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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2022-000271

Dale Brooks, Employee, Respondent,

v.

Benore Logistics Systems, Inc., Employer, and Great American Alliance Insurance Company, Carrier, Petitioners.

RESPONDENT'S BRIEF

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II. DID THE COURT OF APPEALS PROPERLY INTERPRET § 42-1-172 TO FIND RESPONDENT PROVED COMPENSABILITY?

STATEMENT OF THE CASE

The Court of Appeals aptly set forth the relevant facts and law applicable to this case in its decision. *Brooks v. Benore Logistics Sys., Inc.*, Op. No. 5891 (S.C.Ct.App. filed Jan. 19, 2022). *See* App. pp. 418-20.

ARGUMENTS

I. The Court of Appeals employed the proper standard of review because it interpreted a question of law, which requires no deference to the Full Commission.

Petitioner's first argument fails at the outset because it's based on the wrong standard of review. Petitioner argues the Court of Appeals disregarded its standard of review by substituting its opinion on questions of fact and the weight assigned to evidence, which are decisions reserved for the Full Commission. (Pet. Brf., pp. 8-22).

Petitioner's urgings are premised on the substantial evidence standard of review governing findings of fact made by the Full Commission. (Pet. Brf., pp.7-8 and cases cited therein). This deferential standard requires an appellate court to refrain from judicial fact-finding and substitution of its judgment, affirming the Full Commission if its findings are supported by substantial evidence, meaning evidence allowing reasonable minds to reach the Full Commission's conclusion. *Id.*

The fatal flaw in Petitioner's argument is, this is a case of statutory interpretation. For that, the law requires a dramatically different standard of review. That standard of review has been

employed in two cases interpreting the unique statute in question here, S.C.Code § 42-1-172. Those cases reveal the proper standard the Court of Appeals used to decide this case:

In workers' compensation appeals, "an appellate court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but it may reverse when the decision is affected by an error of law." *Michau v. Georgetown Cty. ex rel. S.C. Ctys. Workers Comp. Tr.*, 396 S.C. 589, 593, 723 S.E.2d 805, 807 (2012); *Murphy v. Owens Corning*, 393 S.C. 77, 82, 710 S.E.2d 454, 456 (Ct. App. 2011).

"Statutory interpretation is a question of law." *Murphy* at 393 S.C. 82, 710 S.E.2d 456 (Ct. App. 2011). An appellate court "is free to decide matters of law with no particular deference to the fact finder." *Id.*

Both *Michau* and *Murphy* illustrate when an appellate court uses the non-deferential standard to decide a matter of law under § 42-1-172. *Michau* interpreted § 42-1-172 to decide when medical evidence must be stated to a reasonable degree of medical certainty for admissibility under the statute. *Id.* at 396 S.C. 593, 723 S.E.2d 807. *Murphy* interpreted § 42-1-172 to reveal the factual finding required for repetitive trauma injury compensability. *Id.* at 393 S.C. 85, 710 S.E.2d 458.

This case turns on the same issue as *Murphy*. In fact, the Court of Appeals notes its reliance on *Murphy*'s interpretive guidance in deciding this case:

> The leading case construing § 42-1-172 tells us compensability of a repetitive trauma injury requires a specific finding of fact, made by the greater weight of the evidence, of a direct causal relationship, established by medical evidence, between the injury and a repetitive act occurring in the course of the regular duties of employment. *Murphy v. Owens Corning*, 393 S.C. 77, 85, 710 S.E.2d 454, 458 (Ct. App. 2011).
>
> (App. p. 422).

Here, the Court of Appeals' fundamental holding is the Full Commission made an error of

law by misinterpreting § 42-1-172's plain terms in injecting an extra term, violating the intent of the statute:

> The two-part test announced by the Full Commission is unfaithful to *Murphy* and misreads § 42-1-172. The plain language of § 42-1-172 does not support a two-part construct. The intent of the statute is to require a commissioner to make a specific factual finding that medical evidence establishes a causal connection between the repetitive duties of claimant's employment and the injury. The single commissioner did just that. In insisting the statute also requires the commissioner to make a separate factual finding that the employee's job duties were repetitive, the Full Commission sees something in the statute that is not there. Setting such an extra hurdle violates fundamental rules of statutory construction. *Paschal v. State Election Comm'n*, 317 S.C. 434, 437, 454 S.E.2d 890, 892 (1995) (court may not resort to subtle or forced construction to expand or limit a statute's scope).

(App. p. 423).

In reaching its decision, the Court of Appeals did not weigh or re-weigh evidence. The Court of Appeals never holds the Full Commission's decision is unsupported by substantial evidence. Instead, the Court holds:

1. The single commissioner made the finding required by the statue. "In ruling Brooks was entitled to compensation for a repetitive trauma injury, the single commissioner's order tracked § 42-1-172 and *Murphy* precisely[.]" (App. p. 422).
2. The Full Commission forcibly constructed the statue to expand its scope by requiring an additional "hurdle" that's not in the statute, namely a commissioner's "separate factual finding that the employee's job duties were repetitive." (App. p. 423, *supra).* Likewise, the Court decrees the Full Commission "committed an error of law in adding an improper, redundant condition" to § 42-1-172's compensability test. (App. p. 424).
3. An ergonomics report cannot satisfy the plain terms of § 42-1-172's medical evidence requirement.

> *Michau* illustrates why the ergonomics report here is not competent medical evidence under § 42-1-172. *Michau* held § 42-1-172 mandates that to be admissible as "medical evidence" in repetitive trauma cases, the doctor's

> opinion must reflect that it is stated to a reasonable degree of medical certainty, something an ergonomics report cannot do. *Michau*, 396 S.C. at 595-96, 723 S.E.2d at 808 (quoting § 42-1-172).

(App. p. 423).

The Court of Appeals bolstered this holding in concluding, "The ergonomic report was not competent evidence of causation in this § 42-1-172 case." (App. p. 425).

Bluntly, an ergonomics report will never satisfy § 42-1-172(C)'s "additional heightened standard" for medical evidence noted by *Michau* at 396 S.C. 594, 723 S.E.2d 807. This standard is a legal one, not a factual determination.

4. The Full Commission's reliance on the ergonomics report also misinterpreted the standard for compensability under § 42-1-172.

> The Full Commission also committed a clear error in finding the ergonomics report concluded Brooks' job duties were not repetitive. The report makes no such statement and does not even use the word "repetitive." A fair reading of the report reveals it merely opined Brooks' duties did not, in general, expose him to an enhanced risk of injury to his back or legs. Recovery under § 42-1-172 is not limited to work injuries that an ergonomics report deems statistically likely.

(App. p. 424).

"Recovery under § 42-1-172" means compensability. Compensability requires the finding defined by *Murphy* and § 42-1-172: "a specific finding of fact, made by the greater weight of the evidence, of a direct causal relationship, established by medical evidence, between the injury and a repetitive act occurring in the course of the regular duties of employment." *Murphy* at 393 S.C. 85, 710 S.E.2d 458, cited at App. p.422.

5. The Full Commission substituted the judgment of the ergonomics report for the only causation evidence the statute deems competent, medical evidence. **Here, the Court**

of Appeals brings the magnitude of the Full Commission's legal error into full focus: the Full Commission overruled competent medical evidence satisfying § 42-1-172, based on evidence that could *never meet its standard.*

> It is obvious to us the Full Commission substituted the opinion of the ergonomics report for the considered medical opinion, made to a reasonable degree of medical certainty, of Dr. Loudermilk. This was reversible error. *See Herndon v. Morgan Mills, Inc.*, 246 S.C. 216, 143 S.E.2d 384 (1965) ("[W]here the subject is one for experts or skilled witnesses alone and concerns a matter of science or specialized art or other matters of which a layman can have no knowledge, the unanimous opinion of medical experts on particular subjects may be conclusive, even if contradicted by lay witnesses.").
>
> (App. p. 424).

Thus, the Court of Appeals rightly realized § 42-1-172 plainly reserves causation to doctors, a point expounded on *infra* at § II. C., pp. 17-19.

6. The Full Commission's decision rested on incompetent evidence as defined by § 42-1-172.

> While the Commission may refuse to accept even uncontradicted medical evidence, it must base its refusal on a valid reason supported by competent evidence in the record. Otherwise, the refusal is arbitrary and capricious and warrants reversal. . . . The ergonomic report was not competent evidence of causation in this § 42-1-172 case. Therefore, because all of the competent evidence supports Brooks' claim, Brooks is entitled to compensation as a matter of law.
>
> (App. p. 425 (citations omitted)).

In sum, the Court of Appeals' decision rests on statutory interpretation, not factual determinations, leaving it free to decide the case without deference to the Full Commission. In addressing Petitioner's ergonomics report, the Court does not weigh evidence or substitute its judgment on a fact question. Instead, the Court of Appeals illustrates how ergonomics reports fall short of the legal standard of competent evidence set by the plain terms of the statute, as interpreted by this Court in *Michau* at 396 S.C. at 595-96, 723 S.E.2d at 808 (opinion-based medical evidence

under § 42-1-172 must be stated to a reasonable degree of medical certainty).

A. The Court of Appeals reached the right conclusion under *Herndon*.

The Court of Appeals held:

> It is obvious to us the Full Commission substituted the opinion of the ergonomics report for the considered medical opinion, made to a reasonable degree of medical certainty, of Dr. Loudermilk. This was reversible error. *See Herndon v. Morgan Mills, Inc.*, 246 S.C. 201, 216, 143 S.E.2d 376, 384 (1965) ("[W]here the subject is one for experts or skilled witnesses alone and concerns a matter of science or specialized art or other matters of which a layman can have no knowledge, the unanimous opinion of medical experts on particular subjects may be conclusive, even if contradicted by lay witnesses.").

(App. p. 424).

Petitioner argues the Court of Appeals' reliance on *Herndon* is an error of law. (Pet. Brf., pp. 15-20). Petitioner calls the *Herndon* rule applied by the Court of Appeals the "expert's word is final" rule. (Pet. Brf., p. 17). Using a case *Herndon* relied on, Petitioner argues the expert's word isn't final in a single situation: "[W]here uncontroverted medical opinions are merely deductions drawn from certain symptoms the final conclusion remains with the [Full Commission]." *Id.*, citing *Anderson v. Campbell Tile Co.*, 202 S.C. 54, 24 S.E.2d 104, 107–08 (1943). This argument fails here for several reasons.

First, Dr. Loudermilk's opinion is not a mere deduction drawn from certain symptoms. Instead, it's a diagnosis based on an MRI scan Dr. Loudermilk waited months for Respondent to get. At Respondent's first visit, Dr. Loudermilk **suspects** an **L5-S1** disk injury, but recommends an MRI to confirm. (App. p. 309). In the next three follow-up visits, Dr. Loudermilk repeats the need for an MRI. (App. pp. 310, 314, 315). In a pre-MRI questionnaire, the doctor notes the "need to get an MRI of lumbar spine to accurately determine the correct diagnosis/cause of his symptoms." (App. p. 312). During this time, Dr. Loudermilk makes it plain his assessment is provisional. He qualifies symptoms as "**most likely**" caused by one of three potential causes: a

lumbar disk bulge **or** disk protrusion **or** disk herniation. (App. pp. 309, 310, 314, 315 (uses "mostly" instead of "most likely")).

Everything changes when Respondent gets the MRI. Dr. Loudermilk notes, "We have finally gotten an MRI of the lumbar spine and this shows a disk protrusion of **L4-L5**, this is most likely the source of his symptoms." (App. p. 316 (emphasis added)). Dr. Loudermilk's assessment now features a definite cause, location, and disk injury: "Low back pain with right lower extremity radiculopathy **secondary to** an **L4-L5** lumbar disk **protrusion**." *Id.* (emphasis added). Note the MRI pinpointed the exact location of the injury at L4-5, which is different from where the doctor suspected it was without the MRI, L5-S1. The post- MRI questionnaire notes the repeated work activities **caused** the disk protrusion shown on the MRI. (App. p. 317).

Those repeated work activities are chronicled in Dr. Loudermilk's records. At Respondent's first office visit, Dr. Loudermilk notes:

1. Respondent "runs a switcher trick. He apparently works as a driver and he climbs up and down some stairs approximately 150 times per day switching trucks."
2. "Respondent's job involves switching trucks in and out multiple times during the day, opening and closing doors, bending and stooping, and climbing ladders."
3. Respondent "apparently does at a minimum of 30 trailers per shift."

(App. p. 308).

In the post-MRI questionnaire, Dr. Loudermilk confirms "the repetitive activities of [Respondent]'s job, including but not limited to going up and down stairs, getting in and out of a truck, opening and closing doors, bending and stooping, and climbing ladders, most probably cause[d] low back pain with right leg radiculopathy." (App. p. 317).

Dr. Loudermilk's uncontroverted medical opinion is based on an MRI supplying an exact

cause, location, and disk injury, plus knowledge of Respondent's repetitive job activities. Thus, his diagnosis is not merely a deduction based on symptoms.

Additionally, this dispels Petitioner's assertion a medical opinion "may be rejected if found inconsistent with the facts or otherwise unreasonable" under *Windham v. City of Florence*, 221 S.C. 350, 359, 70 S.E.2d 553, 557 (1952). (Pet. Brf., p. 18). The diagnosis is well- reasoned and consistent with Respondent's repetitive job activities and an MRI scan.

Accordingly, *Herndon*'s "expert's word is final" rule applies, justifying affirmance of the Court of Appeals.

Second, Respondent overlooks *Herndon* supplies another reason to affirm the Court of Appeals here. *Herndon* rejected a causation finding that contradicted medical evidence. There, the single commissioner found a causal connection between a claimant's fall at work and later death from multiple myeloma. In reversing that finding, the Court bluntly noted:

> There is no medical testimony of any causal connection between Herndon's fall from the ladder and his death from multiple myeloma five months later. The medical testimony here completely negatives causal connection.
>
> *Herndon v. Morgan Mills, Inc.*, 246 S.C. 201, 207, 143 S.E.2d 376, 379–80 (1965).

Herndon closes with the conclusion, "There is no evidence of substance to make issue with the unanimous professional opinion of the medical witnesses[.]" *Id.* at 246 S.C. 217, 143 S.E.2d 385. Like the commissioner in *Herndon*, the Full Commission here contradicted undisputed medical testimony. No evidence of substance makes an issue with that undisputed professional medical opinion, as an ergonomics report cannot reach the issue of medical causation as required by the statute governing this case. The Court of Appeals fixed this error and should be affirmed.

Third, this case mirrors *Herndon* and its reliance on this authority:

> Larson in his treatise on Workmen's Compensation Law, Vol. II, Section 79.54, page 304, asserts that reliance on lay testimony is not justified when the medical

question is a complicated one and likely to carry the fact-finding body into realms which are more properly within the province of medical experts. We quote therefrom the following:

> 'The increasing tendency to accept awards unsupported by medical testimony should not be allowed to obscure the basic necessity of establishing medical causation by expert testimony in all but simple and routine cases—and even in these cases such evidence is highly desirable and is a part of any well prepared presentation.'

Herndon v. Morgan Mills, Inc., 246 S.C. 201, 217, 143 S.E.2d 376, 384–85 (1965).

Under S.C.Code § 42-1-172, South Carolina deems repetitive trauma injuries a complicated medical question likely to carry the Full Commission "into realms more properly within the province of medical experts." This Court holds § 42-1-172(A) "commands that the '[c]ompensability of a repetitive trauma injury must be determined **only** under the provisions of this statute.'" *Michau* at 396 S.C. 594, 723 S.E.2d 807 (emphasis in original), citing *Murphy* at 393 S.C. 84, 710 S.E.2d 458 (Ct.App.2011). S.C.Code § 42-1-172(B) requires the causal connection to be "established by medical evidence." The statute defines medical evidence as "expert opinion or testimony stated to a reasonable degree of medical certainty[.]" Section 42-1-172(C). "[S]ection 42-1-172(C) expressly creates an additional heightened standard for repetitive trauma injury cases. Specifically, it requires "medical evidence," in the form of "expert opinion or testimony [to be] stated to a reasonable degree of medical certainty." *Michau* at 396 S.C. 594, 723 S.E.2d 807.

Thus, the statute imposes strict evidence requirements. The only proof of causation is "medical evidence." § 42-1-172(B) and (D). Under *Michau*, "medical evidence" must satisfy "an additional heightened standard" under § 42-1-172(C). *Id.* at 396 S.C. 594, 723 S.E.2d 807.

As required by § 42-1-172, *Michau*, and *Herndon*, Respondent supplied the basic necessity of establishing medical causation by expert evidence.

Fourth, Petitioner overlooks a key point made by *Anderson v. Campbell Tile Co.*, 202 S.C. 54, S.E.2d 104 (1943). Petitioner focuses on *Anderson*'s tests to judge the weight and sufficiency of expert testimony. (Pet. Brf., p. 17). But it overlooks *Anderson*'s final directive in considering this testimony:

> The opinion of the expert may not be arbitrarily rejected; it is to be considered by the [Full Commission] in view of all the facts and circumstances in the case and of the common knowledge and experience of mankind; and when such common knowledge utterly fails, the expert opinion may be given controlling effect."
>
> *Id. at* 202 S.C. 54, 24 S.E.2d 108.

Again, by enacting S.C.Code § 42-1-172 as discussed *supra* at pp. 9-10, the General Assembly decided in repetitive trauma cases, "common knowledge utterly fails," as preconceived by *Anderson, supra.* Here, *Anderson* requires the uncontradicted medical expert's opinion to be given controlling effect. As such, the Court of Appeals should be affirmed.

Because Petitioner's first argument rests on the wrong standard of review, the Court should affirm the Court of Appeals on this ground. The only remaining argument is whether the Court of Appeals properly interpreted the statute.

II. The Court of Appeals properly interpreted § 42-1-172 to find Respondent proved compensability.

The Court of Appeals got it right in this case because it faithfully applied the statute as written by the General Assembly. This is proven by established precedent involving general principles of statutory construction and specific principles governing interpretation of the unique statute at issue, laid down in two cases considering it, *Michau v. Georgetown Cty. ex rel. S.C. Ctys. Workers Comp. Tr.*, 396 S.C. 589, 723 S.E.2d 805 (2012) and *Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454 (Ct. App. 2011).

At the heart of this case lies the workers' compensation repetitive motion statute, S.C.Code

§ 42-1-172. In it, the General Assembly instructs us on proving a worker's compensation repetitive trauma injury:

> (A) "Repetitive trauma injury" means an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events. Compensability of a repetitive trauma injury must be determined only under the provisions of this statute.
>
> (B) An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.
>
> (C) As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician.
>
> (D) A "repetitive trauma injury" is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.
>
> (E) Upon reaching maximum medical improvement, the employee may be entitled to benefits pursuant to Section 42-9-10, 42-9-20, or 42-9-30. Medical benefits for compensable repetitive trauma injuries shall be as provided elsewhere in this title.

Section 42-1-172(A) unequivocally establishes this is the exclusive statute to determine compensability in repetitive trauma cases. This Court holds § 42-1-172(A) "commands that the '[c]ompensability of a repetitive trauma injury must be determined **only** under the provisions of this statute.'" *Michau* at 396 S.C. 594, 723 S.E.2d 807 (emphasis in original), citing *Murphy* at 393 S.C. 84, 710 S.E.2d 458 (Ct.App.2011).

Cases interpreting § 42-1-172 reveal our Courts strictly interpret it by its plain meaning, refusing judicial overreach to inject terms that don't exist in the statute.

A. The Court of Appeals properly interpreted § 42-1-172 in the spirit of *Michau.*

This Court showcased the strict interpretation of § 42-1-172 in three ways in *Michau v. Georgetown Cty. ex rel. S.C. Ctys. Workers Comp. Tr.*, 396 S.C. 589, 723 S.E.2d 805 (2012).

There, the Court reversed admitting in evidence a medical record not stated to a reasonable degree of medical certainty, citing § 42-1-172(C).

First, in reviewing § 42-1-172(C), the Supreme Court mandated strict adherence to § 42-1-172's plain terms, requiring medical opinion evidence stated to a reasonable degree of medical certainty, regardless of the standard for a non-repetitive motion case. There, the defendant urged § 42-1-172 didn't govern admission of medical evidence. *Michau* at 396 S.C. 593-94, 723 S.E.2d 807. Instead, the defense argued § 1-23-330 of the Administrative Procedures Act controlled. Section 1-23-330 merely provides "[i]rrelevant, immaterial or unduly repetitious evidence shall be excluded." *Id.* The Supreme Court rejected that argument, holding

> [S]ection 42-1-172(C) expressly creates an additional heightened standard for repetitive trauma injury cases. Specifically, it requires "medical evidence," in the form of "expert opinion or testimony [to be] stated to a reasonable degree of medical certainty."

Id. at 396 S.C. 594, 723 S.E.2d 807.

Thus, the statute imposes strict evidence requirements. The only proof of causation is "medical evidence." § 42-1-172(B) and (D). Under *Michau*, "medical evidence" must satisfy "an additional heightened standard" under § 42-1-172(C). *Id.* at 396 S.C. 594, 723 S.E.2d 807.

Second, *Michau* assured us § 42-1-172 is applied as written. The Court held the Full Commission erred admitting the defendant's medical record because it wasn't stated to a reasonable degree of medical certainty. *Id.* at 396 S.C. 594, 723 S.E.2d 807. The Court proclaimed, "The plain reading of the statute requires that 'opinion or testimony' must be 'stated to a reasonable degree of medical certainty.'" *Id.* at 396 S.C. 595, 723 S.E.2d 808.

Third, the Supreme Court refused to inject a term that wasn't in § 42-1-172. The Court noted the defense apparently argued § 42-1-172(C) applied only to claimants. *Michau* at 396 S.C. 596, 723 S.E.2d 808. The Court rejected this notion, holding, "The statutory language makes no

such distinction, so we decline to adopt this forced construction." *Id.* In doing so, the Court noted the basic premise of statutory construction that "words should be given 'their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.'" *Id.* (citing *State v. Sweat*, 386 S.C. 339, 688 S.E.2d 569 (2010)).

Here, Petitioner insists § 42-1-172 requires a separate finding by a commissioner that a claimant's job duties were repetitive. (Pet. Brf., pp. 22-28). Imposing that finding ignores *Michau*'s imperatives. First, Petitioner's imposition is not in the plain terms of § 42-1-172's strict standard for causation evidence. Second, interpreting § 42-1-172 to include the imposition forces the Court to fail to apply the statute as written. Third, Petitioner's imposition creates a distinction that doesn't exist in § 42-1-172, which can only be included by forcibly construing it. Simply put, *Michau* tells us § 42-1-172 requires causation to be proven by medical evidence stated to a reasonable degree of medical certainty. That's what Respondent did, and the Court of Appeals was faithful to *Michau* in affirming Respondent proved compensability. But a more specific case justifies this result.

B. The Court of Appeals properly interpreted § 42-1-172 to the letter of *Murphy*.

The year before *Michau*, the Court of Appeals decided *Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454 (Ct.App.2011). *Murphy* guides us in determining the compensability of a repetitive trauma injury, the precise issue in this case. *Murphy* laid out the required findings:

> Compensability under section 42-1-172 requires a specific finding of fact, by the preponderance of the evidence, of a direct causal relationship, established by medical evidence, between the repetitive act and the employment.
>
> *Id.* at 393 S.C. 85, 710 S.E.2d 458.

Murphy held the Full Commission made the required findings, emphasizing the medical records:

> The single commissioner found in part that "the preponderance of the evidence is that there is a direct causal connection between the repetitive activities of

> [Murphy's] job and the aggravation of her ... condition. This finding is based on the medical records...." The Commission sustained the commissioner's order in its entirety, and found in part: (1) Murphy suffered an aggravation of her underlying condition by the repetitive trauma of performing overhead work on her job; (2) the finding was based on the record as a whole, including the medical record; and (3) there was a direct causal connection between the repetitive activities of Murphy's job and the aggravation of her condition.
>
> *Id.* at 393 S.C. 85, 710 S.E.2d 458.

Turning to this case, we see how the Court of Appeals reached the right conclusion by its steadfast adherence to the law and judicial restraint. The Court of Appeals observed the guiding star in deciding compensability, and how the single commissioner followed it to reach the right conclusion:

> The leading case construing § 42-1-172 tells us compensability of a repetitive trauma injury requires a specific finding of fact, made by the greater weight of the evidence, of a direct causal relationship, established by medical evidence, between the injury and a repetitive act occurring in the course of the regular duties of employment. *Murphy v. Owens Corning*, 393 S.C. 77, 85, 710 S.E.2d 454, 458 (Ct. App. 2011).
>
> . . . .
>
> In ruling Brooks was entitled to compensation for a repetitive trauma injury, the single commissioner's order tracked § 42-1-172 and *Murphy* precisely, stating:
> 14. ... Based on the preponderance of the evidence before me in this case, I must conclude that [Brooks] has suffered a compensable repetitive trauma injury to his low back affecting his right leg.
>
> A. I find a direct causal relationship between the repetitive acts **and the employment**. [In a footnote, the Court observes, "In making this statement, the single commissioner was following Murphy to a fault. . . We are certain the emphasized phrase was a scrivener's error and should read "and the injury."]
>
> B. This finding is based on the entire record.
>
> . . . .
>
> The intent of the statute is to require a commissioner to make a specific factual finding that medical evidence establishes a causal connection between the repetitive duties of claimant's employment and the injury. The single commissioner did just that.

App. p. 422, 423.

Thus, faithful to the plain terms of the controlling statute and the leading case interpreting the finding required by that statute, the Court of Appeals properly concluded Respondent proved compensability as required by law.

Next, the Court dispelled the Full Commission's mistaken conclusion § 42-1-172 requires "an independent requirement that the Commissioner find by a preponderance of evidence that the claimant's specific job activities are repetitive [under] § 42-1-172(B)." App. p. 423.

Reaching the crux of the issue, the Court of Appeals gave clear legal reasons for rejecting this imposition. First, the Full Commission's test violated the plain language rule and the statute's intent:

> The two-part test announced by the Full Commission is unfaithful to *Murphy* and misreads § 42-1-172. The plain language of § 42-1-172 does not support a two-part construct. The intent of the statute is to require a commissioner to make a specific factual finding that medical evidence establishes a causal connection between the repetitive duties of claimant's employment and the injury. The single commissioner did just that.
>
> App. p. 423.

Significantly, the Court of Appeals accurately summarized the finding required by the plain terms of the statute: "a specific factual finding that medical evidence establishes a causal connection between the repetitive duties of claimant's employment and the injury." *Id.* Grounds further supporting this statutory interpretation will be revealed *infra* at subsection II. C., pp. 17-19.

Second, the Court of Appeals found imposing a separate finding violated the forced construction rule:

> In insisting the statute also requires the commissioner to make a separate factual finding that the employee's job duties were repetitive, the Full Commission sees

> something in the statute that is not there. Setting such an extra hurdle violates fundamental rules of statutory construction. *Paschal v. State Election Comm'n*, 317 S.C. 437, 454 S.E.2d 892 (1995) (court may not resort to subtle or forced construction to expand or limit a statute's scope).
>
> App. p. 423.

Legally, the analysis is complete. Compensability could only be proven under § 42-1-172(A). *Michau* at 396 S.C. 594, 723 S.E.2d 807. Respondent submitted the only medical evidence satisfying § 42-1-172(C)'s "additional heightened standard" in this case, namely a doctor's causation opinion stated to a reasonable degree of medical certainty. *Id.* Based on that evidence, the commissioner made the compensability finding required by § 42-1-172(B). *Murphy* at 393 S.C. 85, 710 S.E.2d 458. Petitioner offered no medical evidence under § 42-1-172 to contradict it, or cast it into doubt by presenting "a valid reason supported by competent evidence" that could lead the Commission to reject it, even if uncontradicted. App. p.425, and authorities cited therein.

The only evidence Petitioner offered was an ergonomics report. The Court of Appeals thoroughly pointed out this evidence has no place in a § 42-1-172 compensability analysis, as discussed at pp. 3-6, *supra.*

Thus, the uncontradicted, competent medical evidence supported compensability under § 42-1-172(B). The Court of Appeals properly upheld it, in specific terms leaving no doubt it rooted the decision squarely within the limits of this unique statute:

> Therefore, because all of the competent evidence supports Brooks' claim, Brooks is entitled to compensation as a matter of law. . . . To repeat, because the only rational inference that can be drawn from the record is that Brooks met his burden of proving he suffered a repetitive trauma injury arising out of his employment as defined by § 42-1-172, we reverse the ruling of the Full Commission and remand for calculation of benefits.
>
> (App. p. 425).

As such, the Court of Appeals should be affirmed.

C. Legislative history supports the Court of Appeals' conclusion, justifying affirmance here.

The Supreme Court has turned to § 42-1-172's legislative history to guide its interpretation. *Michau* faced the Court with deciding if § 42-1-172 required medical "documents, records, or other material" to be stated to a reasonable degree of medical certainty. *Id.* at 396 S.C. 594, 723 S.E.2d 807. The Court first held § 42-1-172's plain terms did not require it, refusing to "expand its plain meaning or interpolate this requirement." *Id.* at 396 S.C. 595, 723 S.E.2d 808.

Importantly here, the *Michau* Court added another reason for this holding, in footnote 4:

> Legislative history also supports this interpretation of section 42-1-172. Had the General Assembly intended to require "documents, records, or other material" be "stated to a reasonable degree of medical certainty," it would have left the April 4, 2007 amended and adopted Senate version of this section intact. This version unambiguously provides:
>
> > As used in this title, "medical evidence" means expert opinion, expert testimony, documents, or other material that is offered or stated to a reasonable degree of medical certainty by a licensed health care provider.
>
> S. 332, reprinted in 4 Senate Journal, South Carolina Regular Session, 2007, at 1662. However, the legislature did not adopt this language.
>
> *Id.*

Notably for this case, the only aspect of § 42-1-172 inviting a finding beyond medical evidence didn't survive legislative debate. We turn to the version of § 42-1-172 adopted by the Senate on April 5, 2007. It contained this version of subsection D:

> (D) A 'repetitive trauma injury' shall be considered to arise out of employment only if it is reasonably apparent upon consideration of all the circumstances that there is a direct causal relationship between the condition under which the work is performed and the injury.
>
> S. 332, reprinted in Senate Journal, 2007 South Carolina Regular Session, 4/5/2007, at 1739.

This version intimates a finding based on "consideration of all the circumstances," which

necessarily includes non-medical evidence.

It never passed.

The version of Section 42-1-172(D) passed by the General Assembly reads:

> (D) A "repetitive trauma injury" is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.

S.C.Code Ann. § 42-1-172(D).

We cannot turn a blind eye to what this means. **In considering a version of § 42-1-172 with a finding of fact involving non-medical evidence, the General Assembly struck it down and replaced it with a medical evidence requirement – the second such requirement in the statute.**

The General Assembly's decision here leaves this Court with a stark, but clear resolution to Petitioner's imposition when viewed in light of long-held rules of statutory construction.

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature . . . What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.

Hodges v. Rainey, 341 S.C. 85, 533 S.E.2d 581 (2000) (citations omitted).

As noted by this Court in *Michau*, the General Assembly expressed its intent to limit repetitive trauma injury compensability decisions strictly to the terms of § 42-1-172. *Id.* at 396 S.C. 594, 723 S.E.2d 807 (2012) ("[c]ompensability of a repetitive trauma injury must be determined **only** under the provisions of this statute." (Emphasis in original). *See also* 42-1-172(A). The plain terms of § 42-1-172(B-D) reveal the General Assembly repeatedly expressed its intent for compensability to turn on medical evidence stated to a reasonable degree of medical certainty.

Accordingly, Courts are duty-bound to give effect to this expressed intent of the General

Assembly: causation under § 42-1-172 is left to professionals trained to diagnose repetitive trauma injuries, or provide a reliable alternative explanation for them. Those professionals are doctors. § 42-1-172(C), (B), and (D).

Petitioner's imposition of a separate finding of repetitiveness by a commissioner requires judicial overreach by changing § 42-1-172's meaning, searching for legislative intent outside the statute when it's clearly apparent from its terms (and legislative history), and injecting non-existent terms through tortured construction. This violates basic rules of statutory interpretation:

> Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.
>
> *Hodges v. Rainey*, 341 S.C. 85, 533 S.E.2d, 581 (2000).
>
> If the legislature's intent is clearly apparent from the statutory language, a court may not embark upon a search for it outside the statute. When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.
>
> *Id.* at 341 S.C. 87, 533 S.E.2d 582 (2000).

Had the General Assembly intended a separate finding of repetitiveness by a commissioner, it would have left the prior version of § 42-1-172(D) intact. Instead, the General Assembly rejected this provision, passing a provision in its place that requires medical evidence of causation. As such, to dispose of this argument, this Court should remain faithful to its own directive, "The statutory language makes no such distinction, so we decline to adopt this forced construction." *Michau* at 396 S.C. 596, 723 S.E.2d 808.

D. Dr. Loudermilk's medical opinion is legally sufficient.

Petitioner argues Dr. Loudermilk's opinion is legally insufficient because it does not explicitly state 1) Respondent's job activities were "repetitive traumatic events," 2) the

"cumulative effects of those repetitive traumatic events caused an injury," and 3) a "direct" causal relationship between the conditions under which the work is performed and the injury. (Pet. Brf., pp. 28-30). The controlling statute, S.C.Code § 42-1-172, does not require that, and this pinched view squints out the clear implications of Dr. Loudermilk's medical evidence.

Petitioner's argument defies strict adherence to § 42-1-172's plain terms mandated by this Court in *Michau* as discussed *infra* at § II.A., pp. 11-13. To restore a full view of the issue, we return to the cardinal rule of statutory interpretation. "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 85, 533 S.E.2d, 581 (2000).

Here's what § 42-1-172 says about medical evidence:

> (B) An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is **established** by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.
>
> (C) As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician.
>
> (D) A "repetitive trauma injury" is considered to arise out of employment only if it is **established** by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.
>
> (Emphasis added).

The Court of Appeals properly boiled down what medical evidence is required to do in this case:

> The leading case construing § 42-1-172 tells us compensability of a repetitive trauma injury requires a specific finding of fact, made by the greater weight of the evidence, of a direct causal relationship, **established** by medical evidence, between the injury and a repetitive act occurring in the course of the regular duties of employment. *Murphy v. Owens Corning*, 393 S.C. 77, 85, 710 S.E.2d 454, 458 (Ct.

App. 2011).

(App. p. 422, (Emphasis added)).

"Establish" means "prove." Black's Law Dictionary (11th ed. 2019). The commissioner decides that. § 42-1-172(B); *Murphy v. Owens Corning*, 393 S.C. 77, 85, 710 S.E.2d 454, 458 (Ct. App. 2011).

Thus, the statute does not require a doctor to explicitly define job activities as "repetitive traumatic events," to explicitly declare "the cumulative effects of those repeated traumatic events caused injury," or to explicitly use the word "direct" in diagnosing a causal connection. "The statutory language makes no such distinction, so we decline to adopt this forced construction." *Michau* at 396 S.C. 596, 723 S.E.2d 808.

Here, Dr. Loudermilk's questionnaire satisfies the statute. It is stated to a reasonable degree of medical certainty. (App. p.317). While it does not use Petitioner's magic word "direct," it proves the causal relationship between work conditions and the injury. Specifically, the doctor agrees **"the repetitive activities of [Respondent]'s job,** including but not limited to going up and down stairs, getting in and out of a truck, opening and closing doors, bending and stooping, and climbing ladders, **most probably caused** low back pain with right leg radiculopathy . . . [and] . . . **cause[d]** an L4-5 disc protrusion shown on [Respondent]'s MRI . . . [and] . . . **cause[d]** severe low back pain radiating to his right leg with numbness, tingling, burning, and weakness [.]" *Id.* (Emphasis added). While unnecessary under the plain terms of § 42-1-172, the implication is clear: Respondent's job activities were repetitive traumatic events with a cumulative effect of causing injury.

Here, the single commissioner properly interpreted § 42-1-172 to find the medical evidence proved Respondent's work caused the injury. The Court of Appeals rightfully reinstated that decision, and should be affirmed.

CONCLUSION

For the foregoing reasons, the Court of Appeals should be affirmed.

Respectfully submitted,

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