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September 18, 2025

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Clerk, South Carolina Court of Appeals
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Re: Walter Hoover, Jr., Appellant, v. Tractor Supply Company, Employer, and Starr Specialty Insurance Company, Carrier, Defendants, Of which Tractor Supply Company is the Respondent.
Appellate Case No. 2025-001248

Dear Sir or Madam:

Enclosed for filing in the above referenced case are the following documents:

(1) Initial Brief of Respondent; and
(2) Designation of Matter; and
(3) Certificate of Counsel; and
(4) Proof of Service of the Initial Brief of Respondent and Designation of Matter.

Sincerely,

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Sep 18 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC File No. 2207041

Appellate Case No. 2025-001248

Walter Hoover, Claimant, Appellant

v.

Tractor Supply Company, Employer, and Starr Specialty Insurance Company, Carrier, Defendants, of which Starr Specialty Insurance Company is the Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On May 11, 2023, Respondents filed a Form 21 Hearing Request to address termination of benefits for medical non-compliance, reduction of the compensation rate, and overpayment of temporary total disability benefits. On May 16, 2023, Appellant filed a Form 50 Hearing Request seeking additional benefits under the Workers' Compensation Act ("The Act").

The claim was heard in front of the Single Commissioner on November 28, 2023. The Decision and Order issued on February 14, 2024, ordered (1) Appellant sustained a compensable injury to his back arising out of and in the course and scope of his employment with Employer, Tractor Supply Company, on May 25, 2022; (2) Appellant was non-compliant with medical treatment from February 14, 2023, to November 13, 2023, when he attended appointments authorized and scheduled by Respondents and purposefully acted belligerently; (3) Respondents were entitled to terminate all benefits as of January 4, 2024; (4) Appellant was not entitled to

benefits under the Act due to constructive abandonment of the claim through medical non-compliance, and the claim was dismissed without prejudice; (5) Appellant's average weekly wage is $542.73 and compensation rate is $361.84; and (6) Respondents were entitled to a credit of $30,107.06 for overpayment due to the incorrect compensation rate and credit for overpayment of TTD benefits during the period of Appellant's medical non-compliance, which was February 14, 2023, to November 13, 2023.

Appellant timely filed an appeal of the Single Commissioner's Order, requesting Commission Review. On May 2, 2024, the case was removed from the hearing docket as Appellant failed to timely file and serve his appellant brief by the prescribed deadline. On May 6, 2024, Appellant filed a Motion to Reinstate his claim. The motion was granted on May 20, 2024, and the matter was heard in front of the Full Commission on April 14, 2025. In the Decision and Order issued June 12, 2025, the Full Commission fully affirmed the Decision and Order of the Single Commissioner.

Thereafter, on June 20, 2025, Appellant attempted to file a Notice of Appeal. On June 24, 2025, Appellant was notified by the South Carolina Court of Appeals that is Notice of Appeals contained the following deficiencies: (1) the notice of appeal was not in the proper format and did not contain any argument; (2) the notice of appeal was not accompanied by the order challenged on appeal; (3) there was no filing fee of $250.00 submitted; and (4) proof of service must be provided. Appellant attempted to correct these deficiencies by refiling his Notice of Appeal to include a Form 7 proof of service. Appellant was again informed by the South Carolina Court of Appeals to correct the continued deficiencies within ten (10) days as well as that his time for ordering the transcript had expired. On July 3, 2025, Appellant notified Respondents and the Court of Appeals that the transcript had been ordered. On July 29, 2025, Appellant filed "Proof of Service

of Notice of Receipt of Transcript" indicating the transcript was received on July 22, 2025. Appellant then improperly submitted a Motion for Extension of Time of his initial appellate brief on August 18, 2025. Appellant filed his initial appellate brief on August 21, 2025.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act ("APA") sets forth the standard for judicial review of decisions of the Workers' Compensation Commission. *Lark v. Bi-Lo, Inc*., 276 S.C. 130, 276 S.E.2d 304 (1981). In South Carolina Workers' Compensation claims, the Full Commission is the ultimate finder of fact. *Shealy v. Aiken County*, 341 S.C. 448, 535 S.E.2d 438 (2000). An appellate court is not to weigh any evidence found by the Full Commission. *Id.* The decision of the Full Commission may only be reversed or modified if the appealing party has been prejudiced, there is an error of law, or the decision was not supported by substantial evidence. *Davis v. S.C. Dep't of Corr*., 444 S.C. 138, 906 S.E.2d 569 (2024). Any findings of fact must be affirmed if supported by substantial evidence. *Hartzell v. Palmetto Collision, LLC*, 415 S.C. 617, 785 S.E.2d 194 (2016). Substantial evidence is more than just a "mere scintilla," but rather "is evidence which, considering the records as a whole, would allow reasonable minds to reach the conclusion the agency reached." *Pierre v. Seaside Farms, Inc*., 386 S.C. 534, 689 S.E.2d 615 (2010) (quoting *Tennant v. Beaufort County Sch. Dist.*, 381 S.C. 617, 674 S.E.2d 488 (2009)).

STATEMENT OF FACTS

By way of background, Appellant has a documented pre-existing low back condition from at least 2019. Appellant treated at Southeastern Spine Institute, with medical records indicating lower back pain radiating into the posterior lateral aspect of the right leg. Single Comm. Tr. P. 20, ll. 19-23 (2023); Def. APA 1, p. 1. On March 29, 2019, Appellant underwent a right L5-S1 decompression and right L5-S1 discectomy. Def. APA 1, p. 18.

On May 25, 2022, Appellant sustained an injury by accident to the lower back arising out of and in the course and scope of his employment with Tractor Supply Company when moving dog kennels. Appellant's claim was admitted, and he received causally-related medical treatment and temporary total disability benefits. Following the accident, Appellant received treatment with Dr. Davis of Palmetto Bone and Joint. Def. APA 3, p. 55. Respondents then provided treatment with Dr. Gunter at MUSC Health Neurosurgery on January 6, 2023. Def. APA 7, p. 84. Based on Dr. Gunter's recommendation, Respondents then provided an independent medical evaluation with Dr. Tavel at Pain Specialists of Charleston on February 14, 2023, for pain management. Def. APA 8, p. 89. Dr. Tavel recommended two right SI joint injections and stated Appellant would be at maximum medical improvement in 3-6 months. Def. APA 8, p. 90.

However, Appellant became constructively non-compliant with medical treatment as his claim progressed. Both Dr. Gunter and Dr. Tavel refused to continue treating Appellant as a patient. Def. APA 7, p. 92-93; Def. Ex. E, p. 144. Respondents then provided an evaluation with Dr. Girault with Pain Medicine Specialists for pain management. Def. APA 10, p. 106. However, Dr. Girault also declined to see Appellant as a patient due to his behavior during the evaluation. Def. APA 10, p. 107. Respondents then sent Appellant Dr. Boyd with Lexington Brain and Spine Institute for an evaluation of the low back. Def. APA 11, p. 109. Dr. Boyd assessed Appellant with SI joint dysfunction, noting he had chronic radicular numbness from previous surgery. Def. APA 11, p. 111. Dr. Boyd recommended pain management and potential surgery if injections proved ineffective. Def. APA 11, p. 111.

Despite diligent efforts on behalf of Respondents to provide treatment, Respondents eventually filed a Form 21 Hearing Request to terminate Appellant's benefits. At the hearing in front of the Single Commissioner, Appellant testified to wanting to "discontinue [himself] of the

Workers' Comp" and "to close and get out of it and take care of [himself]." Single Comm. Tr. P. 11, ll. 15-17 (2023); Single Comm. Tr. P. 12, ll. 12-13 (2023). Appellant further testified to being able to perform everyday activities while treating, such as ride the lawn mower, play basketball, and "whatever [he] want[s] to do." Single Comm. Tr. P. 27, ll. 7-13 (2023); Single Comm. Tr. P. 31, ll. 19-25 (2023). He further noted he would not "hurt any more part of [his] back." Single Comm. Tr. P. 27, ll. 12-14 (2023).

Following the Decision and Order of the Single Commissioner, Appellant appealed to the Full Commission, despite no evidence justifying such an appeal. During the hearing in front of the Full Commission, Appellant testified to having "ample, ample evidence" to support his claim. Full Comm. Tr. P. 4, ll. 7-8 (2025). He further testified that "[he] don't want to sit here and do this," he wanted to "take it to the next level." Full Comm. Tr. P. 4, ll. 1-3 (2025); Full Comm. Tr. P. 14, ll. 4-5 (2025). No evidence supporting Appellant's position was ever presented at the hearing in front of the Full Commission. In his initial appellate brief, Appellant again submitted no evidence supporting his appeal. Appellant has shown a blatant disregard for the South Carolina legal system throughout this claim and should not be rewarded for such behavior. As such, the Order of the Full Commission should be affirmed in its entirety.

ARGUMENTS

I. WHETHER APPELLANT'S INITIAL BRIEF PRESERVES ANY ISSUE FOR APPEAL BEFORE THE SOUTH CAROLINA COURT OF APPEALS.

Under South Carolina Appellate Court Rule 208(b), initial briefs are *required* to contain table of contents and cases, statement of issues on appeal, statement of the case, standard of review, arguments, and a conclusion stating the precise relief requested. The appellate court may disregard any "broad general statements" presented in the issues on appeal. Rule 208(b)(1)(B), SCACR. Further, the statement of the case is required to have "a concise history of the proceedings," which

at minimum includes date of injury, nature of the claim, trial dates, description of defense, date and description of orders, date of service of motion of appeal, and any changes made by the parties. Rule 208(b)(1)(C), SCACR. The statement of the case must not contain any contested matters. *Id.*

Additionally, an issue is "deemed abandoned if the argument in the brief is not supported by authority or is only conclusory." *Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 716 S.E.2d 123, 127 (Ct. App. 2011). In the case of *Potter v. Spartanburg School District*, the claimant sustained an admitted accident when he fell from a ladder. *Id.* at 124. The defendants in the case began providing medical treatment and temporary benefits. *Id.* at 125. The matter proceeded to a hearing, which Claimant appealed to the Workers' Compensation Commission and the Circuit Court before reaching the Court of Appeals. Before the Court of Appeals, the claimant failed to cite "any statute, rule, or legal authority" for several issues in his brief. *Id.* at 127. The court explained that though he did raise specific facts that could be considered, he gave the court no substantive legal authority to rely upon. *Id*. Accordingly, the issues were deemed abandoned. *Id*.

Here, Appellant's initial brief dated August 21, 2025, fails to satisfy the South Carolina Appellate Court Rules and therefore he has abandoned his arguments and did not preserve any issues for appeal. In his brief, Appellant's statement of issues on appeal include (1) Whether the Commission erred by failing to rule on Appellant's properly filed Form 50; (2) Whether the Commission erred under § 42-15-60 by disregarding medical necessity and effectively ratifying the Carrier's termination of physical therapy for insurance authorization issues despite Drayer Physical Therapy's documented plan of care; and (3) Whether the Comision erred under § 42-15-60 by relying on Dr. Edward Tavel's IME opinions- including an MMI projection- issued despite his admission that a new lumbar MRI was not available for review, and despite Appellant's continuous, authorized care culminating in Dr. Boyd's IME and active treatment plan. Appellant's

issues on appeal are "broad general statements" for which it is uncertain the harm being alleged or the relief that is being sought. In his argument, Appellant states that the Commission did not address his Filed Form 50. However, Appellant's Form 50 seeking determination of benefits has been properly ruled upon by the Decision and Orders of both the Single Commissioner and the Full Commission. In both Decision and Orders, it was found that Appellant was constructively non-compliant with medical treatment, resulting in the termination of benefits. Respondents were within their rights to deny further treatment, including physical therapy, under S.C. Code Ann. § 42-15-60. Appellant contends that Dr. Tavel's medical recommendations were made without proper consideration of Appellant's medical history and without review of updated imaging. Appellant further contends that this "pivoted his diagnosis" and led to treatment with Dr. Boyd. Again, this is a broad statement without indication of any specific harm done or relief being sought by Appellant.

Further, Appellant's statement of the case does not contain the minimum required information under the South Carolina Appellate Court Rules. In his statement of the case, Appellant merely restates his issues on appeal. There is no indication as to filing dates, trial dates, description of orders, etc. Appellant's arguments fail to provide any proof of legal errors; all are conclusory statements unsupported by any evidence. Failure to abide by the Appellate Court Rules results in an order of dismissal. Rule 206(a), SCACR. He additionally never raised any of this authority before the Single Commissioner or Appellate Panel. Therefore, Appellant's case should be dismissed for failure to comply with South Carolina Appellate Court Rules. Further, the Order of the Full Commission should be affirmed.

II. WHETHER THE COMMISSION CORRECTLY DETERMINED THAT APPELLANT WAS CONSTRUCTIVELY NON-COMPLIANT WITH MEDICAL TREATMENT, PURSUANT TO § 42-15-60, AND THEREFORE NOT ENTITLED TO FURTHER BENEFITS UNDER THE ACT.

Under South Carolina Workers' Compensation Regulations, the employer is required to pay for all authorized medical treatment, however, it is within the employer's rights to select the authorized treating physician. S.C. Code Ann. Regs 67-509. If an employee refuses to accept medical treatment, the employer can cease compensation until the employee's refusal ends. S.C. Code Ann. § 42-15-60(A). Further, "if the employee refuses to submit himself to or in any way obstructs the examination requested by and provided for by the employer, his right to compensation and his right to take or prosecute a proceeding under this title *must* be suspended." S.C. Code Ann. § 42-15-80.

The court has held, "the [Act] must be construed in justice to both parties and must not impose a burden on either." *Hill v. Skinner*, 195 S.C. 330, 11 S.E.2d 386 (1940) (where an employee was denied compensation for refusing to submit to a physical examination) *see Wardlaw v. J. G. Ridgeway Const. Co.,* 212 S.C. 116, 46 S.E.2d 662 (1948) (where the court found the employer was entitled to suspend compensation due to the employee's lack of "credible evidence" in claiming refusal to submit to medical treatment was justified). While typically medical noncompliance is determined by refusal to attend appointments, the South Carolina Workers' Compensation Commission has held that an employee's conduct is also grounds for termination. For example, in *Bruce Harris v. Collins & Aikman,* an employee sustained an admitted injury and was provided with causally-related medical treatment. No. 9804023, 1999 S.C. Wrk. Comp. LEXIS 226 (S.C. Wrk. Comp. July 29, 1999) at 2 (order incorporated by reference in *Bruce Harris v. Collins & Aikman*, No. 9804023, 2000 S.C. Wrk. Comp. LEXIS 482 (S.C. Wrk. Comp. Jan. 20, 2000) noting the Appellate Panel adopted the Single Commissioner's Findings of Fact and Rulings of Law as correct). In that case, the defendants provided treatment with Dr. Millon and Dr. Brown. *Id.* at 8. Both doctors subsequently refused to treat the claimant, with Dr. Brown noting the

claimant was irate. *Id.* at 18-19. The defendants then scheduled an appointment with Dr. Posta. *Id.* However, Dr. Posta canceled the appointment after speaking with Dr. Milon and Dr. Brown. *Id.* The defendants then attempted to provide treatment with Dr. Batson, who stated he also could not see the claimant. *Id.* The hearing commissioner ultimately found that due to his volatile behavior, the claimant's actions constituted a refusal of medical treatment pursuant to S.C. Ann. §§ 42-15-60- and 42-25-80. *Id.* at 23, 26-27. Thus, the defendants were entitled to terminate benefits and no longer responsible for further medical treatment. *Id.*

Similarly to our present case, Appellant sustained an admitted injury in which Respondents provided causally-related treatment and temporary total disability benefits. Like in *Bruce Harris*, Appellant's own conduct constitutes refusal of medical treatment. Throughout the life of his claim, Appellant engaged in inappropriate behavior, both in the office and through communications, with his authorized treating physicians and their staff, as well as towards his assigned nurse case manager. Despite numerous attempts by Respondents to provide treatment, Appellant continued to exhibit belligerent and disrespectful behavior. This resulted in multiple doctors refusing to provide medical treatment for Appellant, as detailed below.

Respondents initially provided treatment with Dr. Edward Tavel with Pain Specialists of Charleston on February 14, 2023. Def. APA 8, p. 91. Despite Dr. Tavel's recommendation of injections to treat Appellant's low back, Appellant attempted to control his own medical treatment by demanding surgical intervention and to be sent to Southeastern Spine Institute. Def. APA 8, p. 93-97. On May 11, 2023, Dr. Tavel's office informed Respondents that they would be releasing Appellant from the practice "due to his aggressive behavior." Def. Ex. E, p. 144. Specifically, it was noted that Appellant had made threatening calls to Dr. Tavel's office. Def. Ex. E, p. 137.

On February 28, 2023, Appellant called Dr. Gunter's office, he referred to a staff member as "b****" and a "hag," and threatened to come into their office to "let them have it" because he wanted pain medication. Def. APA 7, p. 89. The nurse case manager notified Respondents that Dr. Gunter's office was under the impression that Appellant's girlfriend had called impersonating a nurse case manager. Def. Ex. E, p. 128. On March 6, 2023, Dr. Gunter's office released Appellant from their care, noting it "certainly" did not appear possible to continue Appellant's care, as there was noted discord with the relationship between the practice and the Appellant. Def. APA 7, p. 90.

Respondents also attempted to provide medical treatment with Dr. Girault, who also declined to treat Appellant. Def. APA 10, p. 106. Dr. Girault noted that Appellant was combative upon arrival to his office and informed him "what to do and not to do." Def. APA 10, p. 107. Appellant's girlfriend noted during the appointment, that they were "in the process of suing the previous providers" and attorneys. Def. APA 10, p. 107. Further, it was discovered that she had also recorded the visit without Dr. Girault's consent. Def. APA 10, p. 107.

Appellant's behavior was not just directed at his medical providers. On May 9, 2023, Respondents were notified by Kimberly Adams, Gallagher Bassetts' Filed Case Manager, that the claim must switch to a Telephonic Nurse Case Manager due to Appellant's aggressive behavior and threats made to his Nurse Case Manager, Randi Walle. Def. Ex. E, p. 137. On Jul 11, 2023, Respondents were notified that Appellant had called Jeff Close, an employee of the carrier, "loud," "a liar," and "an idiot" via phone call. Def. Ex. D, p. 123. Appellant has also been aggressive towards Defense Counsel. On April 15, 2023, Appellant emailed Defense Counsel alleging she was being rude, intentionally non-compliant with the South Carolina Code, and intentionally withholding mileage reimbursement. Def. Ex. E, p. 129. Later, on April 27, 2023, Appellant emailed Defense Counsel, stating the incorrect mileage was paid and claiming the math was done

"by someone's first grader." Def. Ex. E, p. 134. Appellant stated if Defense Counsel was waiting for him to hire an attorney, she was "out of luck," as he was not able to hire anyone due to the "defamation and slander" by Dr. Gunter's office, Defense Counsel, and by Gallagher Bassett. Def. Ex. E, p. 134. On May 10, 2023, Appellant called Defense Counsel 22 times over the span of 19 minutes and left two voicemails stating he would continue to call until he was answered. Def. Ex. E, p. 138-141. Appellant continued to harass Defense Counsel throughout the life of his claim, necessitating the filing of a motion to limit contact. Def. Ex. E, p. 124-126.

Appellant contends that Dr. Tavel recommended steroid injections without reviewing updated imaging and despite Appellants "prior reaction" to such injections. This contention is false. On July 12, 2022, Appellant received a lumbar transforaminal epidural steroid injection at L5-S1. Def. APA 3, p. 61-62. There is no medical narrative detailing an allergic reaction to this injection. Dr. Tavel stated "patient indicates he has had adverse reactions to steroid injections and does not want to proceed with any further steroid injections at this time." Def. APA 8, p. 92-93. In light of this, Dr. Tavel ordered a different treatment plan with an SI joint injection, which Appellant underwent on May 2, 2023. Def. APA 8, p. 94. Dr. Girault was also aware of Appellant's alleged adverse reaction to the lumbar transforaminal epidural steroid injection, so she recommended he undergo a different injection in the form of a SI joint injection and nonsteroidal anti-inflammatory medications. Def. APA 10, p. 106-107. Appellant testified to not being a medical professional and is unqualified to rebut the recommendations of multiple licensed physicians. Single Comm. Tr. P. 23, ll. 21-22 (2023).

In addition to his documented harassment, Appellant has testified that he no longer wants to pursue his workers' compensation claim. At the hearing in front of the Single Commissioner, Appellant requested to "discontinue [himself]" of the system and "to close and get out of it and

take care of [himself]." Single Comm. Tr. P, 11, ll. 15-17 (2023); Single Comm. Tr. P. 12, ll. 11-13 (2023). He further noted he just wants to "get on with his life." Single Comm. Tr. P. 32, ll. 23-24 (2023). Appellant wants to choose his own medical treatment and treat outside of the workers compensation system. Single Comm. Tr. P. 12, ll. 20-25 (2023); Single Comm. Tr. P. 13, ll. 12-13 (2023).

Respondents contend they have more than sufficiently met their burden of proof in the documentation of medical noncompliance as evidenced by Appellant's behavior and own testimony. Pursuant to S.C. Code Ann. §§ 42-15-60 and 42-15-80, Respondents were withing their rights to suspend Appellant's benefits under the Act. Again, a decision of the Full Commission must only be reversed upon the showing of substantial evidence. *Davis v. S.C. Dep't of Corr*., 444 S.C. 138, 906 S.E.2d 569 (2024). Appellant has presented no evidence, let alone substantial evidence, to support his appeal. Therefore, the Order of the Full Commission should be affirmed as Appellant was medically noncompliant and thus, not entitled to further benefits under the act.

III. WHETHER THE COMMISSION CORRECTLY DETERMINED RESPONDENTS ARE ENTITLED TO CREDIT FOR OVERPAYMENT OF TEMPORARY TOTAL DISABILITY BENEFITS PAID DURING THE PERIOD OF APPELLANT'S NON-COMPLIANCE

The Commission determined that Respondents were entitled to credit for overpayment of temporary partial disability benefits paid during the period of Appellant's constructive medical non-compliance from February 14, 2023, to November 13, 2023. The credit for overpayment due to medical non-compliance totals $23,256.48.

Pursuant to South Carolina Code § 42-15-60, "the refusal of an employee to accept any medical, hospital, surgical, or other treatment or evaluation when provided by the employer…bars the employee from further compensation until the refusal ceases" (emphasis added). Further, South Carolina Code § 42-9-210 permits a credit or deduction from compensation when an employer has

made payments during the period of disability that were not due and payable so long as such deductions are made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly TTD payment.

In the case of *Timothy Smith v. Horry County Solid Waste*, the claimant sustained multiple injuries during the course and scope of his employment. No. 1611935, 2020 S.C. Wrk. Comp. LEXIS 21 (S.C. Wrk. Comp. March 16, 2020) at 25. The defendants provided medical care for the same. *Id.* After reaching maximum medical improvement for all body parts, the authorized treating physician referred the claimant for a pain management evaluation and continued treatment. Id. The defendants first provided care with Dr. Willoughby, who discharged him due to a drug screen where he tested positive for cocaine. *Id*. Thereafter, the defendants provided another pain management evaluation with Dr. Parker, who discharged the claimant for the same reason. *Id*. Finally, the defendants authorized treatment with Dr. Boatwright, who also discharged him from care, for again testing positive for cocaine. *Id*. at 25-26. Following the Single Commissioner Hearing, the Smith Commissioner issued an Order finding claimant was non-compliant with medical treatment pursuant to §§ 42-15-60 and 42-15-80. *Id*. at 31. Further, and most importantly for the purposes of this specific argument, the Smith Commissioner found that under S.C. Code Ann. Regs. 67-505, the defendants were entitled to suspend payment of TTD based upon Claimant's non-compliance with medical treatment, and under § 42-9-210, the defendants were entitled to a credit for temporary compensation paid for the period of non-compliance. *Id*.

As detailed above, Appellant was properly found to be constructively medically noncompliant from February 14, 2023, to November 13, 2023. Though he attended appointments physically, he did not "accept" treatment and evaluations by virtue of acting belligerently towards the physicians, their staff, and other professionals attempting to facilitate his claim. He further admitted under

oath to attempting to control his own medical treatment and repeatedly requested referrals to his physician of choice. Accordingly, per § 42-15-60, he is not entitled to Temporary Total Disability benefits under The Act from February 14, 2023, to November 13, 2023. During that period, Respondents paid a total of $23,256.48 in temporary total benefits. Accordingly, just as in *Timothy Smith v. Horry County Solid Waste*, two things are true – first, Respondents paid compensation during the period of disability that was not due and payable since Appellant was barred from compensation, and second, they are entitled to deduction for compensation for the period of non-compliance, which totals $23,256.48. Since the Appellant received compensation that was not due and payable from February 14, 2023, to November 13, 2023, the Single Commissioner's ruling that Respondents were entitled to credit for overpayment of temporary partial disability benefits during the period of Appellant's constructive medical non-compliance, should be affirmed. Further, the Order of the Single Commissioner should be affirmed.

IV. WHETHER THE COMMISSION CORRECTLY DETERMINED APPELLANT'S AVERAGE WEEKLY WAGE AND COMPENSATION RATE PURSUANT TO § 42-1-40

The Commission determined that Appellant's Average Weekly Wage (AWW) and Compensation Rate (CR) to be $542.73 and $361.84 respectively. Order, Finding of Fact eighteen (18), p. 31. South Carolina Code § 42-1-40 defines AWW as the "earnings of the injured employee in the employment in which he was working at the time of the injury during the 52-week period immediately preceding the date of injury." It "must be calculated" by "totaling the wages paid in the last four quarters immediately preceding the quarter in which the injury occurred…divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less." *Id*. The commission "must use" this primary method unless (1) the injured worker worked a period of less than 52 weeks prior to the injury, or (2) it would be unfair to do so "for exceptional reasons."

Pilgrim v. Eaton, 391 S.C. 38, 703 S.E.2d 241, 244 (Ct. App. 2010). The first alternative for calculating AWW if an injured worked less than 52 weeks prior to his injury is to "divide the earnings during that period by the number of weeks and parts thereof during which the employee earned wages." S.C Code Ann. § 42-1-40. In order to use the first alternative, it must be both "practicable" to use the first alternative method, and a "fair and just" result to both parties. *Pilgrim*, 703 S.E.2d at 245.

Here, according to his wage records, Appellant worked a total of only 22 weeks prior to his work accident on May 25, 2022. This means that Respondents had to rely upon an alternative wage calculation method, as there were not 52 weeks of wages available. Accordingly, Respondents resorted to the first alternative per the statute. Since Respondents were in possession of 22 weeks of wages prior to his work accident (included at the Single Commissioner Hearing as Defendants Exhibit A,) it was practicable to rely on these wages. Appellant earned a total of $11,939.97 over the period of 22 weeks. Respondents, per the statute, divided the earnings paid ($11,939.97) by the number of weeks during which the employee earned wages (22), and calculated Appellant's AWW and CR to be $542.73 and $361.84, respectively.

At the hearing, Appellant failed to articulate or propose any numbers to be used for his AWW and CR. He did not allege he received additional cash payments from the insured, which would increase his AWW and CR. He did not allege his wage records, dated December 12, 2021, to June 25, 2022, which were submitted as evidence prior to the hearing as part of Respondents' APA submissions. Accordingly, he proposed no evidence whatsoever related to his AWW and CR and specifically stated in his Request for Commission Review that he had "no argument" for the same. Therefore, there is no evidence that Respondents calculations were unfair or unjust to either party. Accordingly, Respondents simply assert that "the math is the math," which is fair and equitable.

What would be an unjust result, is to force Respondents to pay more than what is owed per the statute. Given Appellant's AWW and CR were calculated in a fair and equitable manner to all parties and was supported by the evidence, the Commissioner's ruling that Appellant's AWW and CR are $542.73 and $361.84, respectively, should be affirmed.

V. WHETHER THE COMMISSION CORRECTLY DETERMINED RESPONDENTS ARE ENTITLED TO CREDIT FOR OVERPAYMENT OF TEMPORARY TOTAL DISABILITY BENEFITS DUE TO INCORRECT AVERAGE WEEKLY WAGE AND COMPENSATION RATE

The Commission determined that Respondents were entitled to credit for overpayment of temporary partial disability benefits due to incorrect average weekly wage and compensation rate. Order, Finding of Fact nineteen (19), p. 3. The credit for overpayment due to incorrect average weekly wage and compensation rate totals $6,850.58.

Per South Carolina Regulation 67-1603(3)(b)(iii), when first, the compensation rate on the Form 20 is less than previously reported on the Form 15; second, it has been over 150 days since the date of injury; and third, Appellant does not agree to a reduction in his compensation, the employer's representative shall continue paying the compensation rate reported on the Form 15 and may file a Form 21 to request a reduction in compensation. South Carolina Code § 42-9-210 permits a credit or deduction from compensation when an employer has made payments during the period of disability that were not due and payable so long as such deductions are made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly TTD payment. In conjunction, these two statutes require an employer's representative to continue payments at an incorrect compensation rate until a Form 21 Hearing has been heard, and an order permits reduction in compensation; however, the representative will then be credited for overpayment made based on incorrect compensation rate, as the overpayment amount was not due and payable when made.

Here, after Respondents originally adjusted for underpayment as seen in Exhibit C, Appellant received weekly TTD benefits at a rate of $596.32, as demonstrated on the List Claim Payments ledger submitted by Respondents into evidence at the hearing. As detailed above, Appellant's wage records detailed a compensation rate of only $361.84. Accordingly, Respondents made payments during the period of disability that were not due and payable since Appellant was paid more than he was owed weekly. Since it had been over 150 days since the date of injury, Respondents requested a Form 21 hearing on March 6, 2023, to request a reduction in compensation, as required by the regulations. They further requested credit for overpayment, which by the time of the November 28, 2023, hearing totaled $6,850.58.

Because Defendant's entitlement to a credit for overpayment due to incorrect average weekly wage and compensation rate was properly calculated and supported by evidence, the Commission's ruling that Respondents were entitled to credit for overpayment of temporary partial disability benefits due to incorrect average weekly wage and compensation rate should be affirmed. Further, the Order of the Commission should be affirmed.

CONCLUSION

For the foregoing reasons and those that may be set forth at oral arguments in this matter, the Respondents respectfully request that the Order of the Full Commission issued June 12, 2025, be affirmed in its entirety and that the matter be dismissed.

RESPECTFULLY SUBMITTED,

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