

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Opinion No. 5906 (S.C. Ct. App. filed April 27, 2022,
Withdrawn, Substituted, and Refiled November 2, 2022)

Isaac D. Brailey, Claimant.....Respondent,

v.

Michelin North America, Inc. (US7), Employer
And Safety National Casualty Corp., Carrier, Petitioners.

BRIEF OF PETITIONERS

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STATEMENT OF ISSUES

- I. Whether the Court of Appeals erred in its application of the substantial evidence standard and whether reviewed under either the substantial evidence standard or preponderance of the evidence standard, the record supports the Full Commission finding Michelin proved every element of the fraud in the application defense under Cooper v. McDevitt & St. Co., 260 S.C. 463, 465, 196 S.E.2d 833, 834 (1973)?
- II. Whether substantial evidence supports the Full Commission's ruling under Capers v. Flautt, 305 S.C. 254, 407 S.E.2d 660 (Ct. App. 1991) and South Carolina law requires that if the appellate court does not affirm the Full Commission's ruling under Capers, it must remand to the Full Commission to make its own findings of fact and conclusions of law if the Court finds the Commission's order does not contain sufficient findings of fact and conclusions of law related to Capers?
- III. Whether substantial evidence supports finding Brailey failed to prove he sustained an injury by accident on June 24, 2017?

STATEMENT OF THE CASE

Respondent Isaac Brailey began working at Petitioner Michelin North America, Inc., and Safety National Casualty Corp. (collectively, "Michelin") on April 17, 2017. Almost immediately after starting the physical component of the job,¹ by May 2017, Brailey complained to doctors that he had 10 out of 10 back pain allegedly from work at Michelin. (R. 61). On June 11, 2017, Brailey went to a doctor complaining of back pain allegedly after lifting at work. (R. 67). A few days later, on June 13, 2017, Brailey returned to a doctor complaining of back pains allegedly after heavy lifting at work. Brailey did not inform any person at Michelin of the alleged back pain or of the June doctors' visits. On the morning of June 24, 2017, Brailey went to an emergency room complaining of lower back pain from lifting/pulling the prior night. (R. 70).

On October 4, 2017, Brailey brought this action by filing a workers compensation claim against Michelin. In the claim, Brailey alleged he sustained an injury by accident to his back on June 24, 2017, arising out of and in the course of his brief employment with Michelin. Michelin

¹ The first two weeks of Brailey's job at Michelin was classroom training.

denied the claim, arguing among other things, fraud in the application defense because it discovered Brailey had lied on his employment application regarding his longstanding history of back issues. Specifically, Michelin discovered that on his application, Brailey failed to inform Michelin of a prior strenuous manual labor job and worker's compensation claim he had against Richtex Brick. In fact, like his claim at Michelin, at Richtex, Brailey had filed a worker's compensation claim almost immediately after starting that job. At Richtex, Brailey told the treating physician that "he knows something is wrong with his back and he wants to go to a back specialist." (Appx. 901-08). The treating physician informed him that he was unable to perform the physical demands of the job and restricted him from work until he visited a specialist. (Appx. 901-08). Brailey never visited a specialist before applying to work at Michelin.

Michelin further argued to the Commission lack of notice because Brailey complained of back problems prior to June 24, 2017, without informing Michelin. Additionally, Michelin maintained that even if Brailey injured his back on June 24, 2017, he intentionally and willfully did so given his prior history and failure to report.

Following a hearing, the Single Commissioner denied the claim, finding (1) Brailey committed fraud in the application for employment, vitiating the employer-employee relationship and barring him from benefits pursuant to Section 42-1-130 of the South Carolina Code and Cooper v. McDevitt & Street Co., 260 S.C. 463, 196 S.E.2d 833 (1973); (2) Brailey failed to meet his burden of proof under Section 42-1-160 to prove he sustained a compensable injury to his low back while under the employ of Michelin on June 24, 2017; (3) Capers v. Flautt, 305 S.C. 254, 407 S.E.2d 660 (Ct. App. 1991) barred Brailey's claims; and (4) even assuming Brailey actually sustained an injury by accident to his low back on June 24, 2017, he intentionally and willfully did so by (a) failing to alert or notify Michelin that he was allegedly suffering from ten out of ten low

back pain for at least four weeks prior to that date, and (b) seeking medical treatment on his own without any knowledge by Michelin due to Brailey's failure to provide notice.

The Full Commission unanimously found the Single Commissioner's Decision and Order was supported by the greater weight of the evidence and affirmed the Order in its entirety with minor amendments. (R. 25-26).

The Court of Appeals reversed the judgment of the Full Commission. In its first opinion, the Court of Appeals held (1) substantial evidence did not support the Full Commission concluding Michelin proved a causal connection between Brailey's false representation and the injury to meet the third prong of Cooper; (2) Capers may be applicable but the Full Commission's order does not contain sufficient findings of fact and conclusions of law or properly apply the facts to the law relating to Capers; and (3) the Full Commission erred in finding Brailey did not injure his back in an accident arising out of his employment at Michelin. Isaac Brailey v. Michelin North America, Inc. (US7) & Safety National Casualty Corp., Op. No. 5906 (S.C. Ct.App. filed April 27, 2022). Michelin filed a Petition for Rehearing.

The Court of Appeals denied the Petition, but withdrew, substituted, and refiled its opinion. Isaac Brailey v. Michelin North America, Inc. (US7) & Safety National Casualty Corp., Op. No. 5906 (S.C. Ct. App. filed April 27, 2022, Withdrawn, Substituted, and Refiled November 2, 2022). In its substituted opinion, the Court of Appeals compounded its errors by changing its holding regarding Capers to opine that Capers is inapplicable. The Court then went on to erroneously find facts and conclusions of law outside the purview of the Court of Appeals' standard of review to support its holding regarding Capers. Id.

Michelin petitioned this Court for a writ of certiorari, which this Court granted on August 10, 2023.

STATEMENT OF FACTS

Brailey's prior job at Richtex consisted of lifting and loading heavy bricks onto a monorail. (R. 166, 407-08). In December 1997, within three weeks of employment at Richtex, Brailey filed a workers' compensation claim for a low back injury after what the doctor noted as a "vague episode of lifting some bricks." (R. 143, 158-59, 166-75, 408-09). The treating physician advised him that he was unable to perform the job and that it was in his best interest to find new employment if he did not respond to conservative treatment quickly. (R. 158-59). Brailey did not follow the treating physician's instructions for treatment, and instead went to Doctors' Care seeking a second opinion. Id. Brailey returned to the treating physician and demanded that he be evaluated by a back specialist, stating he "knows something is wrong with his back." Id. The treating physician placed Brailey on restrictions until a surgeon evaluated his back. Id. Brailey never got evaluated by a back specialist. He settled the workers' compensation claim and never returned to the company. (R. 410-11).

Shortly thereafter, in May 2001, Brailey began working for Westinghouse Electric Corporation. In Westinghouse's application process, Brailey denied to Westinghouse any "recurrent low back pains." (R. 178). He also denied ever having had a work-related injury or illness or having been restricted medically from doing any part of his job. (R. 179). Later, in October 2013, on Westinghouse's HealthWorks Questionnaire and Physical, Brailey again denied to Westinghouse ever having "had a work injury, Workers' Compensation claim, been given any impairment rating or disability rating, applied for or received any type of disability or pension . . . received an award or settlement for any injury, accident, disease or other disorder." (R. 180). He further denied any permanent restrictions or limitations or having had a previous job with similar physical demands. Id. At the hearing in this case, Brailey alleged his position at

Westinghouse required that he lift pallet containers and push carts of wrenches and rods weighing up to 800 pounds (R. 411, 413), but in his deposition testimony, he testified that his Westinghouse job, “was not too much physical demand on that job. It was just basic. It was really light.” (R. 247). The medical records indicate Brailey was “on disability” following his job at Westinghouse and before beginning employment with Michelin. (R. 58).

Following Westinghouse, Brailey began working for Michelin in May 2017. (R. 417). During the hiring process for Michelin, like with Westinghouse, Brailey again falsely denied any prior back injury, backache, back pain or having ever experienced a medical problem that affected his ability to perform work. (R. 176, 419-21, 461, 601-05). He passed Michelin’s entry physical exam; however, Michelin’s nurse explained that if a job applicant wanted the job at Michelin as bad as Brailey claimed he did, then applicants could provide false information in order to pass the initial physical examination. (R. 753-758).

The first few weeks at Michelin was classroom training. Similar to Richtex, shortly after starting the physical component of his job at Michelin, Brailey began complaining to doctors of back issues from work. On June 11, 2017, Brailey went to Urgent Care, complaining of “low” “back pain after lifting at work” over the “past several days.” (R. 67). He denied any prior history of back issues. Id. His pain scale was 8. (R. 68). He was diagnosed with a lumbar strain and ordered to follow up with his doctor if he did not improve in three to five days. Id. No person at Michelin was aware of this visit or Brailey’s claim that he experienced the low back pain from work. (R. 335-36, 414-15, 463-65, 469-71, 474, 490-92, 618, 638, 706-07, 720, 738, 743, 767-68).

A few days later, on June 13, 2017, Brailey went to his general practitioner, again complaining of “lower back pain” “for the past 2 weeks” from work at Michelin. (R. 61). The

medical record states “has had new job at Michelin, moving heavy stuff – there now for about past 2 weeks.” Id. The pain scale was “10/10.” Id. Brailey told the doctor that he “never had pain there in past.” Like the June 11th visit, several witnesses testified—including Brailey—that no person at Michelin was aware of this visit or Brailey’s claim that he experienced the low back pain from work.

Then on June 24, 2017, Brailey went to an emergency room, complaining of lower back pain “since he was working last night, states does a lot of lifting/pulling and started hurting then.” (R. 70). The medical report shows Brailey was in less pain on June 24th than he had been at the June 13th visit. (R. 516). On this visit Brailey asked the hospital staff about a possible workers’ compensation claim. (R. 71, 76).

Brailey then spoke to Michelin’s plant nurse who immediately scheduled him an appointment with Michelin’s plant doctor for the following business day, June 26, 2017. (R. 737). The plant nurse noted Brailey “was very vague on how [the alleged accident] happened.” (R. 735). Before the visit with the plant doctor, Brailey completed Michelin’s “HealthWorks Post-Injury Questionnaire.” (R. 80-82). On the form, Brailey denied ever having “injured this part of your body before.” Id. When asked in the previous illnesses section, “Do you now have or have you ever had: (if so, list the date it occurred or you were diagnosed) . . . Back injuries or problems,” Brailey only referred to the June 24th hospital visit. Id. He made no mention of the June 11th visit, the June 13th visit, or his prior workers compensation claim for his back. He alleged his back pain was 10/10 on the pain scale. Id.

The plant doctor ordered Brailey to follow up with him on June 28, 2017. (R. 85). Brailey did not follow the plant doctor’s instructions and instead returned to the emergency room on the next day, June 27, 2017. Brailey never returned to Michelin to follow-up with the plant doctor or

complete the investigation or accident report. (R. 719-20, 771-72). Although Brailey claimed he did not return to Michelin because he did not have transportation, he later admitted that Michelin offered him transportation that he refused. (R. 577). Michelin staff also testified that Michelin offered to provide Brailey with transportation when Brailey claimed he could not return because he did not have transportation, but Brailey refused the offer. (R. 772-73).

A few days later, on June 30, 2017, Brailey went to Doctors Care, complaining of lower back pain. (R. 99, 102, 537). He did not answer the questions on the intake form addressing whether the injury was a workers' compensation claim. (R. 98). Doctors Care referred him to an orthopedic specialist.

On July 24, 2017, Brailey began treating with Dr. Scott Boyd. Dr. Boyd observed a herniated disc on Brailey's MRI, but confirmed there was no way to tell from looking at the MRI how long the issue had been present. (R. 308, 326-27). Brailey reported to Dr. Boyd's office that he "hasn't had previous back problems except maybe 25 years ago he had an episode that resolved without any treatment." (R. 112). Dr. Boyd was under the impression that Brailey "had an injury on June 24th [2017] and no problems before then." (R. 54). Dr. Boyd was unaware of Brailey's prior workers compensation injury and his recent medical visits on June 11 and June 13, 2017. Once provided with the June 11 and June 13, 2017 records, Dr. Boyd opined that he could not "be certain" as to whether Brailey's lower back problem was caused by an accident on June 24, 2017. (R. 328). He reiterated that "I think I would say uncertain as to the date" (R. 329), when asked whether it was "still possible to state within a reasonable degree of medical certainty, as was done on [Dr. Boyd's questionnaire], that the cause of the low back problems is related to a work accident on June 24, 2017" (R. 328).

The Single Commissioner denied benefits to Brailey, which the Full Commission affirmed.

The Court of Appeals reversed the Full Commission's decision. This Petition followed.

STANDARD OF REVIEW

The Administrative Procedures Act ("APA") governs this Court's review of the Full Commission's decisions. See Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). "The claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture or speculation." Nicholson v. S.C. Dep't of Soc. Servs., 411 S.C. 381, 384, 769 S.E.2d 1, 2-3 (2015) (quoting Crisp v. South Co., 401 S.C. 627, 641, 738 S.E.2d 835, 842 (2013)). "A decision of the Worker's Compensation Commission will not be overturned by a reviewing court unless it is clearly unsupported by substantial evidence in the record." Howell v. Pac. Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987). Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the Full Commission reached. Waters v. S.C. Land Resources Conservation Comm'n, 321 S.C. 219, 467 S.E.2d 913 (1996).

In workers' compensation cases, the Full Commission is the ultimate fact finder. Hunter v. Patrick Constr. Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The final determination of witness credibility and the weight to be accorded evidence is reserved exclusively to the Full Commission. Ford v. Allied Chem. Co., 252 S.C. 561, 167 S.E.2d 564 (1969). It is not the task of an appellate court to weigh the evidence as found by the Full Commission. Ellis v. Spartan Mills, 276 S.C. 216, 277 S.E.2d 590 (1981). Further, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999). Where the record includes conflicts in the evidence over a factual issue, the findings of the Full

Commission are conclusive. Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002).

ARGUMENT

The Court of Appeals' decision cannot stand as the law of this state. The law of South Carolina does not award benefits to a claimant under the circumstances presented in this case. Not only does the Court of Appeals' decision directly conflict with legal precedence, but to allow a claimant to obtain benefits within the framework of this case contravenes the entire purpose and policy that generated the fraud in the application and notice doctrines. The opinion goes on to undermine the fact-finding role left exclusively to the Full Commission and generates other facts to shed the case in the light most favorable to the claimant to support the ruling—a claimant whose lack of credibility permeates the record in a case in which credibility was a substantial issue. The Court of Appeals' opinion must be reversed and the Full Commission's decision reinstated.

I. Whether reviewed under the substantial evidence standard or preponderance of the evidence standard, the record supports the Full Commission finding Michelin proved every element of the fraud in the application defense under Cooper v. McDevitt & St. Co., 260 S.C. 463, 465, 196 S.E.2d 833, 834 (1973).²

A. The Court of Appeals erred in its application of the standard of review it chose to rely upon.

The Court of Appeals did not properly apply the standard of review it relied upon in its opinion—the substantial evidence standard. Under that standard, a “decision of the Worker's

² The Court of Appeals properly held Michelin met the first two prongs of the fraud in the application defense under Cooper—that (1) Brailey willfully and knowingly made false statements as to his physical condition to Michelin on his employment application and (2) Michelin relied on those statements and they were a substantial factor in hiring Brailey. Any issues raised by Brailey regarding which standard the Court of Appeals should have applied and whether the Court erred in finding Michelin met the first two prongs of Cooper are not preserved because Brailey failed to file his own Petition for Rehearing with the Court of Appeals. See Mazloom v. Mazloom, 392 S.C. 403, 403, 709 S.E.2d 661 (2011) (holding issue unpreserved for review because it was not raised in a petition for rehearing to the Court of Appeals).

Compensation Commission will not be overturned by a reviewing court unless it is clearly unsupported by substantial evidence in the record.” Howell v. Pac. Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987). Here, the Court improperly weighed the evidence, and the Court’s errors controlled the analysis which led to a finding in favor of Brailey. Instead of looking for what in the Court’s view should have been included in the record, the Court’s sole duty was to consider whether what is in the record supports the Full Commission’s decision.

The Court put on blinders to the facts supporting the Commission’s decision and created facts from evidence not in the record thereby ignoring the substantial evidence in the record supporting the Full Commission’s decision.³ Indeed, the lens through which the Court of Appeals

³ For example, the Court relied on the fact that Brailey “passed a physical during Michelin’s hiring process and was cleared for full duty” even though Michelin’s plant nurse explained that if a job applicant wanted the job at Michelin bad enough, as Brailey claimed he did, then applicants could provide false information in order to pass the initial physical examination. (R. 753-758). The Court relied on this even though it found substantial evidence supports the Commission’s findings that Brailey willfully and knowingly made false statements as to his physical condition to Michelin. Thus, the fact that Brailey “passed a physical” does not mean he was physically able to do the job as implied by the Court’s opinion. The record before the Court demonstrates Brailey lied to doctors when necessary to get what he wanted—i.e., to get a job. The Court’s implicit credibility findings bleed into its decision that the Full Commission’s decision is not supported by substantial evidence.

The Court accepted, for example, Brailey’s claims that (1) he was never trained in the correct procedures for filing workers’ compensation claims or for reporting injuries at work even though Michelin employees testified otherwise, (2) called his supervisors during his visit to the ER on June 24, 2017, and the supervisor told him to go to the nurse which is inconsistent with the record, (3) “tried to see the Michelin nurse but the office was closed” despite the testimony from Michelin’s training manager that the employees were trained that if the medical department was not open, they were to go directly to security because Michelin’s security officers are trained EMTs and the employees were specifically instructed not to go to the family health center for work-related injuries; and (4) missed the follow up appointment with Dr. Izard “because he did not want to drive while taking pain medication” when in fact Brailey denied the transportation offered and lied to the Single Commissioner regarding his reasons for not attending the follow up appointment. More importantly, the Court appears to have accepted Brailey’s claim that his current pain was in “a different area of his back” than the prior injury in holding that there was no causal connection between the false representation to Michelin and the current injury. This was error.

viewed the facts to reach its conclusion to reverse the Commission erroneously relied on Brailey's testimony even though the Commission, as the ultimate finder of fact, determined Brailey lacked credibility. See Hunter v. Patrick Constr. Co., 289 S.C. 46, 344 S.E.2d 613 (1986) (holding the Full Commission is the ultimate fact finder and makes the final determination of witness credibility and the weight to be accorded evidence); Ford v. Allied Chem. Co., 252 S.C. 561, 167 S.E.2d 564 (1969) (same). It was not the task of the Court of Appeals to weigh the evidence as found by the Full Commission. Ellis v. Spartan Mills, 276 S.C. 216, 277 S.E.2d 590 (1981). The skewed view by which the Court of Appeals used to reach its decision is erroneous and requires reversal.

B. The Court of Appeals' opinion conflicts with Jones v. Georgia-Pacific Corp., 355 S.C. 413, 586 S.E.2d 111 (2003), which does not require the additional elements the Court of Appeals created and required for the employer to satisfy the causal connection element under Cooper.

The core of the Court of Appeals' decision on the Cooper defense is that although the Full Commission found Dr. Boyd was not aware of the extent of Brailey's prior back injury, according to the Court of Appeals, the Full Commission's decision must be reversed because the record contains no evidence that the prior injury did not resolve or any evidence of the extent of the prior injury. (Appx. 1038). In reversing, the Court of Appeals further ruled that the "record contains no medical evidence that Brailey's 1997 back injury somehow contributed to the June 24 injury or that he was predisposed to back injury."

i. Jones does not require the additional elements the Court of Appeals imposed on Michelin and like Jones, Brailey's claims at Richtex and Michelin are the same.

The Court of Appeals' opinion conflicts with this Court's decision in Jones by adding requirements that the record contain evidence (1) that the prior back injury contributed to the alleged current injury, (2) the claimant was predisposed to the current injury, (3) the prior injury did not resolve, and (4) of the extent of the prior injury. Jones does not require these additional

parameters for an employer to prove a causal connection, neither does the elements originally set forth in Cooper or any other case in South Carolina.

In Jones, when determining whether an employer proved the third element of Cooper, this Court held “there is a causal connection between Claimant's injuries and the false representation as she had documented back problems prior to employment and claims that she injured her back while working for Respondent.” Jones, 355 S.C. at 419, 586 S.E.2d at 114. That is exactly the case here. Brailey had documented back problems to his low/middle back prior to employment with Michelin—which he specifically denied to Dr. Boyd—and claims he injured his low/middle back while working for Michelin. The inquiry stops there. Instead of properly applying Jones, the Court of Appeals went further and lodged additional unknown requirements upon an employer to prove the fraud in application defense under Cooper.

In adding the additional elements, the Court of Appeals ignored the fact that like Jones Brailey's claims in the instant action are the exact same claims which led to a workers' compensation injury and settlement for the prior back injury. The jobs at Richtex and Michelin both entail regularly lifting and moving heavy products. R. 158, 407-08 (noting Brailey's job at Richtex was to lift and load stacks of bricks onto a monorail all day); R. 61, 436 (noting Brailey's job at Michelin required him to lift and move heavy items). Indeed, the prior medical records and reports demonstrate the current issue involves the same part of Brailey's back as the prior issue that he failed to include in his application for employment with Michelin—low and middle back that hurts when he bends. In the December 4, 1997 medical report, the note states “back exam shows tenderness to palpation of the *intervertebral space at L2-3* There is tenderness and muscle spasm in the *bilateral lumbar region*” (R. 158) (emphases added). Further, the Workers' Compensation Commission's database shows the location as “*low back area*” for the

1997 claim. (R. 166) (emphasis added). Brailey's Form 50 Request for a Hearing in the instant case alleges he sustained an injury to his "back," indicating an issue with any part of his back. In the instant action, Brailey completed Michelin's Post-Injury Questionnaire claiming the injury was to his "*lower left & middle back.*" (R. 80) (emphasis added). He claimed, "severe pain, ba[re]ly can move can't been (sic) down." *Id.* Likewise, in the medical record from the December 1997 visit with Richtex's doctor, Brailey reported "the pain is in the *middle of his back*, hurts sometimes when . . . he bends." (R. 159) (emphasis added).

Brailey's claims at Richtex and Michelin are so similar that Brailey even procedurally interacted with the employer and doctor the same when making the claims. Like the prior injury at Richtex, immediately after starting the physical aspect of his job at Michelin requiring him to start regularly lifting and moving heavy items, Brailey reported a "vague" work accident, claimed low back pain, and did not follow the treating physician's instructions.

ii. Even if the additional elements are required, the elements are met here and Dr. Boyd's opinion does not support causation or warrant finding Michelin did not meet the third element of Cooper.

Even if Michelin was required to provide evidence of predisposition to back injury, extent of the prior injury unrevealed to the treating doctor, or evidence that the prior injury contributed to the current injury, the Richtex claim's medical records provide the medical evidence to support the Full Commission's decision. That doctor opined that if Brailey does a job he is unable to perform, he can injure his back. The treating physician at Richtex directly informed Brailey that he was "unable to perform the job" and that because he had been having pain the entire time he worked for the job, he should consider finding different employment. (R. 158-59). Richtex's doctor instructed him to see a specialist for his low back injury. *Id.* Brailey told the doctor that he knows something is wrong with his back and he wants to go to a back specialist. *Id.* The last

medical instruction to Brailey states, "I will place him on no heavy lifting until he sees the surgeon." Id. Brailey never visited a specialist but went on to perform a job that he could not perform at Michelin. At Michelin, Brailey's Trainer testified Brailey had difficulty doing his job. (R. 659-663). The Training Manager testified Brailey never successfully completed validation and could not do the job safely. (R. 697-98). Michelin employees explained that Brailey, who was previously told by a doctor that he could not perform heavy lifting, could not perform Brailey's job at Michelin. (R. 667).

In reaching its decision related to the impact of Dr. Boyd's opinion and Dr. Boyd's lack of awareness of the extent of Brailey's prior back injury, the Court of Appeals ignored the fact that Brailey admitted he did not tell Dr. Boyd about previously being placed under restrictions because of his back or his prior back injury. (R. 599). Instead, the only thing Dr. Boyd knew was what Brailey told him—that he "hasn't had previous back problems except maybe 25 years ago he had an episode that resolved without any treatment." Thus, Dr. Boyd only had false information because Brailey reported 10/10 back pain only weeks prior to the appointment with Dr. Boyd.⁴ Further, Brailey did not tell Dr. Boyd that he previously told the doctor at Richtex that he "knows something is wrong with his back and he wants to go to a back specialist." He did not inform Dr. Boyd that Richtex's doctor ordered him not to do any heavy lifting until he sees a surgeon, and that he never visited a specialist. Furthermore, Michelin's Safety Manager explained Michelin and its doctor were not able to investigate the full extent of the prior injury because Brailey did not inform the company of his prior back issues and the prior workers' compensation claim. (R. 775).

⁴ Dr. Boyd explained that "[p]roper application of the scale, [ten out of ten], should be the worst pain you could experience." (R. 322).

iii. The Court of Appeals improperly extrapolated facts related to the resolution of the 1997 injury and Brailey's work at Westinghouse.

Finally, even if it were necessary under Jones and Cooper to have evidence of lack of resolution of the injury and the Court of Appeals was correct that there was no evidence that the 1997 injury did not resolve, the opposite of the Court's reasoning on the resolution of injury is also true—there is no evidence Brailey's injury did "resolve." The medical records indicate Brailey was "on disability" following his job at Westinghouse and before beginning employment with Michelin. (R. 58). In any event, the evidence is not necessary for a finding that the Full Commission's decision is supported by substantial evidence.

In the same vein, the Court of Appeals also improperly weighed the evidence by placing great weight on the fact that Brailey worked at Westinghouse in the time between his employment with Richtex and Michelin. First, the Court ignored the fact that Brailey lied on his Medical History and Examination Form for his position at Westinghouse. When Brailey applied to Westinghouse, he falsely denied ever having had a work-related injury or illness; ever being restricted medically from doing any part of his job; ever having any pain, numbness, limited motion, or injury of the back; ever having a work injury, workers' compensation claim, or receiving a settlement for any injury; or having had a previous job with similar physical demands. (R. 177-79). Brailey then doubled down on his lies to Westinghouse years later by again denying any prior claims or injuries. Id. Thus, the Court of Appeals again inappropriately relied on Brailey's testimony that he allegedly worked without issue at Westinghouse to conclude there was no causal connection between Brailey's false representation and the alleged injury.

The record lacks credible evidence that Brailey was able to safely perform the job at Westinghouse without issue whereas the evidence in the record is clear that Brailey could not perform his job at Richtex or Michelin. More importantly, there is no credible evidence for the

Court to conclude Brailey never complained to Westinghouse about back issues or that Westinghouse never sent Brailey for any medical treatment inhouse or elsewhere, resolving the matter internally. The record does not include testimony from any Westinghouse representative. In fact, as previously stated, the medical records indicate Brailey was “on disability” following his job at Westinghouse and before beginning employment with Michelin. (R. 58).

Although during the hearing before the Single Commissioner, Brailey alleged his position at Westinghouse required that he lift pallet containers and push carts of wrenches and rods weighing up to 800 pounds (R. 411, 413), in his deposition testimony, Brailey testified that his Westinghouse job, “was not too much physical demand on that job. It was just basic. It was really light.” (R. 247). A “light” job cannot compare to the physical demands placed upon Brailey at Richtex and Michelin. Accordingly, the Court of Appeals’ opinion should be reversed and the Full Commission’s order reinstated. See Jones, 355 S.C. at 418, 586 S.E.2d at 113 (“Our standard of review does not permit us to weigh the evidence and make our own determination.”); S.C. Code Ann. § 1-23-610 (Supp. 2020) (noting that the reviewing Court shall not substitute its judgment for that of the agency “as to the weight of evidence on questions of fact”).

C. Alternatively, if the case is reviewed under the preponderance of the evidence standard, the preponderance of the evidence supports affirming the Full Commission under Brayboy v. WorkForce, 383 S.C. 463, 681 S.E.2d 567 (2009) and its progeny.

Even if the Court of Appeals had applied the preponderance of the evidence standard to the determination of whether an employer-employee relationship existed, the Court nonetheless should have affirmed the Full Commission. As an initial matter, even under the broad preponderance of the evidence standard, the final determination of witness credibility is reserved to the Full Commission. See Hernandez-Zuniga v. Tickle, 374 S.C. 235, 243-44, 647 S.E.2d 691, 695 (Ct. App. 2007) (providing that even when analyzing a workers’ compensation issue under

the preponderance of evidence standard, “the final determination of witness credibility is usually reserved to the Appellate Panel”); Paschal v. Price, 392 S.C. 128, 133, 708 S.E.2d 771, 773 (2011) (same). As previously discussed, the Court of Appeals erroneously relied a great deal on Brailey’s credibility to reach its conclusions reversing the Full Commission despite the Full Commission’s credibility finding and the overwhelming evidence in the record that Brailey lacks credibility.

Moreover, the facts of this case are similar to the facts outlined in Brayboy v. WorkForce, 383 S.C. 463, 681 S.E.2d 567 (2009)—a case applying the preponderance of the evidence standard and which Brailey urged the Court of Appeals to follow. The claimant in Brayboy sustained a back injury in 2003. Id. at 464, 681 S.E.2d at 567. Brayboy’s employment application included disclaimers similar to those outlined in Brailey’s post-hire questionnaire. Id. at 464-65, 681 S.E.2d at 567-68. As in the instant case, “[n]otably, Brayboy signed his name under these cautionary statements. Despite these warnings, Brayboy responded in the negative to all questions inquiring if Brayboy had prior back injuries, physical defects, medical conditions, or previous workers’ compensation claims.” Id. at 465, 681 S.E.2d at 568. “Brayboy testified he did not report any of his prior injuries to WorkForce as he did not feel the injuries were relevant to a construction job. Also, Brayboy stated he did not include the cave-in injury as it had ‘cleared up very quickly.’” Id. at 466, 681 S.E.2d at 568. Similarly, here, although Brailey executed the declaration and authorization portion of the form, he claims he quickly completed the forms and suggests that because he believed the prior workers’ compensation claim was minor and occurred some years prior, Michelin did not need to know that information. Like Brayboy, Brailey failed to report his back problems and admitted he provided false information on Michelin’s application as well as Westinghouse’s employment documents. Id. at 467, 681 S.E.2d at 569. Brailey’s continued attempt to minimize the Richtex claim because it was several years prior to the claim against

Michelin is of no moment. The Court in Brayboy considered evidence of the claimant's injury from his service in the military in the "early 1970s" whereas the workers compensation claim was in 2003.

As in Brayboy, Michelin presented credible evidence that it relied upon Brailey's false statements, and there was irrefutable evidence of a causal connection between the false information and the current injury because the injury is "primarily in the same area" as the prior back injury. Id. at 467-68. As this Court decided in Brayboy, this Court should be "firmly convinced" Michelin established all three factors of Cooper and the Court of Appeals erred. Id. at 569.

II. South Carolina law requires that the appellate court either affirm the Full Commission's ruling on the Capers v. Flautt, 305 S.C. 254, 407 S.E.2d 660 (Ct. App. 1991) issue or remand to the Full Commission for it to make its own findings of fact and conclusions of law if the appellate court finds the Commission's order does not contain sufficient findings of fact and conclusions of law related to the ultimate issue of liability under Capers.

A. Capers is directly applicable to the facts of this case.

In Capers, just as the instant case, the Commission denied benefits because the claimant knowingly and willfully made a false statement on his employment application and because the Commission found the claimant did not sustain an accidental injury as contemplated within S.C. Code Ann. Section 42-1-160, partly based upon the credibility of the witnesses. The claimant previously experienced a medical condition which led to a workers' compensation claim and hindered the claimant's ability to perform his job. Id. at 256-58, S.E.2d. at 661. The claimant did not inform the new employer of the prior injury and instead continued to perform a job that could cause the same type of injury. The Commission found the injury was not an injury by accident because the claimant "had been aware of the situation for several years and had previously left a job due to the same problem." Id.; see also Landry v. Carolinas Healthcare Sys., 396 S.C. 149, 157, 719 S.E.2d 288, 292 (Ct. App. 2011) (relying on Capers to hold substantial evidence

supported the Full Commission finding claimant did not suffer an injury by accident arising out of and in the course of her employment where the worsening of condition was not unexpected); Havird v. Columbia YMCA, 308 S.C. 397, 400, 418 S.E.2d 329, 331 (Ct. App. 1992) (same).

Capers is not distinguishable from this case. It is instead, directly on point. It is difficult to imagine a situation in which Capers would not apply to these circumstances. Brailey knew for many years that performing the strenuous type of job he performed at Michelin had the potential if not likelihood to injure his back. And at Richtex, the medical records succinctly state that the doctor told Brailey that if he performed a laborious job that he is incapable of performing, he can injure his back. (R. 158-59). Brailey then failed to inform Michelin of his prior employment with Richtex and his prior workers' compensation claim for his back. Moreover, the medical records show he went to the doctor weeks before the vague injury he reported on June 24, 2017, and reported that he had been experiencing back problems for several weeks due to his job at Michelin. At his doctor's visit on June 13, 2017, Brailey reported that he had been having lower back problems for the prior two weeks, meaning Brailey had been experiencing back problems at Michelin since at least May 2017. Brailey did not report those back problems to any person at Michelin. Thus, like the claimant in Capers, Brailey had been aware of the situation for several years, had previously left a job due to the same problem, and had experienced the same problem for several weeks prior to June 24, 2017. The Court of Appeals seemingly ignored Brailey's two medical visits right before the alleged date of accident. Given Brailey's testimony that he had been told this type of strenuous work often led to muscular and soreness issues and Brailey's history at Richtex, culminating in 10 out of 10 pain before the date of accident, under Capers Brailey had a duty to inform Michelin of the issues because he knew or should have known he would eventually suffer a worsening of his condition which is exactly what happened if the Court accepts Brailey's

story as true.

Accordingly, substantial evidence supports the Full Commission's conclusion under Capers that Brailey's problem was not an unlooked-for event which he did not expect. It was, in fact, an event which he could anticipate given his past experience and medical provider's opinion. Richardson v. Wellman Combing Co., 233 S.C. 454, 459, 105 S.E.2d 602, 604 (1958).

B. If the Court determines the Commission's findings of fact and conclusions of law are not sufficiently detailed on an issue related to ultimate liability in the case, the Court must remand the case to the Full Commission.

Alternatively, because Capers is directly applicable to this case, it is black letter law in this state that if an appellate court determines the Full Commission's findings of fact and conclusions of law were not sufficiently detailed, South Carolina law requires the Court to remand to the Commission for sufficiently detailed findings and conclusions before an appellate court can determine whether the Commission's decision regarding Capers was erroneous. See Bartley v. Allendale Cnty. Sch. Dist., 392 S.C. 300, 310, 709 S.E.2d 619, 624 (2011) (reversing the Court of Appeals, finding "remand to the Commission is necessary to allow it to make the necessary factual findings and legal conclusions to resolve" the claim); Fox v. Newberry Cnty. Mem'l Hosp., 319 S.C. 278, 280, 461 S.E.2d 392, 394 (1995) ("The duty to determine facts is placed solely on the Commission and the court reviewing the decision of the Commission has no authority to determine factual issues but must remand the matter to the Commission for further proceedings. The reviewing court may not make findings of fact as to basic issues of liability for compensation, where, to do so, would impose upon the court the function of determining such facts from conflicting evidence." (internal citation omitted)); Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986) (remanding for administrative body to make detailed factual findings before appellate court could determine whether decision was

erroneous, stating “[i]t is impossible for an appellate court to review the order for error, since the reasons underlying the decision are left to speculation”); Turner v. Campbell Soup Co., 252 S.C. 446, 450, 166 S.E.2d 817, 818 (1969) (finding remand appropriate when appellate court determines the Commission failed to make an essential finding of fact or when appellate court concludes the Commission’s findings are so indefinite or general as to afford no reasonable basis for appellate court to determine whether findings of fact are supported by evidence and whether the law has been properly applied to the findings); Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 129, 127 S.E.2d 288, 295 (1962) (holding an issue that impacts the “ultimate liability in the case” is “one upon which the Commission is required to make an express finding of fact” and “failure to do so requires that the case be remanded to the Commission for such finding” (superseded by statute)).

The Court of Appeals has recognized this proposition in some cases. See, e.g., Canteen v. McLeod Reg'l Med. Ctr., 400 S.C. 551, 558, 735 S.E.2d 246, 250 (Ct. App. 2012) (holding circuit court improperly weighed evidence and made its own factual determinations, remanding to Commission for specific findings and conclusions); Pack v. State Dep't of Transp., 381 S.C. 526, 538, 673 S.E.2d 461, 468 (Ct. App. 2009) (same); Baldwin v. James River Corp., 304 S.C. 485, 487, 405 S.E.2d 421, 422-23 (Ct. App. 1991) (same).

Here, the Full Commission’s findings of fact and conclusions of law are sufficient to support its ruling under Capers, but if the Court determines the Full Commission’s findings and conclusions are not sufficiently detailed on the question of liability under Capers, remand to the Full Commission is necessary to allow it to make the necessary factual findings and legal conclusions to resolve Brailey’s claims.

III. Substantial evidence supports finding Brailey failed to prove he sustained an injury by accident on June 24, 2017.

Regardless of whether a different standard of review applies to the fraud in the application defense, there is no question that the substantial evidence standard remains the standard for the Court to determine whether the Full Commission correctly ruled Brailey failed to prove an injury by accident on June 24, 2017. See Jordan v. Kelly Co., 381 S.C. 483, 486, 674 S.E.2d 166, 168 (2009) (applying the substantial evidence standard to determine whether claimant sustained an “injury by accident arising out of and in the course of the employment” under S. C. Code Ann. § 42-1-160). As discussed throughout this Petition, the Court of Appeals did not properly apply the substantial evidence standard of review.

A. Substantial evidence supports the Full Commission finding Brailey failed to meet his burden to prove a compensable injury at Michelin on June 24, 2017.

The Court of Appeals broadly rules that the Full Commission erred in finding Brailey failed to prove he injured his back in an accident arising out of his employment with Michelin. (Appx. 1040-41). Yet, the Full Commission’s order is more narrowly tailored than the Court of Appeals’ opinion and should be affirmed because it is supported by substantial evidence. Specifically, the Full Commission found

This claim is denied in its entirety based on evidence of numerous issues relating back to 1997 through 2017. The claimant has failed to carry his burden of proof of an accident being sustained on June 24, 2017, due to his lack of credibility, the lack of sufficient medical evidence to support his allegations, and, moreover, due to medical evidence to the contrary. We find the claimant was unable to return to work after June 24, 2017, due to a previous incident.

The Full Commission then concluded “[u]nder §42-1-160, the claimant did not sustain compensable injury to his low back while under the employ of [Michelin] on June 24, 2017, as alleged. Claimant failed to meet his burden of proof that he injured his low back on June 24, 2017,

under the evidence presented.” Thus, the question here is did Brailey prove an injury by accident arising out of his employment with Michelin on June 24, 2017. The answer to the question is no he did not.

Section 42-1-160 of the South Carolina Code provides that “‘Injury’ and ‘personal injury’ mean only injury by accident arising out of and in the course of employment” “The word ‘accident’ as used in this title must not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously, or at frequent intervals in the course of such employment, over extended periods of time. Any injury or disease attributable to such causes must be compensable only if culminating in a compensable repetitive trauma injury pursuant to Section 42-1-172 or an occupational disease” Id.

The record demonstrates the following regarding Brailey:

- **Prior to Michelin-** (1) had a workers compensation claim at Richtex for his low back following a “vague episode of lifting” immediately after starting the job, (2) went to Doctors Care instead of following up with the company’s doctor, (3) demanded to see a specialist (but never went), (4) was told by a doctor that if he could not perform the job, he could injure his back, (5) failed to inform his next job of the Richtex workers compensation claim despite being asked multiple times throughout his employment, and (6) was on disability when he began working at Michelin—yet, disclosed none of that to Michelin;
- **January 3, 2017-** has a coughing problem as noted in his visit with his family doctor (R. 56);
- **End of May 2017-** begins the physical aspect of his job at Michelin and immediately begins complaining of low back problems but he does not report any issues to Michelin;
- **June 11, 2017-** complains to a doctor of back pain after “lifting at work” over the “past several days,” his pain is an 8 but he does not report the complaints to Michelin;
- **June 13, 2017-** complains to a different doctor of “lower back pain” from “moving heavy stuff” “for the past 2 weeks” from work at Michelin, pain is “10/10” but he does not report it to Michelin, coughing also listed as an “active” problem;
- **June 24, 2017-** claims that on this date he has a workers compensation injury by accident for low back pain from “lifting/pulling” at work but was “vague” in describing the accident to Michelin’s plant nurse;
- **June 26, 2017-** has appointment with Michelin’s plant doctor, ordered to return on June 28th, denies any prior back problems other than the June 24th visit to the hospital;

- **June 27, 2017-** goes to the hospital instead of following up with the plant doctor, reports to the doctor that “when he coughs it hurts his back” (R. 87);
- **June 28, 2017-** does not return for his scheduled appointment with Michelin’s plant doctor, claimed he did not have transportation to return to the plant despite the offer of transportation;
- **Jun 30, 2017-** goes to Doctor Care, does not indicate on the Patient Information Form that it is a workers’ compensation claim;
- **July 2017-** treats with Dr. Boyd but lies about his prior back issues, Dr. Boyd opines that he cannot “be certain” to a reasonable degree of medical certainty as to whether Brailey’s lower back problem was caused by an accident on June 24, 2017.

The Court of Appeals ignored the fact that Brailey only claimed an injury by accident on June 24, 2017. He did not claim a repetitive trauma injury or an injury occurring on June 11, 2017, or June 13, 2017. Although there is record of Brailey visiting a medical facility on June 24, 2017, there are equally probative records evidencing similar complaints from weeks prior. Moreover, Michelin’s plant doctor noted the cause of Brailey’s condition was not known at the time of the evaluation on June 26, 2017. (R. 84). Brailey, thereafter, failed to return to the plant doctor as instructed. Brailey admitted and medical records demonstrate that he was in less pain on June 24, 2017, than he had been on June 13, 2017. (R. 516). Also, Brailey admitted that he had hard coughing issues going on during this time which hurt his back and agreed he was coughing hard enough to herniate a disk. (R. 530-532). As aptly noted by the Single Commissioner and affirmed by the Full Commission:

[Brailey]: The MRI was done July 29th, 2017.

[Single Commissioner]: -- and we don't we don't know what happened between June 11th, 13th, 24th -- we don't have a clue what happened.

[Brailey]: Well, we do know what happened on June -- July -7 on June 24th, Your Honor, and we have --

[Single Commissioner]: Well, we had a lot of coughing and hacking and all kind of crazy things --

[Michelin]: And no radiating --

[Single Commissioner]: -- we don't know what caused it.

(R. 751-52).

As Brailey has only alleged injury for Jun 24, 2017, it was reasonable for the Full Commission to find Brailey failed to meet his burden of proving an injury by accident on the date he has alleged. See Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999) (holding the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence); Waters v. S.C. Land Resources Conservation Comm'n, 321 S.C. 219, 467 S.E.2d 913 (1996) (noting substantial evidence is evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the Full Commission reached).

Even if Brailey now argues a different date prior to June 24, 2017, or an aggravation of a preexisting injury,⁵ the assertions would not warrant reversal of the Full Commission because the Commission's decision is supported by substantial evidence. See Sharpe, 336 S.C. at 161-62, 519 S.E.2d at 106 (affirming the Commission's decision that the claimant failed to prove an injury by accident on a specific date and rejecting the argument that even if the claimant was injured on a different date, the claimant's work accident aggravated the pre-existing injury); id. ("Again, although there was evidence from which the Commissioner could have found that an accident occurred on July 21st, and from which he could have held a prior injury was aggravated, there is ample evidence in the record from which reasonable minds could infer that Sharpe was actually injured on July 16th, that no accident occurred on July 21st, and that, in fact, Sharpe 'staged' the July 21st accident.").

The Court of Appeals erred in holding "the medical evidence pertaining to his 2017 injury, which consists of an MRI and the expert medical opinion of a neurosurgeon, is not contradicted

⁵ If Brailey makes these new allegations, the issues are unpreserved for appeal to this Court because they were never raised to or ruled upon by the Full Commission or the Court of Appeals.

and constitutes substantial evidence that supports a reversal of the Commission's order.” (Appx. 1041). First, as previously outlined, Dr. Boyd testified that there was no way to tell from looking at Brailey’s MRI scan how long the herniated disc was present. (R. 308, 326-27). It is plausible that the herniated disc could have been present long before Brailey even began working at Michelin. See R. 58 (noting Brailey was “on disability” following his position with Westinghouse). Although Brailey claimed there is no medical evidence showing a different incident or that the radiculopathy and herniated disc existed before June 24, 2017, the Court of Appeals ignored the evidence of Brailey experiencing back pain in 1997, so much so that he filed a workers' compensation claim and told the treating doctor that he needed to see a specialist and the 10/10 back pain that sent Brailey to two different doctors earlier in June 2017.

Next, Dr. Boyd testified he could not “be certain” as to whether Brailey’s lower back problem could be caused by an accident on June 24, 2017. (R. 328-339). Dr. Boyd testified he could not be certain about a date of accident and that the questionnaire he executed for Brailey should actually say he was uncertain about the date. (R. 328-329). Dr. Boyd further testified the history given to him was different than the history Brailey gave to other doctors. (R. 320-321). Accordingly, the Commission did not err in concluding Brailey failed to meet his burden of proving an injury by accident on June 24, 2017. The Court of Appeals erred in reversing the Full Commission. See Brunson v. American Koyo Bearings, 395 S.C. 450, 718 S.E.2d 755 (2011) (affirming finding that a claimant did not suffer a work-related injury where her claim that she had never suffered from respiratory issues prior to the claim was directly refuted by the medical records documenting her prior complaints, the evidence related to her claim was conflicting, and a doctor believed the claimant had ulterior motives for pursuing her claim); Fair v. Fluor Daniel, 309 S.C. 520, 424 S.E.2d 541 (Ct. App. 1992).

B. This case is distinguishable from Crane v. Raber's Discount Tire Rack, 429 S.C. 636, 842 S.E.2d 349 (2020) as credibility was a substantial issue that was reasonably and meaningfully related to whether Brailey actually suffered an injury at work on June 24, 2017, and Dr. Boyd's opinion is not dispositive of the issue.

This case is distinguishable from Crane v. Raber's Discount Tire Rack, 429 S.C. 636, 842 S.E.2d 349 (2020). In Crane, the claimant was investigating the cause of a hissing noise when an air hose suddenly separated from its fitting and caused an explosion-like sound. Id. at 640, 842 S.E.2d at 350-51. Surveillance video from the time of the accident showed the claimant stepped away from the tire changer and covered his ears with his hands. Id. Shortly thereafter, the claimant's wife drove him to the hospital, where the claimant complained of difficulty hearing in both ears and assessed his ear pain as an eight out of ten. Id. There was no dispute in the record as to whether the accident occurred because the surveillance camera captured the entire accident. At a hearing, the single commissioner found the claimant lacked credibility in large part because he appeared to exaggerate his hearing loss at the hearing. Id. at 641, 842 S.E.2d at 351-53. Based primarily on the finding that the claimant's testimony was not credible, the commissioner denied the claimant's claims. Id. This Court reversed the Commission's decision because the claimant's credibility was not "reasonably and meaningfully" related to whether the claimant actually suffered hearing loss at his employment on February 19, 2014. Id. at 641-48, 842 S.E.2d at 351-55.

This Court held:

Credibility can be important in resolving factual disputes before the commission. When credibility is a reasonable and meaningful basis on which to make a factual determination, and when there is evidence of sufficient substance to afford a reasonable basis for the credibility finding, we will uphold the commission's factual determinations on the basis of credibility.

Id. at 648, 842 S.E.2d at 355.

After Crane, in May 2021, in Rummage v. BGF Industries, 434 S.C. 441, 865 S.E.2d 380 (Ct. App. 2021), the Court of Appeals reiterated that credibility can be an important factor in resolving disputes before the Commission and the Commission can give less weight to medical opinions if it is believed that the claimant was untruthful in self-reporting symptoms to the medical providers.

In Rummage, the claimant fell backward and struck her head into a hand truck. The claimant filed a workers' compensation claim and secured causation opinions from several doctors opining to a reasonable degree of medical certainty that the claimant suffered from psychological issues after her workplace injury, had not reached MMI, and required psychiatric treatment.

After a hearing, "the single commissioner denied Claimant's claim, by and large based on her assessment of Claimant's credibility." Id. at 452, 865 S.E.2d at 386. The single commissioner gave little weight to the medical opinions of the doctors who provided causation because "they had not been provided Claimant's accurate medical history and had based their opinions on Claimant's unreliable self-reporting." Id. at 453, 865 S.E.2d at 386. The Full Commission affirmed the single commissioner, and the Court of Appeals affirmed the Full Commission.

The Court in Rummage concluded that even when a claimant is required to produce medical evidence to prove a claim, "this does not require the fact finder to ignore medical evidence that is not expert opinion, other lay evidence, or the credibility of the Claimant." Id. at 458, 865 S.E.2d at 389. The Court of Appeals in Rummage recognized the holding in Crane and stated that "In this case, credibility was a substantial issue Therefore, the Appellate Panel could have properly given less weight to Claimant's doctor's opinions if it believed Claimant was untruthful in her self-reporting of symptoms or her presentation." Id. at 459, 865 S.E.2d at 390.

The Court in Rummage pointed to numerous incidences demonstrating the claimant's lack of credibility, including the claimant denying prior issues when the medical records showed otherwise, indicating she could "not remember" on specific issues, and two incidences in which the claimant had been dishonest. Ultimately, the Court held the claimant's medical experts' opinions "were substantially weakened in light of the credibility findings of the Appellate Panel as the opinions rely, at least in part, on an exaggerated presentation of symptoms." Id. at 460, 865 S.E.2d at 391.

Here, like in Rummage and other cases, credibility was a substantial issue that was "reasonably and meaningfully" related to whether Brailey actually suffered an injury at work on June 24, 2017, as alleged or as to the causation of his alleged injuries. This is a denied claim from a claimant who provided false statements to employers, medical professionals, and even the Single Commissioner at a hearing. As in Rummage, the Full Commission could give less weight to Dr. Boyd's opinions, and properly did so, because it is clear from the totality of the evidence that Brailey was untruthful in his self-reporting of symptoms, the dates he reported the symptoms, and the cause of the injury.

Furthermore, Dr. Boyd's testimony is not dispositive of the issue. The Full Commission has discretion to weigh and consider all the evidence, both lay and expert, when deciding whether causation has been established and although medical testimony is entitled to great respect, the fact finder may disregard it if other competent evidence is presented. Ballenger v. S. Worsted Corp., 209 S.C. 463, 467, 40 S.E.2d 681, 682-83 (1946). Indeed, "medical testimony should not be held conclusive irrespective of other evidence." Id. at 467, 40 S.E.2d at 682-83. Further, the Court of Appeals ignored Dr. Boyd's testimony that he had no way of knowing how long Brailey's herniated disc had been present. (R. 308, 326-27). Dr. Boyd confirmed that his opinion was based

100% on the history Brailey gave him and on the records from Urgent Care he may have received. Therefore, a crucial component of Dr. Boyd's opinion was his ability to trust the history Brailey provided to him and as addressed throughout this Brief, the Single Commissioner (who observed Brailey testify) and Full Commission (the ultimate finder of fact) found Brailey lacked credibility.

Moreover, the Court of Appeals misapprehended the Commission's credibility finding. The Commission's credibility finding was based on more than Brailey's "vague" and "rambling" responses. (Appx. 1040). Specifically, the Commission provided as follows:

We find the claimant is not credible. This Finding is based upon the greater weight of the evidence in the record, the testimony of the claimant, the testimony of representatives from Michelin, as well as the Hearing Commissioner's observations of the claimant at the hearing. Specifically, the greater weight of the evidence shows that a couple of weeks after he began working for Richtex in 1997, the claimant had a very similar incident. In that claim, the claimant alleged back pain after he began physical work with the company. At Richtex, as in the current claim, instead of following the treating doctor's orders, the claimant sought treatment at Doctors Care.

As further evidence of the claimant's lack of credibility, the claimant omitted information about a former employer—an employer for which he had a workers' compensation claim for a back injury from his employment application for Michelin. The claimant also denied any prior workers' compensation claims, which is untrue. Moreover, he repeatedly attempted to justify his answers during his testimony. We find that while testifying, the claimant gave confusing answers when asked direct questions by his attorney. As noted by the Hearing Commissioner throughout the proceeding, the claimant provided vague responses when questioned by defense counsel. He would not answer defense counsel's questions, rambling through responses. (H.T. 227).

(R. 43-44).

Here, as discussed throughout this Petition, the record is replete with evidence demonstrating Brailey's testimony was completely unreliable and lacked any credibility whatsoever because of his inconsistent and untrue statements. Including, but not limited to, the

facts that Brailey

- falsely stated to employers he never had a workers' compensation claim (R. 415-16)
- falsely completed the Michelin's Post-Hire Health Questionnaire when he applied to Michelin (R. 461, 601-05)
- falsely completed Westinghouse's medical history form when he began working for Westinghouse only three and a half years after his back injury at Richtex (R. 606-10, 613-23)
- falsely told his family doctor that he never had prior back pain (R. 485-86)
- falsely stated he had never had any prior back problems or prior knee surgery when he met with Michelin's doctor on June 26, 2017 (R. 522-23)
- falsely completed Michelin's Post-Injury Questionnaire after he claimed he had a work accident
- falsely stated to Dr. Boyd on July 24, 2017, that he "hasn't had previous back problems except maybe 25 years ago he had an episode that resolved without any treatment" even though he had reported 10/10 back pain only weeks prior, and was in fact treated for a prior workers' compensation claim to his back by Dr. Norris
- admitted that he lied at the hearing when he said he did not return to see Dr. IZard because he did not have transportation, when in fact, Mark Gross did offer to provide him with transportation

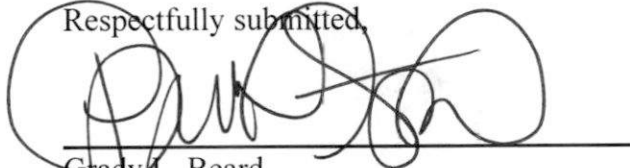
Contrary to Brailey's contentions otherwise, this case is also distinguishable from Clark v. Philips Elecs./Shakespeare, because here, unlike Clark, the Full Commission explained both the basis of the credibility determination and how the determination rationally affects the disputed fact. 433 S.C. 186, 192, 857 S.E.2d 378, 381 (Ct. App. 2021), reh'g denied (Apr. 21, 2021). The Court in Clark in fact acknowledged that even under Crane "factual findings based on credibility calls can, and often do, amount to substantial evidence that requires us to affirm." Id.

Indeed, the Court of Appeals in the instant matter agreed Brailey willfully and knowingly made false statements. Brailey lied to his employers, he lied to doctors, and provided inconsistent testimony between his deposition and hearing testimony. Substantial evidence supports the Full Commission's decision, and this Court should reverse the Court of Appeals and reinstate the Full Commission's order.

CONCLUSION

For the foregoing reasons, Michelin respectfully requests that the Court reverse the Court of Appeals and affirm and reinstate the decision of the Full Commission of the Workers Compensation Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Grady L. Beard", written over a horizontal line. The signature is stylized and somewhat cursive.

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