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1 subtraction. Twenty-two minus eight would yield a fourteen
2 percent impairment to the whole person, but that just
3 happens to be by luck the chart indicates that it can be
4 done arithmetically in that example.
5 Q And that's concerning the neck only?
6 A That's concerning the neck only, and
7 that would mean that in short, he currently has twenty-two
8 percent. He, before the accident, had eight percent. That
9 leaves you with fourteen percent that's attributed to the
10 motor vehicle accident.
11 Q Okay.
12 A To the neck only.
13 Q Of July of '04?
14 A The motor vehicle accident of July '04.
15 Yes, sir.
16 Q Now, let's talk about his low back. Do
17 you have an opinion as to whether or not he has any
18 permanent impairment to his low back as a result of the --
19 well, first of all, what did the MRI of his low back show?
20 A Yes, sir. The MRI of his lumbar spine
21 was performed on the 27th of October, 2004. It showed
22 these congenital anomalies that we talked about earlier, it
23 showed some minor disc bulges at L2-3. Now, forgive me for
24 one second because this is L1, so L2-3 would be here.
25 There'd be a little bit of a bulge. Again, it would stick

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1 out in the back, and it really would not irritate this
2 nerve very much. At L3-4, there was some minor disc bulges
3 and at L4-5 down here. It also indicated that at these
4 levels to the outside over here where the nerves exit, this
5 little hole, this bony hole right here that there was some
6 encroachment because of some pinching, that this did
7 slightly pinch these nerves in the hole coming out, what we
8 call normal foraminal stenosis, and those are also at all
9 three of those same levels.
10 Q Okay. Doctor, did you actually perform
11 the MRI of his neck and his back, or did you have it done
12 by another doctor?
13 A That was done by Healthsouth Diagnostic
14 Center, by a Board certified radiologist.
15 Q And what was his name?
16 A Glenn E. Jung. In fact, he has
17 additional expertise in musculoskeletal radiology.
18 Q And did you actually review the films
19 that he did?
20 A Yes, sir. I looked at both the films
21 and the report.
22 MR. ENGLISH: Let's make as the next
23 numbered exhibit, Exhibit No. 3, the MRI of the
24 lumbar spine, which was done on 10-27-04, and
25 Exhibit No. 4, the MRI of the cervical spine that

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1 was done on 1-10-05.
2 THE WITNESS: Thank you. Do you want me
3 to remove that from my chart?
4 MR. ENGLISH: No. We'll furnish it to
5 the court reporter.
6 (Exhibits No. 3 and 4 were filed.)
7 Q And, Doctor, do these MRI films that you
8 reviewed and the reports confirm your opinions that you're
9 giving today concerning this man?
10 A Yes, sir, to within that same reasonable
11 degree of medical certainty. Yes, sir.
12 Q Is that something you can actually see
13 that you saw on these two MRI films concerning this man?
14 A Oh, this is without a doubt objective.
15 He has disc bulges, and I doubt anybody would refute that.
16 The one thing that you can't definitively state, just based
17 on looking at the film, is was this old, was this new.
18 That requires judgment, it requires taking a history, and
19 that gets to be where the report itself might not say that
20 this is motor vehicle accident related. This is not --
21 that's why my report says that.
22 Q Okay. Assuming he was in a motor
23 vehicle accident, he was hit from the rear hard enough to
24 break his seat back, is that consistent with the protruding
25 discs and the bulging discs you found in his neck and his

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1 low back on the MRI's?
2 A Yes, sir. I should qualify that,
3 however, in stating that these disc protrusions I labeled
4 as being equivocally related whereby it gets to be very
5 tough to state that without a doubt he had no disc
6 pathology before and that it was all related to the motor
7 vehicle accident, and thus in regard to particularly his
8 cervical spine, I felt that you did need to dilute down
9 some of that impairment. I thought that that was fair and
10 appropriate. Yes, sir.
11 Q And you did. Okay. And we'll make
12 these the next numbered exhibits, Ms. Court Reporter, 3 and
13 4. And, Doctor, let's talk about his low back impairment
14 now. What impairment do you feel like he has to his low
15 back as a result of the wreck that we're here about today,
16 if any?
17 A As he stands or as he stood before me on
18 the 15th of November, utilizing the same A.M.A. Guides in a
19 short abridged form, he had an eight percent impairment.
20 Q Did he have any preexisting impairment
21 to his low back?
22 A And I felt that he had no preexisting
23 impairment in regard to his lumbar spine.
24 Q Okay. Would that be to the body as a
25 whole?

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1 A Again, to the body as a whole as it
2 relates to the lumbar spine.
3 Q Do you have an opinion, Doctor, as to
4 whether or not this man has reached maximum medical
5 improvement and if so, when?
6 A Yes, sir. I believe that he did reach
7 maximum medical improvement. I believe that he did so --
8 Q What was the date of that, sir?
9 A On -- I'm sorry, I apologize, I'm trying
10 to be as precise as I can be. That would be on the 15th of
11 November, 2005, whenever we calculated this impairment
12 rating.
13 Q When you say maximum medical
14 improvement, Doctor, what does that mean for the layman?
15 A Sure, that means that in our
16 professional opinion, it's not likely that he's going to
17 get much better. Also, it means that it's not likely he's
18 going to get much worse directly attributed to the motor
19 vehicle accident. I mean all of us are getting worse with
20 time because of age, et cetera, but in particular, with
21 regard to the motor vehicle accident, we think that he's
22 pretty much stabilized. We don't think he's going to get
23 much worse, we don't think he's going to get much better.
24 Q Did you refer this man to a pain clinic?
25 A Yes, sir, I did.

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1 Q Why?
2 A Because he still has pain and that is,
3 unfortunately, where you send patients who you can't get
4 better.
5 Q Have you done everything you can for
6 this man to alleviate his pain in his neck and his back
7 from this wreck?
8 A Yes, sir.
9 Q Okay. Who did you refer him to?
10 A I believe we sent him to Dr. Browder.
11 Q And is Dr. Browder a pain specialist
12 here in Knox County?
13 A Yes, sir.
14 ~~Q Do you have an opinion, Doctor, as to~~
15 whether or not this man is capable of gainful employment at
16 this time as a psychiatric technician or working with
17 psychiatric patients?
18 MR. WOODFIN: Objection. That's beyond
19 the scope of his expertise, but go ahead and
20 answer the question.
21 MR. ENGLISH: Go ahead, please.
22 A I will state that I do feel comfortable
23 answering that question, and I've seen him multiple times,
24 and I believe that he does not have the ability to be
25 gainfully employed as a psychiatric technician, as I would

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1 understand a psychiatric technician would need to
2 potentially have to subdue potentially unruly psychiatric
3 patients, would have to assist them in feeding, have to
4 assist them in lifting them on occasions to beds and
5 commodes and/or move them from one place to another for CAT
6 scans and things of that nature.
7 Q Doctor, when you last saw him the 15th
8 of November, did you give him a permanent no duty, no work
9 status with certain impairments?
10 A Yes, sir.
11 Q Restrictions?
12 A Yes, sir.
13 Q What were those restrictions? And I'll
14 ask you to refer back to your July 6 note, the specifics of
15 that, sir.
16 A On July 6th, it was written for no
17 repetitive bending, stooping, squatting, or lifting greater
18 than fifteen pounds. He should be allowed frequent changes
19 in position.
20 Q Are those still the restrictions that
21 you had him on permanently at this time, sir?
22 A If I can, sir, allow me just a few
23 seconds to check my notes.
24 Q Okay.
25 A No. In effort -- I should state that

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1 those were amended further to whereby he was placed on no
2 duty on the 15th of November, 2005.
3 Q What does that mean, sir, in your
4 opinion?
5 A Meaning that I really don't think he
6 could do anything. When I saw him in the office, let's
7 say, on the 15th of November, I saw him for forty-five
8 minutes to an hour and during that time the man just could
9 not sit or lay still or stand still. He was constantly
10 having to change positions. I don't think that he would
11 have been employable in that regard. He would have been a
12 distraction to any workplace with as frequently as he had
13 to move to try to keep himself in some semblance of
14 comfort.
15 Q Doctor, do you have an opinion as to
16 whether or not this man will suffer pain in the future as a
17 result of these injuries?
18 A Yes, sir. I think that that
19 unfortunately also is permanent, and that's the reason why
20 we sent him to a pain management consultation through Dr.
21 Browder.
22 Q Will he require medications to alleviate
23 the pain of this wreck and injuries in the future?
24 A Most likely.
25 Q Have you done everything that you can

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1 for him at this time from an orthopedic standpoint, Doctor?
2 A Yes, sir.
3 MR. ENGLISH: I believe that's all.
4 CROSS EXAMINATION
5 BY MR. WOODFIN:
6 Q Dr. Koenig, my name's Clint Woodfin, and
7 I represent Mr. Curd and Fox of Oak Ridge in this lawsuit.
8 Mr. Curd was driving the vehicle that rear-ended Mr.
9 Neely's vehicle. If I understood your testimony correctly
10 about his restriction, you have changed the restriction
11 that you had him on since July of 2004 as of 11-15-05; is
12 that correct?
13 A That was correct. I just want to make
14 sure I heard the dates correctly. He was -- we attempted
15 to put him back to work on a limited duty basis, very
16 limited, in July, and I responded as such to Mr. English's
17 question. He said as of July, what was his duty status,
18 and then on the 15th of November, 2005, he was placed on no
19 duty.
20 Q And that original restriction didn't
21 change until November 15th, 2005, correct?
22 A That's correct. Please understand that
23 this gentleman has never had a Functional Capacity
24 Evaluation, which would objectively describe exactly what
25 this gentleman can and cannot do. When you don't have the

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1 benefits of that study, the physician can use his thumb and
2 try various limited duty attempts. Sometimes he
3 undershoots, sometimes he overshoots. It was my opinion
4 that he could not tolerate the fifteen pounds of repetitive
5 lifting that we attempted to get him to do in July, so I
6 overshot the mark in July; I asked him to do too much.
7 Q So you think he should have been
8 restricted from doing anything from the first time that you
9 saw him up until the time that you last saw him here in
10 November?
11 A No, sir. I think it was appropriate to
12 try it in July. I don't think that there was an error in
13 medical decision making. I think that I just was overly
14 hopeful that he would be able to do that.
15 Q When you say he is not able to do
16 anything, are you saying he needs to sit in a bed for a
17 complete day and not do any activity at all?
18 A What I'm saying is that this gentleman
19 probably can't even tolerate sitting in bed for eight
20 hours. He's going to have to sit, stand. He's going to
21 have to move his self to a recliner. He's going to have to
22 walk, he's going to have to pace. In that regard, no to
23 your question, simply, and similarly at the workplace do I
24 think he could sit and just answer a phone, I don't think
25 so. He's going to have to stand, he's going to have to

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1 sit, he's going to have to lie down for a short period of
2 time. I know that I couldn't employ him in a clerical
3 position in my office, and I certainly couldn't employ him
4 to do any manual labor in my office.
5 Q Do you have any training as a vocational
6 assessor?
7 A Indirect training in the fact that I
8 have substantial -- how can we put it, in the fact that I
9 deal with a lot of vocational reports. I discuss with
10 vocational rehabilitation counselors various options and
11 how they orthopedically or mechanically can be potentially
12 adjusted or improved, so I have a fair bit of experience,
13 but, no, sir, I'm not a vocational rehabilitation
14 counselor.
15 Q Do you have any training in what jobs
16 are available for disabled people in this area?
17 A I have a good general idea. Do I have
18 the ability to know that at this particular time that one
19 company "X" has a job that's opened, no, sir.
20 Q Is that general ability similar to what
21 any of us who have an understanding as to what work
22 involves has?
23 A I would think it would be similar to
24 what any other Board certified orthopedic surgeon has in
25 the area.

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1 Q No more or no less?
2 A No more, no less.
3 Q And as far as whether or not you've ever
4 actually performed a vocational analysis on someone, I
5 think that would be no?
6 A That is correct.
7 Q You mentioned his inability to do these
8 activities, and I'm thinking that's primarily based on the
9 complaints of pain that he's relating to you, correct?
10 A Based on the complaints of pain coupled
11 with the objective findings on MRI, CT scan and plain films
12 as well as a physical examination that's repetitively done.
13 Q There are no objective indications which
14 would lead you to conclude that if he tried to do anything,
15 he would hurt himself, are there?
16 A Not within the fifteen pounds that he
17 was allowed to do back in July. I don't think that the
18 fifteen pounds would hurt him. I just don't think that he
19 was able to do the fifteen pounds.
20 Q And that's still the same in November of
21 2005, when you last saw him? There's nothing objective
22 that you can point to that says if this man tries to do
23 something, he's going to hurt himself?
24 A I think if he tried to lift more than
25 fifteen pounds again, I think that he would fail again.

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