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**Aug 16 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner  
R. Michael Campbell, II, Commissioner  
Aisha G. Taylor, Commissioner

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W.C.C. FILE NO.: 2106012

Appellate Case No. 2024-000607

Nathaniel Coakley, Claimant,.....Appellant,

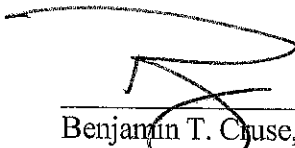
v.

Pilgrim's Pride Corp.,  
Employer, and American  
Zurich Ins. Co., Carrier,.....Respondents.

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**INITIAL BRIEF OF APPELLANT**

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## STATEMENT OF ISSUES ON APPEAL

1. Did the Commission err in finding that Respondents fulfilled their obligations under Commissioner Dooley's Order?
2. Did the South Carolina Workers' Compensation Commission (hereinafter "Commission") err in finding that Respondents' liability for continuing care, as set forth in Commissioner Dooley's Order, was limited only to see that Claimant reaches MMI
3. Did the South Carolina Workers' Compensation Commission (hereinafter "Commission") err in finding that Commissioner Dooley's Order specifically made any further treatment contingent upon the authorized treating physician's recommendations regarding future treatment?
4. Did the Commission err in finding Appellant reached maximum medical improvement (hereinafter "MMI") for his back injury with an eight percent (8%) impairment, needing only *Dodge* medicals?
5. Did the Commission err in finding Appellant reached MMI for all affected body parts on January 17, 2023?
6. Did the Commission err in finding that greater weight was given to the opinions of Dr. Nallu and Dr. Noojin versus Dr. LaMotta?
7. Did the Commission err in finding that Dr. LaMotta's opinion was based on a false or incorrect medical history given to him by Appellant thus finding Dr. LaMotta's opinion is not based on full and accurate information and can be discounted?
8. Did the Commission err in finding Appellant suffered eight percent (8%) permanent partial disability to his back?
9. Did the Commission err in finding Appellant suffered no (0%) permanent partial disability to his bilateral hips?

10. Did the Commission err in finding that Respondents are entitled to a credit for overpayment of TTD benefits paid since January 17, 2023?
11. Did the Commission err in ordering that Appellant is at MMI as of January 17, 2023?
12. Did the Commission err in ordering that Appellant is entitled to an award of permanent partial disability of eight percent (8%) to his back?
13. Did the Commission err in ordering that Appellant suffered no permanent partial disability to his bilateral hips?
14. Did the Commission err in ordering that Respondents are entitled to credit for overpayment of TTD benefits since the date of MMI?

#### **STATEMENT OF THE CASE**

This matter arises out of a work-related accident that occurred on January 19, 2021. Appellant filed a Form 50, claim only, dated May 13, 2021, alleging injury to his bilateral legs, hips, feet and back after stepping on a drainage ditch causing him to fall landing on his hips and lower back. Respondents provided causally related medical treatment including treatment with Dr. Frank Noojin for his bilateral hip injuries, and with Dr. Parintha Nallu for his low back injury. Respondents filed a Form 21, hearing request, on May 23, 2022, claiming Appellant was at MMI based on a Form 14B from Dr. Nallu dated January 11, 2022. A Form 21 hearing was held before Commissioner Dooley on October 12, 2022.

At the hearing before Commissioner Dooley, Respondents admitted the work-related accident and low back injury, but expressly denied Appellant's bilateral hip injuries. Respondents asserted that Appellant MMI for his compensable low back injury on October 14, 2021, as indicated by Dr. Parintha Nallu's Form 14B. As such, Respondents sought an Order finding only the low back injury compensable, allowing them to stop payment of Appellant's TTD, pay permanent disability

for the low back injury if any, and awarded a credit for TTD paid in excess of any permanent disability award.

At the hearing before Commissioner Dooley, Appellant asserted that he sustained compensable injuries to his bilateral hips in addition to his admitted low back injury, that he had not yet reached MMI for his compensable injuries, that he requires additional medical evaluations and treatment for same, and that he is entitled to ongoing TTD. Appellant objected Respondents submitting Dr. Nallu's Form 14B as it was obtained in violation of S.C. Code Ann. 42-15-95(B) and (C). Appellant requested an Order finding he sustained compensable bilateral hip injuries in addition to his admitted low back injury, that he was not at MMI for all compensable injuries including the bilateral hips, that he is entitled to additional medical evaluations and treatment for the compensable injuries, and ongoing TTD until such time as those benefits may be properly terminated under the Act.

By way of Decision and Order dated January 3, 2023, Commissioner Dooley held Appellant sustained compensable injuries to his bilateral hips in addition to his lumbar spine related to this work accident, that Appellant had not reached MMI, and that Appellant is entitled to additional evaluations and treatment for his compensable injuries. Neither party appealed Commissioner Dooley's Decision and Order.

Appellant asserts Respondents did not comply with the Decision and Order from Commissioner Dooley and refused to provide Appellant any treatment or even an evaluation for his compensable injuries. Rather, Respondents sent a Form 14B to Dr. Nallu and a questionnaire to Dr. Noojin asking about the nature and extent of Appellant's injuries and MMI status. On February 6, 2023, Respondents filed a second Form 21, requesting a hearing.

A second Form 21 hearing was held before Commissioner Wilkerson on April 18, 2023. Again, Respondents sought an order finding Appellant at MMI for his compensable injuries, now

including Appellant's bilateral hips, an order allowing Respondents to stop payment of temporary compensation and awarding a credit for temporary compensation benefits paid in excess of any award. It was Appellant's position before Commissioner Wilkerson that Respondents had not complied with Commissioner Dooley's Order as they have not provided Appellant any evaluation or treatment for his low back and bilateral hip injuries as so ordered.

By way of Decision and Order dated June 7, 2023, Commissioner Wilkerson correctly states the issue in this case is whether Respondents complied with the January 3, 2023, Order from Commissioner Dooley. Commissioner Wilkerson went on to hold that Respondents liability for continuing care, as set for in the prior Order from Commissioner Dooley, was to see that Appellant reaches MMI. Commissioner Wilkerson further found Appellant had reached MMI, awarded permanent partial disability to the low back equal to Dr. Nallu's medical impairment rating of 8%, and awarded Respondents credit for temporary compensation paid after January 17, 2023.

Appellant timely filed a Form 30, Request for Commission Review, listing fourteen (14) specific grounds for review based upon Commissioner Wilkerson's findings of fact, conclusions of law, and order in this matter. Oral arguments were held on September 18, 2023, before the Appellate Panel of the South Carolina Workers' Compensation Commission. A majority of the Appellate Panel affirmed Commissioner Wilkerson's Order, with Commissioner Taylor dissenting finding the Respondents failed to provide treatment as ordered by Commissioner Dooley. Appellant timely filed his appeal to this court.

### **STANDARD OF REVIEW**

The South Carolina Administrative Procedures Act ("APA") provides the standard for judicial review of decisions by the Appellate Panel. *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). Under the APA, an appellate court may reverse or modify the

decision of the Appellate Panel if the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. S.C. Code Ann. § 1-23-380(5)(d), (e) (Supp.2012); *Transp. Ins. Co. v. S.C. Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689-90 (2010).

The substantial evidence rule of the APA governs the standard of review in a Workers' Compensation decision. *Gadson v. Mikasa Corp.*, 368 S.C. 214, 628 S.E.2d 262 (Ct. App.2006); *Frame v. Resort Servs., Inc.*, 357 S.C. 520, 593 S.E.2d 491 (Ct.App.2004); *Corbin v. Kohler Co.*, 351 S.C. 613, 571 S.E.2d 92 (Ct.App.2002); see *Lockridge v. Santens of Am., Inc.*, 344 S.C. 511, 515, 544 S.E.2d 842, 844 (Ct.App.2001) ("Any review of the commission's factual findings is governed by the substantial evidence standard."). Pursuant to the APA, this 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. *Rodriguez v. Romero*, 363 S.C. 80, 610 S.E.2d 488 (2005); *Gibson v. Spartanburg Sch. Dist. # 3*, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. *Pratt v. Morris Roofing, Inc.*, 357 S.C. 619, 594 S.E.2d 272 (2004); *Jones v. Georgia-Pacific Corp.*, 355 S.C. 413, 586 S.E.2d 111 (2003).

A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." *Bass v. Kenco Group*, 366 S.C. 450, 457, 622 S.E.2d 577, 580 (Ct.App.2005).

## ARGUMENT

### **I. The Commission erred in finding Respondents fulfilled their obligation under Commissioner Dooley's Decision and Order dated January 3, 2023**

Medical treatment for a work-related accident and injury is governed by Section 42-15-60, which requires an employer to provide medical, surgical, hospital, and other treatment within the first ten weeks following an accident as may be required to effect a cure or give relief and for additional time as in the judgment of the Commission will tend to lessen the period of disability. S.C. Code Ann. § 42-15-60 (Supp. 2019). Where the Commission finds that further medical treatment is necessary and should be furnished under this section, implicit in such an award is the finding that additional medical treatment will tend to lessen the period of disability. *Dykes v. Daniel Const. Co.*, 262 S.C. 98, 202 S.E.2d 646 (S.C. 1974). Moreover, all unappealed findings of fact and law made by a Hearing Commissioner become and are the law of the case. *Smith v. S.C. Dept. of Mental Health*, 329 S.C. 485 (S.C. Ct. App. 1997)

As stated by the Commissioner Wilkerson and echoed by the Appellate Panel, ultimately the issue in this case is whether Respondents complied with Commissioner Dooley's January 3, 2023 Order. Appellant asserts on appeal Respondents have not complied with Commissioner Dooley's Order and the subsequent Order from Commissioner Wilkerson and the Appellate Panel are not supported by substantial evidence in the record and are based on errors of law.

#### **A. Commissioner Dooley's Order**

At the hearing before Commissioner Dooley, Respondents denied Appellant sustained any compensable injury to his bilateral hips arising out of his work-related accident on January 19, 2021. Their denial was based on the opinion of Dr. Frank Noojin who stated in his August 19, 2021 medical record that he did not need to see Appellant again for further evaluation as Appellant did not have any hip problems but sustained a lumbar spine injury with radiculopathy. (Defendants

APA p. 129) Respondents argued before Commissioner Dooley that Appellant “initially treated for what was thought to be a hip injury but the authorized treating physician, *Dr. Noojin, referred him for low back treatment saying it was not a hip injury.*” (Hr. Tr. p. 4, lines 1-6)(emphasis added) Respondents questioned Appellant at that hearing, “So, *Dr. Noojin released you on August the 20<sup>th</sup>, 2021 because you had a back condition versus a hip condition, correct?*” To which Appellant replied, “I’m not a doctor. That’s what he says. You sent me to him.” (Hr. Tr. p. 40 lines 5-9)(emphasis added) The basis for, and medical evidence relied upon in support of, Respondents denying Appellant’s hip injuries was the opinion of Dr. Noojin who made it clear Appellant did not have any hip injury related to his workers’ compensation claim, but rather had lumbar radiculopathy for which he didn’t need to see Appellant again for further evaluation or treatment.

Appellant then sought an evaluation with Dr. Ivan LaMotta at Midlands Orthopedics and Neurosurgery. Dr. LaMotta opined to a reasonable degree of medical certainty that Appellant sustained bilateral hip injuries causally related to his work-related accident which required additional treatment in the form of total hip arthroplasties versus conservative hip replacements. (Claimant’s APA p. 289) Respondents argued that Dr. LaMotta’s opinion should be discredited because his opinion was based on invalid or incomplete information. Specifically, Respondents argued Dr. LaMotta based his opinion on Appellant’s reported medical history denying any previous diagnoses with his low back or bilateral hips although a medical record reflects Appellant sought medical care for his hip the previous year before seeing Dr. LaMotta. (Hr. Tr. p. 4, lines 17-25; Hr. Tr. p. 5, lines 2-6) At the hearing before Commissioner Dooley, Respondents questioned Appellant directly, and at length, regarding this discrepancy concerning any back or hip complaints prior to his work-related accident.

After considering the evidence and testimony presented Commissioner Dooley issued a Decision and Order finding Appellant sustained compensable injuries to his bilateral hips and low

back. Commissioner Dooley further ordered that Appellant has not reached MMI and that Appellant needs further treatment for his bilateral hips and lumbar spine injuries with an orthopedic physician pursuant to S.C. Code Ann. § 42-15-60 (Supp. 2019).

**B. Following Commissioner Dooley's Order**

Commissioner Dooley's Decision and Order was not appealed by either party and became the law of this case. *Ham v. Mullins Lumber Co.*, 193 S.C. 66, 74, 7 S.E.2d 712, 716 (1940) ("[A]ll findings of fact and law by the Hearing Commissioner became and are the law of [the] case, except only those within the scope of the exception of defendant and the notice given to the parties by the Commission. . . .").

However, Respondents did not comply with this unappealed Order from Commissioner Dooley as they did not provide Appellant any treatment, or even an evaluation, for his bilateral hip and lumbar injuries following that Order. Respondents instead only sent correspondence to Dr. Nallu and Dr. Noojin asking whether Appellant was at MMI. Specifically, Respondents sent a questionnaire to Dr. Noojin asking:

1. Have you treated [Appellant] for bilateral hip pain relative to his Workers' Compensation accident of January 19, 2021?  
YES \_\_\_ NO \_\_\_
2. Is [Appellant's] bilateral hip pain predominantly the result of injury to his back?  
YES \_\_\_ NO \_\_\_
3. Is [Appellant] at maximum medical improvement (MMI) relative to his bilateral hip pain?  
YES \_\_\_ NO \_\_\_
4. Has [Appellant] suffered any permanent impairment to either hip as a result of the Workers Compensation accident of January 19, 2021?  
YES \_\_\_ NO \_\_\_
5. Does [Appellant] have any permanent restrictions as a result of his bilateral hip injuries?  
YES \_\_\_ NO \_\_\_

Dr. Nallu returned the completed Form 14B and Dr. Noojin returned the questionnaire indicating Appellant was at MMI for his lumbar and bilateral hip injuries. (Defendant's APA p. 267) Respondents then filed a Form 21 requesting a second hearing to stop payment of temporary compensation and pay permanent disability benefits, if any.

**C. Commissioner Wilkerson's Order**

Respondents argued Appellant reached MMI on the date Dr. Noojin completed his questionnaire and that was all they were required to do under Commissioner Dooley's Order. (Wilkerson Hr. Tr. p. 7, lines 2-13) Respondents stated that they sent the questionnaire to Dr. Noojin "to determine if [Appellant] needed any further treatment for the hips." (Wilkerson Hr. Tr. p. 7, lines 5-8) The actual questionnaire Respondents sent to Dr. Noojin did not ask any questions relating to what, if any, additional treatment is needed for Appellant's bilateral hip injuries. (Defendants' APA p. 267) Respondents further urged Commissioner Wilkerson to invalidate the opinion of Dr. LaMotta based on their allegations Appellant provided incorrect or incomplete medical history concerning his pre-existing complaints related to his work injuries. (Wilkerson Hr. Tr. p. 7, lines 15-24)

Appellant was not present at the hearing before Commissioner Wilkerson as he mistakenly went to the address where his hearing before Commissioner Dooley was held. Both parties and Commissioner Wilkerson agreed Appellant's testimony was not required to address the issue of whether Respondents complied with Commissioner Dooley's Order. As such, Commissioner Wilkerson did not hear any new testimony at this second hearing. Despite not hearing from no new or additional testimony and indication that Appellant's testimony would not be required to address the issue presented, Commissioner Wilkerson discounted the opinion of Dr. LaMotta based on the "false" or "incorrect" medical history provided by Appellant. Appellant asserts on appeal any finding in Commissioner Wilkerson's or the Appellate Panel's Order addressing

credibility of Appellant and weight afforded the medical opinions based on such credibility is based on an error of law and not supported by the substantial evidence in the record. (*See Crane v. Raber's Discount Tire Rack*, 429 S.C. 636 (S.C. 2020) “The commission may not, however, give artificial importance to a credibility determination when credibility is not a reasonable and meaningful basis on which to decide a question of fact.”)

Commissioner Wilkerson’s Order, affirmed by a majority of the Appellate Panel on appeal, interpreted Commissioner Dooley’s Order only to require Respondents to obtain a statement of MMI rather than provide any actual treatment for Appellant’s bilateral hip and lumbar injuries. The Order further found Respondents fulfilled their obligation under Commissioner Dooley’s Order when Dr. Noojin completed the questionnaire regarding MMI. Such an order is not supported by the substantial evidence in the record and is based on an error of law which has prejudiced the substantial right of the Appellant to receive medical treatment ordered by Commissioner Dooley in an unappealed Order which should be the law of the case. *Transp. Ins. Co. v. S.C. Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689–90 (2010)(Under the APA, an appellate court may reverse or modify the decision of the Appellate Panel if the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. S.C. Code Ann. § 1–23–380(5)(d), (e) (Supp.2012))

### **CONCLUSION**

For the reasons set forth above, Appellant respectfully asserts the Appellate Panel erred as a matter of law in finding Commissioner Dooley’s Order did not actually order medical treatment, but rather limited Respondents’ liability for medical treatment only to see that Appellant reaches MMI, and that Respondents fulfilled their obligation by obtaining statements that Appellant

reached MMI. Appellant respectfully request the Court of Appeals reverse the Appellate Panel Order in full.

Respectfully submitted,



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