

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

The Honorable Melody L. James, The Honorable Aisha Taylor,  
and The Honorable Cynthia C. Dooley  
Commissioners for the Appellate Panel

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Appellate Case No. 2024-001822  
S.C. W.C.C. File No.: 1925084

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Christina Bradshaw (née Walthour), Claimant.....Respondent,

v.

Remedy Intelligent Staffing, Inc., Employer, and  
XL Insurance America, Inc., Carrier.....Appellants.

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**REPLY BRIEF OF APPELLANTS**

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## **STATEMENT OF ISSUES ON APPEAL**

- I. Respondent's "Reweighting the Evidence" Characterization Misstates the Nature of Appellants' Appeal
- II. The Commission Erred as a Matter of Law by Collapsing Two Distinct Injury Events into a Single Compensable Injury Without Timely Notice or Authorized Medical Treatment
- III. Respondent's Reliance on Unrebutted Medical Causation Opinions Does Not Cure the Commission's Legal Errors Concerning Notice and Authorization of Treatment
- IV. Respondent's "Symptom Progression" Theory Does Not Eliminate the Employer's Statutory Right to Notice and Control of Medical Treatment
- V. Respondent's "Self-Inflicted Prejudice" Framing Misstates the Legal Standard Governing Denial of a Continuance
- VI. Multiple Levels of Administrative Review Do Not Insulate Legal Error from Appellate Correction

## STANDARD OF REVIEW

The Administrative Procedures Act (APA) establishes the standard for our review of Appellate Panel decisions. Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Under the APA, this court may reverse or modify the decision of the Appellate Panel when the substantial rights of the appellant have been prejudiced because “the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689–90 (2010); *see also* S.C. Code Ann. § 1-23-380(5)(d)–(e) (Supp. 2016). “The Appellate Panel is the ultimate fact finder in workers' compensation cases, and if its findings are supported by substantial evidence, it is not within our province to reverse those findings.” Mungo v. Rental Unif. Serv. of Florence, Inc., 383 S.C. 270, 279, 678 S.E.2d 825, 829–30 (Ct. App. 2009). “Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action.” Taylor v. S.C. Dep't of Motor Vehicles, 368 S.C. 33, 36, 627 S.E.2d 751, 752 (Ct. App. 2006) (quoting S.C. Dep't of Motor Vehicles v. Nelson, 364 S.C. 514, 519, 613 S.E.2d 544, 547 (2005)).

“The Respondent 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.” Crisp v. SouthCo. Inc., 401 S.C. 627, 641, 738 S.E.2d 835, 842 (2013) (quoting Clade v. Champion Labs., 330 S.C. 8, 11, 496 S.E.2d 856, 857 (1998)). “[A]n employer who has responded to a workers' compensation claim may assert a general denial of liability whether or not the response expressly contests compensability.” Hargrove v. Carolina Orthopaedic Surgery Assocs., PA, 389 S.C. 119, 124, 697 S.E.2d 641, 643 (Ct. App. 2010). “Injury” for purposes of

workers' compensation means "only injury by accident arising out of and in the course of employment." S.C. Code Ann. § 42-1-160(A) (2015); *see also* Turner v. SAIIA Constr., 419 S.C. 98, 105, 796 S.E.2d 150, 154 (Ct. App. 2016) ("For an accidental injury to be compensable, it must "aris[e] out of and in the course of employment." (quoting § 42-1-160(A))). "An injury arises out of employment if it is proximately caused by the employment." Id.

## ARGUMENTS

### **I. Respondent’s “Reweighing the Evidence” Characterization Misstates the Nature of Appellants’ Appeal**

Respondent repeatedly characterizes Appellants’ appeal as an invitation for this Court to reweigh evidence and substitute its judgment for that of the Commission. That framing is incorrect as a matter of law. While appellate courts may not reassess credibility or reweigh conflicting evidence, Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981), administrative deference presupposes that the Commission’s conclusions rest on findings that satisfy the statutory prerequisites for compensability under the Act. Clade v. Champion Labs., 330 S.C. 8, 496 S.E.2d 856 (1998). Appellants do not challenge the Commission’s credibility determinations or advance alternative factual inferences; they contend that the Commission committed errors of law by (1) collapsing two distinct injury events into a single compensable injury without legally sufficient notice or authorized medical treatment, and (2) relying on medical causation opinions that presuppose statutory compliance not established by the Commission’s findings. Review of statutory compliance and legal authority does not constitute impermissible reweighing and remains squarely within this Court’s authority under S.C. Code Ann. § 1-23-380(A)(5).

### **II. The Commission Erred as a Matter of Law by Collapsing Two Distinct Injury Events into a Single Compensable Injury Without Timely Notice or Authorized Medical Treatment**

Respondent defends the Commission’s decision by reframing Appellants’ “two distinct injuries” argument as a factual dispute already resolved at two levels of administrative review. That response misses the legal issue presented. Appellants do not dispute that the Commission found a single compensable injury; they contend that the Commission lacked legal authority to do so under the Act. The Commission’s own findings and the procedural chronology reflect two separate injury events involving different body parts, separated by time, intervening treatment, and

an absence of notice to the Employer regarding any alleged cervical injury until after surgery had already occurred. By collapsing those events into a single compensable injury, the Commission excused statutory notice requirements and imposed liability for medical treatment obtained entirely outside Appellants' knowledge or control. Whether the Commission may lawfully take that analytical step is a question of statutory authority, not factual weighing, and remains subject to appellate correction notwithstanding administrative deference. *See Clade*, 330 S.C. at 12–13, 496 S.E.2d at 858–59.

### **III. Respondent's Reliance on Unrebutted Medical Causation Opinions Does Not Cure the Commission's Legal Errors Concerning Notice and Authorization of Treatment**

Respondent repeatedly asserts that the Commission's compensability finding must be affirmed because Appellants presented no competing medical causation testimony. That contention misstates South Carolina law and improperly converts a weight-of-the-evidence principle into a burden-shifting rule. The claimant always bears the burden of proving causation with competent evidence, and an award may not rest on surmise, conjecture, or speculation. *Clade*, 330 S.C. 8, 496 S.E.2d 856 (1998). Unrebutted medical testimony, standing alone, cannot satisfy the claimant's burden where it presupposes statutory compliance—timely notice and authorized treatment—that the Commission did not and could not lawfully find satisfied. *Crisp v. SouthCo., Inc.*, 401 S.C. 627, 630–31, 738 S.E.2d 835, 837–38 (2013). Nor does the absence of an affirmative alternative explanation cure a claimant's failure to meet statutory requirements. *Turner v. SAIIA Constr.*, 419 S.C. 98, 796 S.E.2d 150 (Ct. App. 2016). Appellants' challenge addresses these legal deficiencies—not the relative persuasiveness of medical experts—and unrebutted medical opinions formed after unauthorized treatment cannot, as a matter of law, substitute for compliance with the Act.

### **IV. Respondent's "Symptom Progression" Theory Does Not Eliminate the Employer's Statutory Right to Notice and Control of Medical Treatment**

Respondent invokes the principle that workers' compensation claimants are not required to self-diagnose complex medical conditions and that symptoms may evolve over time. Appellants do not dispute that general proposition. The legal error arises from what Respondent omits: symptom evolution does not extinguish the employer's statutory right to timely notice of the injury being claimed, nor does it authorize a claimant to unilaterally obtain extensive medical treatment without employer knowledge or authorization. Medical opinions formed after such unauthorized treatment, and premised on assumed work causation absent contemporaneous notice, cannot substitute for compliance with statutory notice and authorization requirements. *See Crisp*, 401 S.C. at 630–31, 738 S.E.2d at 837–38; *Turner*, 419 S.C. at 105–06, 796 S.E.2d at 154. By accepting Respondent's "symptom progression" theory as a substitute for statutory compliance, the Commission effectively nullified the notice and authorization framework altogether—an error of law subject to reversal.

**V. Respondent's "Self-Inflicted Prejudice" Framing Misstates the Legal Standard Governing Denial of a Continuance**

Respondent defends the denial of Appellants' motion for continuance by recasting any resulting prejudice as self-inflicted through Appellants' litigation choices. That framing misstates the governing inquiry. The question is not whether Appellants could have acted differently at earlier stages of the case, but whether the denial of a continuance—under the circumstances presented—resulted in actual procedural prejudice affecting Appellants' ability to address the materially expanded issues placed in dispute. *See Richey v. Dickinson*, 359 S.C. 609, 598 S.E.2d 307 (Ct. App. 2004). Reframing prejudice as "self-inflicted" collapses the legal analysis into a blame-based narrative untethered from the governing standard. While arising in a different procedural context, *Morris v. BB&T Corp.*, 438 S.C. 582, 885 S.E.2d 394 (2023), confirms the general principle that discretionary rulings must reflect a reasoned exercise of judgment grounded in law, not conclusory attribution of fault.

## **VI. Multiple Levels of Administrative Review Do Not Insulate Legal Error from Appellate Correction**

Respondent emphasizes that the compensability determination was reviewed and affirmed by both the Single Commissioner and the Appellate Panel. While that procedural history informs the standard of review, it does not insulate the decision from appellate correction where legal error is shown. Deference extends to factual findings supported by substantial evidence, but not to misapplication of legal standards or reliance on conclusions reached without statutory authority. Mungo v. Rental Uniform Serv. of Florence, Inc., 383 S.C. 270, 678 S.E.2d 825 (Ct. App. 2009). Internal Commission review cannot convert an error of law into an unreviewable determination, and this Court retains an independent obligation to ensure that the Commission's conclusions rest on correct legal principles capable of sustaining the result as a matter of law.

## **VII. Conclusion**

For the foregoing reasons, the Commission's decision rests on legal errors concerning statutory notice, authorization of medical treatment, and the scope of its authority under the Act, and therefore cannot be sustained notwithstanding administrative deference. Because Appellants challenge the Commission's statutory authority and legal sufficiency—not its factual findings—affirmance based on deference alone would improperly insulate legal error from review.

Respectfully submitted,

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