

**RECEIVED**

**Jan 16 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

The Honorable T. Scott Beck, Commissioner

Appellate Case No. 2024-001935

S.C. W.C.C. File No. 2118696

Serge Wandji, Claimant,.....Appellant,

v.

The Regional Medical Center, Employer,  
and Antum Risk, Carrier,..... Respondents.

**MOTION TO STRIKE**

Pursuant to Rule 240, Rule 208, Rule 209, and Rule 210, S.C.A.C.R., the Respondents move before the Court of Appeals for an Order striking improper, immaterial, and impertinent arguments in the Appellant's Initial Brief referencing testimony and documents that were not submitted into evidence before the Workers' Compensation Commission. Respectfully, if these references to matters outside of the record are not stricken from the Appellant's Brief, then the Respondents would be forced to address the merits of testimony or documents that were not properly presented to the trier of fact for the first time on appeal, which is highly irregular, prejudicial, and perhaps violative of the Respondents' right to due process.

By his appeal, the Appellant seeks review of the Workers' Compensation Commission's November 1, 2024, Order denying his Motion "to Reopen case or request for modification based on extraordinary circumstances." (*See attached* Exhibit 1, Order dated November 1, 2024). This Motion Order is the only Order subject to review. (*See attached* Exhibit 2, Notice of Appeal, and Exhibit 3, Amended Notice of Appeal). The Workers' Compensation Commission's prior Decision and Order addressing the merits of the Claimant's workers' compensation claim, issued on March 8, 2024, was not appealed, and therefore, it is final and binding. S.C. Code Ann. § 42-17-60; Gattis v. Murrells Inlet VFW No. 10420, 353 S.C. 100, 109, 576 S.E.2d 191, 195 (Ct. App. 2003) (holding that "[i]f the parties to the dispute fail to timely appeal the final award of the full commission, then its order "is conclusive and binding as to all questions of fact"). (*See attached* Exhibit 4, Decision and Order dated March 8, 2024).

The Appellant's Motion "to Reopen case or request for modification based on extraordinary circumstances"<sup>1</sup> was filed on October 4, 2024 -- seven months after the Commission issued final Decision and Order on March 8, 2024. (*See attached* Exhibit 4, and Exhibit 5, Motion to Reopen dated October 4, 2024.). The Appellant's Motion contained no

---

<sup>1</sup> The Appellant's Motion to Reopen dated October 4, 2024, raised only three grounds and cited only Rule 60(b), S.C.R.C.P., and S.C. Code Ann. § 42-17-90. Rule 60 of the South Carolina Rules of Civil Procedure does not apply to administrative proceedings before the South Carolina Workers' Compensation Commission. *See* Rule 1, S.C.R.C.P., Rule 81, S.C.R.C.P.; *see also* Stone v. Roadway Express, Emp., 367 S.C. 575, 582, 627 S.E.2d 695, 699 (2006); *accord* Nettles v. Spartanburg Sch. Dist. #7, 341 S.C. 580, 588, 535 S.E.2d 146, 150 at *f.n.*4 (Ct. App. 2000) (concluding that the workers' compensation law does not provide for a motion under Rule 60, S.C.R.C.P.). Instead, procedure before the Workers' Compensation Commission is governed exclusively by Title 42 and Regulation 67. In addition, S.C. Code Ann. § 42-17-90 governs changes in a claimant's physical condition after an award is made. There is no allegation (much less proof) of a physical change of condition for the worse in this claim and S.C. Code Ann. § 42-17-90 is wholly inapplicable. *See* Causby v. Rock Hill Printing & Finishing Co., 249 S.C. 225, 227, 153 S.E.2d 697, 698 (1967).

exhibits or supporting affidavits. The Workers' Compensation Commission did not receive any additional evidence in the Appellant's claim after the conclusion of the evidentiary hearing on February 16, 2023, as indicated in Hearing Commissioner Beck's May 31, 2023, Decision and Order, which lists all evidence that is properly part of the evidentiary record before the Commission. (*See attached* Exhibit 6, Decision and Order dated May 31, 2023).

On October 23, 2024, the Appellant attempted to file an untimely Reply to the Respondent's Return to his Motion "to Reopen case or request for modification based on extraordinary circumstances," in which he improperly referenced, quoted, and exhibited excerpts from a deposition of Dr. John H. Samies taken on September 17, 2024, during the course of independent civil litigation initiated by the Appellant in the Orangeburg County Court of Common Pleas (2023-CP-38-00331)<sup>2</sup>. This deposition was taken by the Appellant 19 months after the evidentiary record closed in his workers' compensation claim, without notice to the undersigned counsel of record for the Respondents.<sup>3</sup> The deposition of Dr. Samies was not part of the record before the Workers' Compensation Commission because the Appellant made no attempt to depose Dr. Samies during the course of his workers' compensation claim and made no

---

<sup>2</sup> The Honorable Judge Maite Murphy granted summary judgment and dismissed this case on January 14, 2025. On information and belief, the Appellant has already filed (or attempted to file) an appeal to the Court of Appeals.

<sup>3</sup> Because this deposition was taken without notice to, or the participation of the undersigned counsel of record for the Respondents, the Respondents contend it would not have been admissible in the workers' compensation claim even if it had been timely presented in accordance with S.C. Code Reg. 67-612 or S.C. Code Reg. 67-707. Not only does the Workers' Compensation Act give the Respondents the right to notice and opportunity to participate in the deposition of an expert witness, but this right is guaranteed by the due process clause of the U.S. and S.C. Constitutions. S.C. Code Ann. § 42-3-160; S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 452-53, 574 S.E.2d 730, 734 (2002) (holding the procedural due process right to confront and cross-examine witnesses applies in the civil context and includes the right to be physically present during the testimony) (internal citations omitted).

attempt submit the deposition at any time prior the Commission issuing the final Decision and Order on March 8, 2024, as required by S.C. Code Reg. 67-612 or S.C. Code Reg. 67-707.

Accordingly, on October 31, 2024, the Respondents filed with the Workers' Compensation Commission a Motion to Strike the Claimant's Reply, including the exhibited portions of the transcript of Dr. Samies's deposition. (*See attached* Exhibit 7, Motion to Strike dated October 31, 2024). The Commission granted the Respondent's Motion to Strike by Order dated December 23, 2024. (*See attached* Exhibit 8, Order dated December 23, 2024). The Respondents respectfully contend that an exhibit to an untimely, unfounded pleading that is ordered to be stricken by the Commission should not be included in the Record on Appeal because it was not properly "presented to" the Commission as required by Rule 210(c), S.C.A.C.R. *Cf. Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 184 (Ct. App. 1986) (holding that depositions relied on by Gilmore either had not been filed as the rule required or had not been published and therefore were not in the record and the hearing judge properly disregarded the testimony that Gilmore's counsel claimed, during his argument, was reflected by those depositions); *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E. 473 (1933) (a court cannot consider statements of fact appearing only in argument of counsel).

Despite the fact that the deposition of Dr. Samies was not part of the record before the Workers' Compensation Commission, the Appellant's Initial Brief to the Court of Appeals repeatedly references and quotes the alleged deposition testimony of Dr. Samies, including at pages 13 (§ 1), 14 (§ 1), 15, and 16 (§ 1). The Appellant has also listed the "Transcripts of the Deposition of Dr. Samies" in his Designation of Matter to be included in the Record on Appeal. The Respondents respectfully contend that the deposition of Dr. Samies is not properly included in the Record on Appeal, as it was not properly submitted into evidence before the Workers'

Compensation Commission and was not considered by the Commission in rendering any decision. The Respondents contend that the Appellant's references to the deposition testimony of Dr. Samies in his Initial Brief are improper and highly prejudicial because they require responsive briefing by the Respondents on appeal if they are not stricken. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (holding that "[i]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review"). Therefore, the Respondents respectfully request that the Court of Appeals strike any and all references to (and quotations from) the deposition of Dr. Samies contained in the Appellant's Initial Brief and exclude the transcript of this deposition from the Record on Appeal. See generally, Cobb v. Benjamin, 325 S.C. 573, 581, 482 S.E.2d 589, 593 (Ct. App. 1997) (granting a motion to strike matters from the record on appeal and holding that a representation of fact in written briefs, memoranda or made during oral argument, may not be considered by the court where it is unsupported by the record).

The Respondents have filed a separate Motion to Exclude matters designated by the Appellant to be included in the Record on Appeal. In addition, the Respondents respectfully request that the Court strike all references, quotations, and representations made by the Appellant in his Initial Brief regarding deposition testimony of Dr. Samies that was not properly presented to, or considered by, the Workers' Compensation Commission and otherwise order that the Appellant's future briefing conform to Rule 208(b)(4), S.C.A.C.R..

*[signature block on following page]*

Respectfully submitted,



---

Roy A. Howell, III, *S.C. Bar #11888*

Kirsten Leslie Barr, *SC Bar #15525*

Trask & Howell, L.L.C.

P.O. Box 2167

Mt. Pleasant, SC 29465

(843) 881-4228

[rhowell@trask-howell.com](mailto:rhowell@trask-howell.com)

[kbarr@trask-howell.com](mailto:kbarr@trask-howell.com)

Attorneys for Respondents

January 16, 2025  
Mount Pleasant, SC

**EXHIBIT 1**  
**ORDER DATED NOVEMBER 1, 2024**

BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.      2118696

Serge Wandji,	)	
	)	
Claimant,	)	
vs.	)	
	)	
The Regional Medical Center,	)	
	)	
Employer,	)	<b>MOTION ORDER</b>
	)	
Antum Risk	)	
	)	
Carrier,	)	
	)	
<hr style="border: 1px solid black;"/>		

A Motion regarding the following Motion has been received by Claimant, Mr. Serge Wandji.

Motion to Reopen Case or Request for Modification based on extraordinary circumstances.

The Motion request is DENIED, as it goes to the merits of the Claim.

Motion Order served via USPS:

Serge Wandji PO Box 523 Columbia, SC 29202	Roy A. Howell, III Trask & Howell, LLC PO Box 2167 Mt. Pleasant, SC 29465
--	--

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

  
\_\_\_\_\_  
T. Scott Beck, Commissioner

**By Shawnee Radcliff on November 1, 2024**

**EXHIBIT 2**  
**NOTICE OF APPEAL**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED  
NOV 12 2024  
SC Court of Appeals

---

Serge Wandji,  
Appellant/Claimant,  
v.  
The Regional Medical Center, Self-Insured Employer,  
Through Antum Risk, Respondent/Defendant.

---

NOTICE OF APPEAL

**TO: THE HONORABLE SOUTH CAROLINA COURT OF APPEALS, THE REGIONAL MEDICAL CENTER, AND ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that the Claimant, Serge Wandji, hereby appeals to the South Carolina Court of Appeals from the Order of the South Carolina Workers' Compensation Commission, which denied his Motion to Reopen the workers' compensation case, W.C.C. File No. 2118696, on November 1, 2024. The Claimant appeals on the following detailed grounds:

**1. Newly Discovered Evidence**

The Claimant has presented significant newly discovered evidence that was not available during the initial hearings and could not have been obtained through reasonable diligence. This new evidence includes a critical deposition and affidavit from Dr. John H. Samies, the expert witness whose testimony played a pivotal role in the Commission's decision to deny the Claimant's compensation. Specifically, the newly uncovered evidence reveals that:

- **Undisclosed Roles and Affiliations:** Dr. Samies holds executive positions at The Regional Medical Center (TRMC), including serving on the Board of Trustees and chairing the Infection Control Department. These roles establish a direct and significant

conflict of interest. His affiliation with the Defendant organization was never explicitly disclosed in his 'expert' letter, despite the fundamental requirement for impartiality in expert testimony.

- **Inaccuracies in Expert Testimony:** Dr. Samies's deposition shows that he lacked critical knowledge about the Claimant's COVID-19 exposure. Despite this, he asserted in his expert letter that it was "unlikely" the Claimant contracted COVID-19 at work. Under questioning, he admitted that any employee at the hospital, including the Claimant, could have been exposed to the virus, given the high prevalence of COVID-19 cases at TRMC. This acknowledgment starkly contradicts his earlier claims, demonstrating that his initial testimony was speculative and unreliable.

## **2. Evidence of Fraud, Misrepresentation, or Misconduct**

The Claimant has also uncovered substantial evidence of fraud, misrepresentation, and misconduct by the Defendant and its counsel:

- **Solicitation and Fabrication of Testimony:** Dr. Samies admitted in his deposition that his expert letter, presented as an independent assessment, was actually solicited and generated by the Defendant's Infection Control Department, which he himself chairs. This arrangement undermines any claim of independence and exposes the testimony as being intentionally crafted to favor the Defendant. Furthermore, Dr. Samies was fully aware that his letter would be used in labor litigation, specifically to challenge the Claimant's workers' compensation claim.
- **Misleading Statements:** Dr. Samies provided false and misleading assertions regarding the likelihood of workplace exposure. He conceded that his conclusions were based on

assumptions and incomplete records rather than direct evidence. Despite these admissions, the Defendant relied heavily on his testimony, which misled the Commission and compromised the fairness of the proceedings.

### **3. Undisclosed Conflict of Interest**

The Claimant has demonstrated that there was a significant and undisclosed conflict of interest involving Dr. Samies:

- **Dual Roles Compromising Objectivity:** As both a Board member and Chair of the Infection Control Department at TRMC, Dr. Samies has a vested interest in the outcome of the case. His financial and professional ties to the Defendant create a clear and undeniable conflict. South Carolina law, as emphasized in *State v. Galbreath*, 359 S.C. 398 (2004), and *Hines v. Blue Cross Blue Shield of South Carolina*, 411 S.C. 108, 119 (2014), mandates that expert testimony must be independent and free from bias. The failure to disclose these conflicts violated these legal principles and undermined the credibility of the evidence used against the Claimant.
- **Violation of Established Legal Standards:** The use of conflicted testimony contravenes established standards for expert evidence, as outlined in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), which require that expert opinions be both impartial and reliable. The Commission's reliance on Dr. Samies's compromised testimony has resulted in a decision based on faulty and biased evidence.

### **Conclusion**

The Claimant contends that the Workers' Compensation Commission's denial of the Motion to Reopen, despite this compelling new evidence and clear instances of fraud and conflict of interest, was in error. The Commission's decision was heavily influenced by testimony that has since been proven to be compromised and unreliable. Therefore, the Claimant respectfully requests that the South Carolina Court of Appeals review and reverse the decision of the Workers' Compensation Commission, granting appropriate relief based on the newly discovered evidence and the egregious misconduct uncovered.

**WHEREFORE**, the Claimant, Serge Wandji, respectfully appeals to the South Carolina Court of Appeals, seeking a full review of the Commission's decision to ensure that justice is served in light of the extraordinary circumstances and serious procedural violations.

**Dated:** November 12, 2024

**Respectfully submitted,  
s/Serge Wandji  
Pro Se Appellant  
P.O. Box 523  
Columbia, SC 29202  
sergewandji@gmail.com**

CERTIFICATE OF SERVICE

RECEIVED  
NOV 12 2024  
SC Court of Appeals

I hereby certify that on this November 12, 2024, a true and correct copy of the Claimant's **Notice to Appeal** was served upon the following party via certified mail, and email to the Defendant Attorney in file as followed:

Mr. Roy A. Howell, III  
Trask & Howell, L.L.C.  
Attorneys for Defendants  
763 Johnnie Dodds Blvd  
P.O. Box 2167 Mt. Pleasant, SC 29465  
rhowell@trask-howell.com

s/Serge Wandji  
P.O. Box: 523  
Columbia, SC, 29202  
sergewandji@gmail.com

**EXHIBIT 3**  
**AMENDED NOTICE OF APPEAL**

**RECEIVED**

**Nov 27 2024**

**SC Court of Appeals**

**FORM 1  
NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION  
COMMISSION

T. Scott Beck, Commissioner

File No. 2118696

Serge R. Wandji  
Pro See Claimant

Appellant

v.

The Regional Medical Center, Self-  
Insured Employer, Through Antum  
Risk,

Defendant.

AMENDED NOTICE OF APPEAL  
Appellate Case No. 2024-001935

Serge R. Wandji appeals the order of Commissioner T. Scott Beck dated November 1, 2024. Appellant received written notice of entry of this order on November 4, 2024.

November 27, 2024

s/Serge Wandji  
Post Office Box 12112  
Charleston SC, 29422  
(678) 612-9649  
Pro see Appellant

Other Counsel of Record:  
Roy A. Howell, III  
763 Johnnie Dodds Blvd  
Post Office Box 2167  
Mt. Pleasant, SC 29465  
Attorney for Respondent  
rhowell@trask-howell.com

**EXHIBIT 4**

**DECISION AND ORDER DATED MARCH 8, 2024**

State of South Carolina  
**Workers' Compensation Commission**

**APPELLATE PANEL DECISION AND ORDER**

**COMMISSION PANEL:** Melody L. James, Commissioner; Gene McCaskill, Commissioner;  
and Avery B. Wilkerson, Jr., Commissioner, Chair

SCWCC File No.: 2118696

Serge Wandji,  
Claimant/Appellant,

v.

The Regional Medical Center,  
Self-Insured Employer,

through

Antum Risk,  
Carrier,  
Defendants/Respondents.

---

**AFFIRMED**

---

Hearing held in Richland County, South Carolina,

on September 18, 2023

Per notice timely and properly served upon all Parties in Interest.

Appearances: Serge Wandji, Claimant/Appellant, appeared *pro se*.  
Roy A. Howell, III, Esq., of Trask & Howell, L.L.C., Mt.  
Pleasant, South Carolina, appeared on behalf of  
Defendants/Respondents.

Court Reporter: Sarah Costilow, (803) 252-3445,  
[contact@creelreporting.com](mailto:contact@creelreporting.com)

Filed:

March 8, 2024

## I. STATEMENT OF THE CASE

This matter is before the Commission's Appellate Panel pursuant to the *pro se* Claimant's Form 30, seeking review of Hearing Commissioner T. Scott Beck's Decision and Order dated May 31, 2023. Following a hearing on February 16, 2023, Commissioner Beck concluded that the greater weight of the evidence indicates that the Claimant's alleged injuries (a COVID-19 infection and related symptoms) were not caused naturally or unavoidably by any accident on or about August 27, 2021, and his alleged injuries did not otherwise arise out of or in the course of his employment as required by S.C. Code Ann. § 42-1-160. Commissioner Beck further concluded that, pursuant to S.C. Code Ann. § 42-11-10, the greater weight of the evidence indicates the Claimant's employment did not subject him to hazards in excess to those ordinarily incident to employment, that COVID-19 was peculiar to the Claimant's occupation, or that the disease was either directly caused by, especially incident to, or the natural consequence of the Claimant's work. Accordingly, the claim for medical and compensation benefits was denied.

On June 16, 2023, the Claimant filed a Form 30, Request for Review, with the Commission.

The Claimant seeks a full reversal of Commissioner Beck's May 31, 2023, Decision and Order and an award of medical and compensation benefits.

The Respondents, the Regional Medical Center of Orangeburg and Palmetto Hospital Trust, contend that Commissioner Beck's findings and conclusions are supported by the greater weight of the evidence in the record and the applicable law and seek a full affirmation by the Appellate Panel.

## II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

### COMMISSIONER BECK'S FINDINGS OF FACT

1. The undersigned spent a significant amount of time advising the Claimant on the complexity of this matter and potential legal challenges in satisfying his burden of proving a compensable claim. He was also advised of his right to retain counsel and the potential repercussions of proceeding without the assistance of counsel. In spite of those admonishments, the Claimant elected to proceed *Pro Se* in this matter.
2. The Claimant filed a Form 50 claiming an "injury" or "illness" and alleging that on August 27, 2021, his "whole body" was infected with COVID-19. I find that this pleading triggers the requirements of S.C. Code Ann. § 42-1-160 and I find that COVID-19 must be evaluated as a "disease" under that statute. As such, the Claimant's claim must fail, as I find he did not satisfy his burden of proving it resulted "naturally or unavoidably" from an accident at work by a preponderance of the evidence. There is no medical evidence, as defined in the Act, in the record to satisfy this requirement or to otherwise support a finding that the Claimant's employment placed him at an increased risk of exposure to COVID-19.

In addition, based on the greater weight of the lay and circumstantial evidence presented, the Claimant's COVID-19 infection did not result "naturally or unavoidably" from an accident arising out of or in the course of his employment, as alleged. The Claimant admits that he did not work at the Regional Medical Center on August 27, 2021, and that there was "no injury" on August 27, 2021. (T. p.61, ll.1—9; T. p.64, l.25—p.65, l.4). The Claimant did not present any evidence that he worked with, or provided care for, any COVID positive individuals at any time. Instead, the greater weight of the evidence,

including the testimony of his supervisor, nurse manager Teresa Noe, reveals that the Claimant and all staff on the “locked’ unit where the Claimant worked were required to wear N-95 masks (T. pp.129--130); all patients in the unit were required to test negative prior to admission (T. p.129); the Claimant did not provide care to any COVID patients at any time (T. p.130); and the Claimant “would have had a less chance of catching COVID on the unit versus in the public.” (T. p.130, ll.13—14). Even the Claimant testified that “[n]obody except God” knows when or how he was exposed to, or infected with, COVID-19. (APA p.82).

The greater weight of the evidence further reveals that the Claimant gave inconsistent accounts of when he believes he was first exposed to COVID-19 (August 16, 2021, later recanted) and when his symptoms began (August 23<sup>rd</sup> or August 25<sup>th</sup> or August 26<sup>th</sup>) according to the persuasive testimony of Ms. Kelci Caruso and Ms. Kellie Evans. (T. pp.99-101; T. pp. 113—114; APA p.148; Def. APA pp.7, 57). Dr. John H. Samies, the only infectious disease expert to address this claim, stated that “[t]he recanting of the 8/16 exposure by the claimant and the confusion about the date of onset of symptoms puts doubt on all claimant statements in this case ... the timing of the onset of symptoms should have been quite clear to the claimant.” Dr. Samies ultimately opined “that a link to employment exposure here is unlikely,” negating the probability of a causal connection between the Claimant’s COVID-19 infection and his employment. (Def. APA p.57). While the Claimant’s personal physician, Dr. Fayssoux (an internal medicine doctor), stated that the Claimant “contracted Covid-19 at his place of employment” (APA pp.35, 37), Dr. Fayssoux (unlike Dr. Samies) neither gave a basis for this opinion, nor does he explain when he believes the Claimant was exposed or the nature of any such exposure; he does

not explain how he excluded the possibility of exposure outside of work during a pandemic; and he does not reconcile the inconsistencies in the Claimant's timeline. Therefore, after carefully considering and weighing all of the evidence presented, I find that the Claimant did not meet his burden of proving by a preponderance of the evidence that his COVID-19 infection was the natural or unavoidable result of any alleged accident arising out of or in the course of his employment on or about August 27, 2021.

3. While the Claimant did not file a claim alleging an occupational disease, and while I believe the Claimant's pleading limits him to a claim under S.C. Code Ann. § 42-1-160, I have also analyzed the claim under S.C. Code Ann. § 42-11-10 analysis out of an abundance of caution. The Claimant's claim must also fail under this analysis. To satisfy his burden of proving an occupational disease under § 42-11-10 by a preponderance of the evidence, the Claimant must not only prove that his COVID infection was "a direct result of continuous exposure to the normal working conditions" of his employment, but the Claimant must also prove that he contracted COVID due to "hazards in excess to those ordinarily incident to employment" and "peculiar to the occupation in which he was engaged." The Claimant has presented no competent evidence to support such findings.

The record contains no opinion of any person, lay or expert, that the Claimant's employment subjected him to hazards in excess to those ordinarily incident to employment, or any opinion that COVID-19 was peculiar to the Claimant's occupation. Instead, the record reveals that COVID-19 was contracted by at least 123,842 South Carolinians during the period from August 1, 2021, through August 31, 2021, alone -- including at least 1,869 persons during this period in Orangeburg County. (Def. APA pp.147—148). Ms. Noe testified without objection that the Claimant "would have had a less chance of catching

COVID on the unit versus in the public” because of the stringent testing protocols and the personal protective equipment, including N-95 masks, required in the Claimant’s position as a nurse in the Behavioral Health Unit. (T. p.130, ll.13—14). In addition, Dr. Samies, an infectious disease specialist, opined “that a link to employment exposure here is unlikely,” which does not support a finding that the Claimant’s COVID-19 infection was “a direct result of continuous exposure to the normal working conditions” of the Claimant’s employment. (Def. APA p.57).

Furthermore, the claim fails consistent with the exceptions listed in S.C. Code Ann. § 42-11-10 (B) (3) & (4). Clearly, COVID-19 is a contagious disease. However, the Claimant presented no persuasive evidence that his employment as a nurse in the Behavioral Health Unit placed him at an increased risk of exposure to COVID-19 over and above his risk of exposure outside of his employment. Relevant to this risk analysis is the fact that not only was the Claimant also a student at the University of South Carolina at the time in question, but his employment required him to wear an N-95 mask at all times in clinical areas and he worked in a locked unit where patients were required to test negative for COVID prior to admission. Importantly, the only witness to assess the Claimant’s relative risk, Ms. Noe, testified without objection that the Claimant “would have had a less chance of catching COVID on the unit versus in the public.” (T. p.130, ll.13—14). Therefore, COVID-19 was not “peculiar” to the Claimant’s occupation and the disease was not directly caused by, especially incident to, or the natural consequence of his work based upon the greater weight of the evidence in the record, including the testimony of Ms. Noe and the opinion of Dr. Samies.

### COMMISSIONER BECK'S CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-1-160, the Claimant is not entitled to any medical or compensation benefits under the South Carolina Workers' Compensation Act because the greater weight of the evidence indicates that his alleged injuries were not caused naturally or unavoidably by any accident on or about August 27, 2021, and his alleged injuries did not otherwise arise out of or in the course of his employment.

Pursuant to S.C. Code Ann. § 42-11-10, the Claimant is not entitled to any medical or compensation benefits under the Workers' Compensation Act because he did not file a claim for an occupational disease and because the greater weight of the evidence indicates the Claimant's employment did not subject him to hazards in excess to those ordinarily incident to employment, that COVID-19 was peculiar to the Claimant's occupation, or that the disease was either directly caused by, especially incident to, or the natural consequence of the Claimant's work.

### **III. ISSUES ON APPEAL**

1. [Whether] the Claimant demonstrated solid evidence that he was exposed to COVID-19 at Regional Medical before and during the time of his confirmed infection.
2. [Whether] the Defendants were able to produce or demonstrate evidence to support their defense strategies, as outlined in their Pre-Hearing Brief of January 12, 2023.
3. [Whether] the Defendants engaged in forgery and falsification of documents which they introduced as evidence as part of their APAs in this case.
4. [Whether] the Defendants' [actions] resulted in fraudulent representation, racist attacks and unlawful [conduct].

#### IV. DECISION OF THE APPELLATE PANEL

On November 29, 2021, the Claimant filed a Form 50 claiming an “injury” or “illness” and alleging that, his “whole body” was infected with COVID-19. The Claimant admits that he did not work at the Regional Medical Center on August 27, 2021, and that there was “no injury” on August 27, 2021. (T. p.61, ll.1—9; T. p.64, l.25—p.65, l.4). The Claimant did not present any evidence that he worked with, or provided care for, any COVID positive individuals at any time. Instead, the greater weight of the evidence, including the testimony of his supervisor, nurse manager Teresa Noe, reveals that the Claimant and all staff on the “locked” unit where the Claimant worked were required to wear N-95 masks (T. pp.129--130); all patients in the unit were required to test negative prior to admission (T. p.129); the Claimant did not provide care to any COVID patients at any time (T. p.130); and the Claimant “would have had a less chance of catching COVID on the unit versus in the public.” (T. p.130, ll.13—14). Even the Claimant testified that “[n]obody except God” knows when or how he was exposed to, or infected with, COVI-19. (APA p.82).

The greater weight of the evidence further reveals that the Claimant gave inconsistent accounts of when he believes he was first exposed to COVID-19 (August 16, 2021, later recanted) and when his symptoms began (August 23<sup>rd</sup> or August 24<sup>th</sup> or August 25<sup>th</sup>) according to the testimony of Ms. Kelci Caruso and Ms. Kellie Evans, who Hearing Commissioner Beck found to be “persuasive.” (T. pp.99-101; T. pp. 113—114; APA p.148; Def. APA pp.7, 57). Dr. John H. Samies, the only infectious disease expert to address this claim, stated that:

“[t]he recanting of the 8/16 exposure by the claimant and the confusion about the date of onset of symptoms puts doubt on all claimant statements in this case ... the timing of the onset of symptoms should have been quite clear to the claimant.”

Dr. Samies ultimately opined “that a link to employment exposure here is unlikely,” negating the probability of a causal connection between the Claimant’s COVID-19 infection and his employment. (Def. APA p.57).<sup>1</sup>

While the Claimant’s personal physician, Dr. Fayssoux (an internal medicine doctor), stated that the Claimant “contracted Covid-19 at his place of employment” (APA pp.35, 37), Dr. Fayssoux (unlike Dr. Samies) neither gave a basis for this opinion, nor does explain when he believes the Claimant was exposed or the nature of any such exposure, does not explain how he excluded the possibility of exposure outside of work during a pandemic, and he does not reconcile the inconsistencies in the Claimant’s timeline. Therefore, Hearing Commissioner Beck properly

---

<sup>1</sup> The Claimant’s allegations with respect to Dr. Samies are improper, unfounded, and irrelevant. The Claimant, himself, submitted Dr. Samies’s report into evidence as APA #58. The Claimant did not object to the admission of this report at the hearing, or did he seek to exercise his right to cross-examine Dr. Samies. Therefore, the Claimant cannot be heard to complain about the admissibility of Dr. Samies’s report on appeal. See Turner v. Med. Univ. of S.C., 430 S.C. 569, 590, 846 S.E.2d 1, 12 (Ct. App. 2020) (holding that a “contemporaneous objection is required to preserve issues for appellate review” and citing Webb v. CSX Transp., Inc., 364 S.C. 639, 657, 615 S.E.2d 440, 450 (2005); see also Scott v. Porter, 340 S.C. 158, 167, 530 S.E.2d 389, 393 (Ct. App. 2000) (holding that “[o]rdinarily, if an appellant fails to object the first time a statement is made, he or she waives the right to raise the issue on appeal”). Dr. Samies’s relationship with the Regional Medical Center was always made clear to the Claimant and to the Commission, as the Respondents submitted Dr. Samies’s resume into evidence (Def. APA #12, pp.58—60), showing that he was on the medical staff at the Regional Medical Center, as well as serving on the Executive Committee and Board of Trustees. However, there is no competent evidence that Dr. Samies’s report was based upon anything other than the facts and his own expert opinion and therefore, the Claimant’s allegations of bias do not affect the weight accorded to his opinion by the Commission. Perhaps more importantly, the Claimant’s allegations regarding Dr. Samies in no way change the fact that the Claimant failed to meet his burden of proving any accident at work, any injurious exposure at work, or any increased risk of exposure to a worldwide pandemic at work, especially given the stringent personal protective equipment and testing protocols required in his workplace.

gave the reports of Dr. Fayssoux little weight in finding that the Claimant did not meet his burden of proving by a preponderance of the evidence that his COVID-19 infection was the natural or unavoidable result of any alleged accident arising out of or in the course of his employment on or about August 27, 2021.

The Claimant's argument that he is entitled to a workers' compensation benefits because the Respondents did not prove that the Claimant was exposed to COVID-19 outside of work is without merit. Not only must workers' compensation awards not be based on surmise, conjecture, or speculation, but the "the difficulty in proving a fact in a compensation case does not relieve the party on whom the burden rests of proving it and does not shift the burden to the other party." Herndon v. Morgan Mills, Inc., 246 S.C. 201, 209, 143 S.E.2d 376, 380–81 (1965) (*internal citations omitted*). Accordingly, the Appellate Panel hereby affirms Hearing Commissioner Beck's findings of fact and conclusions of law under S.C. Code Ann. § 42-1-160, because even the Claimant, when asked if he has any evidence of his alleged exposure to COVID-19, testified:

"Nobody can answer that question ... You are asking a question, with all due respect, that's very stupid." (T. p.66, l.15—p.67, l.14).

Even though the Claimant did not file a claim alleging an occupational disease, and his pleadings limit him to a claim under S.C. Code Ann. § 42-1-160, Hearing Commissioner Beck also analyzed the claim under S.C. Code Ann. § 42-11-10 "out of an abundance of caution" and concluded that the claim must also fail under this analysis. The Appellate Panel agrees. To satisfy his burden of proving an occupational disease under § 42-11-10 by a preponderance of the

evidence, the Claimant must not only prove that his COVID infection was “a direct result of continuous exposure to the normal working conditions” of his employment, but the Claimant must also prove that he contracted COVID due to “hazards in excess to those ordinarily incident to employment” and “peculiar to the occupation in which he was engaged.” The Claimant has presented no competent evidence to support such findings.

The record contains no opinion of any person, lay or expert, that the Claimant’s employment subjected him to hazards in excess to those ordinarily incident to employment, or any opinion that COVID-19 was peculiar to the Claimant’s occupation. Instead, the record reveals that COVID-19 was contracted at least 123,842 South Carolinians during the period from August 1, 2021, through August 31, 2021, alone -- including at least 1,869 persons during this period in Orangeburg County. (Def. APA pp.147—148). Ms. Noe, testified that the Claimant “would have had a less chance of catching COVID on the unit versus in the public” because of the stringent testing protocols and requirements for personal protective equipment, including N-95 masks, in the Claimant’s place of employment. (T. p.130, ll.13—14). In addition, Dr. Samies, an infectious disease specialist, opined “that a link to employment exposure here is unlikely,” which is clearly contrary to the requirement that the Claimant’s COVID-19 infection be “a direct result of continuous exposure to the normal working conditions” of the Claimant’s employment. (Def. APA p.57).

Furthermore, the claim fails consistent with the exceptions listed in S.C. Code Ann. § 42-11-10 (B) (3) & (4). Clearly, COVID-19 is a contagious disease. However, the Claimant presented no competent evidence that his employment placed him at an increased risk of exposure over and above his risk of exposure outside of his employment, especially considering the fact that the Claimant was a student at the University of South Carolina at the time in question and his

employment required him to wear an N-95 mask at all times. Instead, the only witness to assess the Claimant's relative risk, Ms. Noe, testified that the Claimant "would have had a less chance of catching COVID on the unit versus in the public." (T. p.130, ll.13—14). Moreover, it would be specious to suggest that COVID-19 was "peculiar" to the Claimant's occupation or that the disease was either directly caused by, especially incident to, or the natural consequence of his work and there is no persuasive or competent evidence in the record to support any such suggestion. Therefore, Hearing Commissioner Beck's findings and conclusions under S.C. Code Ann. § 42-11-10, are hereby affirmed by the Appellate Panel, as they are supported by the greater weight of the evidence and the applicable law.

#### **FINDINGS OF FACT**

1. The Hearing Commissioner spent a significant amount of time advising the Claimant on the complexity of this matter and potential legal challenges in satisfying his burden of proving a compensable claim. He was also advised of his right to retain counsel and the potential repercussions of proceeding without the assistance of counsel. In spite of those admonishments, Claimant elected to proceed *Pro Se* in this matter.
2. The Claimant filed a Form 50 claiming an "injury" or "illness" and alleging that on August 27, 2021, his "whole body" was infected with COVID-19. The Commission finds that this pleading triggers the requirements of S.C. Code Ann. § 42-1-160 and finds that COVID-19 must be evaluated as a "disease" under that statute. As such, the Claimant's claim must fail, as the Commission finds he did not satisfy his burden of proving it resulted "naturally or unavoidably" from an accident at work by a preponderance of the evidence. There is no medical evidence, as defined in the Act, in the record to satisfy this requirement or to

otherwise support a finding that the Claimant's employment placed him at an increased risk of exposure to COVID-19.

3. In addition, based on the greater weight of the lay and circumstantial evidence presented, the Claimant's COVID-19 infection did not result "naturally or unavoidably" from an accident arising out of or in the course of his employment, as alleged. The Claimant admits that he did not work at the Regional Medical Center on August 27, 2021, and that there was "no injury" on August 27, 2021. (T. p.61, ll.1—9; T. p.64, l.25—p.65, l.4). The Claimant did not present any evidence that he worked with, or provided care for, any COVID positive individuals at any time. Instead, the greater weight of the evidence, including the testimony of Ms. Noe, reveals that the Claimant and all staff on the "locked" unit where the Claimant worked were required to wear N-95 masks (T. pp.129--130); all patients in the unit were required to test negative prior to admission (T. p.129); the Claimant did not provide care to any COVID patients at any time (T. p.130); and the Claimant "would have had a less chance of catching COVID on the unit versus in the public." (T. p.130, ll.13—14). Even the Claimant testified that "[n]obody except God" knows when or how he was exposed to, or infected with, COVI-19. (APA p.82).
4. The greater weight of the evidence further reveals that the Claimant gave inconsistent accounts of when he believes he was first exposed to COVID-19 (August 16, 2021, later recanted) and when his symptoms began (August 23<sup>rd</sup> or August 25<sup>th</sup> or August 26<sup>th</sup>) according to the persuasive testimony of Ms. Caruso and Ms. Evans. (T. pp.99-101; T. pp. 113—114; APA p.148; Def. APA pp.7, 57). Dr. John H. Samies, the only infectious disease expert to address this claim, stated that "[t]he recanting of the 8/16 exposure by the claimant and the confusion about the date of onset of symptoms puts doubt on all claimant

statements in this case ... the timing of the onset of symptoms should have been quite clear to the claimant.” Dr. Samies ultimately opined “that a link to employment exposure here is unlikely,” negating the probability of a causal connection between the Claimant’s COVID-19 infection and his employment. (Def. APA p.57). While the Claimant’s personal physician, Dr. Fayssoux (an internal medicine doctor), stated that the Claimant “contracted Covid-19 at his place of employment” (APA pp.35, 37), Dr. Fayssoux (unlike Dr. Samies) neither gave a basis for this opinion, nor does explain when he believes the Claimant was exposed or the nature of any such exposure, does not explain how he excluded the possibility of exposure outside of work during a pandemic, and he does not reconcile the inconsistencies in the Claimant’s timeline. Therefore, after carefully considering and weighing all of the evidence presented, the Commission finds that the Claimant did not meet his burden of proving by a preponderance of the evidence that his COVID-19 infection was the natural or unavoidable result of any alleged accident arising out of or in the course of his employment on or about August 27, 2021.

5. While the Claimant did not file a claim alleging an occupational disease, and while the Commission is of the belief that the Claimant’s pleading limits him to a claim under S.C. Code Ann. § 42-1-160, the Commission has also analyzed the claim under S.C. Code Ann. § 42-11-10 analysis out of an abundance of caution. The Claimant’s claim must also fail under this analysis. To satisfy his burden of proving an occupational disease under § 42-11-10 by a preponderance of the evidence, the Claimant must not only prove that his COVID infection was “a direct result of continuous exposure to the normal working conditions” of his employment, but the Claimant must also prove that he contracted COVID due to “hazards in excess to those ordinarily incident to employment” and

“peculiar to the occupation in which he was engaged.” The Claimant has presented no competent evidence to support such findings.

6. The record contains no opinion of any person, lay or expert, that the Claimant’s employment subjected him to hazards in excess to those ordinarily incident to employment, or any opinion that COVID-19 was peculiar to the Claimant’s occupation. Instead, the record reveals that COVID-19 was contracted by at least 123,842 South Carolinians during the period from August 1, 2021, through August 31, 2021, alone -- including at least 1,869 persons during this period in Orangeburg County. (Def. APA pp.147—148). Ms. Noe testified without objection that the Claimant “would have had a less chance of catching COVID on the unit versus in the public” because of the stringent testing protocols and the personal protective equipment, including N-95 masks, required in the Claimant’s position as a nurse in the Behavioral Health Unit. (T. p.130, ll.13—14). In addition, Dr. Samies, an infectious disease specialist, opined “that a link to employment exposure here is unlikely,” which does not support a finding that the Claimant’s COVID-19 infection was “a direct result of continuous exposure to the normal working conditions” of the Claimant’s employment. (Def. APA p.57).
7. Furthermore, the claim fails consistent with the exceptions listed in S.C. Code Ann. § 42-11-10 (B) (3) & (4). Clearly, COVID-19 is a contagious disease. However, the Claimant presented no persuasive evidence that his employment as a nurse in the Behavioral Health Unit placed him at an increased risk of exposure to COVID-19 over and above his risk of exposure outside of his employment. Relevant to this risk analysis is the fact that not only was the Claimant also a student at the University of South Carolina at the time in question, but his employment required him to wear an N-95 mask at all times in clinical areas and

he worked in a locked unit where patients were required to test negative for COVID prior to admission. Importantly, the only witness to assess the Claimant's relative risk, Ms. Noe, testified without objection that the Claimant "would have had a less chance of catching COVID on the unit versus in the public." (T. p.130, ll.13—14). Therefore, COVID-19 was not "peculiar" to the Claimant's occupation and the disease was not directly caused by, especially incident to, or the natural consequence of his work based upon the greater weight of the evidence in the record, including the testimony of Ms. Noe and the opinion of Dr. Samies.

#### CONCLUSIONS OF LAW

1. "[T]he difficulty in proving a fact in a compensation case does not relieve the party on whom the burden rests of proving it, and does not shift the burden to the other party." Herndon v. Morgan Mills, Inc., 246 S.C. 201, 209, 143 S.E.2d 376, 380–81 (1965) (*internal citations omitted*).
2. Pursuant to S.C. Code Ann. § 42-1-160, the Claimant is not entitled to any medical or compensation benefits under the South Carolina Workers' Compensation Act because the greater weight of the evidence indicates that his alleged injuries were not caused naturally or unavoidably by any accident on or about August 27, 2021, and his alleged injuries did not otherwise arise out of or in the course of his employment.
3. Pursuant to S.C. Code Ann. § 42-11-10, the Claimant is not entitled to any medical or compensation benefits under the Workers' Compensation Act because he did not file a claim for an occupational disease and because the greater weight of the evidence indicates the Claimant's employment did not subject him to hazards in excess to those ordinarily incident to employment, that COVID-19 was peculiar to the Claimant's



**Order Served via email:**

Serge Wandj <a href="mailto:sergewandji@gmail.com">sergewandji@gmail.com</a>	Roy A. Howell, III Trask & Howell <a href="mailto:rhowell@trask-howell.com">rhowell@trask-howell.com</a>
---	--

**Order Served via USPS:**

Serge Wandji P.O. Box 523 Columbia, SC 29202	Roy A. Howell, III Trask & Howell P.O. Box 2167 Mt. Pleasant, SC 29465
--	---

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

***By Eugenia Hollmon on March 8, 2024***

**EXHIBIT 5**

**MOTION TO REOPEN DATED OCTOBER 4, 2024**

## South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500  
P.O. BOX 1715  
Columbia, SC 29202-1715  
(803) 737-5723

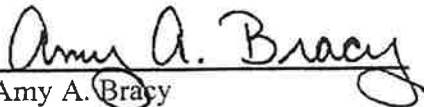


WCC File #: 2118696

Date of Injury: 08/27/2021

Serge Wandji v. THE REGIONAL MED CTR OF ORANGE  
WCC File No. 2118696

The Commission is hereby providing you a copy of the Motion filed by the unrepresented claimant pursuant to R.67-211.

  
Amy A. Bracy  
Judicial Director

Date: October 4, 2024

### CERTIFICATE OF SERVICE

I hereby certify on October 4, 2024, I served this document on the parties listed below by electronic mail or depositing a copy hereof, postage prepaid, in the United States mail and addressed as follows:

Serge Wandji  
PO Box 523  
COLUMBIA, SC 29202

THE REGIONAL MED CTR OF ORANGE  
3000 St. Matthews Road  
Orangeburg, SC 29115

Roy A. Howell, III  
Trask & Howell, LLC  
PO Box 2167  
Mt. Pleasant, SC 29465

By: Nicole Hanzlik, Judicial Department

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

ORANGEBURG COUNTY (where injury occurred)

Serge Wandji, ) W.C.C. FILE NO. 2118696  
)  
Employee/Claimant, )  
)  
-vs- )  
) **MOTION TO REOPEN CASE OR REQUEST FOR**  
) **MODIFICATION BASED ON EXTRAORDINARY**  
) **CIRCUMSTANCES**  
)  
The Regional Medical Center, )  
)  
Self-Insured Employer, )  
Through )  
)  
Antum Risk, )  
)  
Defendant. )  
\_\_\_\_\_ )

TO: The South Carolina Workers' Compensation Commission

Pro se Claimant Serge Wandji respectfully moves this Honorable Commission to reopen the above-captioned workers' compensation case or, in the alternative, to modify the decision rendered by Commissioner Scott Beck and affirmed by the Workers' Compensation Appellate Panel based on extraordinary circumstances pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 42-17-90.

This Motion is based on the following grounds:

## I. INTRODUCTION

---

On March 8, 2024 the Workers' Compensation Appellate Panel affirmed the decision of Commissioner Scott Beck denying the Claimant's workers' compensation claim following his contraction of COVID-19 while working as a staff nurse at The Regional Medical Center (TRMC). However, newly discovered evidence, along with evidence of fraud, misrepresentation, and undisclosed conflicts of interest, has come to light. This evidence, if presented, would have had a significant impact on the case's outcome.

## II. GROUNDS FOR MOTION

### 1. Newly Discovered Evidence

SCWCC  
OCT 04 2024  
JUDICIAL  
505472

The Claimant has uncovered evidence that was not available during the initial hearings and could not have been discovered with due diligence. This includes the affidavit and deposition of Dr. John H. Samies, a medical and infectious diseases 'expert', which directly contradicts the findings relied upon by Commissioner Beck and the Appellate Panel.

Dr. Samies, presented as an independent and unbiased expert witness, was later revealed to be an executive Medical Staff and a member of the Board of Trustees at TRMC. His affiliation with the Defendant organization was never explicitly disclosed, resulting in a clear conflict of interest. Additionally, Dr. Samies did not appear to the hearing for cross-examination, depriving the Claimant of a fair opportunity to challenge his testimony, which was relied upon in the Commissioner's decision.

This newly discovered evidence demonstrates that Dr. Samies was not an independent expert, as portrayed. His 'expert' testimony, which played a critical role in the decision-making process, was biased due to his position at TRMC. This evidence could not have been uncovered during the original proceedings despite the exercise of due diligence.

## **2. Fraud, Misrepresentation, and Conflict of Interest**

Following the original workers' compensation hearing, the Claimant successfully pursued a workers' compensation retaliation lawsuit, during which Dr. Samies was compelled to sit for a deposition. During this deposition, it was revealed that Dr. Samies was not an independent expert, as originally presented, but a sitting member of TRMC's Board of Trustees. This conflict of interest was not explicitly disclosed at the original hearing, resulting in significant misrepresentation.

Moreover, Dr. Samies admitted during the deposition that the timing and location of the Claimant's COVID-19 exposure, as stated in his expert letter, were inaccurate. Dr. Samies acknowledged that the Claimant, as a nurse at TRMC, was exposed to COVID-19 during August 2021 at his workplace, when multiple staff members and patients at TRMC had tested positive and that Claimant cared for patients who tested positive for COVID-19 on his own unit, per TRMC records. Thereby retracting the his previously made statement in his 'expert' letter which stated that "*a link to employment exposure here is unlikely*".

These facts were omitted in his expert letter, which was relied upon by the Commissioner in ~~denying the Claimant's claim.~~

---

## **3. Impact on Commissioner's Decision**

The Commissioner's decision to deny the Claimant's workers' compensation claim was significantly influenced by Dr. Samies' expert testimony. Given the newly discovered evidence of bias, conflict of interest, and fraudulent misrepresentation, it is clear that the decision to deny the claim was based on faulty and incomplete evidence. If the conflict of interest and fraudulent conduct had been disclosed during the original proceedings, the outcome of this case would likely have been different.

### III. LEGAL STANDARD

Under Rule 60(b) of the South Carolina Rules of Civil Procedure, relief from judgment may be granted for:

- **60(b)(2):** Newly discovered evidence that could not have been discovered in time to move for a new trial;
- **60(b)(3):** Fraud, misrepresentation, or misconduct by an opposing party; and
- **60(b)(6):** Any other reason justifying relief from the judgment.

Further, S.C. Code Ann. § 42-17-90 permits the Workers' Compensation Commission to review and modify decisions based on new evidence or changed circumstances.

### IV. RELIEF REQUESTED

In light of the newly discovered evidence and the fraudulent misrepresentation by the Defendant's expert witness, the Claimant respectfully requests the following relief:

1. **Reopen the Case:** The case should be reopened to allow the introduction of this newly discovered evidence and to correct the fraudulent testimony presented during the original hearing.
2. **Modify the Decision:** In the alternative, the Commission should modify its decision in favor of the Claimant, as the newly discovered evidence and revelations of misconduct materially affect the validity of the original ruling.
3. **Any Additional Relief:** The Claimant requests any additional relief the Commission deems just and proper.

### V. CONCLUSION

The Claimant respectfully asserts that the grounds presented constitute extraordinary circumstances warranting the reopening or modification of this case. This Motion seeks a fair opportunity to present the newly discovered evidence and correct the unjust result caused by the fraud, misrepresentation, and undisclosed conflict of interest.

Should this Motion be denied, the Claimant requests permission to file an appeal to the South Carolina Court of Appeals on these same grounds.

---

**Date:** October, 4, 2024

**Respectfully submitted,**  
Serge Wandji  
Pro se Claimant  
P.O. Box 523  
Columbia SC, 29202

sergewandji@gmail.com

---

**CERTIFICATE OF SERVICE**

I hereby certify that on this October 4, 2024, a true and correct copy of the Motion to Reopen Case or Request for Modification Based on Extraordinary Circumstances was served upon the following party via certified mail, and electronic mail, to the Defendant Attorney in file as followed:

Mr. Roy A. Howell, III  
Trask & Howell, L.L.C.  
Attorneys for Defendants  
763 Johnnie Dodds Blvd  
P.O. Box 2167 Mt. Pleasant, SC 29465

---

s/Serge Wandji  
P.O. Box: 523  
Columbia, SC, 29202  
/ sergewandji@gmail.com

**EXHIBIT 6**

**DECISION AND ORDER DATED MAY 31, 2023**



## I. STATEMENT OF THE CASE

The Claimant filed a Form 50 on September 9, 2022, alleging an “infection of whole body” due to an injury and an illness on August 27, 2021, in Orangeburg, South Carolina.<sup>1</sup> He alleges that on that date, he “went to the hospital (TRMC/my employer) to get tested at the Employee Health, and the results came out to be positive for COVID-19.” The Claimant seeks additional medical examination and treatment for “COVID-19,” as well as “Long COVID-19 complications and PTSD,” which he described at the hearing to also include chronic pain, loss of smell, and inflammation. In addition, the Claimant seeks temporary total disability compensation from August 28, 2021, and continuing and benefits for permanent, specific disability.

The Defendants filed a Form 51 on October 7, 2022, denying the claim and raising affirmative defenses under S.C. Code Ann. § 42-11-10, *et seq.* The Defendants deny the Claimant suffered any injury or illness as alleged and deny he is entitled to any medical or compensation benefits. According to the Defendants’ Form 58, the Defendants contend that COVID-19 is one of the ordinary diseases of life for which more than 32% of the population of South Carolina have tested positive; therefore, the Claimant bears the burden of proving that he was infected with COVID-19 naturally and unavoidably from an accident arising out of and in the course of his employment and that his employment, which required him to wear an N-95 mask with a population subject to stringent testing protocols, placed him at an increased risk of such infection. The Defendants further deny the Claimant has properly raised an occupational disease claim and deny the claim meets any of the requirements of S.C. Code Ann. § 42-11-10. In addition, the Defendants specifically contend that the Claimant has failed to meet his burden of proving his entitlement to medical benefits under S.C. Code Ann. § 42-15-60 and that any period of temporary disability ended upon his reaching maximum medical improvement by January 14, 2022, or at the latest May 14, 2022, when the Claimant began working for a new employer.

---

<sup>1</sup> The Claimant’s Form 50 does not allege an occupational disease.

After an extensive pre-hearing conference, the Claimant was advised by the undersigned Commissioner of his right to counsel. At both the pre-hearing conference and on the record at the hearing, the Claimant expressed his understanding of the significance of proceeding without the advice or assistance of counsel. The Claimant was also given the opportunity to consult or to retain counsel and declined this opportunity. The Claimant stated that he desired to go forward with the hearing as scheduled by representing himself and waiving his right to legal counsel.

## II. STIPULATIONS

1. The South Carolina Workers' Compensation Commission has jurisdiction over this claim.
2. The venue is proper.
3. Notice of the hearing was timely and properly served upon all parties in interest.
4. The Commission's file, save self-serving declarations and unstipulated medical records, shall become part of the record.

## III. APA SUBMISSIONS

**By the Claimant:**

APA #	DESCRIPTION	DATES	PAGES
1.	Email from Kellie Evans with Claimant's COVID test result, that I took for School Purpose	08/16/2021	1
2.	Claimant's Negative COVID test result attached in APA #1	08/16/2021	2
3.	Claimant's Negative COVID test result received after he specifically requested a result with the heading and Doctor's signature on it, as required by his school	08/16/2021	3
4.	Group Text message to all staff from Unit Manager Teresa Noe, after COVID Outbreak on the unit (BHU)	08/25/2021	4

5.	Newly improvised COVID safety protocol from Unit manager after COVID outbreak on The unit via a Group text message to staff	08/25/2021	5
6.	Group text message from Unit program Director Mrs. Catherine confirming COVID outbreak and exposure	08/25/2021	6
7.	Facility produced Unit (BHU) COVID Tracing confirming outbreak and exposure on the unit	08/25/2021 – 09/06/2021	7-8
8.	Claimant's Positive COVID test result After being exposed at the workplace (TRMC)	08/27/2021	9
9.	Text message to Unit Manager informing her of positive COVID results	08/27/2021	10
10.	Invitation sent by Kelci Caruso (Employee Health) to fill out worker's compensation eSRO and response	08/27/2021 -08/28/2021	11
11.	Email from Kellie Evans (Employee Health) requesting Claimant to sent 'detailed email about exposure to COVID' at work	08/31/2021	12
12.	COVID exposure 'Incident report' sent to Kellie Evans, clearly indicating that Symptoms started on 8/26/2021	09/2/2021	13
13.	Email from Kellie Evan confirming Reception of "Incident report" on COVID Exposure	09/02/2021	14
14.	TRMC requesting claimant to report to work though he is being devastated by COVID at home	09/03/2021	15-18

15.	Hospitalization 'Progress Notes' confirming Pneumonia due to COVID with acute Hypoxemic respiratory failure, and oxygen Treatment. Also, diagnosis of 'Acute stress Disorder'	09/06/2021	19
16.	Hospitalization's psychiatric consultation note confirming diagnoses of anxiety and depression, and recommending long recovery time	09/06/2021	20
17.	Hospitalization's psychiatric consultation Note confirming diagnoses of anxiety and Depression, and recommending long Recovery time	09/06/2021	21
18.	Medications List		22
19.	Email from Kelci Caruso after Claimant Came in to ask about his Workers' Compensation claim	10/01/2021	23
20.	Claimant's email to Mrs. Norris, HR Director, still requesting information about his Workers' compensation claim	11/07/2021	24
21.	Claimant's fifth email to the HR Director Pleading for any information about his workers' compensation, but still being ignored by everyone at TRMC	11/22/2021	25
22.	After more than three months of being ignored and neglected by the Defendant in regards to his Workers' Compensation claim, Claimant filed his first form 50 with the SC Workers' Compensation Commission	11/29/2021	26
23.	TRMC hired a lawyer in Charleston	01/07/2022	27-29

	(Mr. Howell) who responded to Claimant's Form 50		
24.	In the meantime, Claimant was focusing on his recovery, with his post-hospitalization and post discharge medical follow-ups with his PCP, with regular update to the Defendant	10/27/2021	30-31
25	Few other medical updates received by the Defendant, post hospitalization	9/22/21-1/14/2	32-36
26.	Medical Notice from PCP returning Claimant back to work with some few restrictions which was provided to the Defendant	01/17/2021	37
27.	Claimant's health condition at the time as well as his job requirements as defined by the Defendant was considered		38-39
28.	Claimant's former lawyer even wrote an Email to Mr. Howell (The Defendant's lawyer) specifically requesting when Claimant can return to work?	01/25/2022	40
29.	In the meantime, the 'Acute stress disorder' Diagnosis received while being hospitalized Has progressed into Post-Traumatic Stress Disorders (PTSD), and Claimant was referred By his PCP to a Clinical Psychologist in Columbia for therapy sessions	02/15/2022	41
30.	More PTSD therapy sessions' Notes	02/22/2021- 03/08/2022	42-43
31	After actually driving to work (TRMC) to Resume employment (on 1/26/22) and was not allowed to, Claimant wrote an email to the entire TRMC leadership to plead for his job back	02/25/2022	44

32.	Even the Psychological Clinic in Columbia where Claimant was receiving therapy wrote a Medical Notice recommending his return to Work	03/11/2022	45
33.	The Defendant finally responded to Claimant's Multiple pleads to return to work, by a Termination letter in pure retaliation of filing a form 50 with the SC Workers' Compensation Commission	03/15/2022	46
34.	Following his unlawful employment Termination, Claimant had his former lawyer returned all the items the Defendant (TRMC) Requesting, including keys, ID card, parking tag, etc....	04/05/2022	47
35.	Pay stub showing clearly that Claimant worked On 8/22/21 and on 8/24/21 for 12 hours shift Each day		48

36.	Few checks I was required by TRMC to write, in Order to keep my Health Insurance active, after I Was medically removed from work, following my COVID-19 exposure at work and infection		49-53
37.	Few COVID – 19 related medical bills and co-payments I received and continue to receive, following my hospitalization		54-63
37a.	Few evidence of letter of harassment and stress from Debt collectors working for TRMC		64-65
38	TCCADA nursing job: Hiring date and benefits Enrollment		67
39	First pay stub with TCCADA		68

40	Health threatening medical issues and safety issues both for the claimant and his new patient, related to long-COVID symptoms	06/03/2022	69-70
41.	Resignation letter for health and safety reasons	06/16/2022	71
42.	Acceptance Letter of resignation from TCCADA	06/16/2022	72 -73
43.	New COVID-19 related medical issues/diagnosis	07/14/2022	74-76
44.	Medical update: Long COVID-19 related Inflammation with muscle pain, lumbar pain, and Cervical pain	11/18/2022	77
45.	Latest Medical update: Long COVID related inflammation and generalized body pain, depression, and prediabetes	01/05/2023	78-82
46.	Extract from Claimant's deposition by Mr. Howell	01/07/2022	83
47.	List of employees at TRMC testing positive for COVID-19 during the month of August 2021, 'put manually together by the Defendant'	Mailed on 12/13/2022	84-86
48.	Mr. Howell's prepared Pre-Hearing Brief for the hearing previously scheduled for 12/06/2022	11/23/2022	87-88
49.	EDUCATION MATERIAL on COVID-19 prepared by the Defendant (TRMC)		89-90

50.	TRMC Memo on COVID-19 Updates	08/06/2021	91-93
51.	Mr. David Sutherland Deposition	01/09/2023	94-123
52.	Defendant's letter with Claimant's evaluation Appointment	12/19/2022	124
53.	Dr. Lind's Evaluation Report/Opinion	01/12/2023	125-128
54.	Picture of Claimant's actual DAPS test Answer Sheet for Dr. Lind's evaluation	01/12/2023	129-130

55.	Defendant's letter to Dr. Lind with evaluation questions on the Claimant	12/13/2022	131
56.	FMLA paperwork	09/07/2021	132-139
57.	Claimant's response to Dr. Lind's MMI opinion	02/01/2023	140-143
58.	Dr. John H. Samies's 'expect' letter	12/05/2022	144
59.	Defendant's Three false Narratives	02/01/2023	145-147
60.	The Defendants' "Full Report"		148-149

61	Pain Clinic visit's doctor's notes	01/25/2023	150-152
62	\$25 Medical visit co-payment charges	01/25/2023	153
63.	Long COVID-19 Pain treatment Doctor's notes	02/06/2023	154-155
64.	\$250 Long COVID-19 Pain treatment charges	02/06/2023	156

**By the Defendants:**

<u>APA #</u>	<u>DESCRIPTION</u>	<u>DATES</u>	<u>PAGES</u>
1.	Regional Medical Center - Immunology-Serology	8/16/21 - 8/27/21	1 - 2
2.	COVID-19 Tracing	8/25/21 - 9/23/21	3 - 6
3.	COVID-19 Questionnaire	8/27/21	7 - 9
4.	Roper St. Francis Physician Partners - Dr. James Fayssoux	9/22/21 7/14/22	10 - 30
5.	Serge Wandji's Regional Medical Center - Application Form	2/8/2021	31 - 37
6.	The Regional Medical Center, COVID & Other Updates at RMC, Letter	8/6/21	38 - 40

7.	The Regional Medical Center -- Leave of Absence Letter	9/24/21	41
8.	U.S. Department of Labor Wage and Hour Division	9/24/21	42 - 49
9.	The Regional Medical Center, Letter	3/15/22	50
10.	Dr. James E. Fayssoux Report	11/18/22	51 - 56
11.	Dr. John H. Samies Letter	12/5/2022	57
12.	Dr. John H. Samies - Resume	Undated	58 - 60

13.	Dr. Nicholas A. Lind, Report	1/12/23	61 - 64
-----	------------------------------	---------	---------

14.	Dr. James Fayssoux, Report	1/12/23	65- 75
15.	COVID 19 Questionnaire - Full Report	8/27/21	76 - 78

16.	W-2 Wage and Tax Statement 2021 - The Regional Medical Center	2021	79
17.	Payroll Records -- The Regional Medical Center	3/20/21 - 3/5/22	80 - 104
18.	Tri-County Commission on Alcohol and Drug Abuse - Personnel Records	4/12/22 - 6/16/22	105- 142
19.	W-2 Wage and Tax Statement 2022	2022	143
20.	Academic Transcript from the University Of South Carolina	1/26/23	144 - 146

21.	COVID-19 South Carolina Data	8/1/21 - 8/31/21	147
-----	------------------------------	------------------	-----

22.	COVID-19 Orangeburg County Data	8/1/21 – 8/31/21	148
Exhibit 1	Magistrate's Order in <i>Serge R. Wandji v. Robe Wilkie, Secretary of Veterans Affairs</i>	11/9/20	1—32

#### IV. EVIDENCE OF THE CASE

The Claimant testified on his own behalf before the undersigned Commissioner. The Claimant began working for the Regional Medical Center in Orangeburg as a full-time staff nurse in March 2021, at which time he was already registered in the College of Nursing at the University of South Carolina. He testified that he officially works a minimum of three 12-hour shifts per week but averaged four 12-hour shifts per week. (T. p.18). The Claimant testified that he was responsible for assigning direct care, direct nursing care, and he was also a charge nurse. (T. pp.18--19). He referred to a list of employees at the Regional Medical Center who tested positive for COVID-10 between August 1, 2021, and August 27, 2021. (APA p.84).<sup>2</sup>

According to the Claimant, he went to the Regional Medical Center on August 16, 2021, to take a “COVID test for school purposes,” and the result of that test was negative. (T. p.17, ll.17—19). The Claimant denies that he was symptomatic on August 16, 2021 (T. p.53, ll.9—13), The report of his August 16, 2021, COVID test states:

“Symptomatic as defined by CDC?	Yes
Date of onset (Lab)?	8/16/2021”

(APA pp.2--3; Def. APA pp.1—2; T. p.54, ll.1—6). The August 16, 2021, report further states that “[n]egative results do not preclude SARS-CoV-2 infection and should not be used as the sole basis for

---

<sup>2</sup> The Claimant presented no testimony or other evidence that he was exposed to these persons or the nature of any alleged exposure.

treatment or other patient management decisions. Negative results must be combined with clinical observations, patient history, and epidemiological information.” (APA p.3).

On August 25, 2022, the Claimant received a text message from the hospital stating that all patients in the Behavioral Health Unit were to required to wear masks and stay in their rooms and to that all staff were required to wear N-95 masks and face shields. (APA pp.4-5). He claims that on August 26, 2022, he “started experiencing symptoms; my throat, temperature.” (T. p.21, ll.16—17). On August 27, 2022, he tested positive for COVID-19. (T. p.22). The Claimant sent an email to Kellie Evans at the Regional Medical Center on September 2, 2021, stating that “[i]t wasn’t until Thursday 26, that I started feeling really bad.” (APA p.13).

On September 6, 2021, the Claimant was hospitalized with pneumonia and acute hypoxemic respiratory failure and a “[p]ossible acute stress disorder ... flashbacks with nightmares.” (T. p.23, APA pp.19--20). The Claimant saw a psychiatrist at the hospital and reported “that he is still anxious about how sick he felt before arrival. Says he has “PTSD” from “that feeling.” (T. p.23, APA p.21).

After the Claimant was discharged from the hospital, his primary care physician, Dr. Fayssoux, continued to give him work excuses until January 17, 2022, which he provided to his employer. (T. pp.24—25). According to Dr. Fayssoux’s report dated January 14, 2022, the Claimant reported “[d]oing well and continuing to improve related to his severe COVID-19 infection. Smell has still not completely returned to normal. Taste is still improving. His stamina is still improving. BP has been under good control. Plans to start working for FEMA in March.” (APA p.36, Def. APA pp.19—22). With regard to what Dr. Fayssoux assessed as “[r]eactive depression (situational),” the Claimant’s “symptoms are improving and are not as severe as they were several months ago” but he “would probably benefit from counseling/psychotherapy.” (Def. APA p.20). Dr. Fayssoux further noted that the Claimant had “[r]ecovered” from COVID-19 but was [s]till having PTSD symptoms related to his illness ... He cannot to work [sic] yet in his previous capacity 12 hours a day but has been cleared to return for administrative work on an 8 hour a day schedule.” (Def. APA p.20). The Claimant testified that this was only “some slight restriction” and he reached out to the Regional Medical Center about returning to work. (T. p.25).

On March 15, 2022, the Regional Medical Center informed the Claimant that the organization did not have a part-time administrative position available and that because his leave was exhausted, the employment would end effective March 15, 2022. (T. p.26, APA p.46). The Claimant's maximum period of leave was actually exhausted on December 21, 2021. (Def. APA p.50). He admits that he started a new job at the Tri-County Commission of Alcohol and Drug Abuse as a staff nurse on May 12, 2022. (T. pp.27—28; Def. APA p.111). On his application for employment with the Tri-County Commission on Alcohol and Drug Abuse, he listed his "Current or Most Recent Employer" as "Graduate Research Assistant at the University of South Carolina in Columbia." (Def. APA p.108).

The Claimant was asked whether he completed a medical questionnaire when he applied for employment with the Tri-County Commission on Alcohol and Drug Abuse. The Claimant testified, "I don't remember." (T. p.89, ll.18—20). However, the record clearly reveals that when the Claimant applied for work at the Tri-County Commission on Alcohol and Drug Abuse, he denied having any medical problems or "Chronic Ailment." (Def. APA p.126). He specifically denied having any chest pain or shortness of breath, chronic cough, depression or excessive worry, fatigue, frequent trouble sleeping, nervous trouble of any sort, rheumatism or arthritis, swollen or painful joints, or any other conditions. (Def. APA p.129). At his required health examination on April 21, 2022, the Claimant was found to have "Ø significant illnesses or injuries" and a "normal PE." (Def. APA pp.130—131). The Claimant claims that he does not "remember" this physical exam or medical questionnaire. (T. p.91).

The Claimant admits that he worked 12-hour shifts for the Tri-County Commission on Alcohol and Drug Abuse (T. p.92, ll.10—12) but he denies remembering what his hourly wage was there (T. p.92, ll.13—16). He claims that when he started working and "getting exposed to ambulance coming in with substance abuse patient, and that's what was triggering my -- my acute stress disorder ... I also started realizing how it was impossible for me to work as a nurse with all the Long COVID-related disease symptoms I had." (T. p.28, ll. 19—25). He claims that he "was confusing giving the wrong medication to the patient" and that he could not do his job as a nurse with loss of smell and "brain fatigue." (T. p.29). At that point, he returned to Dr. Fayssoux.

However, according to Dr. Fayssoux's report dated June 3, 2022,

"Patient comes back in today for routine follow-up. He has been doing well since his last visit. He is still living in Columbia, South Carolina. He currently has an administrative job in an inpatient psychiatric treatment facility for teenagers with drug and alcohol problems. Currently working at night. He has some mild unpredictable episodes of palpitations but has not had any symptoms that limit his busy schedule or exercise routine. He's had some right hamstring and left calf discomfort which he responded to changing his exercise regimen. He is also used [sic] a topical anti-inflammatory medication successfully. His sense of taste is largely returned since recovering from COVID 19. He has also had some mild though gradual improvement in his anosmia. He is no longer short of breath with his usual exercise regimen. He is still talking to a counselor on a regular basis primarily related issues that occurred after he recovered from COVID 19." (Def. APA p.22).

Dr. Fayssoux further stated that the Claimant's COVID-19 "long term recovery is actually gone [sic] quite well ... He still has some symptoms that are suggestive of mild PTSD but that "these symptoms are improving and are not as severe as they were several months ago." Dr. Fayssoux did not issue any work restrictions for the Claimant at the June 3, 2022, visit, nor did he recommend any medical treatment to a reasonable degree of medical certainty.

On June 16, 2022, the Claimant resigned his position at the Tri-County Commission on Alcohol and Drug Abuse for "personal health and personal safety reasons." (Def. APA pp.105—106). At an appointment with Dr. Fayssoux on July 14, 2022, the Claimant reported that he was "in the process of changing jobs so that he can work during the day. He felt like some of his mild cognitive issues have been more problematic while working at night. He still feels that he is unable to work 12 hour shifts

effectively.” (Def. APA p.26). Again, Dr. Fayssoux did not issue any work restrictions or recommend any specific treatment.

According to the Claimant, he currently suffers from generalized fatigue, problems remembering and recalling information, forgetfulness, loss of smell, PTSD, acute stress disorder, inflammation, lower and upper body pain, anxiety, and depression. (T. pp.31-32). On November 18, 2022, Dr. Fayssoux ordered MRI scans of the Claimant’s lumbar and cervical spine (APA p.76) after the Claimant complained of a “3-week history of worsening lumbar back pain ... that radiates down into his left buttock and is associated with numbness along the left posterolateral thigh, left lateral leg, and to a certain degree on the left lateral foot” and “discomfort in his right neck, right trapezius, and pain down into the right lateral and posterior arm.” (Def. APA p.51). Dr. Fayssoux stated that it was “[u]nclear why he would have coincident neck and low back pain.” (Def. APA p.54). Dr. Fayssoux did not relate the Claimant’s back or neck pain to his prior COVID-19 infection,<sup>3</sup> did not address work restrictions, and did not recommend any medical treatment to a reasonable degree of medical certainty on November 18, 2022. Instead, Dr. Fayssoux stated that the Claimant had “[l]argely recovered” from COVID-19 “with the exception of a persistent problem with anosmia” and that the Claimant’s “[r]eactive depression (situational)” was “[n]ot currently problematic.” (Def. APA p.54). When asked at the February 15, 2023, hearing if he was honest with Dr. Fayssoux on November 18, 2022, the Claimant testified, “I don’t remember.” (T. p.87, ll.9—14).

Neither the results of the MRI scans, nor records of his neurosurgical evaluation were submitted into evidence; however, the record does contain the report of Dr. Matthew Drakely dated January 14, 2023. Dr. Drakely’s assessment was cervical and lumbar radiculopathy with acute lumbar radiculitis, though he acknowledged that he had not reviewed the Claimant’s MRI scans. Dr. Drakely recommended

---

<sup>3</sup> The Claimant’s Form 50 dated September 9, 2022, does not claim any injury to his neck or back. In addition, Dr. Fayssoux’s records reveal the Claimant has a pre-existing history of back problems with radicular pain. (Def. APA 14)

an L5-S1 epidural steroid injection but did not address either causation or work restrictions and gave no opinion regarding medical treatment (or otherwise) to a reasonable degree of medical certainty.

The record also contains the report of the Claimant's annual physical examination with Dr. Fayssoux dated January 5, 2023. Reportedly, the Claimant's chief complaint at that time was "numbness in L leg." (APA p.77). Dr. Fayssoux's assessments on that date included "[l]umbar back pain with radiculopathy affecting left lower extremity," "[c]ervical pain (neck)," "[e]ssential hypertension," "[v]itamin B12 deficiency," "[v]itamin D deficiency," "[r]eactive depression (situational)," "[p]rediabetes," and "[l]ong COVID." With respect to the Claimant's depression, Dr. Fayssoux noted that his "depression objectively does not seem any worse than previously noted" and that the Claimant was not taking any antidepressant medications, though he was in active counseling.<sup>4</sup> Dr. Fayssoux did not issue any work restrictions for depression (or any other condition) and did not recommend any treatment for depression to a reasonable degree of medical certainty. Likewise, Dr. Fayssoux did not issue any work restrictions or recommend any treatment for "[l]ong COVID" to a reasonable degree of medical certainty. Dr. Fayssoux did not relate the Claimant's lumbar pain, radiculopathy, cervical pain, hypertension, vitamin deficiencies, or prediabetes to the Claimant's prior COVID-19 infection. (APA pp.77—81).

On cross-examination, the Claimant was asked about his February 8, 2021, application for employment with the Regional Medical Center. (Def. APA #5). On that application, the Claimant was asked "[h]ave you been terminated from a job for cause or forced resignation?" (Def. APA p.31). The Claimant answered, "[n]o." When asked at the hearing whether this answer was truthful, the Claimant testified, "I don't remember. Objection ... I don't remember. That's my answer." (T. p.40, ll. 15—20).

The Claimant was then asked if he had ever worked for the Department of Veterans Affairs. The Claimant testified, "I don't remember ... If it's in my resume, then it is true because I wrote it—but I don't—I don't recall." (T. p.41, ll.1—9). When asked if he was terminated for cause by the Department

---

<sup>4</sup> The record reflects that the Claimant has not seen a counselor since March 2022. The Claimant submitted no record or opinion, stated to a reasonable degree of medical certainty, that he requires treatment for PTSD.

of Veterans Affairs, the Claimant testified, "... you have no evidence for that. I don't know." (T. p.41, ll. 15—16).

The Defendants then marked as Exhibit 1 the Order of United States Magistrate Judge Mary Gordon Baker in the case of Serge R. Wandji v. Robert Wilkie, Secretary of Veterans Affairs, dated November 9, 2020, which was later affirmed by the Fourth Circuit Court of Appeals on June 24, 2021. According to that Order, the Claimant's employment with the Department of Veterans Affairs was terminated on March 14, 2018, because of the Claimant's "inappropriate conduct and lack of candor," as well as "multiple no-call, no-show incidents" and "aggressive behavior." The Claimant was asked again whether he was truthful on his application for employment with the Regional Medical Center when he denied having been terminated from a job with cause" – the Claimant claimed that "[t]hey didn't ask me anything about a job at the VA."

The Claimant admits that he was employed by the Regional Medical Center as a nurse in the Behavioral Health Unit. (T. p.46, ll.22-24). He admits that he did not provide direct patient care to COVID patients in the ICU. (T. p.47, l.24—p.48, l.1). He admits that he did not provide direct patient care to COVID patients in the emergency room. (T. p.48, ll.2—4). Instead, he provided care for psychiatric patients, all of whom tested negative for COVID prior to admission.

The Claimant denied having any knowledge of the visitation policy for the Behavioral Health Unit. (T. p.51, l.22; p.52, ll.5—10). The Claimant denied having any knowledge of the Regional Medical Center's policies for testing patients prior to admission to the Behavioral Health Unit and denied having any knowledge of the requirement that he wear protective equipment, including a N-95 mask, at work. (T.p.49, ll.14—25). However, the record contains documentation of the Regional Medical Center's policies in this regard, including a memorandum dated August 6, 2021, addressed to "All Employees" stating that N-95 masks were required to be worn by anyone with contact with patients. (Def. APA 6). The Claimant alleges that he did not receive this memorandum (T. p.50, ll.9—14), which was included in his own APA submissions (#50, pp.91—93), and claims that he had a "regular" mask (T. p.50, l.25).

The Claimant testified that he does not remember what classes he was taking at the University of South Carolina in August 2021. (T. p.57). Likewise, he does not remember what dates he worked in August 2021. (T. p.58). He also claims to not remember that COVID-19 infections were rising in Orangeburg County and throughout South Carolina in August 2021. (T. p.60). He claims that he does not recall leaving his house at any time between August 17, 2021, and August 22, 2021. (T. p.58—62). He also does not recall speaking to anyone at Employee Health to schedule a testing appointment on August 27, 2022. (T. p.62).

The Claimant admits that he did not work at the Regional Medical Center on August 27, 2021. (T. p.61, ll.1—9). In addition, he admits that there was “no injury” on August 27, 2021. (T. p.64, l.25—p.65, l.4). The Claimant was previously asked at his deposition when he claims to have been infected with COVID-19 and the Claimant responded,

“[n]obody except God can tell exactly what day a person was infected. Do you understand? No doctor, no nurse, no lawyer, no human being can tell exactly what date, what time somebody was infected with COVID. Do you understand?” (APA p.82).

At the hearing, the Claimant again admitted that he has no evidence as to the date or time of his exposure to COVID-19:

“Nobody can answer that question ... You are asking a question, with all due respect, that’s very stupid.” (T. p.66, l.15—p.67, l.14).<sup>5</sup>

Kelci Caruso testified on behalf of the Defendants. Ms. Caruso has an RN and BSN degree and was employed as the Employee Health nurse at the Regional Medical Center in August 2021. (T. p.96).

---

<sup>5</sup> The Claimant was ultimately instructed to “answer the question that’s asked of [him]” because he was “evading the questions.” (T. p.68, ll.16—29).

Her office was responsible for testing employees for COVID during that time. (T. p.96). Ms. Caruso testified that in August 2021, the Regional Medical Center offered employees COVID testing if they were symptomatic or had an exposure, but free tests were not offered for personal reasons (such as travel or school). (T. p.97). In addition, Ms. Caruso testified that in August 2021, employees in clinical areas were required to wear N-95 masks and were required to wear a surgical mask in other areas of the hospital. (T. p.97, ll.11—14). She confirmed that a memorandum was sent to all employees reminding them of these protocols on August 6, 2021. (T. p.97, ll.18—21). Therefore, Ms. Caruso opined that an employee's risk of exposure to COVID at the hospital was "low," as long as everyone was wearing their protective equipment. (T. p.97, l.25—p.98, l.1).

Ms. Caruso testified that the Claimant presented to Employee Health on August 16, 2021. (T. p.98, ll.23—25). For more than a year prior, the Regional Medical Center's policy was that employees who were symptomatic or needed testing, pre-registration was required. (T. p.98). However, the Claimant did not schedule an appointment or register for testing on August 16, 2021 – he "just showed up." (T. p.97, ll.1-3). Ms. Caruso explained that,

"...shortly after 11:00, I came back to my office after testing other employees outside of the same-day surgery entrance that had an appointment ... he was sitting in Kellie's portion of the office ... She informed me that **he needed to be tested for COVID due to an exposure**, and I let him know that our next testing was at 2:00, and he said that he could not come back at 2:00, because he was getting an admission, and he was going to stay in the office until we tested him. So I told him that it was going to be a few minutes, because like I said, I had to process those specimens, and we had asked him to step outside ... He should have waited outside for us. We actually have a note on our door that stated if you needed to be tested, that we ask that you not come in our office." (T. p.99, l.12—p.100, l.14) (emphasis added).

Ms. Caruso testified that the Claimant was “[v]ery demanding. He wasn’t going to leave until we, you know, did his COVID test” but he did not tell her that he needed the test for school. (T. p.100, ll. 15—23). In particular, Ms. Caruso testified that if the Claimant had told her that he needed a COVID test for school, she would have recommended other areas that he could go to be tested because she “did not test for any school purposes, travel purposes, surgery purposes, or anything like that. It was only for exposure or symptoms.” (T. p.100, l.24—p.101, l.5).

Ms. Caruso testified that her next interaction with the Claimant was on August 27, 2021, when she tested him for COVID a second time. (T. p.101). His results were positive on that date. Ms. Caruso testified that the Claimant told her on that day that his symptoms had begun four to five days before and he settled on Monday, August 23<sup>rd</sup> as the date. (T. p.101). According to Ms. Caruso, if the Claimant’s symptoms began on August 23, 2012, as the Claimant stated to her, then he could have contagious up to two days prior, including on Sunday, August 22<sup>nd</sup> when the Claimant was working, and she was “concerned that he possibly could have brought COVID into the hospital.” (T. p.102, ll.23—25). On cross-examination, Ms. Caruso confirmed that her “concern” was based on guidelines published by the CDC. (T. p.105).

Kellie Evans also testified on behalf of the Defendants. She is the administrative assistant in the Employee Health Services office at the Regional Medical Center. (T. p.112). Ms. Evans testified that on August 16, 2021, the Claimant came into her office to request a COVID test because “he had been exposed.” (T. p.113, ll.16—16). Upon questioning from the undersigned, Ms. Evans clarified that “he was exposed but not having symptoms.” (T. p.116, ll.1—2). She further testified that he did not claim to need a COVID test “for school.” (T. p.113, l.20). According to Ms. Evans, if the Claimant had informed her that he needed a COVID test “for school,” he would not have been given a free test at the Regional Medical Center. (T. p.126).

In addition, Ms. Evans testified that when she spoke to the Claimant on August 27, 2021, to schedule his second COVID test, the Claimant told her that his symptoms began on August 23, 2021. (T. p.114, ll.9—10). The Claimant later called back and stated he started feeling bad on August 25<sup>th</sup>. The

Claimant changed his history yet again in an email on September 9<sup>th</sup>, at which time he claimed his symptoms started on August 26, 2021. (T. p.114). Ms. Evans and Ms. Caruso documented their conversations with the Claimant contemporaneously. (Def. APA 15, pp.76—78).

Teresa Noe also testified on behalf of the Defendants. She is a nurse manager on the Behavioral Health Unit at the Regional Medical Center and was the Claimant's supervisor when he was employed there. (T. p.128). Ms. Noe explained that the Behavioral Health Unit was a "locked" unit (meaning that you must have a badge to go in or out) that treated geriatric behavioral health patients. (T. p.128). Patients in the Behavioral Health Unit were required to have a negative COVID test prior to admission. (T. p.129). In August 2021, visitors were only allowed on Saturdays and Sundays from 2:00 to 4:00. (T. p.129). All staff on the unit were required to wear N-95 masks and the Claimant would not have been allowed on the unit without one. (T. pp.129--130). In his position, the Claimant did not provide care to any COVID patients. (T. p.130). According to Ms. Noe, the Claimant "would have had a less chance of catching COVID on the unit versus in the public." (T. p.130, ll.13—14).

On cross-examination, the Claimant questioned Ms. Noe about the discharge instructions he received from the Regional Medical Center. According to the Claimant's APA pages 88 and 89, the

"virus that causes COVID-19 mainly spreads from person to person ... Doctors also think it is possible to get infected if you touch a surface that has the virus on it and then touch your mouth, nose or eyes ... A person can be infected, and spread the virus to others, even without having symptoms ... Symptoms usually start 4 or 5 days after a person is infected with the virus. But in some people, it can take up to 2 weeks for symptoms to appear."

Dr. John H. Samies, an infectious disease specialist at Palmetto Infectious Disease Physicians, reviewed the Claimant's records, including his COVID-19 Questionnaire and the testing log for

Behavioral Health Unit employees. (Def. APA p.57). According to Dr. Samies, while hospital policy required the use of protective equipment,

“[o]f more importance to this case is [the Claimant’s] self reported exposure and request for testing on 8/16/2001. This was negative. The details of this exposure are unclear. Certainly a positive test on 8/27 and symptoms beginning on 8/23 as he initially reported or on 8/25 or 8/26 (which he subsequently stated) would be consistent with exposure on or near the 8/16 date. Generally COVID incubation is 2 – 14 days with onset for most being about 5 – 10 days from exposure. It is highly unlikely that 8/22 was the date of exposure if his symptoms began on 8/23 and not possible that 8/24 was the date of exposure for onset 8/23. The exposure of 8/22 with onset on 8/25 is unlikely being at the shortest end of incubation period and the exposure of 8/24 with onset of 8/25 is highly unlikely being shorter than the incubation period of the virus.

The recanting of the 8/16 exposure by the claimant and the confusion about date of onset of symptoms puts doubt on all claimant statements in this case. Since the reporting by Employee Health of RMC appears to be a real time event, it would seem that the timing of onset of symptoms should have been quite clear to the claimant.

**It is my opinion that a link to employment exposure here is unlikely based on the information presented to me.”** (Def. APA p.57) (emphasis added).

No other infectious disease experts gave an opinion in this claim.

The report of psychologist Dr. Nicholas Lind of Post Trauma Resources, LLC, dated January 12, 2023, is also contained in the record. (Def. APA 13). The Claimant was referred by the Defendants to Dr. Lind for evaluation of potential emotional impairment he claims to have suffered as a result of his prior COVID infection. The Claimant reportedly “invalidated the measures pertaining to potential posttraumatic stress symptoms because of overreporting and endorsement of unlikely symptoms.” In

addition, the Claimant was administered the MMPI-3 but the result was “invalid” and “uninterpretable” because he only “completed 97 of the 335 items.” (Def. APA p.63). The Claimant was also administered the Detailed Assessment of Posttraumatic Stress, “a measure of the impact of potentially traumatic events” and was “determined to have endorsements inconsistent with a legitimate posttraumatic stress reaction.” (Def. APA p.63). According to Dr. Lind, the Claimant has reached maximum medical improvement “for any psychological distress he experienced secondary to his COVID diagnosis.” (Def. APA p.64). In addition, Dr. Lind opined that “[t]here is no credible evidence of any ongoing psychological distress directly associated with his COVID diagnosis ... there was no evidence of memory or attention dysfunction ...” (Def. APA p.64). The Claimant prepared a written response to Dr. Lind’s report. (APA #57, pp.141-143).

#### V. FINDINGS OF FACT

1. The undersigned spent a significant amount of time advising the Claimant on the complexity of this matter and potential legal challenges in satisfying his burden of proving a compensable claim. He was also advised of his right to retain counsel and the potential repercussions of proceeding without the assistance of counsel. In spite of those admonishments, Claimant elected to proceed *Pro Se* in this matter.
2. The Claimant filed a Form 50 claiming an “injury” or “illness” and alleging that on August 27, 2021, his “whole body” was infected with COVID-19. I find that this pleading triggers the requirements of S.C. Code Ann. § 42-1-160 and I find that COVID-19 must be evaluated as a “disease” under that statute. As such, the Claimant’s claim must fail, as I find he did not satisfy his burden of proving it resulted “naturally or unavoidably” from an accident at work by a preponderance of the evidence. There is no medical evidence, as defined in the Act, in the record to satisfy this requirement or to otherwise support a finding that the Claimant’s employment placed him at an increased risk of exposure to COVID-19.

In addition, based on the greater weight of the lay and circumstantial evidence presented, the Claimant's COVID-19 infection did not result "naturally or unavoidably" from an accident arising out of or in the course of his employment, as alleged. The Claimant admits that he did not work at the Regional Medical Center on August 27, 2021, and that there was "no injury" on August 27, 2021. (T. p.61, ll.1—9; T. p.64, l.25—p.65, l.4). The Claimant did not present any evidence that he worked with, or provided care for, any COVID positive individuals at any time. Instead, the greater weight of the evidence, including the testimony of his supervisor, Ms. Teresa Noe, reveals that the Claimant and all staff on the "locked" unit where the Claimant worked were required to wear N-95 masks (T. pp.129--130); all patients in the unit were required to test negative prior to admission (T. p.129); the Claimant did not provide care to any COVID patients at any time (T. p.130); and the Claimant "would have had a less chance of catching COVID on the unit versus in the public." (T. p.130, ll.13—14). Even the Claimant testified that "[n]obody except God" knows when or how he was exposed to, or infected with, COVI-19. (APA p.82).

The greater weight of the evidence further reveals that the Claimant gave inconsistent accounts of when he believes he was first exposed to COVID-19 (August 16, 2021, later recanted) and when his symptoms began (August 23<sup>rd</sup> or August 25<sup>th</sup> or August 26<sup>th</sup>) according to the persuasive testimony of Ms. Kelci Caruso and Ms. Kellie Evans. (T. pp.99-101; T. pp. 113—114; APA p.148; Def. APA pp.7, 57). Dr. John H. Samies, the only infectious disease expert to address this claim, stated that "[t]he recanting of the 8/16 exposure by the claimant and the confusion about the date of onset of symptoms puts doubt on all claimant statements in this case ... the timing of the onset of symptoms should have been quite clear to the claimant." Dr. Samies ultimately opined "that a link to employment exposure here is unlikely," negating the probability of a causal connection between the Claimant's COVID-19 infection and his employment. (Def. APA p.57). While the Claimant's personal physician, Dr. Fayssoux (an internal medicine doctor), stated that the Claimant "contracted Covid-19 at his place of employment" (APA pp.35, 37), Dr. Fayssoux (unlike Dr. Samies) gave no basis for this opinion, nor does explain when he believes the Claimant was exposed or the nature of any such exposure, does not

explain how he excluded the possibility of exposure outside of work during a pandemic, and he does not reconcile the inconsistencies in the Claimant's timeline. Therefore, after carefully considering and weighing all of the evidence presented, I find that the Claimant did not meet his burden of proving by a preponderance of the evidence that his COVID-19 infection was the natural or unavoidable result of any alleged accident arising out of or in the course of his employment on or about August 27, 2022.

3. While the Claimant did not file a claim alleging an occupational disease, and while I believe the Claimant's pleading limits him to a claim under S.C. Code Ann. § 42-1-160, I have also analyzed the claim under S.C. Code Ann. § 42-11-10 analysis out of an abundance of caution. The Claimant's claim must also fail under this analysis. To satisfy his burden of proving an occupational disease under § 42-11-10 by a preponderance of the evidence, the Claimant must not only prove that his COVID infection was "a direct result of continuous exposure to the normal working conditions" of his employment, but the Claimant must also prove that he contracted COVID due to "hazards in excess to those ordinarily incident to employment" and "peculiar to the occupation in which he was engaged." The Claimant has presented no competent evidence to support such findings.

The record contains no opinion of any person, lay or expert, that the Claimant's employment subjected him to hazards in excess to those ordinarily incident to employment, nor any opinion that COVID-19 was peculiar to the Claimant's occupation. Instead, the record reveals that COVID-19 was contracted by at least 123,842 South Carolinians during the period from August 1, 2021, through August 31, 2021, alone -- including at least 1,869 persons during this period in Orangeburg County. (Def. APA pp.147---148). The Claimant's supervisor, nurse manager Teresa Noe (a nurse manager), testified without objection that the Claimant "would have had a less chance of catching COVID on the unit versus in the public" because of the stringent testing protocols and the personal protective equipment, including N-95 masks, required in the Claimant's position as a nurse in the Behavioral Health Unit. (T. p.130, ll.13---14). In addition, Dr. Samies, an infectious disease specialist, opined "that a link to employment exposure here is unlikely," which does not support a finding that the

Claimant's COVID-19 infection was "a direct result of continuous exposure to the normal working conditions" of the Claimant's employment. (Def. APA p.57).

Furthermore, the claim fails consistent with the exceptions listed in S.C. Code Ann. § 42-11-10 (B) (3) & (4). Clearly, COVID-19 is a contagious disease. However, the Claimant presented no persuasive evidence that his employment as a nurse in the Behavioral Health Unit placed him at an increased risk of exposure to COVID-19 over and above his risk of exposure outside of his employment. Relevant to this risk analysis is the fact that not only was the Claimant also a student at the University of South Carolina at the time in question, but his employment required him to wear an N-95 mask at all times in clinical areas and he worked in a locked unit where patients were required to test negative for COVID prior to admission. Importantly, the only witness to assess the Claimant's relative risk, Ms. Noe (a nurse manager), testified without objection that the Claimant "would have had a less chance of catching COVID on the unit versus in the public." (T. p.130, ll.13—14). Therefore, COVID-19 was not "peculiar" to the Claimant's occupation and the disease was not directly caused by, especially incident to, or the natural consequence of his work based upon the greater weight of the evidence in the record, including the testimony of Ms. Noe and the opinion of Dr. Samies.

## VI. CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-1-160, the Claimant is not entitled to any medical or compensation benefits under the South Carolina Workers' Compensation Act because the greater weight of the evidence indicates that his alleged injuries were not caused naturally or unavoidably by any accident on or about August 27, 2022, and his alleged injuries did not otherwise arise out of or in the course of his employment.
2. Pursuant to S.C. Code Ann. § 42-11-10, the Claimant is not entitled to any medical or compensation benefits under the Workers' Compensation Act because he did not file a claim for an occupational disease and because the greater weight of the evidence indicates the Claimant's employment did not subject him to hazards in excess to those ordinarily incident to employment, that COVID-19 was

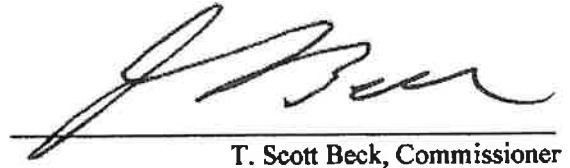
peculiar to the Claimant's occupation, or that the disease was either directly caused by, especially incident to, or the natural consequence of the Claimant's work.

**ORDER**

IT IS, THEREFORE, HEREBY ORDERED that the Claimant is not entitled to, and the Defendants are not responsible for, any medical or compensation benefits under the South Carolina Workers' Compensation Act for any alleged accident, injury, or occupational disease on or about August 27, 2021.

**AND SO IT IS ORDERED.**

5/25/23  
Columbia, SC

  
T. Scott Beck, Commissioner

Order served via USPS & Email

Serge Wandji  
PO Box 523  
Columbia, SC 29202  
sergewandji@gmail.com

Roy A. Howell, III Esquire  
Trask & Howell, LLC  
PO Box 2167  
Mt. Pleasant, SC 29465  
rhowell@trask-howell.com

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

***By Shawnee DeBruhl on May 31, 2023***

**EXHIBIT 7**

**MOTION TO STRIKE DATED OCTOBER 31, 2024**

**BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
APPELLATE PANEL**

Serge R. Wandji,	)	W.C.C. FILE NO. 2118696
Claimant/Appellant,	)	
	)	
v.	)	<b>MOTION TO STRIKE</b>
	)	
The Regional Medical Center of	)	
Orangeburg,	)	
Employer, and	)	
Palmetto Hospital Trust,	)	
Carrier,	)	
Respondents.	)	
_____	)	

TO THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND SERGE R. WANDJI, *PRO SE* CLAIMANT:

PLEASE TAKE NOTICE that the Regional Medical Center of Orangeburg and the Palmetto Hospital Trust hereby move before the South Carolina Workers' Compensation Commission pursuant to S.C. Code Reg. 67-215 for an order STRIKING the Claimant's Reply filed on October 23, 2024, based upon the following:

1. The Workers' Compensation Commission finally decided the above-referenced claim by Decision and Order filed on March 8, 2024. The Claimant did not file a Motion to Reconsider within five days, pursuant to S.C. Code Reg. 67-215(B), and he did not file any appeal to the Court of Appeals within 30 days, as required by S.C. Code Ann. § 42-17-60. Therefore, the March 8, 2024, Decision and Order is "conclusive and binding" and not subject to further review by the Commission or the appellate courts.
2. Seven months after the Commission issued its final Decision and Order in this claim, the Claimant filed an untimely "Motion to reopen case or request for modification based on

extraordinary circumstances,” which attempted to improperly re-argue the merits of his claim in direct contravention of S.C. Code Reg. 67-215(B).

3. The Respondents timely filed and served a Return to the Claimant’s Motion on October 11, 2024. *See* S.C. Code Reg. 67-215(F) (imposing a 10-day deadline for a memorandum in opposition to a motion) and S.C. Code Reg. 67-215(E)(1) (stating that service is deemed complete upon mailing).
4. On October 23, 2024 – 12 days after the Respondents’ Return was served – the Claimant filed a Reply; however, S.C. Code Reg. 67-612(F) clearly states that after a memorandum in opposition is filed, “no further memoranda are allowed.” Therefore, the Respondents respectfully contend that the Commission should refuse to accept for filing the Claimant’s untimely and improper Reply (and improper exhibits attached thereto), pursuant to the plain terms of S.C. Code Reg. 67-612.
5. In addition, the Claimant’s untimely and improper Reply not only attempts to relitigate the merits of his claim in contravention of S.C. Code Reg. 67-215(B), but also improperly and prejudicially quotes extensively from a deposition transcript that is not part of the record in this claim and which would not have been admissible even if it had been timely presented in accordance with S.C. Code Reg. 67-612. The Claimant has even attached portions of this transcript as an “exhibit” to his Reply. The Respondents respectfully request that if the Commission chooses to accept the Claimant’s Reply for filing, the Commission should strike any and all references to this deposition testimony not in evidence, including citations, quotations, and deposition transcript itself.
6. The deposition at issue was taken by the Claimant on September 17, 2024, – 19 months after the record closed in this workers’ compensation claim – ostensibly for the purpose of

discovery in support of civil litigation pending in the Orangeburg County Court of Common Pleas. While the Claimant did take the deposition of the Regional Medical Center's CEO in the course of his workers' compensation claim, he chose not to schedule the deposition of Dr. Samies in his workers' compensation claim at any time, and he did not seek to postpone his workers' compensation hearing on February 16, 2023, for this, or any other, purpose.

Therefore, pursuant to S.C. Code Reg. 67-612(J) and Reg. 67-613(A), any attempt to conduct additional depositions in a closed workers' compensation claim is wholly improper and any and all references to such improper discovery contained in the Claimant's Reply (and exhibits thereto) should be stricken by the Commission.

7. Moreover, both S.C. Code Ann. § 1-23-320(C) and S.C. Code Ann. § 42-3-160 require that the Claimant give notice of a deposition in accordance with the Rules of Civil Procedure, which specifically mandates that the Claimant "shall give ten (10) days notice in writing to every other party." *See* Rule 30(b)(1), S.C.R.C.P.. Neither the Respondent, Palmetto Hospital Trust, nor the undersigned counsel for the Respondents (the only counsel of record for the Palmetto Hospital Trust and the Regional Medical Center in the workers' compensation claim) were given any notice of the September 17, 2024, deposition of Dr. Samies. This fact alone should render any testimony elicited at this deposition inadmissible in his workers' compensation claim and necessitates that any and all references to such improper discovery contained in the Claimant's Reply (and exhibits thereto) be stricken from the Commission's file.

8. Additionally, the September 17, 2024, deposition was apparently not noticed for use as evidence in any trial or hearing and certainly was not noticed for use as evidence in a closed workers' compensation claim. However, the Rules of Civil Procedure, S.C. Code Ann. § 1-


23-320, and S.C. Code Ann. § 42-3-160 clearly require that “[t]he notice shall specify that the purpose of the deposition is for evidence at a trial or hearing.” See Rule 30(i), S.C.R.C.P. Accordingly, any and all references to such improper discovery contained in the Claimant’s Reply (and exhibits thereto) should be stricken by the Commission.

9. In addition, if the Commission were to allow the Claimant to now introduce testimony from a discovery deposition taken in a civil action 19 months after his workers’ compensation hearing without proper notice to the Respondents, in contravention of all applicable statutes, rules, and regulations, the Respondents’ constitutional right to due process would be irredeemably violated. The constitutional requirements of due process clearly afford the Respondents the right to notice, and the opportunity cross-examine all witnesses, including Dr. Samies, should his untimely testimony be deemed admissible. See S.C. Const. Art. 1, § 22, Stono River Env’tl. Protection Ass’n v. S.C. Dep’t Health and Env’tl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991).

**THEREFORE**, any and all references to the September 17, 2024, deposition, including the exhibited portions of the transcript itself, should be stricken from the Commission’s file. In the alternative, the Commission should reject the Claimant’s Reply in its entirety, as it is untimely and improper under S.C. Code Reg. 67-612.

**WE SO MOVE.**

Respectfully submitted,



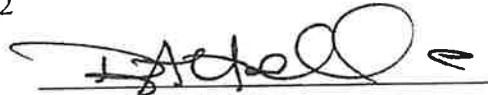
Roy A. Howell, III  
Trask & Howell, LLC  
Attorneys for the Respondents

October 31, 2024  
Mount Pleasant, SC

CERTIFICATE OF SERVICE

I hereby certify that on this 31 day of October 2024, I have caused a true and correct copy of the Motion to Strike to be mailed first-class mail prepaid postage and certified mail prepaid postage to the Claimant addressed as follows:

Serge Wandji  
P.O. Box 523  
Columbia, SC 29202

  
\_\_\_\_\_  
Roy A. Howell, III

3842/418\motion

**EXHIBIT 8**  
**ORDER DATED DECEMBER 23, 2024**

BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 2118696

Serge R. Wandji, )  
)  
Claimant, )  
vs. )  
)  
The Regional Medical Center of )  
Orangeburg, q )  
)  
Employer, ) **MOTION ORDER**  
)  
Palmetto Hospital Trust, )  
)  
Carrier, )  
)  
\_\_\_\_\_ )

A Motion regarding the following request has been received by  
Defendant attorney Rob A. Howell, III

Motion to Strike Claimant's Reply filed October 23, 2024.

The following disposition has been made:  GRANTED  Denied

  
\_\_\_\_\_  
T. Scott Beck, Commissioner

Order served via USPS:

Serge Wandji 579 Folly Road PO Box 12112 Charleston, SC 29422	Roy A Howell, III, Esquire Trask & Howell PO Box 2167 Mt. Pleasant, SC 29465
--	---

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Shawnee Radcliff on December 23, 2024

RECEIVED

Jan 16 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

The Honorable T. Scott Beck, Commissioner

Appellate Case No. 2024-001935

S.C. W.C.C. File No. 2118696

Serge Wandji, Claimant,.....Appellant,

v.

The Regional Medical Center, Employer,  
and Antum Risk, Carrier,..... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that the Respondents served the above-named Appellant, Serge Wandji, with a copy of the attached MOTION TO STRIKE this 16th day of January 2025, by emailing and depositing a copy of the same in the United States Mail, first class postage prepaid, addressed as follows:

Serge Wandji  
579 Folly Road P.O. Box 12112  
Charleston, SC 29422  
*sergewandji@gmail.com*

January 16, 2025



Roy A. Howell, III, S.C. Bar #11888  
Kirsten Leslie Barr, SC Bar #15525  
Trask & Howell, L.L.C.  
P.O. Box 2167  
Mt. Pleasant, SC 29465  
(843) 881-4228  
Attorneys for the Respondents

TRASK  
HOWELL  
WORKERS' COMPENSATION DEFENSE

*Reply to*  
Roy A. Howell, III  
(843) 881-2236  
rhowell@trask-howell.com

January 16, 2025

*Via Regular Mail and Email-ctappfilings@sccourts.org*

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

**RECEIVED**

**Jan 16 2025**

**SC Court of Appeals**

Re: Serge Wandji v. The Regional Medical Center  
W.C.C. File No.: 2118696  
**Appellate Case No. 2024-001935**  
Carrier File No.: WC2021098080  
Date of Accident: August 27, 2021

Dear Ms. Kitchings:

Enclosed for filing, please find a Motion to Strike, along with our Proof of Service serving the Appellant with the same and the appropriate \$50.00 filing fee. As always, thank you for your time and consideration of this matter.

Yours very truly,



Roy A. Howell, III

RAHIII/mbm/les

Enc.

cc: Sandra Axson, Antum Risk (w/enc.) (email/upload)  
Tiffany Kirby, MUSC Health-Orangeburg (w/enc.) (email only)  
Mr. Serge Wandji (w/enc.) (email and regular mail)

