mr. Costantino and expressed that he (Petitioner) was not getting any better, that he was in a significant amount of pain, and that it was becoming difficult for him to do the job. Mr. Costantino suggested Petitioner see a doctor.

18. On January 13, 2010, Petitioner was examined by an orthopedic physician. Petitioner provided this orthopedic physician's work status note to Mr. Costantino, who provided it to Respondent's human relations (HR) department. This work status note placed "LIGHT DUTY RESTRICTIONS" on Petitioner's movement for six weeks and limited his "lifting/pushing/pulling" to no more than 25 pounds. This work status note also contained the following directive that, "[i]f light duty is not available with the listed restrictions, the patient is to be temporarily kept off work until the next office visit," which was also six weeks later.

19. After forwarding Petitioner's work status note to Respondent's HR department, Mr. Costantino consulted with the HR personnel. It was determined that it was not safe for Petitioner to continue to work as a CSE. Mr. Costantino contacted Petitioner, expressed concern for his injury, and directed Petitioner to contact Respondent's HR department to

file a claim for STD. Mr. Costantino directed Petitioner to cancel his pending service calls for the remainder of January 2010. Although Petitioner contended he could perform PM, or performance checks, Mr. Costantino indicated that Respondent could not allow Petitioner to continue to work based on the belief that the standard job requirements could be detrimental to Petitioner's health.

20. As Petitioner started his STD, he was advised that he could apply for any available positions for which he was qualified on Eatonjobs.com, the internal job website available only to Respondent's employees. Petitioner did not avail himself of this, as he thought it was Respondent's duty to find him a position.

21. Dianne Higgens (Ms. Higgens) was the manager of compensation, employee rehabilitations, and community involvement for Respondent's PQSD until May 2011, when she retired. In April 2010, Ms. Higgens took a special assignment in Respondent's HR department, when that manager went on maternity leave. During her service in the HR department, Ms. Higgens spoke with Petitioner on numerous occasions regarding his disability and the issues he was having with Sedgwick regarding his disability payments.

22. Ms. Higgens had multiple, lengthy telephone conversations with Petitioner. Ms. Higgens's perception during

these calls was that Petitioner was in a great deal of pain, as he mentioned that in the majority of their telephone conversations. Ms. Higgens's testimony is found credible.

23. Ms. Higgens authored several letters to Petitioner seeking information regarding his medical condition and/or attempting to secure necessary medical documentation regarding Petitioner's disability and when he could return to work fulltime. Specifically, in November 2010, Ms. Higgens sent Petitioner a letter asking for his physician to complete a return-to-work status form. Petitioner did not initially get that form to Respondent, but did provide it in January 2011. The form indicated Petitioner was to have surgery in February 2011 and would be able to return to work six to eight weeks thereafter.[15/] It is appropriate to note that Respondent has in place a return-to-work process for employees who return from either STD or LTD to ensure that their health restrictions or conditions are properly and adequately addressed.

24. Ms. Higgens encouraged Petitioner to search Eatonjobs.com to locate a position that he desired. She offered that, if Petitioner found a job opening that he was interested in, he should apply for it and let her know of his application. She would then contact the appropriate HR person. Petitioner never notified Ms. Higgens of any applications. Further, Ms. Higgens attempted to assist Petitioner in finding work for

him within Respondent's organization. For the one possible position that she found in a 50-mile radius from Orlando, Florida, Petitioner could not fulfill the job requirements because he was medically restricted in how much weight he could lift. Respondent did not and does not have permanent or regular light-duty positions.

25. On April 13, 2010, Petitioner was examined by another physician. Petitioner provided this physician's work status note to Respondent. This work status note reflected that Petitioner "MAY NOT return to work," but could return to "regular duty on MAY 13th 2010." Although this work status note indicated Petitioner could return to work on May 13, 2010, Respondent did not receive any physician's directive or release that Petitioner could, in fact, return to work. In fact, Petitioner's condition declined to such an extent that he, on his own volition, started using a cane in June 2010. Further, in a January 4, 2011, letter, yet another physician documented Petitioner's need to use a cane.[16/]

26. Towards the end of Petitioner's STD period, Mr. Costantino and Petitioner talked via telephone about possible options for Petitioner to pursue. Petitioner continued to express interest in three types of jobs that he felt he could perform: the administrative job of scheduling PM and other service calls, a triage job, and a technical support job. The

first two positions were at a lower salary than Petitioner's CSE position. The technical support job was at a higher salary. All three positions were located in Raleigh, North Carolina. At that time, all three positions were filled with active employees of Respondent and, thus, were unavailable for Petitioner. Mr. Costantino suggested to Petitioner that he search Eatonjobs.com for any open positions. Mr. Costantino also provided Petitioner with the names and contact information for the managers in both Respondent's triage and technical support sections. Petitioner could contact those managers to discuss any openings. Mr. Costantino was unaware of any contact by Petitioner with those managers.

27. Mr. Costantino told Petitioner he could not attend Respondent's training classes because he was on disability leave, and there was a possibility that Petitioner could jeopardize his disability benefits if he participated in some compensable activity for Respondent.

28. Mr. Costantino also discussed the 2009 merit increase award with Petitioner. Respondent's stated policy is that, in order to receive a merit increase award, the employee must be an active employee at the time the merit increase award is effective.

29. Respondent's company-wide 2009 merit increase award was not effectuated until July 2010. As set forth in

Respondent's Merit Planning User Guide, employees who are "on a leave of absence (LOA) cannot be planned for during the merit [award] planning process, unless they return to work before the plan cycle is over." Thus, Petitioner did not qualify for the merit raise in 2010, as he was either on STD or LTD at that time. There was credible testimony that, once Petitioner returned to work for Respondent, he would receive that merit increase award, not retroactively, but moving forward.

30. In late summer of 2010, Mr. Costantino discussed Respondent's leased truck usage with Petitioner. As Petitioner was out on LTD, he was not actively working for Respondent, and he did not need the leased vehicle. Following his previously-scheduled vacation trip in 2010, Petitioner returned the leased truck to Mr. Costantino. When he returned Respondent's leased truck, Petitioner obtained a motorcycle for transportation.

31. Mr. Leung is a CSE from Respondent's Northeast 9 region, specifically working in three New York boroughs: Brooklyn, Queens, and Manhattan. Mr. Leung sustained two hand injuries, a fractured wrist in 2007 and a severely burnt right hand in 2008.

32. Following his fractured wrist in 2007, Mr. Leung was put on LTD because he had to undergo surgery. Mr. Leung was out of work a couple of months; however, he sufficiently recovered and returned to his regular CSE duties.

33. In March 2008, Mr. Leung suffered second-degree burns to his right hand while he was working for Respondent at St. Peter's Hospital. He was initially treated at St. Peter's Emergency Room, but was later transferred to a different hospital that had a burn unit. Mr. Leung received instruction on his hand bandaging/care and was told to return to the hospital for care. He thinks he had his hand in a bandage/dressing for a month. Mr. Leung thinks he was placed on workers' compensation following this accident.

34. Exactly what treatments or job-related activities Mr. Leung performed following his 2007 and 2008 hand injuries are suspect as his memory of these activities was unclear.[17/]

35. Petitioner would have one believe that a burnt hand injury is equivalent to an injured back. The undersigned cannot agree.

36. Petitioner attempted to demonstrate that, following Mr. Leung's 2008 hand injury, he participated in Respondent-sanctioned training and work duties. While it appears that Mr. Leung did participate in some training and work for Respondent, the extent to which he trained or worked was not clearly addressed to establish that Respondent provided Mr. Leung with a position different than his CSE duties.

37. Additionally, Mr. Leung's 2008 circumstance is unhelpful in Petitioner's cause as no testimony was offered

regarding the similarities or differences between the workers' compensation program Mr. Leung thinks he was engaged in and the STD or LTD programs in which Petitioner participated.

CONCLUSIONS OF LAW

38. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 760.11(7), Florida Statutes (2011).[18/]

39. Section 760.10(1)(a) states:

> (1) It is an unlawful employment practice for an employer:
>
> (a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

40. Section 760.22(7) defines "handicap" as follows:

> (a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; . . .

Handicap is a synonym for disability.

41. Florida's definition of "handicap" is essentially the same as the definition in the Americans with Disabilities Act of

1990 (ADA), wherein 42 U.S.C. section 12102(2) defines a disability as:

> (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
>
> (B) a record of such an impairment;
>
> (C) being regarded as having such an impairment.

42. Petitioner is an "aggrieved person," and Respondent is an "employer" within the meaning of section 760.02(10) and (7), respectively.

43. The FCRA of 1992 is codified in sections 760.01 through 760.11 and was patterned after Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000 et seq. Federal employment discrimination law, including disability discrimination law, can be used for guidance in construing the provisions of chapter 760. Florida courts have recognized that actions for discrimination on the basis of disability are analyzed under the same framework as ADA claims. Chanda v. Englehard/ICC, 234 F.3d 1219, 1221 (11th Cir. 2000).

44. Federal case law interpreting Title VII is applicable to cases arising under the FCRA. See Green v. Burger King Corp., 728 So. 2d 369, 370-71 (Fla. 3d DCA 1999); Fla. State Univ. v. Sondel, 685 So. 2d 923 (Fla. 1st DCA 1996).

45. The United States Supreme Court has established an analytical framework within which courts should examine claims of discrimination, including claims of Title VII discrimination (age, race, disability, etc). In cases alleging discriminatory treatment, Petitioner has the initial burden of establishing, by a preponderance of the evidence, a prima facie case of discrimination. St. Mary's Honor Ctr. V. Hicks, 509 U.S. 502 (1993); Combs v. Plantation Patterns, 106 F.3d 1519 (11th Cir. 1997). Fla. Dep't of Transp. V. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

46. A petitioner in a disability discrimination case has the burden of proving a prima facie case of discrimination by demonstrating that: (1) he has a disability; (2) he is a qualified individual, which means that he is able to perform the essential functions of the employment position with or without accommodation; and (3) the respondent unlawfully discriminated against him because of his disability. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). If Petitioner cannot establish all of the elements necessary to prove a prima facie case, Respondent is entitled to entry of judgment in its favor. Early v. Champion Int'l Corp., 907 F.2d 1077 (11th Cir. 1990).

47. Petitioner established he is disabled and is a member of a protected class. He has a physical impairment that does

substantially limit one or more of the major life activities as demonstrated by his continued use of a walking cane.

48. Petitioner was unable to satisfy the second prong of the test for disability discrimination because he did not demonstrate that he was a qualified individual able to perform the essential functions of the position (CSE) with or without an accommodation. Petitioner simply cannot meet the weight lifting requirement of the position based on his physician-imposed weight restrictions.

49. With regard to the third prong, Petitioner received STD benefits and then LTD benefits that were less than his regular salary; however, he has been retained by Respondent on LTD for over 14 continuous months. Respondent has waited for Petitioner's medical clearance so that he could return to work. Such clearance has not been forthcoming, and a definitive date for that has not been provided. Petitioner has been advised multiple times that he could apply (via Eatonjobs.com) for any position which he could physically perform, yet he has chosen not to do so.

50. Petitioner has been unable to demonstrate that the treatment he received is disparate from other similarly-situated individuals.

51. If or when a petitioner proves a prima facie case of discrimination, the burden shifts to the respondent to proffer a

legitimate, non-discriminatory reason for the action it took. Texas Dep't. of Com. Aff. v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981). The respondent's burden is one of production, not persuasion.

52. In the present case, however, Petitioner only met the initial burden of proof as to his status as a member of a protected class, he sustained a non-work related injury; therefore, he was/is disabled. (No determination as to the permanency of the disability is being made here.)

53. Although Petitioner only met one prong of the test, Respondent was not obligated to prove a non-discriminatory reason for his circumstance. However, Respondent provided evidence that Petitioner was treated in accordance with its stated published policies.

54. Respondent, in addressing Petitioner's medical disability, encouraged Petitioner and provided him the opportunity to apply for other positions for which he was qualified and for which the physician-imposed weight restriction would not be an issue. The fact that Petitioner did not afford himself of that opportunity is not Respondent's responsibility.

55. Petitioner was not an active employee when Respondent offered various CSE training programs. Respondent was not required to train Petitioner for a new light-duty position, when Respondent did not have any light-duty positions.

56. Petitioner was not an active employee when Respondent's 2009 merit raises were effectuated in 2010. Respondent's policies clearly state that, in order to receive a merit award, those employees on leave cannot be planned for; thus, Petitioner, who was on LTD leave, was not eligible for the merit raise in July 2010.

57. Petitioner was not an active employee in 2010 when Respondent requested the return of the leased vehicle. Petitioner's own testimony was that he used the vehicle 90 percent of the time for company business and only 10 percent for his own personal use. While Petitioner was not actively working for Respondent (during either the STD or the LTD periods), there was no company business for Petitioner to use the vehicle.

58. Based on the evidence and testimony offered at hearing, Petitioner failed to establish a prima facie case that Respondent discriminated against him based on his disability or for any other type of discrimination. Accordingly, Respondent cannot be found to have committed any of the unlawful discriminatory employment practices alleged in the Petition, which is the subject of this proceeding. Therefore, the employment discrimination charge should be dismissed.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be issued by the Florida Commission on Human Relations finding Eaton Corporation not guilty of the alleged unlawful discriminatory employment practices alleged by James Patrick Overly, II, and dismissing his Petition for Relief in full.

DONE AND ENTERED this 24th day of January, 2012, in Tallahassee, Leon County, Florida.

LYNNE A. QUIMBY-PENNOCK
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of January, 2012.

ENDNOTES

[1/] Mr. Hunsinger is licensed as an attorney in Washington state. He was accepted as a qualified representative in this proceeding.

[2/] Mr. Doyle is licensed as an attorney North Carolina. He was accepted as a qualified representative in this proceeding.

[3/] Petitioner's exhibits were originally sequentially numbered starting with number 101 through 122. For ease of reference, when admitted into the record, Petitioner's exhibits were numbered sequentially starting with the number 1.

[4/] Although unusual, it is not unheard of to accept exhibits of the opposing side during the case-in-chief, provided there is no objection from the party who would have offered the exhibit. There was no objection from Respondent; thus, those selected exhibits were admitted during Petitioner's case-in-chief.

[5/] There was no testimony offered regarding Sedgwick's workers' compensation claims process or program.

[6/] Both parties agreed that Respondent's Exhibit 1 contained the appropriate CSE job description.

[7/] Mr. Irish was initially hired as a CSE II, but through his years of experience working for Respondent, he rose through the ranks from CSE II, to CSE III, to senior CSE to his current position as a senior technologist. He has the same duties as a CSE, but he also has additional administrative responsibilities and other duties.

[8/] Respondent provides each CSE a battery lift. This device is on rollers and consists of a hydraulic platform that can be raised four or five feet to enable a CSE to remove battery trays from various large-sized battery systems. (The batteries may weigh over 80 pounds.) A battery lift weighs approximately 200 pounds. When needed, a CSE has to roll the battery lift from a storage location to the service vehicle, push the battery lift up a ramp into the vehicle, drive to the work site, and remove the battery lift for use. Once the work site is completed, the CSE must reverse the process to return the battery lift to a storage location.

[9/] Petitioner's two-wheeled dolly could be converted to a four-wheeled dolly if additional equipment was needed.

[10/] A brand name, sturdy multi-meter device that reads voltage in alternating current (AC) and direct current (DC) with a probe. It can read amperage and resistance and is used for troubleshooting.

[11/] An infrared gun is used to look for hot spots on connections or capacitors in the UPS.

[12/] Safety gear is standard equipment provided by Respondent to all CSEs. Any time a CSE enters a UPS room, that CSE must have an arc flash-rated shirt, arc flash-rated pants, leather steel-toed shoes or Kevlar steel-toed boots, and safety glasses. When exposed to higher voltage situations, a CSE must wear a hard hat, tinted face shield, arc flash earplugs, high-voltage rated gloves, and gauntlets.

[13/] Petitioner initially paid $110.00 a month for use of the company vehicle. At some point, Respondent increased the fee.

[14/] Stand-by service is usually provided with advanced notice when a customer wants a CSE present as it performs a shutdown or some other type of work. The CSE will download system information from the unit before the shutdown and "stand-by" in case an unexpected emergency occurs.

[15/] Petitioner is not seeking redress after November 22, 2010; therefore, further findings about his disability and recovery is unwarranted.

[16/] This other physician had examined Petitioner on December 15, 2010, but did not submit the letter until January 2011.

[17/] Mr. Leung's testimony is replete with phrases of "I don't remember" (14 times); "I think" (20 times); "I'm not sure" (ten times); "it's been a long time"; or "that's my best guess" (or words to that effect) regarding his recollection of what he did or did not do following both the 2007 and 2008 accidents. Thus, his testimony, while minimally enlightening, is not without doubt as to what actually occurred.

[18/] References to Florida Statutes are to Florida Statutes (2011), unless otherwise indicated.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.