THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Melody L. James, Commissioner
Gabe Coggiola, Commissioner
R. Michael Campbell, II, Commissioner

W.C.C. FILE NO.: 2202565
Appellate Case No. 2025-001932

RUSTY YOUNG, CLAIMANT……APPELLANT,

v.

CONFLUENCE OUTDOOR, INC., EMPLOYER, and
GREAT AMERICAN ALLIANCE INSURANCE CO., CARRIER……..RESPONDENTS.

FINAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes and Regulations

Cases

STATEMENT OF ISSUES ON APPEAL

1. Whether the Full Commission's Appellate Panel, in Affirming the Single Commissioner's Decision and Order, erred in finding as fact and concluding as law that Appellant did not meet his burden of proof under § 42-1-160 regarding a compensable work accident and such findings of fact and conclusions of law are against the greater weight and preponderance of the overwhelming and substantial medical evidence in the record.
2. Whether the Full Commission's Appellate Panel, in Affirming the Single Commissioner's Decision and Order, erred in finding as fact and concluding as law that Appellant did not meet his burden of proof under § 42-1-160 in direct contravention of *Crane v. Raber's Discount Tire Rack*, 429 S.C. 636, 842 S.E.2d 349 (2020).

STATEMENT OF THE CASE

This matter was before the Full Commission's Appellate Panel pursuant to Appellant's Form 30, requesting review of Single Commissioner Beck's (hereinafter "Single Commissioner") February 27, 2025 Decision and Order. This matter was before the Single Commissioner on June 19, 2024 in Columbia, South Carolina pursuant to Appellant's Form 50, specifically to determine (1) whether Appellant sustained a compensable injury, (2) whether Appellant is entitled to temporary total disability benefits ("TTD"), (3) the extent of Appellant's entitlement to permanent partial disability benefits, and (4) whether Appellant is entitled to past, present, and future medical treatment.

This is a denied claim for an injury to the right shoulder, right arm, and back arising out of the course and scope of employment. Appellant worked for Confluence Outdoor, Inc. (hereinafter "Defendant Employer") where he made kayak molds. While performing his job duties, he sustained injuries when he tried to pry a kayak mold out of the machine where the mold is formed.

In the Decision and Order currently on appeal, the Full Commission's Appellate Panel affirmed the Single Commissioner who found Appellant failed to meet his burden of proof that he sustained a compensable work injury and is not entitled to medical benefits, temporary or permanent disability compensation, or any other ancillary costs associated with this claim. This appeal was filed by Appellant to address the Full Commission's Appellate Panel affirmation of the Single Commissioner's findings concerning compensability, entitlement to medical benefits, and entitlement to permanent partial disability. As it pertains to Defendants' bases for denial (discussed below), the Single Commissioner found they had not met their burden of proof as it pertains to a "fraud in the application" or "McDevitt & Street defense." This issue was not appealed and is not before the Court.

At the Single Commissioner hearing, Appellant took the position that he met his burden of proof, by a preponderance of the evidence, that he is entitled to a finding of compensability for work related injuries to his neck/back, right shoulder and right upper extremity, past and future medical treatment related to these body parts, and a permanent partial disability award of, at a minimum, 8% to the right shoulder, 5% to the right upper extremity, and 51% to the back. Appellant did not argue that he is entitled to permanent and total disability due to the issue of permanent physical restrictions not being addressed by his treating providers due to the claim being denied by Defendants. (R. p. 207, lines 4-18). At the Full Commission Appellate Panel hearing, Appellant took the same position and that the Single Commissioner had erred in ignoring the substantial medical evidence in the record that supported compensability and further erred in providing no nexus between the credibility findings and how that allowed for ignoring objective medical evidence and medical opinions in direct contravention of *Crane v. Raber's Discount Tire Rack*, 429 S.C. 636, 842 S.E.2d 349 (2020).

Defendants denied the claim entirely on several grounds: (1) fraud in the application, (2) Appellant's credibility, (3) no accident occurred, (4) Appellant's current condition is not related to his employment, and (5) Appellant cannot satisfy his burden of proof that he sustained a compensable injury by accident. (R.208). As mentioned previously, the Single Commissioner found Defendants had not met their burden for a "McDevitt & Street defense," but Defendants did not appeal this issue, and, therefore, it is not before the Court.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act governs judicial review of decisions by the Workers' Compensation Commission. Bass v. Isochem, 365 S.C. 454, 467, 617 S.E.2d

369, 376 (Ct. App. 2005). An appellate court's review is limited the determination of whether or not the decision of the Appellate Panel of the Workers' Compensation Commission was supported by substantial evidence or is controlled by some error of law. Grant v. Grant Textiles, 372 S.C. 196, 200, 641 S.E.2d 869, 871 (2007); S.C. Code Ann § 1-23-380(A)(5) (Supp. 2006).

The guiding principle undergirding our workers' compensation system that the Act is to be liberally construed in favor of the claimant. Carter v. Penny & Tire Recapping Co., 261 S.C. 341, 349, 200 S.E.2d 64, 67(1973). An award may not rest upon surmise, conjecture, or speculation. Tiller v. Nat'l Health Care Ctr. Of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999). Instead, "[an award] must be founded on evidence of sufficient substance to afford a reasonable basis for it." Wynn v. People's Natural Gas Co. of S.C., 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961). A court may reverse or modify the Commission's decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are affected by other error of law. Broughton v. South of the Border, 336 S.C. 488, 520 S.E.2d 634, 637 (Ct. App. 1999).

When only one reasonable inference can be deduced from the evidence, it becomes a question of law for the courts. Kinsey v. Champion American Service Center, 268 S.C. 177, 232 S.E.2d 720 (1977). "While the appellate courts are required to be deferential to the full commission regarding questions of fact, this deference does not prevent the courts from overturning the full commission's decision when it is legally incorrect as it is here." Grant v. Grant Textiles, 372 S.C. 196, 641 S.E.2d 869 (2007). The Commission's findings will be reversed when the evidence of a compensable injury is overwhelming. Massey v. W.R. Grace & Co., 286 S.C. 434, 334 S.E.2d 122 (1985).

The judicial review of the appellate panel's factual findings is governed by the substantial

evidence standard. Gadson v. Mikasa Corp., 368 S.C. 214, 221, 628 S.E.2d 262, 266 (Ct. App. 2006). The appellate panel's decision must be affirmed if supported by substantial evidence in the record. Shuler v. Gregory Elec., 366 S.C. 435, 440, 622 S.E.2d 569, 571 (Ct. App. 2005) (internal citations omitted). A reviewing court may not substitute its judgment for the judgment of the Commission as to the weight of the evidence on questions of fact. S.C. Code Ann. § 1-23-380(A)(5) (Supp. 2006). However, a reviewing court may reverse or modify a decision of the appellate panel if the findings of the panel are, "clearly erroneous in the view of the reliable, probative and substantial evidence on the whole record." S.C. Code Ann. § 1-23-380(A)(5)(e) (Supp. 2006); (Houston v. Deloach & Deloach, 378 S.C. 543, 550; 663 SE.2d 85, 88) (S.C. Ct. App. 2008).

While an appellate court's review of factual findings in a workers' compensation case is governed and controlled by the substantial evidence rule, an appellate court may freely and absolutely review a trial court's decision concerning an issue of law. Where the Commission's decision is controlled by an error of law, the appellate review is plenary. Grant v. Grant Textiles, 361 S.C. 188, 191, 603 S.E.2d 858, 859 (Ct. App. 2004) (noting that a reviewing court will not overturn a decision by the Workers' Compensation Commission unless the determination is unsupported by substantial evidence or is affected by an error of law) (*reversed* on other grounds (Grant v. Grant Textiles, 372 S.C. 196, 200, 641 S.E2d 869, 871 (2007)). "An award in a workers compensation case cannot be based on surmise, conjecture or speculation." McLeod v. Piggly Wiggly Carolina Co., 280 S.C. 466, 313 S.E.2d 38 (1984).

ARGUMENTS

I. The Full Commission's Appellate Panel, in Affirming the Single Commissioner's Decision and Order, erred in finding as fact and concluding as law that Appellant did not meet his burden of proof under § 42-1-160 regarding a compensable work accident and such findings of fact and conclusions of law are against the greater weight and preponderance of the overwhelming and substantial medical evidence in the record.

A. Medical Evidence for Right Shoulder

The medical evidence associated with this claim is extensive, but for the purposes of this appeal, it is necessary to focus on the treatment and opinions of the treating surgeon (Dr. VanPelt), the treating provider for his right shoulder (Alan Duncan, MS, APRN, FNP-BC), independent medical examiner (Dr. Grady), and the opinion of non-examining physician (Dr. Hodge). On March 9, 2022, Appellant reported his injury to his Defendant Employer's safety manager, Don, and he was directed to AFC Urgent Care for treatment (R. pp. 343-347). As he testified, he was sent home after reporting the injury on March 8, 2022. He attempted to work the next day, and he testified that the same sort of issue occurred again with removing the mold, and he reported to Don and was taken to AFC Urgent Care. (R. p. 214, line 3-p. 215, line 12). At AFC, Appellant complained of pain in his right shoulder and "pins & needles" in the right upper extremity (R. p. 343). He was given work restrictions and told to follow up with an orthopedic doctor (R. p. 347). On March 16, 2022, Appellant presented to the Emergency Room at St. Francis Eastside due to the claim being denied. At St. Francis, he complained of right shoulder pain, and after an exam, the doctor prescribed an anti-inflammatory and muscle relaxant. He was advised to avoid heavy lifting and given a referral for orthopedics (R. pp. 348-363).

On March 30, 2022, Mr. Young began treatment with Piedmont Orthopaedic Associates (R. pp. 364-369). He was seen by Alan Duncan, MS, APRN, FNP-BC, who is licensed and board-certified (R. p. 564, lines 14-25). Mr. Duncan noted that he thought the majority of Mr. Young's right shoulder pain may be due to a labral pathology. He performed various tests that all came back positive for an injury. An MRI was ordered, and Mr. Young was told to follow up after completion for a definitive treatment plan (R. pp. 364-366; R. p. 572, line 1-p. 573, line 1).

An MRI of the right shoulder was performed on April 4, 2022 (R. pp. 374-377). On April 20, 2022, Mr. Young followed up with Mr. Duncan to review the MRI, which showed edema-like marrow signal in the distal acromion and distal clavicle and trace fluid in the AC interval. No rotator cuff or labral pathology was present. Mr. Duncan opined that Appellant 's shoulder pain was due to subacromial impingement, and he could not rule out AC joint arthritis. He recommended conservative treatment to include corticosteroid injections, oral NSAIDS, and formal physical therapy. Appellant elected to proceed with the recommended treatment and was given an injection at that visit. Interestingly, this is also the first documented mention that there could be a cervical spine component to this injury (R. pp. 378-380)

Mr. Duncan provided a written causation statement, in addition to testifying in a deposition under oath, that he believes Mr. Young’s cervical issues were causally related to the work injury (R. p. 434; R. p. 577, lines 14-21). In his deposition, he confirmed compensability of the right shoulder (R. p. 577, lines 14-21; R. p. 589, lines 1-13). There is no contradictory medical evidence or medical opinion concerning the compensability of the right shoulder.

During Mr. Duncan’s deposition, Defendants had the opportunity to show Mr. Duncan all relevant records concerning any prior injuries as well as documents concerning their allegations about Appellant’s credibility in this matter. Defendants also had the opportunity to question Mr.

Duncan at length regarding these issues and inform Mr. Duncan of their concerns relating to the issues presented in the present claim. After reviewing records and addressing Defendants' line of questioning, Mr. Duncan confirmed Mr. Young injured his right shoulder in this March 8, 2022 work-related accident (R. p. 589, lines 1-13). Again, there was no medical evidence or medical opinion provided to contradict compensability of the right shoulder.

B. <u>Medical Evidence for Back (cervical spine)</u>

As discussed above, there were complaints of radicular symptoms very early in this case, but initially this injury presented as being in the shoulder. Mr. Duncan even admitted in his deposition that he should have asked questions to rule out radiculopathy early on but did not (R. p. 576, line 10-p. 577, line 6). Regardless, as early as April 20, 2022, there was discussion of cervical spine pain and radiculopathy, and by June 2022, it was abundantly evident from the medical records that there was a cervical spine injury in this claim that needed to be evaluated by the spine team at Piedmont Orthopaedic Associates. This was supported by physical examinations performed by Mr. Duncan and not only Appellant's subjective complaints (R. pp. 380, 384).

On July 12, 2022, Appellant was finally able to get an evaluation from the spine team at Piedmont Orthopaedic Associates, and an MRI of the cervical spine without contrast was ordered by Amy Hunt, PA-C (R. pp. 396; 400-403). On July 19, 2022, Appellant completed the cervical MRI, which demonstrated multilevel cervical spondylosis, marrow reconversion, and annular fissure at C5-6 (R. pp. 410-411). In a follow up visit, Amy Hunt ordered injections prior to a surgical consultation (R. pp. 429-430). In a July 21, 2022 questionnaire, Alan Duncan opined that Mr. Young's cervical spine and radicular symptoms down to the hand/fingers were causally related to the March 8, 2022 work accident (R. p. 434). This medical opinion does not merely rely on

subjective complaints made by Appellant but was rendered after physical examinations and review of objective diagnostic imaging by Mr. Duncan.

On September 1, 2022, Mr. Young saw Dr. Christopher Van Pelt for the first time to evaluate his cervical spine injury (R. p. 441). Dr. Van Pelt reviewed the MRI and was unable to determine whether the patient's symptoms were incidental to or the etiology of his symptoms. Dr. Van Pelt recommended cervical epidural steroid injections as well as an EMG and nerve conduction study of the right upper extremity for further delineation (R. pp. 444-446). **Perhaps the most persuasive evidence regarding the cervical spine injury and veracity of this claim comes from Dr. Van Pelt's October 20, 2022 visit. Dr. Van Pelt specifically mentions the diagnostic dilemma with predominantly right-sided symptoms but left-sided findings on the MRI (R. p. 455). In his Assessment/Plan, Dr. Van Pelt stated "[t]his patient's clinical history and physical exam is consistent with right-sided C7 radiculopathy. The imaging studies are concordant with the patient's symptoms." (R. p. 457). Again, this opinion is based on Dr. Van Pelt's physical examinations and personal review of objective diagnostic imaging and not based solely on Mr. Young's subjective complaints.**

Dr. Van Pelt was later deposed concerning causation of the cervical spine injury (R. pp. 600-645). Defendants had the opportunity to show Dr. Van Pelt any and all records in support of their denial and question Dr. Van Pelt at length regarding their allegations relating to Appellant's credibility. They went to great lengths by not only discussing his prior accidents and claims but also discussing the amounts of settlements in prior claims as if this information has some basis in determining medical causation. They even attempted to drag Appellant's prior hospitalization for use of drugs and a mental health condition from SEVEN years earlier into the fray (R. p. 608, line

22- p. 610, line 3). Without regurgitating, in full, the deposition, we refer to several key points with brief references:

- Reviewing prior records from April 2021 MVA has no significance and does not change his opinion (R. p. 611, lines 12-22)
- Cervical MRI shows annular fissure, and this is very important due to timing (R. p. 619, lines 1-9)
- Timing puts the fissure within reasonable probability of being related to the March, 8, 2022 work accident (R. p. 620, lines 1-6)
- Medical explanation regarding MRI findings and right-side complaints and this being because of the annular fissure pressing on the spinal cord (R. p. 622, line 6-p. 623, line 8)
- Confirms why he ordered EMG (R. p. 624, lines 2-25)
- Explains why the MRI and EMG correlate with the March 8, 2022 work injury (R. p. 625, lines 9-24)
- Refuses to provide an impairment rating on the fly without reviewing Guides, and also states clearly that prior drug use does not cause cervical spine issues (R. p. 628, line 21-p. 629, line 23)
- Reviewed chiropractic records and they do not change his opinion (R. p. 629, line 24-p. 631, line 18)
- After reviewing all the evidence put in front of him, Dr. Van Pelt provides the clearest answers on causation for the cervical spine (R. p. 631, line 19-p. 632, line 10)

Because of the multiple body parts involved, Appellant presented to Dr. Walter Grady for an independent medical examination ("IME") and evaluation of permanent impairment to the injured body parts (R. pp. 553-558). Dr. Grady provided a physical exam of the right shoulder, right arm, and cervical spine. He also noted Appellant's ongoing symptoms and limitations with his cervical spine, right shoulder, and right arm (R. p. 555-556). After his examination and reviewing records, Dr. Grady provided permanent impairment ratings of 51% to the cervical spine, 5% to the right upper extremity, and 8% to the right shoulder (R. p. 557). All opinions were provided to a reasonable degree of medical certainty in the IME, and there is no other medical evidence in the record to contradict these impairment ratings.

Dr. Grady was subsequently deposed as well in this matter (R. pp. 646-674). This was the third time Defendants deposed a medical provider in this claim, and like the depositions before this, they were able to show any and all records and make assertions in support of their ongoing denial directly to Dr. Grady. Without regurgitating, in full, the deposition, we refer to several key points with brief references:

- Dr. Grady has training in family medicine, orthopedics, and hand surgery and is board-certified in orthopedic surgery and family medicine (R. p. 648) (Deposition p. 6, line 25-p.7, line 10)
- He has scaled back his practice in recent years and stopped doing surgeries so that he can be a caregiver for his wife, but he still sees patients regularly outside of IMEs (R. p. 648) (Deposition p. 7, line 16-p.8, line 2)
- He has a hand specialty but treats all body parts (R. p. 648) (Deposition p. 8, line 18-p.9, line 11)
- He doesn't treat annular fissures personally and refers those patients to a neurosurgeon or orthopedic spine surgeon for their treatment (R. p. 649) (Deposition p. 13, lines 9-24)
- Confirms the "bolt" vs. "boat" in the IME could be typographical error (R. p. 657) (Deposition p. 42, lines 10-23)
- **Agrees with Dr. Van Pelt's opinion in his questionnaire that the March 8, 2022 accident most probably caused the cervical spine and right upper extremity symptoms, and also says none of the questions Defense Counsel asked changed his opinion from his IME regarding causation and permanent impairment (R. p. 657) (Deposition p. 44, line 2-p. 45, line 10)**
- **Asked if he agrees with Dr. Van Pelt, and states that he does agree with Dr. Van Pelt and that Dr. Van Pelt is the treating surgeon AND SPECIALIST, so he agrees with Dr. Van Pelt's opinion and causation statement (R. pp. 657-658) (Deposition p. 45, line 13-p.46, line 4)**
- **Gives his own concurring opinion that what Appellant was doing with the boat on March 8, 2022 aggravated any preexisting condition (R. p. 659) (Deposition p. 50, lines 7-13)**

In summation, as was, in my opinion, indicated by the Single Commissioner in our pre-hearing conference, when you have objective findings to support a claimant's subjective complaints, it is hard to refute compensability. Every treatment of a patient by a medical professional starts with subjective complaints, and from those subjective complaints, physical examinations are performed

and, if necessary, imaging and other objective testing are ordered to determine the extent of an injury and a treatment plan. In the present case, the subjective reports led to the physical examinations discussed above that had pertinent findings, which led to imaging/testing. Mr. Young cannot fake or lie about an annular fissure on an MRI that is pressing on his spinal cord, and he cannot fake or lie about an EMG evidencing right C7 radiculopathy. The objective findings on imaging are what led to the treatment plan from Mr. Duncan and Dr. Van Pelt (and Dr. Van Pelt's staff), and all of this medical evidence and opinion evidence can only lead to the conclusion that this is a compensable claim for the right arm, right shoulder, and cervical spine.

The findings of the Full Commission's Appellate Panel are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Based upon the greater weight and preponderance of the substantial record including the medical reports, opinions, and testimony of the treating physician Dr. Van Pelt and treating provider Mr. Duncan, as well as the medical report and opinion of Dr. Grady by way of IME (and his deposition) confirming those opinions, Appellant asserts he has met his burden of proof establishing compensability of his claim. Additionally, Appellant asserts the medical evidence and testimony confirm entitlement to permanent partial disability as reflected in Dr. Grady's IME and deposition (R. p. 557, p. 657) (Deposition p. 44, line 2-p. 45, line 10).

C. <u>Error of Law</u>

In determining whether a work-related injury is compensable, courts liberally construe the Workers' Compensation Law toward providing coverage and resolve any reasonable doubt in favor of the injured employee. *Whigham v. Jackson Dawson Communications* (S.C. 2014) 410 S.C. 131. 763 S.E.2d 420, rehearing denied; *Douglas v. Spartan Mills, Startex Division* (S.C. 1965) 245 S.C. 265, 140 S.E.2d 173. Proof that workers' compensation claimant sustained an injury may

be established by circumstantial evidence and direct evidence where circumstances lead an unprejudiced mind to reasonably infer the injury was caused by the accident. *Tiller v. National Health Care Center of Sumter* (S.C. 1999) 334 S.C. 333, 513 S.E.2d 843.

Proof that a claimant sustained an injury and that it arose out of and in the course of his employment may be established by circumstantial as well as by direct evidence, where the circumstances surrounding the occurrence of the injury are such as to lead an unprejudiced mind reasonably to infer that it was caused by accident; the evidence need not negate all other causes of resultant injury in compensation proceedings. *Holly v. Spartan Grain & Mill Co.*, (1947) 210 S.C. 183, 42 S.E.2d 59.

In determining whether a work-related injury is compensable, the Workers' Compensation Act is liberally construed toward the end of providing coverage rather than noncoverage in order to further the beneficial purposes for which it was designed. *Shealy v. Aiken Co.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). "Any reasonable doubt as to the construction of the Act will be resolved in favor of coverage." *Id.* at 455-56, 535 S.E.2d at 442.

In *Brailey v. Michelin North America, Inc.*, 438 S.C. 77 (2022), the court dealt with almost the exact same scenario as the current case before you. There was a “fraud in the application” defense raised along with compensability issues. While the discussion and analysis of *Brailey* tends to focus on the three prongs of the *Cooper v. McDevitt & Street* defense, we point to this case for the less discussed subtext put forth by the court. Specifically, the court discussed Defendants in that case “[having] not proven a causal connection between the false representation and the injury.” *See Corbin v. Kohler Co.*, 351 S.C. 613, 624, 571 S.E.2d 92, 98 (Ct. App. 2002) ("Expert medical testimony is intended to aid the Appellate Panel in coming to the correct conclusion.").

The *Brailey* court further noted the doctor in that case was unaware of "the extent" of a prior injury. However, the record contained no evidence that the prior injury did not resolve nor did it indicate the "extent" of the injury. Further, the court noted that the record contained no medical evidence that the prior injury contributed to the work-related injury at issue. (*Id.*). It is Appellant's position that the Single Commissioner's conclusions, affirmed by the Full Commission's Appellate Panel, misapply the standard outlined in *Brailey*, which affirms that fact-finders cannot ignore objective medical evidence or substitute personal judgment for professional opinions rendered to a reasonable degree of certainty.

In the present claim, Appellant is asserting that the findings of the Full Commission's Appellate Panel are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. The greater weight and preponderance of the substantial record in this case can only point to a finding of compensability for his back, right shoulder, and right upper extremity injuries. Mr. Duncan, Dr. Van Pelt, and Dr. Grady have provided medical opinions to a reasonable degree of medical certainty as well as testified under oath, and they all support compensability.

The Single Commissioner's Decision and Order made several errors as it pertains to not only the medical evidence but also the medical testimony, lay evidence, and lay testimony by misstating evidence, ignoring evidence, not specifically citing the record, etc. The Full Commission's Appellate Panel affirmed the Single Commissioner's Decision and Order with no alterations, new findings of facts, or conclusions of law, and they made no further explanations or attempts to remedy the myriad errors of the Single Commissioner.

First, as it pertains to findings regarding medical evidence and testimony of medical providers, Finding of Fact 17 is a clear mistake in finding the wrong date upon which Appellant stopped treating with a chiropractic facility. This could be dismissed as a minor mistake by stating

July 12, 2021 instead of July 9, 2021, but Finding of Fact 82 then attempts to further skew and misrepresent the record by finding Appellant treated for a prior accident "**through** July 2021." Again, perhaps this was a minor mistake (albeit both were pointed out prior to the Single Commissioner signing this Decision and Order (R. pp. 1567-1568) and was pointed out to the Full Commission's Appellate Panel in our brief (R. pp. 148-175), but these are two of many mistakes/misstatements in the record that when compounded upon each other appear to be an attempt to construe the evidence against finding coverage and sew reasonable doubt in favor of a denial. *Whigham v. Jackson Dawson Communications* (S.C. 2014) 410 S.C. 131. 763 S.E.2d 420, rehearing denied; *Douglas v. Spartan Mills, Startex Division* (S.C. 1965) 245 S.C. 265, 140 S.E.2d 173.

Another clear misstatement of the evidence came in Finding of Fact 45, where the Full Commission's Appellate Panel affirmed the Single Commissioner who stated that Appellant did not inform his medical providers about prior accidents and injuries while undergoing treatment. Whether a specific question was asked by a medical provider about a prior injury or accident and not answered truthfully or whether Appellant answered and it was not recorded correctly would be speculation to begin with. Notwithstanding this speculation, to find this as fact, but ignore that Mr. Duncan, Dr. Van Pelt, and Dr. Grady were all apprised of these prior injuries and accidents in their depositions and did not change their opinions on causation is reversible error.

The Full Commission's Appellate Panel affirmed the Single Commissioner who made a similar misstatement in Finding of Fact 100 when he found Dr. Van Pelt testified that he was not aware of prior claims and had not seen or reviewed prior chiropractic records. While it is true that Dr. Van Pelt testified to not being aware of the prior accidents, the Single Commissioner chose to leave out and not find as fact that Dr. Van Pelt was presented with these prior records during his

deposition, and of course, he was asked about the prior workers' compensation claims, so he had full knowledge during his deposition about all of this when rendering his opinion. (R. pp. 606-608, 620, 623, 630-631). What also gets left out in all this is that NONE of these prior workers' compensation claims had anything to do with the areas of the body Dr. Van Pelt was treating.

In Finding of Fact 119, the Full Commission's Appellate Panel affirmed the Single Commissioner where he also misstated Dr. Grady's deposition testimony regarding the cervical and right arm symptoms by finding as fact that he opined they were "probably caused by a work-related accident on March 8, 2022." The deposition could not have been clearer that Dr. Van Pelt's opinion was that the work-related accident **MOST** probably caused Appellant's cervical and right arm symptoms, and Dr. Grady agreed with him. This an important omission, as the difference between "probably" and "most probably" is the difference between meeting the requisite standard for compensability and not. This finding of fact is not accurately based on the record, rather it is contradicted and represents reversible error. These are more attempts to pile on issues with or weaken the claim but ignore that, from a medical standpoint, all treating providers were provided with this information and were able to make fully informed opinions **to a reasonable degree of medical certainty** in their depositions with full knowledge of Appellant's history as well as their personal physical examinations and imaging reviews.

Dr. Van Pelt's deposition testimony is discussed at length above, so I will not regurgitate all the same points as above. However, in Finding of Fact 122, the Full Commission's Appellate Panel affirmed the Single Commissioner who finds that the crux of Dr. Van Pelt's opinion is based on the appearance of annular fissures on imaging. It is our position this finding is purely speculation and conjecture, as it dismisses the totality of Dr. Van Pelt's testimony focusing on only one portion of the evidence he found important. Nearly two pages later in his deposition, he

discusses not only the MRI but also his physical examinations and the EMG findings, and how all these things correlated and formed his opinion. (R. p. 624, line 2-p. 626, line 16).

In Finding of Fact 124, the Full Commission's Appellate Panel affirmed the Single Commissioner, who committed several errors. First, the Single Commissioner stated as fact that Dr. Grady and Dr. Hodge "similarly reviewed [Appellant's] medical records." Dr. Grady's review of medical records is clear in his IME, and he and Defense counsel stated at the beginning of his deposition that he had Appellant's file and if anything existed regarding his treatment, it was in there (R. pp. 554-555; p. 647, Deposition p. 4, line 24-p.5, line 10). This was clear speculation, surmise, and conjecture to conflate the thorough record review of Dr. Grady with what Dr. Hodge may or may not have done. We have one page from Dr. Hodge, and the only records that are specifically mentioned are an MRI and an EMG (R. p. 1322). This is a far cry from the detailed review Dr. Grady performed and specifically listed out in his IME. Furthermore, Finding of Fact 124 discusses both doctors opining that annular fissures can be acute or chronic. However, it is conveniently left out that, when deposed, Dr. Grady specifically stated he does not treat annular fissures and refers them to neurosurgeons or orthopedic spine surgeons (R. p. 649) (Deposition p. 13, lines 9-24). Additionally, to find as fact that Dr. Grady opined that annular fissures can be acute or chronic and use that to deny this claim when the Single Commissioner stated in Finding of Fact 119 that Dr. Grady agreed with Dr. Van Pelt's opinion is clearly contradictory. This also ignores the totality of Dr. Grady's deposition testimony wherein he never wavered from supporting the opinion of Dr. Van Pelt and agreed, at a minimum, there was an aggravation of any preexisting condition. (R. pp. 657-658) (Deposition p. 45, line 13-p.46, line 4); R. p. 659) (Deposition p. 50, lines 7-13)).

In Finding of Fact 125, the Single Commissioner, similarly to Finding of Fact 122, fixated

on the annular fissure issue as the sole basis for Dr. Van Pelt's opinion. This is discussed above as to why it is patently incorrect that this was the only basis for his opinion. Additionally, the Full Commission's Appellate Panel affirmed the Single Commissioner who found as fact that two other providers "unilaterally contradicted" his opinion. There is no disputing Dr. Grady did agree in his deposition with an unknown internet article quoted by Defense Counsel that stated annular fissures could be present for many years. However, as stated previously, this ignores the totality of Dr. Grady's testimony and how he stated time and again that he agreed on causation with Dr. Van Pelt.

The Full Commission's Appellate Panel affirmed the Single Commissioner who also found as fact that Dr. Van Pelt did not know about a prior neck injury and April 2021 motor vehicle accident, but then inexplicably accused him of "[failing] to admit knowing about [Appellant's] prior injuries to a body part, especially those relatively recent in time, which could have some bearing on the present condition of that body part" (R. p. 68). This portion of the finding is completely contradictory by itself by first finding as fact that Dr. Van Pelt did not know about a prior neck injury and then accusing him of failing to admit he knew about a prior neck injury with no evidence to substantiate such a claim.

Considering Dr. Grady repeatedly stated that he would agree with and defer to Dr. Van Pelt, the only partially contrary medical opinion in the record is a statement written by Dr. Hodge (R. p. 1322). There are several issues with relying on Dr. Hodge's opinion, including the fact that we have no idea exactly what records he reviewed, he reviewed only reports of imaging and did not review the imaging personally, and he never performed his own in-person physical examination of Appellant. Perhaps speculating about what records Dr. Hodge reviewed or ignoring that he did not personally review the imaging and never physically examined Appellant could be ignored in deciding to give his opinion more weight. While I would not agree with speculating and

ignoring all these faults in his opinion, the biggest issue that cannot be ignored is that his opinion was he ". . . cannot say beyond a reasonable doubt that the imaging findings are related to the injury." (R. p. 1322).

First, this opinion was not rendered to the correct standard that is required for compensability. In *Michau v. Georgetown County*, 396 S.C. 589 (2012), the court discussed the admissibility of evidence in a repetitive trauma injury claim under S.C. Code § 42-1-172. In *Michau*, they discussed the statute's definition of "medical evidence" meaning "expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material . . . ." The *Michau* court found that the plain reading of the statute requires "opinion or testimony" be stated to a reasonable degree of medical certainty, and that "opinion or testimony" are treated differently than "documents, records, or other material." The definition of "medical evidence" is the same in S.C. Code § 42-9-35, so it stands to reason the courts would apply the definition of "medical evidence" the same in every case. There is no scenario where Dr. Hodge's opinion statement could be considered anything but a medical opinion. As such, under *Michau*, Dr. Hodge's opinion should never have been admissible to begin with for not being stated to a reasonable degree of medical certainty. However, even upon admission, it should not have been given greater weight than those opinions stated to a reasonable degree of medical certainty. Even moving past the wrong standard being applied, the plain language of his opinion is that he "cannot say beyond a reasonable doubt that the imaging findings are related to the injury." (R. p. 1322). That clearly means that it can still be more likely than not that the findings are related, and there are **THREE** medical providers who also confirmed that it was more likely than not.

In Finding of Fact 126, the Full Commission's Appellate Panel affirmed the Single Commissioner who found Dr. Van Pelt's findings are not supported by the greater weight of the

evidence, lacks credibility, and afforded it the weight he deemed necessary, which is unclear but presumably means it was given little weight (R. p. 68). This finding provides no basis for how Dr. Van Pelt's opinion is "not supported by the greater weight of the evidence." In fact, the only evidence that is not in support of Dr. Van Pelt's opinion is the doctors slightly varying their opinions on whether annular fissures dissipate after a few months or not. Again, Dr. Van Pelt did not rely SOLELY on the age of the annular fissure, and while it was important in forming his opinion, as discussed above, it was not the only evidence he used. Furthermore, the Single Commissioner, which the Full Commission's Appellate Panel affirmed, went out of his way to accuse Dr. Van Pelt of lying under oath with no evidence to substantiate such a claim or any explanation of how Dr. Van Pelt's opinion lacked credibility.

Subsequent to this, in Finding of Fact 127, the Full Commission's Appellate Panel affirmed the Single Commissioner who found Dr. Grady "testified to findings significantly different than those of Dr. Van Pelt," but that he ultimately deferred to Dr. Van Pelt (R. p. 68). Because of this, the Single Commissioner found as fact that Dr. Grady's opinion lacked credibility and gave it, presumably, little weight as well. Yet, two findings before this (Finding of Fact 125), the Single Commissioner dismissed the opinion of Dr. Van Pelt, in part, based on a portion of Dr. Grady's testimony. However, two findings later, the Single Commissioner found Dr. Grady's opinion lacked credibility and should be given little weight. The tap dance back and forth that was done here to cherry pick portions of a doctor's opinion to degrade the weight afforded the treating physician but then subsequently afford neither of those doctors' opinions great weight is confounding. And again, the Single Commissioner is giving little weight to the TWO BOARD-CERTIFIED orthopedists that actually treated and/or examined the patient personally. The Full Commission's Appellate Panel affirmed this without hesitation or even an attempt to remedy the

contradiction.

In Finding of Fact 128, the Full Commission's Appellate Panel affirmed the Single Commissioner who found as fact that Dr. Hodge's opinion aligns with a preponderance of the medical evidence that the cause of Appellant's present symptoms are idiopathic in nature due to a series of accidents between 2018 to 2021 (R. pp. 68-69). First and foremost, Dr. Hodge made no such conclusion in his opinion or even an assertion that a reasonable mind could surmise to make the leap that was made in stating this was Dr. Hodge's opinion. Second, the record contains no opinion statement or medical evidence anywhere that says Appellant's symptoms are idiopathic in nature or related to any accident but the March 8, 2022 work accident at Defendant Employer. In fact, the word "idiopathic" never appears in any doctors' records, deposition transcripts, or opinion statements. Yet, the Full Commission's Appellate Panel affirmed the Single Commissioner who found as fact that his "present symptoms were idiopathic in nature."

Second, the Full Commission's Appellate Panel affirmed the Single Commissioner who found as fact that the April 3, 2021 motor vehicle accident "occurred only nine months before Appellant began working for [Defendant Employer]" (R. p. 69). While the math of this is accurate, there is no explanation for how starting a job nine months after an accident (or six months after the treatment for that accident had ended) has any bearing on the compensability of a claim or the medical opinions of the treating providers that were made aware of all these factors and still rendered opinions in favor of compensability. The Single Commissioner also found as fact that the preponderance of the non-medical evidence did not support finding Appellant was involved in a work-related accident on March 8, 2022 (R. p. 69). However, there is no mention of what the said "non-medical evidence" was or how it supported this part of the finding. The Full Commission's Appellate Panel affirmed this and made no attempt to remedy this error.

Finally, the Full Commission's Appellate Panel affirmed the Single Commissioner who found the opinion of Dr. Hodge was credible and afforded it the weight he "deemed it deserved" (R. P. 69). This was not specified, but presumably as with the other inconclusive findings of fact above, he afforded the opinion great weight. I have discussed the multitude of fallacies with Dr. Hodge's opinion above, and without reciting them all again, I note that the issues with his opinion are plentiful and not worthy of being afforded great weight to deny compensability. Ultimately, the Single Commissioner's conclusion, which the Full Commission's Appellate Panel affirmed, that Appellant's symptoms were "idiopathic" was unsupported by any expert opinion, and especially not an opinion to a reasonable degree of medical certainty and constitutes reversible error under *Michau* as well as *Clemmons v. Lowe's Home Centers, Inc.*, 420 S.C. 282 (2017).

The Single Commissioner's Conclusions of Law 4 and 8, which the Full Commission's Appellate Panel affirmed, stated the substantial weight and greater weight of the evidence showed Appellant had not met his burden of proof that his claim was causally related to the March 8, 2022 work accident (R. pp. 74-75). Without re-stating all the evidence and errors discussed above, Appellant would simply refer to the above arguments as support for overturning these conclusions of law and concluding that the Full Commission Appellate Panel's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. The greater weight and preponderance of the substantial record in this case can only support finding Appellant sustained a compensable injury by accident on March 8, 2022 at Defendant Employer.

II. The Full Commission's Appellate Panel erred in affirming the Single Commissioner finding as fact and concluding as law that Appellant did not meet his burden of proof under § 42-1-160 in direct contravention of *Crane v. Raber's Discount Tire Rack,* 429 S.C. 636, 842 S.E.2d 349 (2020).

It is Appellant's position that the objective medical evidence and opinion testimony of the medical providers in this case far outweigh any credibility issues, and as was the case in *Crane,* there is simply no nexus between the credibility issues brought up and how they warrant precluding compensability in light of the objective medical evidence and medical opinion testimony discussed above. However, I would be remiss if I did not address some of the errors that the Full Commission's Appellate Panel affirmed to avoid compensability.

For example, as Appellant's hearing testimony (and his previous depositions) showed, he never denied having an altercation with a coworker or why he was fired. In fact, the hearing testimony, which was not refuted with any evidence or testimony from Defendants, clearly shows Defendants are not exactly clean in this termination. The only evidence in the record is that the son of the safety manager is who Appellant got into an altercation with, and this is the same safety manager who Mr. Young initially reported his injury to when his pain got too unbearable the day after the date of the accident (R. p. 215, lines 5-9). There was no refutation provided about this altercation, which brings the question that if two people were involved in this altercation, then why was only one terminated for their actions in this incident? Additionally, if someone has recently reported a work injury, and you are about to fire them, it would make sense to save video of such an altercation or at least have more documentation besides one form that says terminated "for cause" with no other supporting documentation (R. p. 847). The Single Commissioner nor the Full Commission's Appellate Panel found any issue with this testimony or version of the events that

occurred surrounding the Appellant's injury or the subsequent days after while he was on light duty restrictions from the Defendants' authorized treating physician.

At the Single Commissioner's Hearing, there was extensive cross examination about Appellant having two prior workers compensation claims and a prior motor vehicle accident where he received settlements. Again, he never lied nor attempted to hide any of this information. In fact, all the evidence regarding these prior claims further supports this claim because there was no prior shoulder injury/condition, and he had no prior impairment rating to his back. Having a prior claim (or claims) that is/are admitted and compensable is not evidence to support denying a subsequent claim. Appellant's Counsel has personally experienced two workers' compensation claims in the past, so am I to assume I should be wary of bringing a third claim if I am injured on the job due to the Commission potentially viewing my claim as not compensable because I had prior claims?

While the records admitted do show two instances of polysubstance abuse in his past, Appellant testified truthfully at the hearing that he has had no issues since. I say he testified truthfully because there was no rebuttal to his testimony, and not only did he have a clear drug test to get his job, but he was also drug tested on March 9, 2022 (the day after the date of accident) and that test came back negative as well. Similar to having prior claims, just because someone has used illicit substances on two occasions several years ago does not mean they suddenly cannot have a compensable workers' compensation claim. In the same vein, a prior termination from a job does not suddenly render a claim non-compensable. Yet, the Single Commissioner made it a point to discuss all these things at length in the review of evidence and in Findings of Fact, but he made no mention of how any of this history results in a denial of the claim before him. The Full Commission's Appellate Panel affirmed the Single Commissioner without providing any nexus between this history and how that makes the current claim non-compensable.

In Finding of Fact 7, the Single Commissioner found as fact that Appellant testified in a deposition about a prior MRI showing missing cartilage in his knee and an annular bulge in his back (R. pp. 51-52). Oddly, despite all the credibility issues the Single Commissioner found as fact in his Decision and Order, this finding of fact does not question in the slightest what Appellant testified to or the validity of the MRI findings. Nevertheless, while this testimony is taken as fact, the error here by the Single Commissioner was not clarifying or specifying that this annular bulge testimony was only about Appellant's **low back**, not his neck (R. p. 822, line 22-p. 824, line 25). The Full Commission's Appellate Panel made no attempt to clarify or remedy this error either.

In Finding of Fact 13, the Single Commissioner found as fact that Appellant testified that a June 2020 accident resulted in ongoing hip pain, which bothered his back and ankle (R. p. 52). The Single Commissioner referenced a prior clincher, where there is no evidence to support "ongoing hip pain" that bothers his hip or ankle (R. pp. 683-686). In fact, as the clincher in that case showed, there was no impairment rating his back (R. p. 683). Also, Finding of Fact 13 conveniently leaves out that this clincher and accident was about his **low back**, hip, and left ankle, NONE of which are at issue in the present claim. The Single Commissioner nor the Full Commission's Appellate Panel made any attempt to explain the relevance of this or how it led to denying compensability in this claim.

In Finding of Fact 48, the Single Commissioner found as fact that Appellant testified that his job immediately prior to the Defendant Employer in this claim was with Cintas and that Appellant testified about his packing responsibilities at this job (R. p. 57). First, this is factually incorrect, as Appellant started his job at Cintas AFTER he was fired by the Defendant Employer in this claim (R. p. 224, lines 3-10). There is no explanation why the Single Commissioner also found as fact that the "packing" responsibilities of this job were done seven months prior to his

cervical fusion or how that has any bearing on the compensability of the claim. While there is speculation, surmise, and conjecture abound, Appellant can only speculate here that there is some insinuation that perhaps his work at Cintas is somehow connected to the cervical fusion. Of course, there is no lay testimony, medical evidence, or medical opinion/testimony to support such an assertion. The Full Commission's Appellate Panel made no attempt to clarify or remedy this error either.

In Finding of Fact 62, the Single Commissioner found as fact that Appellant testified about applying for work with Defendant Employer four months after his treatment for his 2021 motor vehicle accident ended (R. p. 59). While this is true that Appellant agreed with the math error made by Defense Counsel in his questioning, the Single Commissioner did not clarify the clear mistake here that this was five plus (5+) months after the treatment ended. As stated previously, the slight error between four months and five months is possibly harmless error, but when the amalgamation of all these seemingly minor errors are used in combination to constitute "substantial evidence" to deny a claim, they become very important. Moreover, there is no medical evidence anywhere in the record that provides any nexus between Appellant's prior motor vehicle accident and his need for a cervical fusion. Finally, there is no explanation for why applying for a job any number of months after medical treatment has ended from a prior accident leads to denying compensability of this claim in the face of multiple opinions supporting causation/compensability. The Single Commissioner was made aware of this math error (R. p. 1567), and this was also spelled out to the Full Commission's Appellate Panel in our brief to them; neither attempted to fix this nor explain how it supports a denial.

In Finding of Fact 71, the Full Commission's Appellate Panel affirmed the Single Commissioner who found as fact that Appellant's hearing testimony does not align with prior

deposition testimony where he "indirectly asserted" he was consistently harassed by an unnamed employee (R. p. 60). The Single Commissioner only cited the hearing transcript, so it is hard to understand how the testimony does not align. However, reading the hearing and deposition transcripts in full clearly shows that Appellant consistently stated that he never had a problem with his supervisor at Defendant Employer, and he never knew anybody at Defendant Employer to be dishonest or had a problem with them **prior to getting hurt on March 8th** (R. p. 251, line 23-p. 252, line 6). The testimony literally shows the exact opposite because Defense Counsel states Appellant's testimony was consistent. I can only assume the Single Commissioner was referring to Appellant's August 23, 2022 deposition. And making this assumption and re-reading the entirety of this deposition (due to the fact that no specific part of the deposition was cited in the Decision and Order), the Single Commissioner has, again, erroneously interpreted Appellant's testimony. Appellant was specifically asked about any problems with his supervisor or anybody in a supervisory or management position (R. p. 1433, lines 14-24). There is no evidence in the record to support his testimony not aligning, and there is no evidence that the person he was in a verbal altercation with that led to his termination was a supervisor or management. This was also spelled out to the Full Commission's Appellate Panel in our brief to them; they made no attempt to fix the Single Commissioner's error or explain how Appellant's testimony was inconsistent or did not align.

In Finding of Fact 74, the Single Commissioner found Appellant's hearing testimony does not align with his January 11, 2024 deposition testimony regarding his headaches being related to his March 8, 2022 work accident (R. p. 60). The Single Commissioner cites Appellant's deposition transcript wherein Appellant testified that certain motions performed during his independent medical examination with Dr. Grady led him to the conclusion his headaches were from certain

movements of his neck (R. p. 1523, lines 9-15). There is no reference to the hearing transcript to support finding the testimony does not align, and it would be an error to find this as fact without supporting it from the record. This was also spelled out to the Full Commission's Appellate Panel in our brief to them; they affirmed the Single Commissioner's finding and made no attempt to fix the Single Commissioner's error or explain how Appellant's testimony was inconsistent or did not align.

Findings of Fact 130 and 131 are the crux of the Full Commission's Appellate Panel's errors in not applying the law of *Crane* to the case at hand. The Single Commissioner found as fact that he could only consider the evidence before him, lists the evidence before him, and then finds the substantial weight of the evidence shows Appellant has not met his burden. This is discussed in more detail below, but many of the things mentioned by the Single Commissioner are not supported by the very record he mentions (i.e., untruthful/evasive/inconsistent testimony, prior workers' compensation claims for UNRELATED body parts, etc.). To find this as fact but not explain the nexus between this evidence and how it results in ignoring objective medical evidence is the gravest of injustices before us. The Full Commission's Appellate Panel affirmed these Single Commissioner findings and made no attempt of their own to explain the nexus between the evidence and how it results in ignoring objective medical evidence to deny compensability.

Error of Law

In workers' compensation cases, it is crucial that the findings of the Commission are based on objective medical evidence. The failure to consider such evidence not only undermines the integrity of the decision-making process but also denies injured workers the benefits they rightfully deserve. In the case at hand, the Full Commission's Appellate Panel's decision to ignore objective medical evidence (physical examinations, MRI imaging, EMG findings, etc.) and the multiple

medical opinions, rendered to a reasonable degree of medical certainty, should be deemed reversible error, much like the ruling in *Crane v. Raber's Discount Tire Rack*, 419 S.C. 249 (2018). In *Crane*, the South Carolina Supreme Court underscored the necessity of using medical evidence to substantiate findings regarding the severity of an injury. Here, as in *Crane*, the Full Commission's Appellate Panel's decision to disregard objective medical evidence in this case mirrors the same error, resulting in an unjust denial of benefits.

In this case, Appellant presented objective medical evidence, including expert testimony and diagnostic testing, showing that the injuries sustained were consistent with Appellant's account of the work-related accident. While there is no specific video evidence on the date of accident (which is not a requirement under the Act anyway), Appellant provided ample testimony about a similar occurrence at work that is very clearly on video the day after this accident, which is the date he reported this injury to his safety manager and requested treatment (R. p. 217, line 14-p. 219, line 9). Despite this evidence and the video from the day after clearly showing the jerking motion that resulted in this work-related injury, the Full Commission's Appellate Panel dismissed the medical findings, citing subjective factors like Appellant's credibility or perceived inconsistencies in his testimony. The Full Commission's Appellate Panel's reliance on these subjective factors, without giving appropriate weight to the objective medical evidence, led to the wrongful denial of benefits.

Objective medical evidence is the cornerstone of workers' compensation claims, as it provides an unbiased, factual basis upon which to evaluate the extent of a worker's injuries. In South Carolina, workers are entitled to compensation for injuries that arise out of and in the course of employment. The Workers' Compensation Act specifically mandates that benefits should be awarded based on the medical evidence of a claimant's injury, not solely on subjective accounts.

In *Crane*, the South Carolina Supreme Court addressed a situation where that commissioner had relied heavily on subjective credibility determinations to deny benefits, despite that claimant presenting substantial objective medical evidence. The Court reversed the Single Commissioner's decision, asserting that credibility findings must be supported by substantial evidence in the record, especially when such findings conflict with objective medical evidence. The Court held that the Workers' Compensation Commission must base its findings on objective, verifiable facts, and any denial of benefits should be clearly justified by such evidence.

Much like in *Crane*, the Full Commission's Appellate Panel in this case erroneously placed undue emphasis on subjective factors, such as alleged inconsistencies in Appellant's testimony, having prior worker's compensation claims, or previously using illicit substances, instead of properly considering the objective medical evidence that supported compensability in this claim. Moreover, the Full Commission's Appellate Panel failed to show the nexus between credibility and the medical evidence before them. The medical evidence presented in this case, including physical examinations, diagnostic reports, and expert testimony, clearly establishes that Appellant sustained the injury as described in the claim. To disregard this objective evidence in favor of subjective assessments is legally unsound and contrary to the principles outlined in *Crane*.

CONCLUSION

For the reasons set forth above, Appellant respectfully requests that the Court find the Full Commission's Appellate Panel's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and based on an error of law in violation of established precedent. Appellant respectfully requests the Court finds the record supports finding Appellant met his burden of proof establishing compensability under the Act, and the Order of the Full

Commission be reversed with regards to the Findings of Fact and Conclusions of Law concerning compensability of the alleged body parts, an award of reimbursement for out-of-pocket causally-related medical treatment, an award of entitlement to future medical care, and an award of permanent partial disability of, at a minimum, 8% to the right shoulder, 5% to the right upper extremity, and 51% to the back.

Respectfully submitted,

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February 24, 2026
North Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Melody L. James, Commissioner
Gabe Coggiola, Commissioner
R. Michael Campbell, II, Commissioner

W.C.C. FILE NO.: 2202565
Appellate Case No. 2025-001932

RUSTY YOUNG, CLAIMANT……APPELLANT,

v.

CONFLUENCE OUTDOOR, INC., EMPLOYER, and
GREAT AMERICAN ALLIANCE INSURANCE CO., CARRIER……..RESPONDENTS.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.

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