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June 26, 2024

VIA EMAIL AND US MAIL

Amy Bracy, Judicial Director
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

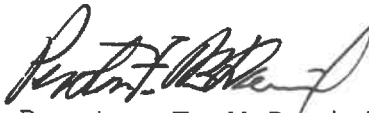
**RE: Evaristo Verdugo Morales v. Insulation by Cohen's, LLC
& Spray Foam By Cohen's LLC
WCC File No. 1921668**

Dear Ms. Bracy:

Please find enclosed for filing with the Commission the original and one (1) copy of our **MOTION FOR RECONSIDERATION PURSUANT TO SC CODE §1-23-380 AND REG. 67-215(B)(2)** in the above-referenced matter, along with the required \$50.00 filing fee, as well as a self-addressed stamped envelope for returning a clocked-in copy to me. I am, by copy of this letter, serving opposing counsel with a copy of the same.

I hope this is sufficient for filing with the Commission; however, if additional information is needed, please feel free to contact me at your convenience.

Sincerely yours,


Preston F. McDaniel

PFM/kth
Enclosures

cc: Don C. Gibson, Esquire (via email and US Mail)
E. Courtney Gruber, Esquire (via email and US Mail)



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1921668

EVARISTO VERDUGO MORALES,)
)
Claimant/Employee,)
)
v.)
)
INSULATION BY COHENS, LLC)
& SPRAY FOAM BY COHENS, LLC,)
)
as Employer,)
)
BUILDERS PREMIER INSURANCE)
COMPANY,)
)
as Insurance Carrier,)
)
Defendants.)
)

**MOTION FOR RECONSIDERATION
PURSUANT TO SC CODE §1-23-380
AND REG. 67-215(B) (2)**

TO: SC WORKERS' COMPENSATION COMMISSION AND E. COURTNEY
GRUBER, ATTORNEY AT LAW, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that pursuant to SC Code §1-23-380 and Commission Reg. 67-215(B) (2), the Claimant hereby moves for reconsideration of the Decision and Order filed on June 21, 2024, as to the following:

1. Commissioner, we request reconsideration as to your Findings that Mr. Morales is in entitled to the medical care as recommended by the authorized treating physician Dr. Stofko simply to make it perfectly clear that the medical care to be provided is in reference to the T-12 fracture and the resulting treatment needed to treat the T-12 fracture which includes the fusion from the T-11 through the L1 vertebrae and involving the

plates and screws in the Claimant's back. In your Notes for Decision, you order the Defendants to pay for the treatment but it only states in reference to the "T-12" fracture, and the same is true in the Decision and Order in that you ordered that he is entitled to ongoing treatment for his injury, "to his T-12 vertebrae as recommended by the authorized treating physician, Dr. Douglas Stofko". You will recall from the evidence that Dr. Stofko confirmed the recommendations of his PA/Nurse Practitioners' that Mr. Morales was in need of treatment due to the pain over the screw sites and over the site of the fusion with the recommendation of physical therapy to be followed by injections if necessary, to be followed by possible hardware removal to address the pain over the fusion site and specifically over the screw sites. We simply ask for reconsideration and an Addendum to the Order to provide that the Defendants are responsible for that causally related medical care. You clearly in your Notes are contemplating the provision of that ongoing medical care in reference to the T-12 but if it is not clearly set out that that includes the plates, rods, fusion and the involved vertebrae T-11-L1, the Defendants will refuse to provide any care other than that directly related to the T-12 vertebrae.

2. Under "Evidence of the Case", Defense Counsel made specific reference to the Order of Commissioner Taylor which was

vacated on appeal. Therefore, any reference to the Findings in that Order should not be set forth anywhere in your Decision.

3. In reference to the Functional Capacity Evaluation, your Finding was that no weight was given to the Functional Capacity Evaluation because of the statement by the evaluator on the front page. Findings of Fact #7, #8, and #9 go far beyond that Finding and make additional Findings and additional reasons for no consideration of the Functional Capacity Evaluation. Commissioner, most respectfully, you are charged with making the Findings and while I of course disagree with your Findings, I have no problem with your Findings but I would ask for your reconsideration as to Findings #7, #8, and #9 because they are not your Findings and basis for your decision.

4. In reference to Findings of Fact #10 and #11, first I would ask your reconsideration in reference to the vocational evaluation because the vocational expert, Ms. Harriet Fowler, on p. 39 of the APAs thoroughly goes through the entire Functional Capacity Evaluation and notes that it was not considered valid but also that the evaluator found him to give maximum, valid and consistent effort with no exaggeration of pain during the actual Functional Capacity Evaluation. More importantly, on p. 38 she goes through the other physical therapy records that he had had and the determination by that physical therapist at the conclusion of physical therapy that he was only capable of doing sedentary work. Thus, the vocational evaluator notes the

discrepancies and problems with the vocational evaluation and clearly did not give, "heavy reliance on the Functional Capacity Evaluation" but especially the additional Findings made by Ms. Gruber.

Further, I would ask for reconsideration on the basis of law. The Defendants are not entitled to a vocational evaluation. I know of no section nor over the entire course of my practice have I ever had the Defendants be found to be entitled to a vocational evaluation. The Defendants are entitled to medical evaluations under SC Code §42-15-80. Also, specifically under the Act as we all know, the Claimant has the burden of proof. Again, I know of no section of the Code that gives the Defendants a right to a vocational evaluation. As I know you are aware, §42-15-80 deals with medical evaluations and has absolutely nothing, nothing to do with a vocational evaluation. There is no authority for a vocational evaluation under SC Code §42-15-80 and you will find no case law ordering the Claimant to go to a vocational evaluation under that statute or under the Act or criticizing the Claimant or affecting the weight of his evidence based on the failure to attend a vocational evaluation.

5. Commissioner, as to your Finding #9 in your Notes for Decision, I would ask for reconsideration on two bases. First, most respectfully, you went outside of the Record whereas your decisions are supposed to be based on the Record before you. Second, I know of no basis under law to not give credibility to

the testimony and opinions of a doctor because he is a patient's advocate and I know of no objection made in the Record to Dr. Poletti's opinions on that basis or any of the bases set forth in #9. Also, I thought all doctors, like Dr. Poletti, were subject to the Hippocratic Oath.

6. As to your Finding #10 which is #13 in the Order, in reference to Dr. Leonard Forrest, you do not cite what the greater weight of the relevant medical evidence is in the case that outweighs his opinions or that consideration of loss of use of the Claimant's entire back is not the essential issue before you for decision. In fact, Dr. Forrest's opinion is directed at the mid-back. In reference to the back, under SC Code §42-9-30(21), the essential issue before you for decision is after injury the loss of use to the Claimant's back to do work requiring the use of the Claimant's back. There is no bifurcation in the statute and there are cases throughout the Supreme Court and Court of Appeals decisions and opinions over the years where the worker had a significant injury to the back prior to the accident, but where the Commission and our Appellate Courts noted that the question was after the accident, the loss of use of the back. While the insurance industry and those seeking to limit awards wish that the cervical, thoracic, and lumbar segments of the spine were separately rated members, they are not. I would ask for reconsideration on the basis that the essential issue before you for decision was loss of use of

the back subsequent to the injury, the uncontested physical therapist records established that he was only qualified for sedentary work. In the contested Functional Capacity Evaluation the physical therapist found that he gave valid and consistent effort during the actual Functional Capacity Evaluation and limited him to at most to light duty work. Dr. Forrest's first opinion in the first report of July 22, 2020 found at APA p. 18 was that Mr. Morales remains with significant mid-back pain, and his activities are severely limited, "dating directly back to the work injury of 10\10\19 noted above". In fact, his entire report is directed at the mid-back. He goes on to state that that is his opinion to a reasonable degree of medical certainty. Then in his follow-up evaluation of January 20, 2021 he again states that, "Mr. Morales' most significant symptoms continue to be in his mid-back as they were when I evaluated him last July" and then goes on to state that that is his opinion as stated to a reasonable degree of medical certainty. Thus, Finding of Fact #10 and Finding of Fact #13 in the Order are inaccurate as Dr. Forrest clearly states that the major focus of his evaluations was, is, and will be the thoracic spine injury. Again, the essential issue before you for decision was the loss of use of the Claimant's back to do work requiring the use of his back subsequent to injury, and any loss of use of the back related or unrelated to the injury are to be considered as the question of loss of use of the back after the injury, not to the lumbar

spine, thoracic spine or the cervical spine. Dr. Forrest gave an opinion as did Dr. Poletti on the loss of use of the back, not the thoracic spine. Like it or not, Ellison v. Frigidaire Home Products, Inc., 360 S.C. 236, 600 S.E.2d 120 (SC App. 2004); Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007); Carolinas Recycling Group v. South Carolina Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (SC App. 2012).

7. As to #14 I would ask for reconsideration because Dr. Jeffrey Buncher stated an opinion concerning the loss of use of the Claimant's back, and whether or not that loss of use related or unrelated wholly to the injury is not the question. The question is, again, after the injury the loss of use of the Claimant's back to do work requiring the use of the Claimant's back.

8. While Finding of Fact #17 in the Order is basically in accordance with your Finding #12 that the Record does not appear to contain an instance of Dr. Stofko specifically endorsing PA Alana Cole's opinions in the Form 14B, in Finding #17 Ms. Gruber refers to the second deposition of Dr. Stofko. Commissioner, most respectfully you did not allow into the evidence the deposition taken by Ms. Gruber and so I think the deposition should simply be referred to as the deposition of Dr. Stofko.

9. Most respectfully, Commissioner you did not make in your Findings of Fact any reference to the following Findings of Fact in the Order or the issues raised by those Findings of

Fact, including Findings of Fact #18, #19, #20, #21, #22, #24, #25, #26, #27, and #28. There is absolutely no reference to any of that testimony or any of those issues in your Notes and there is absolutely no reference to Mr. Morales' depositions testimony. In fact, I thought those were placed into the Record simply if reference was made to those as any discovery deposition or in accordance with proper use of a deposition where the person testifies.

10. In reference to Finding of Fact #30, Commissioner no where in your Notes did you make any such Finding. To the contrary, you actually found that Dr. Stofko no where endorsed the impairment rating in the Form 14B. That Finding of Fact should be stricken as not being reflective of your Findings of Fact and decision.

11. Remaining Finding of Fact #31 is directly in accordance with your Findings.

12. As to the Conclusions of Law, I do not recall either party citing you the US Supreme Court Opinion in Ashe v. Swenson. If I am wrong, please forgive me.

13. In reference to Conclusion of Law #4, I simply would request as noted above that that wording be modified to reflect that the ongoing treatment for his injury is not limited to his T-12 vertebrae but includes the fusion from the T11 through the L1 and required hardware, plates and screws. I am sure you would agree that we are simply wanting the medical care related to the

actual injury and the medical care provided for that injury which included the fusion and also I believe you will agree with me that should he develop problems at the vertebrae above or below the fusion site and if the doctor states that that is causally related to the fusion, Mr. Morales would be entitled to that medical care.

14. As to the actual Order, I believe the first paragraph of the Order is contrary to law. I am acutely aware that it is the Commission's position that the decision of a Commissioner is not final until a decision is entered by the Full Commission, assuming that the Order is appealed. Thus, I would request that the first part of the Order be stricken as not being in accordance with law. The Defendants have to keep paying the Claimant at least until this Order comes out and I believe it is a reasonable position particularly under the current Commission's position that the Order, if appealed, is not final until the Full Commission rules that the Defendants cannot stop payment until the Order of the Commission is final. I am acutely aware that the Defendants regularly stop payment after the Hearing Commissioner's Order is filed, but I know of no case law on that point that if appealed allows them to stop payment prior to the Full Commission decision.

As to the third part of the Order that It Is Further Ordered about the ongoing treatment of T12 vertebrae, again I simply request that the ongoing medical care from the authorized

treating physician, Dr. Douglas Stofko, be in reference to the T12 vertebrae fracture and the fusion that was necessary to repair it, which was from the T11 through the L1 vertebrae requiring plates and screws, that is to say hardware. I simply want to avoid any further litigation in reference to the medical care that you have found Mr. Morales to be entitled to.

Due to the foregoing reasons, the Claimant would request reconsideration of the Order issued on June 21, 2024.

Respectfully submitted,



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and

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Attorneys for the Claimant

June 26, 2024

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December 5, 2024

VIA EMAIL: judicial@wcc.sc.gov
AND US MAIL

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: **Evaristo Verdugo Morales v. Insulation by Cohen's, LLC
& Spray Foam By Cohen's LLC
WCC File No. 1921668**

Dear Ms. Bracy:

Please find attached my Motion for Reconsideration by the Full Commission Panel of their Order in the above-referenced matter pursuant to Reg. 67-215(B) along with the required filing fee.

By copy of this letter, I am notifying and serving Counsel for Defense with this Motion for Reconsideration.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Don Gibson, Esquire (Via Email and US Mail)
Robert P. Gruber, Esquire (Via Email and US Mail)



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1921668

EVARISTO VERDUGO MORALES,)
)
Claimant/Employee,)
)
v.)

**MOTION FOR RECONSIDERATION
PURSUANT TO REG. 67-215(B)**

INSULATION BY COHENS, LLC)
)
& SPRAY FOAM BY COHENS, LLC,)
)
as Employer,)

BUILDERS PREMIER INSURANCE)
)
COMPANY,)
)
as Insurance Carrier,)

Defendants.)
)
)
)

**SCWCC
DEC 10 2024
JUDICIAL**

TO: SC WORKERS' COMPENSATION COMMISSION AND E. COURTNEY GRUBER, ATTORNEY AT LAW, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the Claimant hereby moves for reconsideration in the above-referenced matter pursuant to the Regulations. This is not an attempt to reargue the merits of the case but is to ask for reconsideration of the entire Record for the reasons as set forth hereinbelow due to the errors of law and procedure. The Claimant would request review pursuant to the following:

1. On a general procedural basis, this matter was heard on October 14, 2024. Reg. 67-709(C) requires that the Commissioners vote within ten (10) days of the date of the review. The Full Commission Order states that the decision

**SCWCC
DEC 10 2024
JUDICIAL**

the Full Commission, "fully **AFFIRMED**" decision of the Hearing Commissioner. As such, subsection E contemplates that the Panel shall issue its Order thirty (30) days after the hearing. Thus, this hearing was held on October 14th and this Decision was not entered until December 3, 2024.

2. As to the Panel's Finding of Fact #7, there is no indication in that Finding or any other Finding of Fact that the Panel addressed the issues raised for review of the physical therapist's opinion that conducted the Functional Capacity Evaluation as stated in the Functional Capacity Evaluation that he found Mr. Morales gave valid and consistent effort throughout the entire evaluation. The statement that the results could not be considered valid are only in reference simply to the hand-grip analysis. Further, not only is there no reference in the Full Commission's Decision to the physical therapist's opinions/findings, the Decision does not address the **untrustworthiness** of the **handgrip analysis alone for validity of effort** in certain circumstances. Failure to address these is an error of law.

3. As to Full Commission Finding of Fact #8, there is no evidence that the Commission addressed the issue raised for review that the deficits as stated in the Finding concerned "body parts" that are not compensable does not address the legal issue that the issue before the Commission is loss of use of the

back and that the "body parts" that are referred to are in fact not separate body parts, but are in fact parts of the back. So, under law even if and assuming there is loss of use of the back unrelated to the specific injury, the issue before the Commission and with which the Commission is charged decide is loss of use of the Claimant's back to do work requiring the use of his back. There is no bifurcation in the statute of the cervical thoracic or lumbar spine, the essential issue is loss of use of the back. Thus, under this Commission's Oath of Office and a liberal interpretation of the wording of the Act in favor of the injured worker is an error of law. Further, the attempt to bifurcate the back makes this an arbitrary and capricious Finding and contrary to law.

4. As to Commission Finding of Fact #10, this Finding of Fact is contrary to the law and the undisputed evidence. The undisputed evidence establishes the evaluator, Ms. Harriet Fowler, gave absolutely no weight to the invalid parts of the Functional Capacity Evaluation as clearly stated in her report. Thus, this Finding supposedly based on fact and evidence is arbitrary and capricious. If the Commission wants to make this Finding, it needs to cite from the Record the evidence substantiating that Finding of Fact. There is none.

5. As to Commission Finding of Fact #11, this is clearly an error of law for multiple reasons. The Defendants have no due

process rights as alleged in the Finding in reference to having their own Functional Capacity Evaluation performed. First, there is no such due process right and Counsel for the Claimant has absolutely no idea what the Commission is referring to. Due process according to the SC Supreme Court and under the SC Constitution in reference to Administrative Agencies requires notice and an opportunity to be heard and the right to cross-examine witnesses adverse to your position. SC Constitution Art. 1 §22 provides for notice and an opportunity to be heard, and the right to cross-examine the witnesses as does SC Supreme Court decisions including Garris v. Governing Board of SC Reinsurance Facility, 333 S.C. 432, 511 S.E.2d 48 (1998). The only conceivable due process right would be the inability to present evidence in the form of a vocational evaluation and thus the Defendants would have to have a property interest in and a statutory right to that. There is no such right under the Workers' Compensation Act no matter how much the Defendants or any anti-worker elements seek to push it into the Act. Under the Act, defendants have a very limited right to challenge a worker's right to workers' compensation and the Act is set up that way as a tradeoff and to achieve its beneficial purposes, one of which is to provide swift and sure benefits without extensive litigation. So, under the Act: and §42-3-140, the Defendants have 1) the right to subpoena witnesses, books, and records; and under §42-3-160 they have the

right to 2) take the depositions of witnesses. Under §42-15-80 they have the right to 3) request as many independent medical evaluations as desired, and actually under the statute, require the claimant to submit to "examination at reasonable times and places by a qualified physician or surgeon" which is paid for by the employer or its insurance carrier. Without citation, as the Commission knows the Courts and this Commission have held repeatedly that that is limited to qualified physicians or surgeons and does not encompass neuropsychological testing or even a psychologist unless it is part of an evaluation performed by a qualified physician or surgeon. The Claimant knows of no statute (because there is) that allows for the Defendants to have a vocational evaluation performed requiring participation by the claimant. Thus, the Defendants have no right to a vocational evaluation under the Act requiring the claimant to participate. Yes, the Defendants, as has traditionally been the way that vocational evidence is presented by the defendants, have the right to take a discovery deposition of the claimant and subpoena records and then submit that to a vocational expert along with medical records and other documentation and obtain that expert's records review opinion. Least we not forget as this Commission regularly reminds the claimant and takes note of, the claimant has the burden of proof and that is why there is no limitation on the claimant's right to present evidence.

Further, the Finding of Fact is based on an error of law in that the Finding of Fact clearly sets out that the Defendants **filed a Motion to Compel which was denied by the Commission.** That decision is the "Law Of The Case" so even if they were entitled to an examination under a distorted concept of due process, which they are not under the Act, that issue has been decided and so there is no right to exclude based on due process grounds. This is another blatant error of law.

6. As to Finding of Fact #12, again, quoting from Garris, supra:

"The persons legally responsible for an Administrative Agency's decision must be informed **and unbiased**, must hear the case, and **must in fact make the decision.**"

The Claimant raised three (3) issues of law in reference to this Finding by the Hearing Commissioner which Finding was simply regurgitated by the Full Commission. One is that the Commissioner went outside of the Record. **There is no question that the Commissioner cited to an Order of this Commission which was not presented to him by the parties and was thus outside of the Record.** If the Commission is going to sanction this Finding of Fact, they must state how that is not true. Further, the Claimant alleged as a matter of law that the Finding was arbitrary and capricious. If the Full Commission is going to sanction that Finding as written, then the Commission must state based on evidence in the Record how Dr. Poletti assuming him to

be an "unashamed patient advocate" in some way prejudices him and makes him incapable of rendering a, "truly independent medical evaluation". While that is an absurd basis for no weight, in and of itself, if that basis were to be applied the Claimant would be glad to list numerous doctors and ask each Commissioner to take notice under their expertise in hearing workers' compensation cases that those doctors are so far in the insurance companies' pockets that they would never see the light of day who on a regular basis give Independent Medical Evaluations for the defendants.

Lastly, as cited in Garris, the Claimant raised as a legal issue, whether or not the Commissioner was biased and the Finding was arbitrary and capricious. That Finding of Fact clearly shows a bias or prejudice in his consideration of the evidence. Clearly, Commissioner Beck without notice to the parties had a clear predisposition to not give any weight to the opinions of Dr. Poletti. This clearly evidences as a matter of law bias and prejudice in review of the Claimant's evidence.

7. Finding of Fact #13 of the Full Commission constitutes a violation of law as clearly set out to the Commission previously. First, if the Commission is going to sanction this Finding then it must set forth evidence and basically, "fill in the gaps" in reference to the Commissioner's Finding. by citing specific evidence to establish that Dr. Forrest's opinions were

based largely on injuries that go beyond the T12 fracture. As a matter of law that is contrary to the evidence. Under any rational reading of his reports and his impairment rating, they are based on the thoracic spine. Also, the Finding states that Dr. Forrest's opinions are heavily based on the findings from the Functional Capacity Evaluation, which again is simply not true. If the Commission is going to sanction that inadequate Finding of Fact, which is not a detailed and definite Finding of Fact based on evidence, then it must cite evidence from the Record supporting that part of the Finding of Fact. That is simply not true and there is no evidence to support that and the Commission's decision to sanction that Finding of Fact constitutes an error of law.

8. As to Finding of Fact #14, it is totally inadequate as a matter of law. This Commission is required to make detailed Findings of Fact based on the evidence which is sufficiently detailed and definite enough to allow for judicial review. The Finding of Fact simply sets forth no evidence from the Record to establish the assertions in the Finding of Fact. To make a detailed Finding of Fact in reference to Dr. Buncher's opinions, Commissioner Beck and this Commission would have to cite from his report evidence that establishes that his opinions are based on body parts that are not found to be compensable. By the way, again, "the essential issue for decision before the Commission

and before Commissioner Beck was and is loss of use of the back to do work requiring the use of the back. Last time Claimant's Counsel checked, the cervical spine and the lumbar spine are not separate parts of the body. They are anatomical sections of the spine, i.e., the back. Although Dr. Buncher's report is specifically tailored to the thoracic spine and the treatment which involved the thoracic injury (again, which Commissioner Beck wanted to ignore and this Commission obviously also wants to ignore in trying to deny this worker benefits) including the screws, and plates, and the involvement of the T11 thru and including the L1, in other words, first vertebrae of the lumbar spine; the Finding of Fact as a matter of law is a totally inadequate Finding and the Commission at the least should go back and at least if it is going to reject Dr. Buncher's opinion, set forth the evidence in the Record that would substantiate that Finding and rejection of his opinions.

9. Finding of Fact #16 is actually contrary to the other Findings and is actually accurate in that the fusion involved the T11 thru the L1, and thus the injury involved the T11 vertebrae and through and including the L1 vertebrae. So, if the Commission wants to limit consideration to what the injury itself actually involved, the Commission must include T11 (thoracic spine) and L1 (lumbar spine) as the part of the back that was involved in the actual injury and the treatment

necessary to treat the injury. Any references in the other sections of the Order and any Findings of Fact limiting any of the Award to simply the T12 is contrary to the evidence and this Findings of Fact makes all Findings an error of law and makes this Finding of Fact and the other Findings of Fact contradictory, particularly as to the Award part of the Decision.

10. As to Finding of Fact #17, it in fact sets forth the basis for why the other Findings of Fact are arbitrary and capricious, are not detailed and definite enough, and are also contrary to the facts and evidence in the case. In Finding of Fact #17 as found by Commissioner Beck and reiterated by this Commission Panel, Dr. Stofko never sanctioned the opinions of Alana Cole, PA in her Form 14B. The Form 14B is the only place for a medical doctor to set forth any opinions on impairment to the spine contrary to those set forth by Dr. Poletti, Dr. Forrest, and Dr. Buncher. The Form 14B does not even refer to the impairment rating that was provided by CORA, which is the only, again the only, other evidence in the Record on medical impairment (not loss of use) to the back. Thus, all the other Findings of Fact in reference to the medical opinion evidence and the dog-whistle reference to, "the greater weight of the medical evidence" is an error of law under the facts in this

case requiring review and the making of detailed Findings of Fact.

11. As to Finding of Fact #21, in reference to the complaints the Claimant was and is still having of pain over the screw sites from his surgery that those complaints are not supported "by the greater weight of the medical evidence" is contrary to the medical evidence in the Record. This is an error of law because it states that the complaint is not "supported by the greater weight of medical evidence in the Record" without citing what that greater weight of medical evidence is. The only reference is to PA Cole and that the areas which he was "pointing" to are above the screw sites. All of the other medical evidence including from Dr. Stofko's multiple PAs Alana Cole, and Josephine Jennings, all of the physical therapist's reports from Roper St. Francis and Dr. Poletti, Dr. Forrest, Dr. Buncher and even PA Cole's initial review all refer to the pain over the screw sites (quoting from 11/27/23 O/V of Alana, "he reports is at the screw sites from his previous surgery" (Def. APA, p. 49) and there is no other statement that the complaints are not in reference to the screw sites. What greater weight of what medical evidence.

12. As to all Findings of Fact as set forth in the original Hearing Commissioner's Order as repeated in the Full Commission's Order verbatim, the Hearing Commissioner in his

Notes made no references to any of the testimony or evidence presented in the case, which as a matter of law he is required to do in his Findings of Fact. The references to specific evidence to support the non-detailed, inadequate Findings of Fact referencing the evidence upon which they are based, was added by defense counsel in the final Order. It is an error of law for the Commission under SC Code §42-9-5, §42-17-40, §42-17-50, and SC Code §1-23-350 to fail in its responsibility, not anyone else, to make detailed Findings of Fact and Conclusions of Law which is sufficiently definite and detailed enough to allow for judicial review. Thus, all of the Findings of Fact that list references to the evidence which were not made by either the Commissioner or the Full Commission constitute an error of law and are in strict violation of the statutory responsibility of the Commission who is charged with the responsibility of reviewing the evidence and making Awards.

13. Again, the Commission is charged with the responsibility to make Awards and to make detailed Findings of Fact and Conclusions of Law based on the law contained within the Act itself or submitted by the parties for the consideration of the Commissioner at the hearing. It is going outside of the Record for the Commissioner to cite case law not cited to him for consideration or cited by a party under the statutory provisions as part of a Conclusion of Law made at the direction

of the Commissioner in reference to the Commission's Findings on the Findings of Fact. In this case, the Commissioner in support of his decision on "Law of the Case" cited Ashe v. Swinson, a United States Supreme Court decision that was not cited by either party in reference to this case and is not part of the Record. Thus, it is going outside of the Record and replying on legal precedent not cited by either party in support of the decision of the Commission.

14. The Hearing Commissioner and the Commission erred by not making any Findings of Fact or any Conclusions of Law on whether the Claimant was entitled to an Award for total and permanent disability based on wage loss under SC Code §42-9-10. The Full Commission failed in its responsibility because this was brought to their attention, and yet the Commission as a matter of law did not make any Findings of Fact or Conclusions of Law in reference to the Claimant's request for benefits based on wage loss.

15. The Hearing Commissioner and the Commission erred as a matter of law requiring reconsideration in reference to the failure to cite the evidence relied upon in making a 45% partial disability to the back Award especially in light of the Findings of Fact excluding from consideration the evidence on loss of use of the back.

16. The Claimant requests reconsideration as a matter of law because the Commission while making a Conclusion of Law that the Claimant was entitled to ongoing treatment for his injury to his T12 fracture as recommended by Dr. Stofko, and where the evidence established that his PAs recommended further treatment for his T12 fracture now by not detailing that the Claimant is 'in fact at this time entitled to that further medical treatment as uncontested in the Record in reference to determining whether or not the Claimant needs to have screw removal to improve his condition. The Commission, while making this a part of the Order did not detail, although the evidence is undisputed in the Record as a matter of law, as to what further medical care the Claimant is entitled to under the treating physician, Dr. Stofko.

For to the foregoing reasons due to the legal errors committed by the Full Commission in its review, the Claimant would request reconsideration of the Appellate Panel Decision and Order in this matter and would submit that this matter needs to, at a minimum, be reset for further hearing by the Full Commission for a detailed Order addressing all the issues raised on appeal or the Order of Commissioner Beck needs to be vacated and this matter remanded for a hearing on all issues.

Respectfully submitted,



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