

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal from the South Carolina
Workers' Compensation Commission

SCWCC File No. 1103604

Michael Philip Worthen, Employee,

v.

Respondent,

Laurens County, Employer, and
SC Association of Counties SIF, Carrier,

Appellants.

INITIAL BRIEF OF RESPONDENTS

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SC Court of Appeals

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS	5
STANDARD OF REVIEW	9
ARGUMENTS.....	11
I. SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS THE COMMISSION'S DECISION THAT WORTHEN'S HEART ATTACK ON FEBRUARY 26, 2011 WAS NOT A COMPENSABLE INJURY BY ACCIDENT ARISING OUT AND IN THE COURSE OF HIS EMPLOYMENT.....	11
A. The patient that Worthen and his partner were tending to on February 26, 2011 was 6'2" tall and weighed approximately 262 pounds	12
B. The act of lifting and transporting a patient weighing approximately 262 pounds, with his partner, was expected and anticipated for a Laurens County EMT.....	18
C. Lifting and transporting a patient weighing approximately 262 pounds was not an unusual and extraordinary condition of employment for a Laurens County paramedic	22
II. WORTHEN'S NEED FOR CORONARY ARTERY BYPASS SURGERY WAS NOT CAUSALLY RELATED TO THE HEART ATTACK HE SUSTAINED ON FEBRUARY 26, 2011	26
CONCLUSION	30

TABLE OF AUTHORITIES

Cases

<u>Bentley v. Spartanburg County</u> , 398 S.C. 418, 730 S.E.2d 296 (2012)	22, 24, 25
<u>Black v. Barnwell County</u> , 243 S.C. 531, 134 S.E.2d 753 (1964)	12, 18
<u>Brown v. R.L. Jordan Oil Co.</u> , 291 S.C. 272, 353 S.E.2d 280 (1987)	9, 12
<u>Clade v. Champion Laboratories</u> , 330 S.C. 8, 496 S.E.2d 856 (1998)	11, 15
<u>DeBruhl v. Kershaw County Sheriff's Dept.</u> , 303 S.C. 20, 397 S.E.2d 782 (Ct. App. 1990).....	11
<u>Hendricks v. Pickens County</u> , 335 S.C. 405, 411, 517 S.E.2d 698, 701 (Ct. App. 1999).....	10
<u>Howell v. Pacific Columbia Mills</u> , 291 S.C. 469, 354 S.E.2d 384 (1987)	9
<u>Hoxit v. Michelin Tire Corp.</u> , 304 S.C. 461, 405 S.E.2d 407 (1991).	11
<u>Hunter v. Patrick Construction Co.</u> , 289 S.C. 46, 344 S.E.2d 613 (1986)	9, 12
<u>Jennings v. Chambers Development Co.</u> , 335 S.C. 249, 516 S.E.2d 453 (Ct. App. 1999).....	15
<u>Kearse v. S.C. Wildlife Resources Dept.</u> , 236 S.C. 540, 115 S.E.2d 183 (1960)	11
<u>Lark v. Bi-Lo, Inc.</u> , 276 S.C. 130, 276 S.E.2d 304 (1981)	9
<u>Lockridge v. Santenns of America, Inc.</u> , 344 S.C. 511, 544 S.E.2d 842 (Ct. App. 2001).....	9, 11, 12, 18, 22
<u>Munn v. Nucor Steel</u> , 336 S.C. 28, 518 S.E.2d 289 (Ct. App. 1999).....	26

<u>Pierre v. Seaside Farms, Inc.</u> , 386 S.C. 534, 689 S.E.2d 615 (2010)	9
<u>Pratt v. Morris Roofing, Inc.</u> , 357 S.C. 619, 594 S.E.2d 272 (2004)	10
<u>Rodriguez v. Romero</u> , 363 S.C. 80, 84, 610 S.E.2d 488, 490 (2005)	10
<u>Sanders v. Wal-Mart Stores, Inc.</u> , 379 S.C. 554, 666 S.E.2d 297 (Ct. App. 2008).....	10
<u>Sharpe v. Case Produce, Inc.</u> , 336 S.C. 154, 519 S.E.2d 102 (1999)	17
<u>Shealy v. Aiken County</u> , 341 S.C. 448, 535 S.E.2d 438 (2000).	9, 11, 22, 23
<u>Whitworth v. Window World, Inc.</u> , 377 S.C. 637, 661 S.E.2d 333 (2008).....	9, 12

Statutes

S.C. Code Ann. section 1-23-380(A)(5) (2007)	10
S.C. Code Ann. section 42-1-160 (2007).....	1, 11

STATEMENT OF THE ISSUE ON APPEAL

WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S FINDING THAT WORTHEN'S HEART ATTACK ON FEBRUARY 26, 2011 WAS NOT A COMPENSABLE INJURY BY ACCIDENT ARISING OUT AND IN THE COURSE OF HIS EMPLOYMENT UNDER SECTION 42-1-160, S.C. CODE ANN. (2007), IS SUPPORTED BY SUBSTANTIAL EVIDENCE?

STATEMENT OF THE CASE

On June 22, 2012, Michael Worthen ("Worthen"), an EMT with Laurens County EMS, filed a Form 50, Request for Hearing, alleging that on February 26, 2011, he sustained a compensable injury, specifically a heart attack, by accident arising out of and in the course of his employment when he "was helping lift a 400 to 450 pound patient several times." (Form 50, dated 6/22/2012). On June 25, 2012, Laurens County and its workers' compensation carrier, South Carolina Association of Counties Self-Insurance Fund (hereinafter cited collectively as "Laurens County"), timely filed a Form 51 denying that Worthen's heart attack was the result of an injury by accident arising out of and in the course of his employment. (Form 51, dated 6/25/2012). A hearing was subsequently scheduled before Commissioner Gene McCaskill ("Single Commissioner") on August 14, 2012. (See Order, dated 11/7/2012, p. 1).

At the hearing, Worthen maintained that he sustained a compensable heart attack under the Act. (Tr. 5:10-12). Worthen specifically argued that his heart attack was compensable, because it was induced by an unusual strain or overexertion – i.e., the weight of the patient he was lifting on February 26, 2011. (Tr. 7:9-12). Worthen sought

payment of all causally related medical expenses, as well as temporary total disability benefits from February 26, 2011 through July 1, 2011, the date he returned to work. (Tr. 7:15-8:1).

While the fact that Worthen sustained a heart attack on February 26, 2011 was admitted, Laurens County continued to deny compensability and asserted that Worthen's heart attack was not caused by the work-related activities he was performing on February 26, 2011. (Tr. 8:3-13). Laurens County contended that given his severe, advanced, pre-existing coronary artery disease, Worthen's heart attack could have happened at any time, and that it was purely coincidental that it happened while Worthen was at work. (Tr. 8:14-9:3). Alternatively, Laurens County contended that even assuming Worthen's job duties on February 26, 2011 induced his heart attack, the facts surrounding his alleged accident did not meet the standard of proof required in heart attack cases. (Tr. 8:3-13). Laurens County specifically denied that Worthen's heart attack was induced (1) by an unexpected strain or overexertion of the performance of his duties of employment or (2) by an unusual or extraordinary condition in his employment. (Tr. 8:8-11). While Worthen alleged that the patient he was lifting on February 26, 2011 was at least 400 pounds, Laurens County pointed out that this was purely an estimate. (Tr. 9:4-14). Laurens County contended that the most reliable evidence in the record regarding the patient's weight was the patient's nursing home chart, dated February 2, 2011, which noted that the patient weighed 262 pounds based "on [the] most recent measure in last 30 days." (Tr. 9:15-10:1; *See* APA #12, p. 315). Accordingly, Laurens County argued that Worthen's alleged heart attack was not compensable under the Act because it was not

unexpected, unusual, or extraordinary for a Laurens County EMT to lift a 262 pound patient. (Tr. 8:3-13).

Finally, Laurens County took the position that even if his heart attack was found compensable, Worthen's subsequent quadruple bypass surgery and cardiac defibrillator implantation were not causally related to his heart attack. (Tr. 10:22-11:3). Laurens County contended that they were not responsible for this treatment, because the bypass surgery was performed to treat Worthen's severe, pre-existing coronary artery disease, and not to treat his heart attack. (Id.)

On November 7, 2012, Commissioner McCaskill issued a Decision and Order finding that Worthen's job duties (i.e., lifting and transporting the patient) were the triggering factor in his heart attack on February 26, 2011. (Order, dated 11/7/2012, p. 10). He further found that "[Worthen's] cardiac infarction/heart attack is a compensable injury under the Act, because it was induced by an unexpected strain or overexertion in the performance of his duties or employment, or by unusual ordinary conditions of the employment." (Id., p. 11). With regards to the patient that Worthen was lifting and transporting on the date of his alleged accident, Commissioner McCaskill found as follows:

7. [Worthen] and his partner answered a call on February 26, 2011 that required the two of them to lift and transport a very large man. (The exact size of the patient is in dispute. He weighed somewhere between 262 – 500 pounds. Based upon the testimony, it is reasonable to conclude his exact weight was closer to the lower end of the foregoing range.)

(Id., p. 8). Commissioner McCaskill ordered Laurens County to pay Worthen temporary total disability compensation from February 26, 2011 to July 2, 2011 and to pay for "all his medical expenses that are causally related covered under the Act." (Id., p. 13).

Laurens County timely filed a Form 30, Request for Commission Review, on November 13, 2012. (Form 30, dated 11/13/2012). A review hearing was held before an Appellate Panel of the South Carolina Workers' Compensation Commission ("Appellate Panel") on April 16, 2013. (See Order, dated 6/14/2013, p. 1).

On June 14, 2013, the Appellate Panel, by unanimous vote, issued its Decision and Order reversing the Single Commissioner. (Id.) The Appellate Panel specifically found the patient that Worthen and his partner were transporting on the date of his alleged accident "was 6'2" tall and weighed approximately 262 pounds." (Id., p. 10). The Appellate Panel further found that based on the testimony of both Dr. Bittrick and Dr. Ellison, Worthen suffered from severe coronary artery disease prior to his heart attack on February 26, 2011 and that his need for quadruple bypass surgery on March 2, 2011 was due to his severe, preexisting coronary artery disease, and not his heart attack on February 26, 2011. (Id., p. 12). Finally, the Appellate Panel found that the act of lifting and transporting a patient weighing approximately 262 pounds, with the assistance of his partner, (1) was not an unexpected strain or overexertion in the performance of the duties of Worthen's employment as an EMT for Laurens County and (2) was not an unusual or extraordinary condition of Worthen's employment as an EMT for Laurens County. (Id., pp. 12-13). As such, the Appellate Panel concluded that Worthen did not sustain a compensable injury by accident arising out of and in the course of his employment with Laurens County. (Id., p. 13).

Worthen filed a Notice of Appeal with the South Carolina Court of Appeals on July 9, 2013. (Claimant's Notice of Appeal, dated 7/9/2013).

STATEMENT OF THE FACTS

Worthen was hired by Laurens County as an EMT in September of 2007. (Tr. 25:2-4). As an EMT, his job duties included responding to medical calls, providing patients with treatment, and transporting patients to the hospital for further treatment. (Tr. 25:8-12). Additionally, he was required to lift patients when placing them on a stretcher, putting them in the ambulance, and taking them out of the ambulance. (Tr. 30:13-22 & 72:19-73:2).

At approximately 10:00 p.m. on February 26, 2011, Worthen and his partner, Mike Lundis, responded to a call from National Health Care of Clinton to attend to a patient in respiratory distress. (Tr. 32:1-6). Upon arrival, Worthen and his partner observed the patient and determined that he needed to be transported to the hospital for further treatment. (Tr. 32:8-10). Therefore, Worthen and his partner transferred the patient from his bed to a stretcher. (Tr. 32:11-13). In order to transfer the patient to the stretcher, Worthen reached under the patient's arms, held his wrists and lifted, while his partner simultaneously grabbed the patient's lower extremities and lifted. (Tr. 32:21-25 & 68:8-12). Worthen testified that when they lifted the patient onto the stretcher, he felt a sharp pain in his shoulder blade and "heaviness" in his chest. (Tr. 40:22-41:2). After placing the patient on the stretcher, Worthen and his partner wheeled the stretcher to the ambulance, lifted it into the ambulance, and transported the patient to the hospital. (Tr. 41:3-18). When they arrived at the hospital, he and his partner removed the stretcher with the patient from the ambulance, wheeled him into the hospital, and transferred him onto a hospital bed. (Id.) Worthen testified that when they transferred the patient to the

hospital bed, he once again experienced pain in his shoulder blade, “heaviness” in his chest, and difficulty breathing. (Id.)

With regards to the size of the patient that he and his partner transported on February 26, 2011, Worthen testified that the patient was “very large,” that he was 6’7” – 6’8” tall, and that he weighed between 400 – 450 pounds. (Tr. 33:1-19 & 69:14-16). However, Worthen admitted that nobody measured the patient’s height or weighed the patient, and he testified that he was just “guesstimating” the patient’s height and weight. (Tr. 68:24-69:5 & 69:19-20). On February 26, 2011, Mike Lundis, Worthen’s partner, completed an EMS Patient Care Record documenting the care and treatment he and Worthen provided the patient, and in his report, Mr. Lundis estimated that the patient’s weight was “350 lbs.” (Defendants’ APA #14, p. 318). While Mr. Lundis testified at the hearing that he believed the patient could have been well in excess of 350 pounds, he admitted that he was simply “guessing” the patient’s weight. (Tr. 87:21-88:4 & 97:17-24). Additionally, both Worthen and Mr. Lundis testified that the patient was so tall he hung off the end of the stretcher, that he was wider than the stretcher, which prevented them from raising the side rails, and that they had to use special straps to secure him to the stretcher. (Tr. 34:18-35:25 & 85:13-86:24). However, contrary to the testimony of both Worthen and Mr. Lundis, the patient’s chart from National Health Care of Clinton, dated February 2, 2011, *less than a month before Claimant’s alleged accident*, noted that the patient was 6’2” and weighed 262 pounds based “on [the] most recent measure in last 30 days.” (See Defendants’ APA #12, p. 315).

After leaving the patient at the hospital, Worthen reported the symptoms he was experiencing to his partner. (Tr. 45:5-12). Worthen’s partner then took him back to the

station and ran some tests on him, during which time his partner noticed some changes on Worthen's EKG. (Tr. 46:7-13 & 47:7-9). As a result, Worthen's partner and another paramedic, Michael O'Brien, transported him to Greenville Memorial Hospital. (Tr. 48:9-20). Upon arrival to the hospital, Worthen underwent several tests, which revealed that he had suffered an acute myocardial infarction. (Claimant's APA #2, p. 7). Worthen was subsequently admitted to the hospital, and on February 27, 2011, Worthen underwent a cardiac catheterization, which revealed "extreme coronary disease." (Defendants' APA #2, p. 246). Due to the findings of severe coronary artery disease, he underwent quadruple bypass surgery on March 2, 2011. (Claimant's APA #8, pp. 37-39). Worthen was ultimately discharged from the hospital on March 14, 2011, and he subsequently began treating with Dr. Jon Bittrick. (See Claimant's APAs #2 & #4).

On October 26, 2011, the parties deposed Dr. Bittrick. At his deposition, Dr. Bittrick testified that he believed the act of lifting a 400-500 pound patient was the precipitating factor of Worthen's heart attack. (Bittrick Depo., p. 8:4-19). Dr. Bittrick also testified that Worthen had severe coronary artery disease that pre-existed his heart attack. (Id. at 15:1-15). He noted that Worthen had several risk factors for developing coronary artery disease, including diabetes, high cholesterol, a 12 year smoking history, and a family history of coronary artery disease. (Id. at 16:7-25). Finally, Dr. Bittrick testified that Worthen's quadruple bypass surgery was performed to treat Worthen's preexisting coronary artery disease and that Worthen would have needed the surgery even if he had not had a heart attack on February 26, 2011. (Id. at 22:10-16).

On August 22, 2012, the parties deposed Dr. W. Travis Ellison, who performed a medical records review for Defendants. Dr. Ellison testified that based on Worthen's

history, his heart attack was triggered by the fact he did some heavy lifting. (Ellison Depo. p. 15:3-23). Dr. Ellison also testified that Worthen had “severe” coronary artery disease that pre-existed his heart attack and that a person with that degree of coronary artery disease could have a heart attack at any time. (Id. at 24:8-18). He further testified that Worthen’s bypass surgery was performed to treat his preexisting coronary artery disease and that Worthen would have needed the surgery even if he had not had a heart attack. (Id. at 32:14-33:1).

STANDARD OF REVIEW

The Administrative Procedures Act was enacted in 1977 and “purports to provide uniform procedures before State Boards and Commissions for judicial review after the exhaustion of administrative remedies.” Lark v. Bi-Lo, Inc., 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981). The Administrative Procedures Act establishes the standard for judicial review of decisions of the South Carolina Workers’ Compensation Commission. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010).

In workers’ compensation cases, the Appellate Panel of the South Carolina Workers’ Compensation Commission is the ultimate fact finder. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The appellate court is not permitted to re-weigh the evidence and to substitute its own findings of fact for those of the Commission. Brown v. R.L. Jordan Oil Co., 291 S.C. 272, 353 S.E.2d 280 (1987). The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission’s finding from being supported by substantial evidence. Lockridge v. Santens of America, Inc., 344 S.C. 511, 544 S.E.2d 842 (Ct. App. 2001). The appellate court must affirm the findings of fact of the Commission if they are supported by substantial evidence. Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000).

An appellate court’s review of the Commission’s findings of fact is limited to determining whether the findings are clearly unsupported by substantial evidence in the record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). Substantial evidence is not a mere

scintilla of evidence, nor evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached. Pratt v. Morris Roofing, Inc., 357 S.C. 619, 622, 594 S.E.2d 272, 274 (2004).

Section 1-23-380(A)(5) of the South Carolina Code also provides:

The Court may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are . . . (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. . . .

S.C. Code Ann., § 1-23-380(A)(5) (2007); *See also* Sanders v. Wal-Mart Stores, Inc., 379 S.C. 554, 666 S.E.2d 297 (Ct. App. 2008) (Appellate court can reverse or modify the decision of the Appellate Panel of the Workers' Compensation Commission *only if* the appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record) (Emphasis added).

Thus, "review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law." Rodriguez v. Romero, 363 S.C. 80, 84, 610 S.E.2d 488, 490 (2005) (citing Hendricks v. Pickens County, 335 S.C. 405, 411, 517 S.E.2d 698, 701 (Ct. App. 1999)).

ARGUMENTS

I.

SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS THE COMMISSION'S DECISION THAT WORTHEN'S HEART ATTACK ON FEBRUARY 26, 2011 WAS NOT A COMPENSABLE INJURY BY ACCIDENT ARISING OUT AND IN THE COURSE OF HIS EMPLOYMENT.

A claimant may recover workers' compensation benefits if he sustains an "injury by accident arising out of and in the course of the employment." S.C. Code Ann. § 42-1-160 (2006). The claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture, or speculation. Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998).

In South Carolina, the general rule is that a heart attack is compensable as a workers' compensation accident if it is induced (1) by unexpected strain or overexertion in the performance of the duties of claimant's employment *or* (2) by unusual and extraordinary conditions of employment. *See Lockridge v. Santens of America, Inc.*, 344 S.C. 511, 544 S.E.2d 842 (Ct. App. 2001); Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 407 (1991). (Emphasis added). However, if a heart attack results as a consequence of the ordinary exertion that is required in the performance of the duties of the employment in the ordinary and usual manner, and without any outward untoward event, it is *not* compensable as an accident. DeBruhl v. Kershaw County Sheriff's Dept., 303 S.C. 20, 397 S.E.2d 782 (Ct. App. 1990) (Emphasis added); *See also Shealy v. Aiken County*, 341 S.C. 448, 535 S.E.2d 438 (2000); Kearse v. S.C. Wildlife Resources Dept., 236 S.C. 540, 115 S.E.2d 183 (1960). The fact that due to a weakened heart condition

the exertion required by the ordinary performance of the work is too great for the particular employee who undertakes to perform it, does *not* make it a compensable accident. Id. (Emphasis added).

In the present case, substantial evidence in the record supports the Commission's finding that Claimant did not sustain a compensable heart attack under the Act.

A. The patient that Worthen and his partner were tending to on February 26, 2011 was 6'2" tall and weighed approximately 262 pounds.

In workers' compensation cases, the Appellate Panel of the South Carolina Workers' Compensation Commission is the ultimate fact finder. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). If evidence is conflicting upon an issue, such conflicts in the evidence can only be decided by the Commission. See Black v. Barnwell County, 243 S.C. 531, 134 S.E.2d 753 (1964). The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence. Lockridge v. Santens of America, Inc., 344 S.C. 511, 544 S.E.2d 842 (Ct. App. 2001). The appellate court is not permitted to re-weigh the evidence and to substitute its own findings of fact for those of the Commission. Brown v. R.L. Jordan Oil Co., 291 S.C. 272, 353 S.E.2d 280 (1987). The appellate court must affirm the findings of fact of the Commission if they are supported by substantial evidence. Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008).

In the present case, the parties disputed the size of the patient that Worthen and his partner were transporting when Worthen initially developed symptoms in his chest on February 26, 2011. However, the Appellate Panel specifically found:

14. That the patient that Claimant and his partner were tending was 6'2" tall and weighed approximately 262 pounds. While there

were several guesses and estimates in the record as to the patient's weight (ranging from 350 pounds to 500 pounds), the patient was never actually weighed on February 26, 2011. Thus, we find that the most reliable and probative evidence of the patient's weight on February 26, 2011, was the patient's chart from NHC, dated February 2, 2011, which specifically indicated that the patient was 74 inches tall and weighed 262 pounds based "on [the] most recent measure in last 30 days." (See Defendants' APA #12, p. 315). The patient's chart from NHC, dated February 2, 2011, *less than one month before Claimant's alleged accident*, was the only objective measurement of the patient's weight in the record, and we give great weight to this evidence. This finding is based on the evidence in the record as a whole.

(Order, dated 6/14/13, p.10). As outlined below, substantial evidence in the record clearly supports the Appellate Panel's finding that the patient Worthen and his partner were transporting on February 26, 2011 was 6'2" tall and weighed approximately 262 pounds.

First, Worthen's estimates of the patient's weight varied on different occasions anywhere from 400-500 pounds. Records from Greenville Memorial Hospital, dated February 27, 2011, indicate that Worthen reported to multiple physicians, including Dr. Bittrick, his treating cardiologist, that he was moving a "500 pound patient" when his symptoms began on February 26, 2011. (See Claimant's APA #2, pp. 20&22; Defendants' APA, p. 252). At the hearing, Worthen testified that the patient was "a very large individual" and that he weighed between 400 – 450 pounds. (Tr. 33:1-3 & 69:14-16). However, Worthen admitted that nobody weighed the patient on February 26, 2011. (Tr. 69:19-20). In fact, Worthen explicitly testified that he was simply guessing how much the patient weighed:

Q: [Mr. Kale] And as far as the weight, you're just guesstimating?

A: That's all it is, is a guesstimation.

(Tr. 69:3-5) (Emphasis added).

In an attempt to support his “guesstimation” that the patient weighed over 400 pounds, Worthen called Mike Lundis¹ as a witness at the hearing. Mr. Lundis testified that he completed the EMS run report for the patient in question and that he noted in the report that the patient weighed “350 lbs.” (Tr. 87:4-15; *See also* Defendants’ APA #14, p. 318). While he noted in the run report that the patient weighed 350 pounds, Mr. Lundis specifically testified that he never measured the patient’s weight and that he was simply guessing how much the patient weighed:

Q: [Mr. Desai] Do you recall filling out the report?

A: Yes, I do.

Q: All right. And if you look at the left of it, top left, there is a weight. It says 350 pounds.

A: Yes, I see that.

Q: Did you measure [the patient]?

A: No, I guessed.

Q: You guessed?

A: Just put a rough estimate of the patient’s weight.

(Tr. 87:11-20) (Emphasis added). When questioned further about the run report on cross-examination, Mr. Lundis once again testified that he was simply guessing:

Q: [Mr. Kale] Now, you’ve indicated that when you filled out the EMS run report, that -- you indicated 350 pounds; is that correct?

A: Yes, sir.

Q: And was that your estimate at the time?

A: That was my *guess* at the time, yes.

Q: And you’re still guessing?

A: Yes, sir.

¹ Mike Lundis was employed by Laurens County EMS and was Worthen’s partner on February 26, 2011, the date of his alleged accident. (Tr. 79:16-20 & 85:10-12).

Q: And basically, people can look like they're heavier and not be as heavy as they look?

A: I suppose that's possible. Yes, sir.

(Tr. 97:17 – 98:6) (Emphasis added).

While Worthen and Mr. Lundis estimated that the patient weighed between 350 and 500 pounds, it is abundantly clear that their testimony regarding the patient's weight was pure speculation. As such, the Appellate Panel properly decided not to base its finding regarding the patient's weight on their testimony. See Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998)(Workers' compensation claimant has burden of proving facts that show that injury arose out of employment, and award of benefits must not be based on surmise, conjecture or speculation); Jennings v. Chamber Development Corp., 335 S.C. 249, 516 S.E.2d 453 (Ct. App. 1999)(The claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture or speculation).

Contrary to the speculative testimony of Worthen and Mr. Lundis, the patient's chart from National Health Care of Clinton, dated February 2, 2011, *less than a month before Worthen's alleged accident*, noted that the patient weighed 262 pounds based "on [the] most recent **measure** in last 30 days." (Defendants' APA #12, p. 315) (Emphasis added). The patient's chart from National Health Care established that the patient weighed substantially less than both Worthen's "guesstimation" and Mr. Lundis's "guess." Thus, the patient's chart indicating that he weighed 262 pounds is the most accurate and reliable evidence of his weight, because it was based on an actual measurement of the patient that was taken just weeks prior to Claimant's alleged accident on February 26, 2011, and because it was the **only objective measurement** of the

patient's weight in the record. In fact, even Mr. Lundis's testimony establishes that the patient's chart would be more accurate than his guesses:

Q: [Mr. Kale] And what would really be the best evidence would be the recorded weight that some facility did after they actually weighed him?

A: Yes, sir.

(Tr. 98:3-6) (Emphasis added).

Additionally, the testimony of Worthen and Mr. Lundis regarding the height of the patient establishes that they both exaggerated the patient's size. The stretcher Worthen and his partner used to transport the patient was seventy-six and a half inches – or 6'4½" – in length. (Tr. 34:2-6; *See* Defendants' APA #13, p. 316). At the hearing, Worthen admitted that he did not measure the height of the patient; however, he *estimated* that the patient was around 6'7" or 6'8" tall because the patient's legs "hung off about eight inches passed the end of the stretcher." (Tr. 33:14-34:1 & 34:18-21). When Mr. Lundis was asked at the hearing about the height of the patient, he also testified that the patient was "in excess of the height of the stretcher." (Tr. 85:19-20). In fact, Mr. Lundis specifically testified that the patient extended beyond both the top and bottom of the stretcher:

Q: [Mr. Desai] ...Where was the head, let me ask you that, of the patient?

A: Approximately three inches was over the top of the stretcher and the feet were hanging off the bottom of the stretcher.

Q: So the head was actually over hanging -- the head was hanging over the top?

A: Yes, sir.

Q: And the feet were dangling at the bottom. Is that fair to say?

A: Yes, sir.

Q: Okay. So a six foot four inch and a half stretcher was not sufficient enough for this gentleman that you transported; is that fair?

A: Yes, sir.

(Tr. 86:1-15).

Yet, while Worthen *estimated* that the patient was around 6'7" or 6'8" tall and while Mr. Lundis testified that the patient extended beyond the top and bottom of the stretcher, the patient's chart from National Health Care of Clinton, dated February 2, 2011, noted that the patient's height was "74 inches" (or 6'2"). (Defendants' APA #12, p. 315). Importantly, the recorded height in the patient's chart was based on an *actual measurement* of the patient and was the *only objective measurement* of the patient's height in the record.

While the parties disputed the size of the patient in question, the Appellate Panel gave great weight to the evidence in the patient's chart because it was the only objective measurement of the patient's height and weight in the record. See Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999)(Final determination of witness credibility and the weight to be accorded evidence is reserved to the Workers' Compensation Commission, and it is not the task of the court to weigh the evidence as found by the Commission).

Accordingly, based on the foregoing, substantial evidence in the record clearly supports the Appellate Panel's finding that the patient Worthen and his partner were tending to on February 26, 2011 was 6'2" tall and weighed approximately 262 pounds.

B. The act of lifting and transporting a patient weighing approximately 262 pounds, with his partner, was expected and anticipated for a Laurens County EMT.

As noted above, in South Carolina, a heart attack is a compensable injury by accident if it is induced by unexpected strain or overexertion in the performance of the duties of claimant's employment. See Lockridge, 344 S.C. 511, 544 S.E.2d 842 (Ct. App. 2001). Whether a particular activity constitutes "an unexpected strain or overexertion" must be determined in light of the claimant's usual and normal work duties. See Black v. Barnwell County, 243 S.C. 531, 134 S.E.2d 753 (1964).

In the present case, while Worthen may have sustained a myocardial infarction at work on February 26, 2011, substantial evidence in the record supports the Appellate Panel's finding "[t]hat the act of lifting and transporting a patient weighing approximately 262 pounds, with his partner, was not an unexpected strain or overexertion in the performance of the duties of Claimant's employment as an EMT for Laurens County." (Order, dated 6/14/13, pp. 12-13).

In his brief, Worthen contends that it was "not within [his] normal job duties to lift and transport large individuals, such as an individual the size of subject patient, without additional assistance from more than one other person." (Brief of Appellant, p. 14). However, Worthen's argument is inherently flawed because it is based on his and Mr. Lundis's speculative testimony that the patient in question weighed more than 350 pounds. (Id. at p. 16).

Throughout his brief, Worthen contends that it was unusual for him to have to lift and transport "large individuals" without the help of the fire department. At the hearing, when asked about what he means when he says a "large" individual, Worthen confirmed

that he was describing a person weighing between 400 to 500 pounds, and he also indicated that there was a difference in his mind between a “large” individual and an individual weighing 250 to 260 pounds:

Q: [Mr. Kale] So you said in a month’s time you may have to lift three *large individuals*?

A: Yes, sir. And we usually call the fire department for help.

Q: Would you -- would you -- and when you’re saying *large people*, you’re talking about 400 to 500 pounds?

A: Just a guesstimated rather obese person.

Q: Someone that was 250 to 260 pounds, you see those people frequently, don’t you?

A: Yes, sir.

(Tr. 71:8-18).

Additionally, Worthen argues that Michael O’Brien², another EMT with Laurens County, also testified that additional help was required to lift “*such large patients.*” (Brief of Appellant, p. 16). Worthen cites the following portion of Magistrate O’Brien’s testimony as support:

Q: [Mr. Kale] So, it has happened that you have, as a paramedic, had to with a partner lift *somebody weighing 350 pounds or 400 pounds or even more?*

A: Yes, with help.

(Tr. 122:4-7) (Emphasis added).

Although Worthen contends that it was not within his normal job duties to lift and transport a patient weighing over 350 pounds without the assistance of more than one person, this is not the issue before the Court. As outlined above, substantial evidence clearly establishes that the patient in questioned weighed approximately 262 pounds, *not*

² Of note, Michael O’Brien, who Worthen called as a witness at the hearing, testified that he had known Worthen for a number of years, that they were friends, that he had worked several shifts with Worthen, and that he and Worthen would hunt together. (Tr. 111:9-19).

over 350 pounds. Thus, the issue before this Court is whether substantial evidence supports the Appellate Panel's finding that the act of lifting and transporting a patient weighing approximately 262 pounds, with his partner, was not an unexpected strain or overexertion in the performance of the duties of Claimant's employment as an EMT for Laurens County. As discussed below, substantial evidence in the record clearly supports this finding.

First, Worthen's own testimony establishes that it was not unexpected for a Laurens County EMT to lift and transport patients weighing around 262 pounds. Worthen testified that his job duties as an EMT were to respond to emergency medical calls, to provide patients with treatment, and to transport patients to the hospital for further treatment. (Tr. 25:8-12). He also testified that his job duties required him to lift patients when transferring them onto a stretcher and to also lift patients that are secured on stretchers when putting them in and taking them out of an ambulance. (Tr. 30:13-22 & 72:19 – 73:2).

As an EMT for Laurens County EMS, Worthen testified that he has responded to "thousands" of calls. (Tr. 26:14-16). Importantly, as noted above, Worthen specifically testified that as a Laurens County EMT, he would frequently see patients weighing around 250 to 260 pounds:

Q: [Mr. Kale] Someone that was 250 to 260 pounds, you see those people *frequently*, don't you?

A: Yes, sir.

(Tr. 71:16-18) (Emphasis added). The fact that Worthen's usual and normal job duties required him to lift patients and the fact that he frequently treated patients weighing 250-

260 pounds clearly shows that lifting and transporting a patient weighing 262 pounds, with a partner, did not constitute “an unexpected strain or overexertion.”

Additionally, the testimony of Mr. Lundis further establishes that it was not unexpected for an EMT to lift and transport patients weighing around 262 pounds. As previously mentioned, Mr. Lundis was employed by Laurens County and was working as Worthen’s partner on February 26, 2011.³ (Tr. 45:13-15 & 79:16-20). However, at the time of the initial hearing before the Single Commissioner, Mr. Lundis worked as a paramedic for Vital Care EMS, a private non-emergency transportation company that transports long-term care facility patients via ambulance to and from their appointments at doctors’ offices and other medical facilities. (Tr. 79:21 – 80:12). Mr. Lundis specifically testified that he would see, lift, and transport patients weighing between 200 to 299 pounds on a daily basis:

Q: [Mr. Kale] Do you see a lot of patients that weigh in the 200 pound range?

A: Yes, every day.

Q: Okay. Do you lift them and put them on stretchers and transport them every day?

A: With the assistance of my partner, yes.

Q: And that would be true for anyone from 200 up to 299, correct?

A: Typically, yes.

(Tr. 101:18 – 102:1) (Emphasis added).

While the above excerpt from Mr. Lundis’s testimony admittedly dealt with his job duties at Vital Care EMS, and not Laurens County, it is consistent with Claimant’s

³ Mr. Lundis testified that he resigned from his position with Laurens County due to “medical reasons,” but he admitted that there were other “things going on” with his employment at the time he resigned. (Tr. 100:23 – 101:10).

testimony that as an EMT for Laurens County, he frequently lifted and transported patients weighing around 250 to 260 pounds, with his partner.

Based on the foregoing, substantial evidence in the record support's the Appellate Panel's finding that Worthen's act of lifting and transporting a patient weighing approximately 262 pounds, with his partner, was not "an unexpected strain or overexertion" in the performance of his duties as an EMT for Laurens County. As such, Laurens County respectfully requests that this Court affirm the Commission's decision that Worthen did not sustain a compensable injury by accident arising out of and in the course of his employment with Laurens County.

C. Lifting and transporting a patient weighing approximately 262 pounds was not an unusual and extraordinary condition of employment for a Laurens County paramedic.

As noted above, in South Carolina, a heart attack is also compensable as a workers' compensation accident if it is induced by "unusual and extraordinary conditions of employment." See Lockridge v. Santens of America, Inc., 344 S.C. 511, 544 S.E.2d 842 (Ct. App. 2001). "Unusual or extraordinary conditions of employment," refers to conditions extraordinary to the particular job in which the injury occurs, rather than to employment in general. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000).

The Supreme Court recently addressed and elaborated on the meaning of "unusual or extraordinary conditions of employment" in the case of Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 (2012). In Bentley, the claimant, a deputy sheriff with the Spartanburg County Sheriff's Department, alleged that he developed PTSD and depression after he shot and killed a suspect who attempted to assault him. (Id. at 420, 730 S.E.2d at 297). Spartanburg County did not contest that the shooting incident was

the proximate cause of the claimant's mental injury; however, Spartanburg County denied that the employment condition (the use of deadly force) was unusual or extraordinary with respect to the Claimant's profession as a deputy sheriff. (Id. at 427, 730 S.E.2d at 301). Both the Single Commissioner and the Appellate Panel denied the claimant's claim and found that he failed to meet his burden of proof in establishing a compensable mental injury that arose out of an "unusual or extraordinary condition" of employment for a Spartanburg County deputy sheriff. (Id. at 421, 730 S.E.2d at 298). The claimant appealed to the Court of Appeals, and the case was ultimately heard by the Supreme Court pursuant to Rule 204(b), SCACR. (Id.)

On appeal, the claimant argued that he sustained a compensable mental injury because killing a person was 'unusual.' (Id. at 430, 730 S.E.2d at 302). The claimant also argued that because statistics show that the killing of suspects by a Spartanburg County deputy sheriff occurred about once a year, shooting and killing a suspect was an unusual and extraordinary event. (Id.) However, citing its prior decision in Shealy v. Aiken County, the Court noted that "unusual or extraordinary conditions" does not refer to the conditions of employment in general, but rather to the conditions of the particular employment in which the injury occurs. (Id., 730 S.E.2d at 303). The Court further opined that the frequency of an event occurring is not what defines unusual and extraordinary and that if frequency was a decisive factor, then it would be difficult to put a precise number on how many times an event must occur before it is no longer considered to be unusual and extraordinary. (Id.) As such, the Court affirmed the Commission's denial of the claimant's claim and held that the use of deadly force was not unusual and extraordinary, but was rather "a standard and necessary condition of a

deputy sheriff's job.” (Id. at 431, 730 S.E.2d at 303). In support of its decision, the Court specifically noted that the claimant testified he knew he might have to use deadly force in his job, that the Sheriff testified other officers were aware of the possibility of shooting and killing a suspect, and that the claimant was trained in the use of deadly force. (Id.)

While the claimant in Bentley alleged a mental injury, and not a heart attack, the requirement that the injury must be induced by an unusual or extraordinary condition of the particular employer in order to be compensable is the same in both mental-mental claims and heart attack claims. Thus, the Supreme Court's decision in Bentley is applicable to this claim, and pursuant to Bentley, the issue in the present case is whether lifting and transporting a patient weighing approximately 262 pounds was an unusual or extraordinary condition of employment for a Laurens County EMT.

While analogous to the facts in Bentley, the facts in the present claim offer even more support against a finding of compensability. In Bentley, the Court held that while the claimant had never actually used deadly force (the condition of employment in question), the fact that he was merely aware of the possibility of having to use deadly force supported a finding that it was within the normal scope and duties of a deputy sheriff. In the present case, not only was Worthen aware that he may have to lift patients weighing around 262 pounds, Worthen had actually lifted patients of similar weight, with his partner, on a frequent basis. In fact, as noted in the section above, Worthen testified that as an EMT for Laurens County, he regularly lifted patients when transferring them onto stretchers, putting them in an ambulance, and taking them out of an ambulance. (Tr. 30:13-22 & 72:19-73:2). He also specifically testified that he lifted and transported patients weighing 250 to 260 pounds on a “frequent” basis. (Tr. 71:16-18).

Additionally, much like the Sheriff in Bentley, who testified that officers were aware of the possibility that they might be required to shoot and kill, the testimony of Michael O'Brien supports a finding that lifting a patient weighing approximately 262 pounds was within the normal scope and duties of a Laurens County EMT. Mr. O'Brien testified that he had worked in the EMS field for thirty years, that he had trained hundreds of people, and that he had even been an instructor of basic EMT classes. (Tr. 112:7-16). He testified that he is employed part-time as a paramedic for Laurens County and that he and Worthen had worked several shifts together. (Tr. 111:5-14). Importantly, Mr. O'Brien's testimony establishes that EMTs with Laurens County are aware of the possibility that they may have to lift and transport patients weighing in excess of 400 pounds:

Q: [Mr. Kale] And your testimony has been that you have, as a paramedic, lifted people who weighed over 400 pounds?

A: I have before. Yes, sir.

Q: That's part of your job as a paramedic?

A: Yes, sir.

(Tr. 121:18-22).

Based on the foregoing, substantial evidence in the record clearly establishes that the act of lifting and transporting patients weighing approximately 262 pounds was neither unusual nor extraordinary, but rather, was a standard and necessary condition of Worthen's job with Laurens County. Accordingly, Laurens County respectfully requests that the Court affirm the Commission's decision that Worthen did not sustain a compensable injury by accident arising out of and in the course of his employment with Laurens County.

II.

WORTHEN'S NEED FOR CORONARY ARTERY BYPASS SURGERY WAS NOT CAUSALLY RELATED TO THE HEART ATTACK HE SUSTAINED ON FEBRUARY 26, 2011.

Assuming arguendo that this Court reverses the Appellate Panel's decision regarding compensability, which Laurens County contends would be an error since substantial evidence supports the Appellate Panel's finding that Worthen's heart attack was not a compensable injury under the Act, Laurens County requests that this Court affirm the Appellate Panel's finding that Worthen's need for quadruple bypass surgery on March 2, 2011 was due to his severe, preexisting coronary artery disease, and not due to his heart attack on February 26, 2011.

Under the Act, in order for a claimant to be entitled to medical treatment, the need for treatment must be causally related to his work injury. *See Munn v. Nucor Steel*, 336 S.C. 28, 518 S.E.2d 289 (Ct. App. 1999) (holding that "[a]ny medical treatment claimed under § 42-15-60 must be causally related to the "injury by accident" arising out of and in the course of employment"). In the present case, substantial evidence clearly establishes that Worthen's need for coronary artery bypass surgery was caused by his severe coronary artery disease, and not his heart attack on February 26, 2011.

First, the initial medical reports following Worthen's heart attack on February 26, 2011 show that Worthen underwent coronary artery bypass surgery as a result of his severe coronary artery disease. On the evening of February 26, 2011, Worthen presented to the emergency room at Greenville Memorial Hospital with complaints of shortness of breath and chest pain. (Claimant's APA #2, p. 46). Upon arrival, Worthen underwent several tests, including an EKG, which revealed "severe global hypokinesis of the left

ventricle” with an estimated injection fraction of 30-35%. (Defendants’ APA #8, p. 246). He was subsequently admitted to the hospital and examined by Dr. Bittrick, who diagnosed Worthen with a “Non-Q wave myocardial infarction” and recommended a cardiac catheterization. (Claimant’s APA #2, p. 21). On February 27, 2011, Dr. Charles Ross performed a cardiac catheterization on Worthen. (Defendants’ APA #2, p. 246). **Dr. Ross specifically noted in his surgical report that “The patient had extreme coronary disease and I thought surgical consultation was in order.” (Id.)**

Per Dr. Ross’s request, Worthen was seen by Dr. Barry R. Davis the following day for a surgical consultation. (Claimant’s APA #2, p. 32). Following his examination, Dr. Davis diagnosed Worthen with “significant multi-vessel coronary artery disease with decreased left ventricular function,” and he recommended and scheduled Worthen for “coronary artery bypass grafting with possible left ventricular aneurysmorrhaphy.” (Claimant’s APA #2, pp. 33-34). On March 2, 2011, Dr. Davis performed quadruple bypass surgery on Worthen. (Id. at 37-39).

In addition to the medical reports of Dr. Ross and Dr. Davis, which clearly show that it was Worthen’s “extreme” and “significant” coronary artery disease that caused his need for coronary artery bypass surgery, the deposition testimony of Dr. Jon M. Bittrick, Worthen’s treating cardiologist, establishes that Worthen’s need for surgery was not caused by his heart attack on February 26, 2011.

On October 26, 2011, the parties deposed Dr. Bittrick. At his deposition, Dr. Bittrick reviewed Worthen’s cardiac catheterization report, dated February 27, 2011. (See Bittrick Depo. at 14:15-25). Dr. Bittrick testified that based on the results of the

catheterization, Worthen had severe coronary artery disease that pre-existed his heart attack:

Q: [Mr. Kale] ...That's severe disease; is it not?

A: Yes.

Q: And that would have pre-existed his myocardial infarction?

A: Yes, it would have. Plaque buildup is a process that takes --

Q: Years?

A: At least months to years.

(Id. at 15:7-15).

When questioned directly about the reason for Worthen's quadruple bypass surgery, Dr. Bittrick testified that the surgery was performed to treat Worthen's preexisting coronary artery disease:

Q: [Mr. Kale] The reason for the quadruple bypass surgery, was that to cure his coronary artery disease?

A: We don't use the word "cure," but it was to treat that, yes.

(Id. at 21:14-17). In fact, Dr. Bittrick specifically testified that the surgery was performed to treat the blood flow problem caused by Worthen's coronary artery disease and that Worthen would have needed the surgery even if he had not had a heart attack on February 26, 2011:

Q: [Mr. Kale] But the purpose of the bypass surgery was to correct the blood flow problem he had from the coronary artery disease?

A: Yes.

Q: Would he have needed that surgery even if he had not had the myocardial infarction?

A: Yes.

(Id. at 22:10-16) (Emphasis added).

Dr. Bittrick's deposition testimony undoubtedly shows that Worthen's need for his quadruple bypass surgery was his preexisting coronary artery disease. In fact, his testimony establishes that given the severity of his preexisting coronary artery disease, Worthen would have needed the surgery even if he had not had a heart attack on February 26, 2011.

Finally, the deposition testimony of Dr. W. Travis Ellison further supports a finding that Worthen's surgery was due to his preexisting coronary artery disease. Dr. Ellison testified that Worthen had "severe" coronary artery disease that pre-existed his heart attack. (Ellison Depo. at 23:14-16 & 24:8-12). Additionally, like Dr. Bittrick, Dr. Ellison testified that Worthen's bypass surgery was performed to treat his preexisting coronary artery disease and that he would have needed the surgery even if he had not had a heart attack:

Q: [Mr. Kale] Now on March 2 of 2011, Mr. Worthen had a quadruple bypass grafting.

A: Uh-huh (affirmative).

Q: Was that done to treat his pre-existing coronary artery disease?

A: Yes, it was.

Q: Would he have had to have that surgery, even if he had not had a myocardial infarction if they knew the extent of coronary artery disease he had?

A: Yeah. I mean, the fact that he had the infarction did not -- would not have affected whether he had bypass or not. It was his coronary anatomy, and they would have said, this person needs a bypass.

(Id. 32:14 – 33:1).

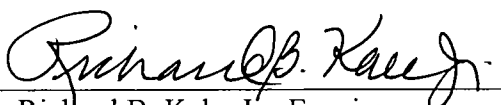
As outlined above, substantial evidence in the record, including the testimony of Dr. Bittrick and Dr. Ellison, as well as the medical records of Dr. Ross and Dr. Davis, establishes that Worthen's need for bypass surgery was a direct result of his severe, preexisting coronary artery disease. Accordingly, Laurens County respectfully requests that the Court affirm the Appellate Panel's finding that Worthen's need for quadruple bypass surgery on March 2, 2011 was not due to his heart attack on February 26, 2011

CONCLUSION

Based on the foregoing, Laurens County respectfully requests that the South Carolina Court of Appeals affirm the Decision and Order of the South Carolina Workers' Compensation Commission finding that Worthen did not sustain a compensable heart attack by accident arising out of and in the course of his employment with Laurens County.

Respectfully submitted,

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November 8, 2013