

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC No.: 1824334

RECEIVED
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SC Court of Appeals

Daniel P. Hayden, Employee,.....Appellant,

v.

Riverside Transport, Inc., and
Liberty Mutual Ins. Co., Carrier,.....Respondents.

**INITIAL BRIEF
OF APPELLANT**

Frank A. Barton
THE BARTON LAW OFFICE
104 Round Knob Road
Post Office Box 2637
Lexington, South Carolina 29071
(803) 821-9026 / fax (803) 490-1024
ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the South Carolina Workers' Compensation Commission err in concluding the Claimant failed to present sufficient evidence to show he suffered a L-1 compression fracture of his spine?
2. Did the South Carolina Worker's Compensation Commission err in admitting into evidence over Claimant's objection, Defendants' Exhibit B?
3. Did the South Carolina Worker's Compensation Commission err in using Exhibit B to make conclusions in regard to purported payments made under an Arkansas compensation claim?

STATEMENT OF CASE

This is an appeal by the Claimant – Appellant from a decision of the Full Commission of the South Carolina Workers’ Compensation Commission. By Amended Form 50 of September 28, 2021, the Claimant – Appellant sought disability benefits and medical treatment for injuries to his back. Appellant Daniel Hayden suffered an on the job injury to his back on August 20, 2018. At that time he was working as a truck driver for the Defendant. The accident occurred in Colorado, the Employer was located in Arkansas, and the Claimant resided in Lexington, South Carolina.

Mr. Hayden was injured when he fell from the cab of his truck. He was initially seen at an emergency room in Colorado on the day of the accident. At that time it was determined Mr. Hayden had suffered a compression fracture at the L-1 level of his spine. (Defendants APA, p.32). Upon his return home he was seen at a Doctor’s Care in Redbank, South Carolina. Doctor’s Care confirmed he had suffered a L-1 lumbar fracture. (Defendants APA, p.37). Thereafter, Appellant received very minimal medical treatment before returning to work.

At the hearing before the Hearing Commissioner on January 5, 2022, Mr. Hayden sought benefits for the lumbar fracture to his spine, including disability benefits, medical benefits, and compensation for the loss of use of his spine. The Defendants alleged Appellant had failed to file a claim within the two year statute of limitations, that he had been compensated under the law of the State of Arkansas, that South Carolina did not have jurisdiction over this workers compensation claim, and his back injury had been caused by a subsequent accident. By decision dated January 24, 2022, the Hearing Commissioner ruled with the Defendants finding the claim was not timely filed, the

Claimant was not entitled to pursue a claim in South Carolina, and that Claimant had failed to provide sufficient evidence he suffered a back injury as a result of his workers' compensation accident of August 20, 2018. Importantly, the Hearing Commissioner also concluded Mr. Hayden had not injured his back in any subsequent accident. (Order, January 24, 2023).

Upon appeal to the Full Commission a hearing was held on April 17, 2023. By decision issued on August 16, 2023, the Full Commission partially reversed the conclusions of the Hearing Commissioner. (Full Commission Order, August 16, 2023). The Full Commission determined Appellant had timely filed a claim within the two years of the accident, and the Appellant was entitled to pursue a claim for workers compensation benefits in South Carolina. The Full Commission upheld, however, the Hearing Commissioner's conclusions the Appellant had failed to provide sufficient evidence he had suffered an injury to his spine as a result of the accident. The Full Commission also concluded the Hearing Commissioner properly relied on evidence presented by Defendants over objection of the Claimant regarding purported payments made pursuant to an Arkansas workers compensation claim. Finally, the Full Commission left intact the conclusion the Claimant had not suffered an injury to his spine subsequent to August 20, 2018.

The decision of the Full Commission was received by Appellant on August 16, 2023. The Notice of Appeal in this action was filed and served on September 11, 2023.

Appellant respectfully submits the Full Commission erred in concluding Appellant had failed to provide sufficient evidence to show he suffered a loss of use of his spine as a result of his accident of August 20, 2018. Furthermore, the Full

Commission erred in relying upon inadmissible evidence, introduced over objection of Claimant, to conclude Claimant had received specific compensation payments pursuant to an Arkansas claim.

STATEMENT OF FACTS

On August 20, 2018, Appellant Daniel Hayden was working as a truck driver for Riverside Transport, Inc. Mr. Hayden was in Colorado at the time when he slipped from his cab and fell injuring his back. On that day he was seen at the UC Health emergency room in Colorado where the doctors determined he had suffered a L-1 compression fracture of his lumbar spine. (Defendant's APA, p.32). Upon returning to Lexington, South Carolina, Appellant was seen at Doctor's Care, in Red Bank, South Carolina, which confirmed Mr. Hayden had suffered a L-1 compression fracture to the lumbar spine. (Defendant's APA, p.37). Thereafter, Appellant received very little medical treatment for his injuries. (Transcript of Hearing, p.35, line 4-p.36, line 24).

On August 7, 2019, Appellant underwent an independent medical evaluation by Dr. Don Johnson at the Southeastern Spine Institute in Mount Pleasant, South Carolina. Dr. Johnson's report issued on August 26, 2019, confirmed Mr. Hayden had sustained an acute compression fracture of his lumbar spine. (Claimant APA, p.1). As a result of the independent medical evaluation, Dr. Johnson concluded Mr. Hayden had suffered a thirteen percent (13%) whole person impairment and seventeen percent (17%) lumbar spine impairment as a result of his workers' compensation accident of August 20, 2018.

Despite the uncontradicted medical records of three separate providers stating the Appellant suffered a L-1 lumbar fracture as a result of his accident of August 20, 2018,

the Workers Compensation Commission concluded the Claimant had not presented sufficient evidence to show he had suffered an injury to his spine as a result of his accident. Appellant respectfully submits this was reversible error.

STANDARD OF REVIEW

“The South Carolina Administrative Procedures Act governs judicial review of a decision of the workers’ compensation commission.” Lark v. Bi-Lo, Inc., 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1982); Bass v. Isochem, 365 S.C. 454, 467, 617 S.E.2d 369, (Ct. App. 2005) cert. dismissed as improvidently granted Aug. 2007; Hargrove v. Titan Textile Co., 360 S.C. 276, 288, 599 S.E.2d 604, 610 (Ct. App. 2004). Pursuant to the APA, an appellate Court’s review is limited to deciding whether the Appellate Panel’s decision is unsupported by substantial evidence or is controlled by some error of law. Grant v. Grant Textiles, 372 S.C. 196, 200, 641 S.E.2d 869, 871 (2007); S.C. Code Ann. Section 1-23-380(A)(5) (Supp. 2006).

The judicial review of the Appellate Panel’s factual findings is governed by the substantial evidence standard. Gadson v. Mikasa Corp., 368 S.C. 214, 221, 628 S.E.2d 262, 266 (Ct. App. 2006); Frame v. Resort Servs., Inc., 357 S.C. 520, 527, 593 S.E.2d 491, 494 (Ct. App. 2004); Corbin v. Kohler Co., 351 S.C. 613, 617, 571 S.E.2d 92, 94-95 (Ct. App. 2002); Lockridge v. Santens of America, Inc., 344 S.C. 511, 515, 544 S.E.2d 842, 844 (Ct. App. 2001). The Appellate Panel’s decision must be affirmed if supported by substantial evidence in the record. Shuler v. Gregory Elec., 366 S.C. 435, 440, 622 S.E.2d 569, 571 (Ct. App. 2005) (citing Sharpe v. Case Produce, Inc., 366 S.C. 154, 160, 519 S.E.2d 102, 105 (1999)). A reviewing court may not substitute its judgment for the

judgment of the agency as to the weight of the evidence on questions of fact. S.C. Code Ann. Section 1-23-380(A)(5)(d)(e)(Supp. 2006), see, also, Hall v. United Rentals, Inc., 371 S.C. 69, 77, 636 S.E.2d 876, 881, (Ct. App. 2006). However, a reviewing court may reverse or modify a decision of the Appellate Panel if the findings, inferences, conclusions, or decisions of them are “clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.” S.C. Code Ann. Section 1-23-380(A)(5)(e)(Supp. 2006); Bass v. Kenco Group, 366 S.C. 450, 457, 622 S.E.2d 577, 580 (Ct. App. 2005); Burse v. S.C. Dep’t of Health & Env’tl. Control, 360 S.C. 135, 141, 600 S.E.2d 80, 84 (Ct. App. 2004) *aff’d*, 369 S.C. 176, 631 S.E.2d 899 (2006).

ARGUMENT I

**THE WORKERS’ COMPENSATION COMMISSION ERRED IN DETERMINING
APPELLANT WAS NOT ENTITLED TO WORKERS COMPENSATION BENEFITS AS HE
FAILED TO PRESENT SUFFICIENT EVIDENCE OF A COMPRESSION FRACTURE AT
L-1 OF HIS SPINE.
(ISSUE 1)**

The evidence in regard to the accident of August 20, 2018, shows Mr. Hayden fell from the cab of his truck and immediately experienced pain in his lower back. As a result of the pain he sought emergency medical treatment at UC Health in Colorado. The medical records introduced from UC Health show Mr. Hayden had suffered a fracture to his lumbar spine at L-1. (Defendant APA, p.32). Mr. Hayden testified he was provided with a back brace, pills, and a walker. He and his wife were also provided a rental car to drive back home to Lexington, South Carolina. (Transcript, p.34, lines 19-23).

After returning to South Carolina Appellant was seen at Doctor's Care in Redbank, South Carolina on August 27, 2018. At that time he was again diagnosed as having suffered a L-1 lumbar fracture. (Defendant's APA, p.33).

Mr. Hayden received minimal medical treatment for his L-1 fracture upon returning to South Carolina and was subsequently seen for an independent medical evaluation by Dr. Don Johnson of Southeastern Spine Institute. Dr. Johnson confirmed in his report Mr. Hayden had suffered a fracture to L-1 as a result of the accident of August 20, 2018. Dr. Johnson further stated as a result of that injury, Mr. Hayden sustained a thirteen percent (13%) whole person impairment and seventeen percent (17%) lumbar spine impairment. (Claimant's APA, p.1).

Despite the uncontradicted evidence of a lumbar fracture, the Full Commission concluded Mr. Hayden had failed to provide sufficient evidence to prove he had suffered a spinal injury as a result of his accident. Appellant respectfully submits the Full Commission was in error.

The findings of the Commission must be supported by the substantial evidence of record. If the findings are not supported by the substantial evidence they should be reversed. Clemmons v. Lowe's Home Centers, Inc., - Harbison, 420 SC 282, 803 SE2d 268 (2017); Anderson v. Baptist Med. Ctr., 343 SC 487, 541 SE2d 526 (2001); Brailey v. Michelin North America, Inc., 438 SC 77, 882 SE2d 172 (Ct.App. 2022, cert. granted August 10, 2023). Appellant respectfully submits the Commission's findings in regard to the L-1 compression fracture were not supported by any evidence and must be reversed.

All medical evidence in the record showed Mr. Hayden suffered a L-1 compression fracture as a result of his accident on August 20, 2018. The compression

fracture was found at the emergency room on the day of his accident. It was thereafter confirmed at Doctor's Care upon his return to Lexington, South Carolina. And finally, the independent medical evaluation report of Dr. Don Johnson confirmed Mr. Hayden suffered an L-1 compression fracture and went on to detail he had suffered a seventeen percent (17%) impairment to his spine. There was absolutely no evidence submitted to contradict the three medical submissions Mr. Hayden had suffered an L-1 compression fracture as a result of his accident of August 20, 2018.

The decision of the Full Commission in regard to proof of the injury was clearly not supported by the substantial evidence of record, or any evidence, and should be reversed. Additionally, the Full Commission concluded the Appellant had failed to provide proof of an aggravation of a pre-existing injury. Appellant did not claim an aggravation of a pre-existing injury. The medical submissions all state the compression at L-1 occurred on August 20, 2018, as a result of Appellant's accident.

The workers compensation commission cannot simply ignore uncontradicted medical reports and conclusions of three different medical providers which clearly state Mr. Hayden suffered a L-1 compression fracture of his spine as a result of his on the job accident. For all of the above reasons the order of the Commission in this regard should be reversed.

ARGUMENT II

**THE WORKERS' COMPENSATION COMMISSION ERRED IN ADMITTING INTO EVIDENCE OVER OBJECTION OF CLAIMANT, DOCUMENTS CONTAINED IN RESPONDENTS' EXHIBIT B WHICH WERE HEARSAY AND NOT CORROBORATED BY ANY OTHER FACTS OR CIRCUMSTANCES IN THE RECORD.
(ISSUES 2 & 3)**

At the hearing of January 5, 2022, Defendants submitted numerous documents which were not identified or otherwise corroborated by any other witness or evidence. The Hearing Commissioner allowed the admission of the documents, contained in Defendants' Exhibit B, APA, pages 58-63. These documents were admitted over Claimant's objections based on lack of foundation and clear hearsay. The exhibits included an email to one of Claimant's attorneys, (Defendants' APA, p.58); a purported Arkansas Workers Compensation Commission Form 4, completed by an unidentified person and dated May 24, 2019, (Defendants' APA, p.59); and a purported letter to the Carrier, dated April 12, 2019, with medical details of Mr. Hayden's injuries. (Defendants' APA, p.60-63).

SC Code Section 1-23-330(1) provides the rules of evidence applied in civil cases for the court of common pleas are to be followed in administrative hearings except in hearings before the workers compensation commission. This does not mean, however, the rules of evidence may be completely ignored in a workers compensation hearing. All hearsay evidence is not simply admissible in a workers compensation case. Hearsay testimony or evidence may be admissible in a workers compensation case if it is otherwise corroborated by facts, circumstances, or other admissible evidence at the hearing. Hamilton v. Bob Bennet Ford, 339 SC 68, 528 SE2d 667 (2000); Ham v. Mullins Lumbar Company, 193 SC 66, 7 SE2d 712 (1940).

Appellant respectfully submits Exhibit B, pages 58-63 were inadmissible in the current action as they were not corroborated by any other evidence or testimony presented at the hearing. There was no foundation to show who prepared any of the documents, what the purpose of the documents were, or whether the documents were kept in the ordinary course of business. Furthermore, the medical letter contained in Exhibit B, pages 60-63 was prepared by someone that never even saw Mr. Hayden. The letter was prepared by a group, Medical Consultants Network, for the insurance carrier, without any other explanation. Again, the generator of the letter did not examine or see Mr. Hayden in person.

Although there was an attempt at the hearing to cross examine Mr. Hayden in regard to payments made as set forth in the Arkansas Workers Compensation Commission Form 4, Defendants Exhibit B, page 59, Mr. Hayden was unable to confirm any amounts he had received as weekly payments or any purported final payment for loss of use of his spine. (Transcript of Hearing, p.42, line 10-p.43, line 2). The cross examination of Mr. Hayden did not confirm figures listed in the Arkansas workers compensation commission Form 4 and Mr. Hayden was unsure of the exact amounts received at any time. There was certainly no confirmation or corroboration he received the purported \$15,908.13 listed in the Arkansas Form 4.

Under all the above circumstances, Appellant respectfully submits the South Carolina Hearing Commissioner was in error in allowing the admission of Exhibit B. The Full Commission was also in error in affirming the admission of those documents over objection of Appellant.

The admission of Defendants' Exhibit B should be reversed. Furthermore, with the absence of Exhibit B, there is no evidence to support any finding of purported payments made by the carrier pursuant to Arkansas law.

CONCLUSION

Reports of three medical providers were introduced stating Mr. Hayden had suffered an L-1 compression fracture of his spine as a result of his accident of August 20, 2018. That evidence was not contradicted in any manner by any other evidence. The decision of the Workers Compensation Commission was clearly contrary to the evidence of record and its conclusion the Appellant failed to provide sufficient proof of his injury must be reversed. Also the evidence of record clearly showed the L-1 compression fracture was a new injury and not an aggravation of a pre-existing injury.

The documents contained in Respondents' Exhibit B were clearly hearsay and not corroborated by any other evidence or testimony presented before the Commission. Respondents' Exhibit B should be deemed inadmissible, and any conclusions based upon that exhibit should be reversed.

Appellant respectfully submits the decision of the Workers Compensation Commission should be reversed. The case should be remanded to the Commission for a determination of the impairment and loss of use suffered to Mr. Hayden's spine. The Commission should further be ordered to award medical benefits to Appellant for treatment of his spinal injury. Finally, Appellant would submit any determination should

be made based upon the current record before the Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'F. A. Barton', written in a cursive style.

Lexington, South Carolina
November 13, 2023

s/Frank A. Barton SC Bar #0562
Frank A. Barton
THE BARTON LAW OFFICE
104 Round Knob Road
Post Office Box 2637
Lexington, South Carolina 29071
(803) 821-9026 / fax (803) 490-1024
ATTORNEY FOR APPELLANT

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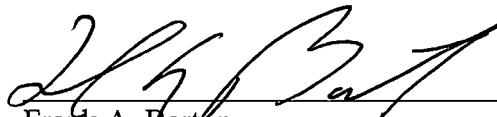
PROOF OF SERVICE

The undersigned does hereby certify one copy each of the **INITIAL BRIEF OF APPELLANT** and **APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** was served in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon and return address clearly visible on November 13, 2023, addressed to each of the following:

D. Alan Westerlund, Jr., Esquire
Willson Jones Carter & Baxley, P.A.
4922 O'Hear Avenue, Suite 301
North Charleston, South Carolina 29405
dawesterlund@wjcblaw.com

John Gabriel Coggiola, Esquire
WILSON JONES CARTER & BAXLEY, P.A.
3600 Forest Drive, Suite 204
Columbia, South Carolina 29204
jgcoggiola@wjlaw.net

Lexington, South Carolina
November 13, 2023



Frank A. Barton
Attorney for the Appellant

THE BARTON LAW OFFICE
104 Round Knob Road
Post Office Box 2637
Lexington, South Carolina 29071
(803) 821-9026 / fax (803) 490-1024

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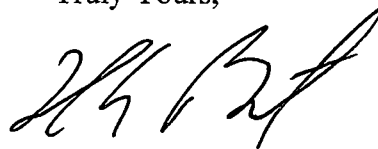
Jenny Abbott Kitchings, Clerk of Court
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Daniel P. Hayden v. Riverside Transport, Inc.
Appellate Case No. 2023-001437

Dear Clerk Kitchings:

Enclosed for filing please find the Initial Brief of Appellant and Appellant's Designation of Matter to Be Included In the Record on Appeal. By copy of this letter we are also serving Mr. Westerlund and Mr. Coggiola. They are also being furnished copies by email.

Truly Yours,



Frank A. Barton

FAB/lfm

cc: D. Alan Westerlund, Jr., Esquire (dawesterlund@wjcblaw.com)
John Gabriel Coggiola, Esquire (jgcoggiola@wjlaw.net)



Columbia P&DC 290
MON 13 NOV 2023 PM

THE BARTON LAW OFFICE
Post Office Box 2637
Lexington, South Carolina 29071

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Jenny Abbott Kitchings, Clerk of Court
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211