

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2007-CP-42-1966

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S.C. Supreme Court

Raquel Martinez, Employee,

Petitioner

v.

Spartanburg County, Employer,
and S.C Association of Counties
Self-Insurance Fund, Carrier,

Respondents.

**APPENDIX
(VOLUME 2)**

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In The Court Of Appeals

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Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2007-CP-42-1966

Raquel Martinez,

Respondent,

v.

Spartanburg County and
S.C. Association of Counties
Self-Insurance Fund,

Appellants.

FINAL BRIEF OF APPELLANTS

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	2
Statement of the Facts	4
Arguments	
I. THE FULL COMMISSION'S ORDER FINDING THAT MARTINEZ WAS NOT SUBJECTED TO UNUSUAL AND EXTRAORDINARY CONDITIONS OF EMPLOYMENT IS SUPPORTED BY SUBSTANTIAL EVIDENCE	17
II. THE COMMISSION'S FINDING THAT THE ACCIDENT INVESTIGATION ON APRIL 4, 2005, DID NOT PROXIMATELY CAUSE MARTINEZ'S MENTAL INJURY IS SUPPORTED BY SUBSTANTIAL EVIDENCE	30
Conclusion	39

TABLE OF AUTHORITIES

Cases

<u>Bass v. Kenco Group,</u> 366 S.C. 450 (Ct. App. 2005)	25
<u>Brown v. Jordan Oil Co.,</u> 291 S.C. 272, 353 S.E.2d 280 (1987)	16,22
<u>Clade v. Champion Laboratories,</u> 330 S.C. 8, 496 S.E.2d 856 (1998)	17
<u>Doe v. S.C. Dept. of Disabilities and Special Needs,</u> 377 S.C. 407, 660 S.E.2d 260 (2008)	3,18,26,27,28,29,30,39
<u>Etheredge v. Monsanto Company,</u> 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002)	16
<u>Frame v. Resort Services, Inc.,</u> 357 S.C. 520, 593 S.E.2d 491 (S.C. App. 2004)	18,31
<u>Howell v. Pacific Columbia Mills,</u> 291 S.C. 469, 354 S.E.2d 384 (1987)	15,16,22
<u>Hoxit v. Michelin Tire Corp.,</u> 304 S.C. 461, 405 S.E.2d 407 (1991)	16
<u>Hunter v. Patrick Const. Co.,</u> 289 S.C. 46, 344 S.E.2d 613 (1986)	15
<u>Lark v. Bi-Lo, Inc.,</u> 276 S.C. 130, 276 S.E.2d 304 (1981)	15,16,18,22
<u>Lowe v. Am-Can Transport Services, Inc.,</u> 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984)	16
<u>McGuffin v. Schlumberger-Sangamo,</u> 307 S.C. 184, 414 S.E.2d 162, 163 (1992)	16,23
<u>Medlin v. Upstate Plaster Serv.,</u> 329 S.C. 92, 495 S.E.2d 447 (1998)	16
<u>Nawa v. Wackenhut Corporation,</u> 288 S.C. 250, 341 S.E.2d 800 (1986)	31

<u>O'Banner v. Westinghouse Electric Corp.,</u> 319 S.C. 24, 459 S.E.2d 324 (Ct. App. 1995)	16,18,22
<u>Powell v. Vulcan Materials Co.,</u> 299 S.C. 325, 384 S.E.2d 725	17
<u>Ross v. American Red Cross,</u> 298 S.C. 490, 381 S.E.2d 728 (1989)	15
<u>Sharpe v. Case Produce, Inc.,</u> 336 S.C. 154, 519 S.E.2d 102 (1999)	15,16,19,38
<u>Shealy v. Aiken County,</u> 341 S.C. 448, 535 S.E.2d 438 (2000)	18,32,38
<u>Stokes v. First National Bank,</u> 298 S.C. 13, 377 S.E.2d 922 (S.C. App. 1988)	17,27,28
<u>Tiller v. National Health Care Ctr.,</u> 334 S.C. 333, 513 S.E.2d 843 (1999)	17
<u>Watt v. Piedmont Automotive,</u> Opinion No. 4572 (Ct. App. June 25, 2009)	22,26,29,30
<u>Statutes</u>	
S.C. Code Ann. §1-23-380 (2007)	25

STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT ERR IN REVERSING THE FULL COMMISSION'S FINDING THAT MARTINEZ WAS NOT SUBJECTED TO AN UNUSUAL AND EXTRAORDINARY CONDITION OF EMPLOYMENT?
- II. DID THE CIRCUIT COURT ERR IN REVERSING THE FULL COMMISSION'S FINDING THAT THE INVESTIGATION PERFORMED BY MARTINEZ WAS ONLY ONE FACTOR, AND NOT THE PROXIMATE CAUSE, OF HER MENTAL CONDITION?

STATEMENT OF THE CASE

Raquel Martinez was employed as a Master Deputy Forensic Investigator by the Spartanburg County Sheriff's Department. (R.p. 57). On September 26, 2005, Martinez filed a Form 50 alleging that she had suffered a mental injury as a result of investigating an accident in which a Greenville County Deputy Sheriff had accidentally backed over and killed his two year old daughter. (R.p. 471). On October 5, 2005, Spartanburg County and its carrier, the South Carolina Association of Counties Self-Insurance Fund (hereinafter "Employer") filed their Form 51 denying that Martinez suffered a compensable psychiatric injury as a result of any unusual or extraordinary condition of employment. (R.p. 472). At the hearing, the Employer contended that Martinez was employed as a forensic investigator, that it was her job to investigate homicide and death cases, and that she was performing her regular job when she investigated the child's accidental death on April 4, 2005. (R.p. 52-53). The Employer further contended that if Martinez suffered mental stress as a result of the investigation on April 4, 2005, it was just one factor and that there were other factors involved in her mental stress, including the death of her "cousin" from AIDS. (R.p. 53). The Employer contended that for a psychiatric claim to be compensable, the job related stress must proximately cause the psychiatric injury, and not just be one of several factors. (R.p. 53).

On November 20, 2006, the Single Commissioner issued his Decision and Order finding, inter alia, that the investigation of the accident on April 4, 2005 was not an unusual or extraordinary condition of employment and that there were other factors involved in Martinez's mental condition. (R.p. 23-45). On May 22, 2007, an Appellate Panel unanimously affirmed the Single Commissioner's Order.

Thereafter, Martinez filed an appeal with the Court of Common Pleas for Spartanburg County. On February 25, 2009 the Circuit Court reversed and remanded the Full Commission's Order on the ground that the Commission's Order lacked sufficient detail to enable the Court to determine whether those findings were supported by substantial evidence. He further found that the Commission erred as a matter of law in failing to use the analysis, as set forth in Doe v. S.C. Dept. of Disabilities and Special Needs, 377 S.C. 407, 660 S.E.2d 260 (2008), to determine whether the conditions of Martinez's job on April 4, 2005 were unusual or extraordinary. Lastly, the Court ruled that the Full Commission's finding that Martinez failed to prove that the conditions of her employment on April 4, 2005 proximately caused her mental injury was not supported by substantial evidence and was also affected by an error of law. The Employer timely filed its Notice of Appeal with the South Carolina Court of Appeals on March 16, 2009.

STATEMENT OF THE FACTS

At the time of the hearing, Martinez was 47 years of age and had worked in law enforcement for approximately 28 years, including 11 years working for the South Carolina Probation and Parole Board, several years working as a store detective in North Carolina, and six and one-half years working for the Spartanburg County Sheriff's Department. (R.p. 56-59, 73-74). Martinez had held the position of Master Deputy Forensic Investigator with the Sheriff's Department for approximately four years. (R.p. 56, 59). She described her job duties as follows:

Going to a crime scene or to a scene to determine if there's a crime, collect evidence, take photographs of the area, take measurements, process for any kind of fingerprints or any other kind of forensic evidence, including D.N.A. If it's like a rape case, we collect the bedding to see if we can find any fibers or unusual hairs that wouldn't belong on it, and we do some of the testing at the Sheriff's office; others, we bag up, send to SLED using the proper protocol for chain of evidence. We download the photographs into a computer, and then we write two different reports in two separate computers to document everything so that we can testify in court at the time that the case comes up.

(R.p. 57). Captain Steven L. Denton of the Criminal Investigative Division of the Spartanburg County Sheriff's office, likewise described Martinez's job duties:

Forensics I.D. photograph all types of scenes, to include property crimes, violent crimes, just the gamut of crimes. You lift latent fingerprints; you process scenes for DNA, any type of evidence, any type of forensics evidence. You interview victims of crimes. You may interview suspects of crimes if you're taking evidence from their bodies. Certainly, death investigation, you come in contact with bodies, deceased bodies, and you also have a responsibility to be present at autopsies, which are usually performed at Spartanburg Regional Medical Center, at the County morgue. You interact with the Coroner's office; you interact with detectives and other personnel in uniform patrol. There's a host of things that a person in I.D. forensics would be responsible to do.

(R.p. 129-130).

On April 4, 2005, Martinez was sent to perform a forensic investigation of the death of a child. (R.p. 123). When she arrived at the scene, numerous law enforcement and emergency personnel were already present. Spartanburg Sheriff Chuck Wright was present as well as probably 6-7 Spartanburg County deputy sheriffs; 8-10 firefighters; 10 officers from the Greer Police Department, including the Police Chief; Captain Jolene Van Syl and Lt. Matt Hamby; the Greenville County Sheriff; several deputies from the Greenville County Sheriff's Department; and at least one ambulance. (R.p. 60, 143-144). The accident which Martinez was dispatched to investigate involved Greenville County Deputy Sheriff Anthony Johnson. (R.p. 61). Officer Johnson had previously worked for the Spartanburg County Sheriff's Department (R.p. 83, 145), but subsequently worked for a short time with the Greer Police Department, and then took a job with the Greenville County Sheriff's Department. (R.p. 83). On April 4, 2005, Officer Johnson was departing his residence when he accidentally backed over his two year old daughter. (R.p. 121-122).

Martinez's only knowledge of the accident when she arrived was that there was a death of a child, that there had been a terrible accident, and that it involved a former employee. (R.p. 60). The accident was investigated by the Spartanburg County Sheriff's Department, because the accident had occurred in Spartanburg County and the City of Greer did not have a forensic unit. (R.p. 60). When Martinez arrived at the scene, Sheriff Wright was in the garage with the child's father who was very distraught. (R.p. 61, 122). Martinez could not identify the person in the garage with Sheriff Wright, but was told by fellow officers that it was Anthony Johnson. (R.p. 61). The Sheriff spent 20-30 minutes in the

garage talking with Officer Johnson. (R.p. 61). The other officers stayed away from the garage, and Martinez never talked with Officer Johnson at the scene. (R.p. 62, 65).

Martinez testified that she considered Anthony Johnson a friend. (R.p. 62). Johnson was only with the Spartanburg County Sheriff's Department for about 1-1½ years (R.p. 83), and had left while Martinez was still in uniform patrol. (R.p. 82). Martinez left uniform patrol to become a forensic investigator about 3½-4 years prior to the accident. (R.p. 74). When Martinez and Anthony Johnson worked in uniform patrol, they both worked on the third shift. (R.p. 99). The Sheriff's Department divided the County into eight zones and divided the third shift into "A", "B", and "C" platoons. (R.p. 99-100). Martinez and Johnson were assigned to different platoons and to different zones. Therefore, Martinez only worked two days out of the week at the same time that Johnson was working. (R.p. 100). On those two days, Martinez would normally only see Anthony Johnson at roll calls at the beginning and end of the shift. (R.p. 100). If Martinez's and Anthony Johnson's zones were busy, she might not see him at all. (R.p. 101). Martinez had never met Anthony Johnson's wife or child and had never gone to his house. (R.p. 83-84). She did not socialize with Anthony Johnson. (R.p. 84). She admitted that she and Anthony Johnson were not "best friends." (R.p. 103).

Since it was close to her shift change when Martinez arrived, she asked Captain Denton if she had to work over her shift, or could the next shift work the accident. (R.p. 63). Captain Denton advised her that she needed to process the scene. (R.p. 63, 124). Captain Denton testified that when he made the decision that Martinez should do the investigation, he was basically saying to her, "you've got to do your job." (R.p. 149).

As a part of her investigation, Martinez took 100-150 photographs, including photographs of the front lawn, the area where the body and car were located, and inside the house. (R.p. 75). The reason for taking photographs was to determine whether the death had occurred the way it appeared or in some other way. (R.p. 75). During the investigation, Martinez looked underneath the patrol car to determine if there was evidence that the child had been underneath the car. (R.p. 67). She testified there were clumps of the child's hair and skin on the tire and on the asphalt. (R.p. 67). There were also fingerprints of a child's hand dragging across the gasoline tank. (R.p. 67). Martinez took photographs of the underside of the patrol car to show that the child had actually gone underneath the car. (R.p. 76). In addition to photographs, Martinez's job required her to take measurements of the position of the body, to collect evidence (including any DNA or fibers), and to move the body so that photographs of both sides of the body could be taken to determine if there were wounds on the underside of the body. (R.p. 76-77). Martinez testified that all these activities were a part of her regular duties as a forensic investigator. (R.p. 77).

After Martinez had investigated the overall scene, she awaited the arrival of the State Highway Patrol's "S" team to complete her investigation. (R.p. 64, 77-78). The Highway Patrol's "S" team responds to all accidents involving patrol cars. (R.p. 64-65). The "S" team would also take measurements and photographs of the accident scene. (R.p. 78). After the "S" team had completed their investigation of the overall scene, Martinez moved the child's body so that she and one of the Highway Patrol investigators could photograph the child's body. (R.p. 78).

Prior to this investigation, Martinez had gone to approximately 100-150 death calls as a forensic investigator. (R.p. 80,98). She had also investigated 24 cases involving

suspicious deaths/homicides (R.p. 80), and participated in approximately 24-26 autopsies in which the pathologist removed organs from the corpse. (R.p. 80-81). She testified that it was not unusual for a forensic investigator to see "blood and guts." (R.p. 81). She had also been to fire scenes in which bodies had been burned, which she admitted could be quite gruesome. (R.p. 81). When she had worked previously for the Greenville County Sheriff's Department, Martinez had gone to an accident scene where a dump truck had driven over a child's head. (R.p. 89). Martinez did not actually perform the investigation, but she testified that the scene did not bother her and she did not cry or have nightmares thereafter. (R.p. 93). She distinguished that accident scene because the child was not run over by a fellow police officer whom she knew. (R.p. 94).

On another occasion, Martinez had investigated a motor vehicle accident in which two teenagers rolled a stolen vehicle, while attempting to escape capture. The driver was ejected from the car and the car rolled over him. (R.p. 96). The teenager died in Martinez's arms after she had moved him to where he could breathe. (R.p. 96). Martinez also testified that it was not uncommon for investigators to go to motor vehicle accidents in which the occupants had been decapitated or had lost an arm. (R.p. 98). She also remembered one instance in which a man had accidentally shot his leg off with a shotgun. (R.p. 98). Martinez testified that her activities on April 4, 2005, of taking photographs, making measurements, moving the child's body, setting up barriers, etc., were all part of her regular job as a forensic investigator. (R.p. 87).

Captain Denton testified that the Spartanburg County Sheriff's Department did not have a policy prohibiting employees from investigating an accident scene when they knew the victim. (R.p. 131). Captain Denton had always maintained that regardless of who the

victim was or who you know, even if it was the wife of the person doing the investigation, the officer had to work the investigation. (R.p. 131). Captain Denton took the same position on April 4, 2005, even though the father of the victim was a person that Martinez had worked with on the third shift at the Sheriff's Department. (R.p. 132). Captain Denton testified that he could have chosen to have somebody else come to the scene and work it, but he chose not to, because he would have worked the investigation "if the shoe had been on the other foot." (R.p. 131-132). Captain Denton also testified that forensic investigators normally touch dead bodies. (R.p. 132). He testified that Martinez would have been in charge of processing the dead body at the accident scene on April 4, 2005. (R.p. 126).

According to Captain Denton, taking photographs, making measurements, and moving the child's body at the accident scene on April 4, 2005 was an ordinary part of Martinez's job. (R.p. 138). He testified that when Martinez was doing her investigation that day, it was an ordinary part of her job. (R.p. 138). The only thing that was different according to Captain Denton was that the investigation involved a child and Martinez knew the child's father who had caused the accident. (R.p. 140-141). Captain Denton acknowledged that forensic investigators have to investigate the death of children. (R.p. 139-140). He also testified that if he had sent any other forensic investigator to do the accident scene, they would have probably known Anthony Johnson as well, although he could not predict they would have the same reaction as Martinez. (R.p. 142).

On April 18, 2005, Michael Adger Roberts, a cousin of Martinez's former husband, died of AIDS. (R.p. 67). Martinez testified at the hearing that Michael lived with her and her former husband every summer and during school breaks. (R.p. 67-68). She considered him her "cousin," although he was not a blood relative. (R.p. 67-68). Martinez testified that

Michael had tested HIV positive and developed AIDS. (R.p. 67-68). As a result of his disease, Michael developed cancers and had surgeries and other treatments over a long period of time. (R.p. 67-68). Martinez testified that it was hard to see Michael Roberts suffering so much, and it was some relief when he died. (R.p. 67-68). She testified that it bothered her when he died, and she cried the day he died and the day he was buried. (R.p. 69).

On April 7, 2005, Martinez saw her family physician, Dr. John R. Wieder, regarding her blood pressure. (R.p. 158). Dr. Wieder noted that Martinez was a sheriff's deputy and worked in the forensics department. (R.p. 158). He indicated that there was a lot of stress on the job and that she worked alternating shifts. (R.p. 158). However, there was no mention in his report of the accident investigation on April 4, 2005. Martinez saw Dr. Wieder again on April 19, 2005. (R.p. 158). Dr. Wieder recorded the following history in his report:

She is very upset and crying. A very close friend and relative, a cousin with whom she was very close over the years, passed away yesterday. She is very upset about it. They were very close ever since they were little kids. She was very upset that she did not get to the hospital in time to say goodbye before he passed away.

(R.p. 158). Dr. Wieder took Martinez out of work for a few days. (R.p. 158). He noted that she would be helping with the funeral arrangements and wanted to attend the funeral. (R.p. 158). At that time, he placed her on Xanax "to help her get through this trying time." (R.p. 160). Dr. Wieder saw Martinez again on April 25 and 29, 2005, May 5, 12, and 26, 2005, and June 24, 2005. (R.p. 160-167). In these office visits, Martinez never mentioned the accident investigation on April 4, 2005. (R.p. 160-167). In fact it was not until May 3, 2006, after filing her workers' compensation claim, that Martinez advised Dr. Wieder about the incident with the child. (R.p. 168).

Martinez was seen at the Spartanburg Regional Hospital Emergency Room on April 24, 2005 complaining of syncope and a migraine headache. (R.p. 169-175). The Emergency Room report noted that Martinez was under increased stress that week due to a death in the family. (R.p. 174). It was the Emergency Room physician's impression that Martinez was having a grief reaction. (R.p. 175). The report does not mention the incident involving the child's death. (R.p. 169-175).

On August 7, 2005, Martinez was hospitalized at Spartanburg Regional Medical Center. (R.p. 180). Dr. Caston's admission report indicated that Martinez was admitted due to delirium thought to be related to Benzodiazepine withdrawal symptoms. (R.p. 180). He noted that Martinez had been given Xanax by her family doctor but had not taken the medication for 3-5 days. (R.p. 179). He further recorded under "Social History" that Martinez apparently had recent problems with uncontrollable hypertension and that the patient's best friend recently died. (R.p. 179). The Emergency Room triage report noted:

Per EMS report pt is Deputy Sheriff "who just went crazy in her house." Broke all windows in house and patrol car. Kicked in doors. Thinks it's year 1800 and she's on the Missouri River. Per family patient has no hx of this behavior.

* * * * *

Patient continues to be agitated and speaking about red horses running through unit, asking how to do a jewish birth when changing from a girl into a boy, pt thinking picture on wall records what she doing. Pt thinks she's here related to giving birth.

(R.p. 183-184).

In his discharge report of August 9, 2005, Dr. Caston stated under "Social History" that:

The patient had no previous history of psychiatric care. The patient apparently had recent problems with uncontrollable hypertension and also had problems with anxiety, insomnia and depression related to the death of her best friend who apparently was a male cousin.

(R.p. 192). (Emphasis added). There was no mention in his discharge report of the death of the child on April 4, 2005.

On August 10, 2005, Martinez was admitted to the Carolina Center for Behavioral Health. (R.p. 263). In the admission report, Dr. Ralph J. Castriotta, stated the reason for the admission as:

The patient was admitted after being hospitalized briefly at SRMC. She ended up there after having a brief reaction, possibly psychotic in nature to abruptly stopping her Xanax. She started the Xanax 2 mg a day 6 weeks ago after suffering an acute anxiety reaction to the death of a relative. She was vulnerable at the time due to stressors at work. She works as a police officer. She feels she was in an emotionally vulnerable state when the relative died. This heightened her reaction to it. She was placed on Xanax. She did reasonably well. She felt that she needed to get off the medication. She did so basically by stopping it. She then deteriorated and had poor sleep. She had decreased ability to get a sense of the world around her. She finally lost touch with reality and was hospitalized. She has little recall of the events that occurred during the time she lost touch with reality.

(R.p. 263). (Emphasis added). It was also noted by Dr. Castriotta that Martinez's brother suffered from depression. (R.p. 264). Dr. Castriotta's diagnosis was psychosis secondary to withdrawal from Benzos and rule out bipolar versus OCD. (R.p. 264). Martinez was discharged from the Carolina Center for Behavioral Health on August 11, 2005, and was seen in follow-up by Dr. Castriotta. (R.p. 265)

On August 22, 2005, Dr. Castriotta interviewed Martinez and noted that she became very confused during the interview. (R.p. 267). Dr. Castriotta discovered that Martinez had

been overtaking her Lortab medication. (R.p. 270). In fact, Martinez had taken 120 Lortabs since August 5, 2005, which was roughly 60 mg a day. (R.p. 270). For that reason, Martinez was re-admitted to the Carolina Center for Behavioral Health on August 22, 2005. (R.p. 270). On August 23, 2005, Dr. Castriotta was interviewing Martinez and asked her why she was overtaking her medicine. (R.p. 270). Martinez told Dr. Castriotta for the first time about the incident in which the police officer had run over his own two-year-old child. (R.p. 270).

Martinez was hospitalized again at the Carolina Center for Behavioral Health from September 28, 2005 to October 20, 2005. In his discharge diagnosis, Dr. Shane Sherbondy stated that Martinez had a bipolar disorder, not otherwise specified, post-traumatic stress disorder, opium abuse, and benzodiazepine abuse. (R.p. 274-275). He also noted that Martinez had a borderline personality disorder. (R.p.275). Following her discharge from the hospital, Martinez continued under the care of Dr. Sherbondy. In his office note of September 29, 2005, Dr. Sherbondy stated that Martinez was no longer working and was seeking long term disability. (R.p. 277, 280). He also stated that Martinez did not want to find a new job, because it could not pay as well. (R.p. 280). On November 9, 2005, Dr. Sherbondy noted Martinez was still pretty fragile and working toward a disability claim. (R.p. 281).

On June 8, 2006, Martinez was evaluated by Dr. John F. Abess, a Charleston psychiatrist. Dr. Abess took an extensive history from Martinez which included sexual assaults over a two year period during her childhood by a male friend of the family and being raped at age 19 by a friend of her youngest brother. (R.p. 308-314).

Martinez described her work experience to Dr. Abess as follows:

She recalls her first autopsy occurred at age 18. Frequently, she has to take measurements of bullet holes. 'We would have to take photos from every angle and behind from inside the skull and from inside the body.' She estimates having participated in about 2 or 3 dozen autopsies. If there was an unattended death, she would have to determine if it was natural or if there was a crime. She estimates having been an investigator at 50 to 100 death scenes. 'It never bothered me.' 'I have always been able to take grizzly stuff.'

(R.p. 311-312). Martinez stated that 10 years ago she had taken Luvox for approximately 1½ years for depression. (R.p. 313). At that time she went through an employee's assistance program. Martinez indicated this was the result of having been separated and divorced. (R.p. 313).

As a result of his evaluation, Dr. Abess made a primary psychiatric diagnosis of post-traumatic stress disorder, recurrent episode, and chronic bipolar I effective disorder. (R.p. 321). He also diagnosed prescription medicine abuse associated with primary diagnosis and a personality disorder. (R.p. 321). Dr. Abess advised that there was evidence of the existence of bipolar mood disorder prior to April 4, 2005, although the diagnosis was not officially recognized. (R.p. 322). He also indicated that there was evidence that Martinez's post-traumatic stress disorder also existed prior to April 4, 2005, in that Martinez had developed symptoms consistent with post-traumatic stress disorder after her rape at age 19. (R.p. 322). It was Dr. Abess' impression that both the accident investigation on April 4, 2005 and the death of her ex-husband's cousin from AIDS in mid-April 2005 were factors in the exacerbation of Martinez's pre-existing bipolar disease. (R.p. 322). He also felt that the accident investigation could have led to a recurrence of a previously experienced post-traumatic stress disorder which occurred when she was sexually abused for about 18 months from age 7-8 while living in Puerto Rico and after being raped at age 19. (R.p. 323).

However, Dr. Abess advised that the discontinuation of Xanax by Martinez along with the initiation of the anti-depressant Zoloft was the actual precipitant cause for the development of a manic manifestation of her bipolar disorder. (R.p. 323). Dr. Abess noted that Martinez had a persisting affective disorder, which based on medical records, revealed itself early in her life. (R.p. 323). He noted that this disorder was genetically developed and the patient had one sibling with a similar disorder. (R.p. 323).

STANDARD OF REVIEW

Whether a causal connection exists between employment and an alleged injury is a question of fact for the South Carolina Workers' Compensation Commission. Sharpe v. Case Produce, Inc., 336 S.C. 154, 159, 519 S.E.2d 102, 105 (1999). In workers' compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). The Appellate Court's review of these findings of fact is limited to determining whether the findings are supported 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" necessary to support a decision of the Commission is:

'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . . It must be enough to justify, if the trial were [sic] to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. . . . This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.'

Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981); *see also*, O'Banner v. Westinghouse Electric Corp., 319 S.C. 24, 30, 459 S.E.2d 324, 327 (Ct. App. 1995) (The determination of witness credibility and the weight to be accorded evidence is reserved to the Commission.) The findings of the Commission are presumed correct and will be set aside only if unsupported by substantial evidence. Etheredge v. Monsanto Company, 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002); Medlin v. Upstate Plaster Serv., 329 S.C. 92, 495 S.E.2d 447 (1998).

The 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, rather than reweighing the evidence presented to the Commission. *See generally*, Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306-7 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987); Brown v. Jordan Oil Co., 291 S.C. 272, 275, 353 S.E.2d 280, 282 (1987); O'Banner v. Westinghouse Elec. Corp., 319 S.C. 24, 30, 459 S.E.2d 324, 327 (Ct. App. 1995). The appellate court is prohibited from overturning findings of fact of the Commission, unless there is no reasonable probability that the facts could be as related by the witness upon whose testimony the finding was based. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). Thus, if reasonable minds could reach the conclusion reached by the Commission, the Commission's findings must be affirmed. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162, 163 (1992).

Of special note is that where the evidence is conflicting, "the Commission's findings of fact are conclusive." Sharpe, 336 S.C. at 160, 519 S.E.2d at 105; *See also*, Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 407 (1991) ("Where there is a conflict in the evidence, either of different witnesses or of the same witnesses, the findings of fact of the Commission as

triers of fact are conclusive.”) Indeed, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s findings from being supported by substantial evidence. Tiller v. National Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999); Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998).

ARGUMENT

I

THE FULL COMMISSION’S ORDER FINDING THAT MARTINEZ WAS NOT SUBJECTED TO UNUSUAL AND EXTRAORDINARY CONDITIONS OF EMPLOYMENT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A. Unusual or Extraordinary Conditions of Employment

Mental injuries caused solely by emotional stress are compensable if the emotional stimuli or stressors are incident to or arise from unusual or extraordinary conditions of employment. Stokes v. First National Bank, 298 S.C. 13, 377 S.E.2d 922 (S.C. App. 1988) (Increase in bank vice-president’s hours to 16 - 18 hours per day, seven days a week during a bank’s merger was unusual or extraordinary condition of employment); Powell v. Vulcan Materials Co., 299 S.C. 325, 384 S.E.2d 725 (Mental injury resulting directly from emotional stress brought on by heated altercation with supervisor was unusual or extraordinary condition of employment). In order to recover workers’ compensation benefits, a Claimant must prove both

- (1) that he was exposed to unusual and extraordinary conditions in his employment; and (2) that these unusual and extraordinary conditions were the proximate cause of his mental breakdown.

Frame v. Resort Services, Inc., 357 S.C. 520, 529, 593 S.E.2d 491, 496 (S.C. App. 2004).

Moreover, the requirement of an “unusual or extraordinary conditions in employment” refers to the conditions of the particular job in which the injury occurs, not to the conditions of employment in general. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000).

The standard to be applied is whether the work conditions at issue were unusual compared to the particular employee’s normal strains. Id. at 457, 535 S.E.2d at 443; Doe v. S.C. Dept. of Disabilities and Special Needs, 377 S.C. 346, 349-350, 660 S.E.2d 262 (2008).

In the instant case, the Commission found that Martinez had not encountered an unusual or extraordinary condition in performing her specific job on April 4, 2005. The Commission’s findings are supported by substantial evidence, such that reasonable minds could reach the decision reached by the Commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). However, the Circuit Court never addressed the Commission’s findings of fact and never determined whether the findings were supported by substantial evidence. Instead, the Court substituted its own opinion and view of the evidence for that of the Commission, and basically rewrote the Commission’s findings of fact.¹

The Circuit Court stated in its Order that the only witnesses who testified regarding the conditions of Martinez’s employment on April 4, 2005 were Martinez and Captain Denton and that both made conclusory statements that the investigation was unusual and extraordinary. (R.p. 13) The Circuit Court apparently accepted these conclusions at face value without, as the Commission had done, examining the facts of what occurred on April 4, 2005 to determine if the investigation Martinez performed was truly unusual or

¹ In footnote 3 of its Order, the Circuit Court set out its own rendition of the facts. It is noteworthy that the Circuit Court never discussed or examined any of the Commission’s findings of facts under the substantial evidence rule. Rather, the Circuit Court engaged in reweighing the evidence, which was beyond its scope of review. O’Banner v. Westinghouse Elec. Corp., *supra*.

extraordinary. With regard to Martinez's and Captain Denton's testimony, the possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's findings from being supported by substantial evidence. See Sharpe v. Case Produce, Inc., 336 S.C. 154, 159, 519 S.E.2d 102, 105 (1999). Yet the Circuit Court made no examination whatsoever of the evidence upon which the Commission relied. It is submitted that had the Circuit Court used the proper standard of review, it would have readily found substantial evidence to support the Full Commission's decision.

According to Martinez, her job entailed:

- (1) Collecting evidence;
- (2) Taking photographs of the area;
- (3) Taking measurements;
- (4) Processing fingerprints or other forensic evidence including DNA;
- (5) Taking photographs of and moving bodies;
- (6) Downloading photographs into a computer; and
- (7) Writing two different reports in two separate computers to document everything.

(R.p. 57, 75-78). Martinez testified that she documented the accident scene on April 4, 2005, extensively to determine that the accident had occurred the way it appeared. (R.p. 76). She took 100-150 photographs, including photographs of the front lawn of the house, the area around the child's body including underneath the car, and inside the house. (R.p. 76). She also took measurements of the position of the body and collected any kind of DNA or fibers. (R.p. 76-77). Martinez testified that the reason the victim's body is moved or turned over is to determine if there is any evidence of harm (gunshot wound or stab wound) on the other side of the body. (R.p. 77). Significantly, Martinez admitted that taking photographs, measurements, collecting evidence, and moving the body of the child were all part of her job as a forensic investigator. (R.p. 139). Similarly, Captain Denton testified that when Martinez was taking photographs, making measurements, and moving the body, she was

doing her ordinary job. (R.p. 76). Clearly, all of these activities were not unusual compared to the normal strains of her job.

However, Martinez contended that the fact that the child's father was Anthony Johnson, a former officer with the Spartanburg County Sheriff's Department whom she knew, made the investigation "unusual or extraordinary." Captain Denton, however, testified that the Sheriff's Department had no policy prohibiting employees from investigating an accident scene where they know the victim. (R.p. 131). Captain Denton took the same position on April 4, 2005 and required Martinez to work the investigation. (R.p. 131-132). The evidence clearly established that Martinez had only known Anthony Johnson for about 1-1½ years during the time that he was employed by the Spartanburg County Sheriff's Department. (R.p. 83). Martinez never socialized with Anthony Johnson (R.p. 84) and had never met Johnson's wife or child. (R.p. 83). Also, while Martinez and Anthony Johnson had worked the same shift at the Spartanburg County Sheriff's Department, they were assigned to different platoons and worked different zones. (R.p. 99-100). Therefore, there were only two working days each week that Martinez actually worked at the same time as Anthony Johnson, and they might only see each other at roll call at the beginning or end of the shift. (R.p. 100). Martinez candidly admitted that she and Anthony Johnson were not "best friends."² (R.p. 103). Interestingly, Martinez testified that she did not know whether her reaction would have been the same if the officer who had run over his child had worked on the second shift instead of the third shift. (R.p. 104). Moreover, Officer Johnson left the Spartanburg County Sheriff's Department at least 3½

² The Circuit Court in its rendition of the facts characterized Martinez and Officer Johnson as having a "close friendship" despite Martinez testifying that they were not "best friends." (R.p. 6).

years before this accident.³ After Johnson left the department, the only times that Martinez saw him was when they would occasionally bump into each other while both were on duty, such as when Johnson might drop off a prisoner. (R.p. 84).

Over the course of her career as a forensic investigator, Martinez had been involved in 100-150 death calls, including 24 cases involving suspicious deaths/homicides (R.p. 80, 98). She participated in approximately 24-26 autopsies where the pathologist removed organs from the body. (R.p. 80-81). She admitted that it was not unusual for a forensic investigator to see "blood and guts." (R.p. 81). She had also been to gruesome fire scenes in which bodies had been badly burned. (R.p. 81). While she was working previously for the Greenville County Sheriff's Department, Martinez had gone to an accident scene where a dump truck had driven over a child's head. (R.p. 89). She admitted that the scene did not bother her and she did not cry or have nightmares thereafter. (R.p. 93). The sole difference, according to Martinez, was that the child was not run over by a fellow police officer with whom she was acquainted. (R.p. 94).

Martinez also testified that it was not uncommon for investigators to go to motor vehicle accidents in which the occupants had been decapitated or had lost an arm. (R.p. 98). On one occasion, Martinez had investigated a motor vehicle accident in which two teenagers rolled a stolen vehicle, while attempting to escape capture. The driver was ejected from the car and the car rolled over him. (R.p. 96). On that occasion, the teenager died in her arms after she had moved him to where he could breathe. (R.p. 96). She also remembered another instance in which a man had accidentally shot his leg off with a shotgun. (R.p. 98). Martinez admitted that her activities on April 4, 2005, of taking photographs, making

³ Martinez testified that Anthony Johnson left the department while she was still in uniform patrol. (R.p. 82). Since Martinez had been a forensic investigator for 3½-4 years (R.p. 59), it is clear that he had left his Spartanburg County employment at least 3½-4 years before the accident.

measurements, moving the child's body, setting up barriers, etc., were all part of her regular job as a forensic investigator. (R.p. 87).

Captain Denton testified that forensic investigators are required to investigate the deaths of children. (R.p. 139-140). Martinez's contention was that this was the first investigation that she had performed where a child had been run over by someone she knew. However, she had admitted to prior investigations involving children. Clearly, the longer a forensic investigator works the more different types of cases he or she will experience. Thus gaining of knowledge and experience by working new and various types of accidents is not an "unusual or extraordinary" condition of employment any more than an attorney's first trial or a surgeon's first operation could be considered an "unusual or extraordinary" condition of employment. It would be incorrect to define a "first experience" as "unusual or extraordinary."

Based on the foregoing, substantial evidence exists in the record to support the Commission's finding that Martinez did not encounter an extraordinary or unusual condition on April 4, 2005, in the course and scope of her employment with Spartanburg County. Even if "the record contains conflicting evidence, this Court may not weigh the evidence." Watt v. Piedmont Automotive, Opinion No. 4572 (Ct. App. June 25, 2009). The proper examination for this Court is not to determine which side the evidence supports, but rather to determine if the Commission's decision to deny benefits was supported by substantial evidence in the record. *See generally*, Watt v. Piedmont Automotive, Opinion No. 4572 (Ct. App. June 25, 2009); Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306-7 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987); Brown v. Jordan Oil Co., 291 S.C. 272, 275, 353 S.E.2d 280, 282 (1987); O'Banner v. Westinghouse

Electric Corp., 319 S.C. 24, 30, 459 S.E.2d 324, 327 (Ct. App. 1995). Thus, if reasonable minds could reach the conclusion reached by the Commission, the Commission's findings must be affirmed. See McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162 (1992). Because substantial evidence exists to support the Commission's decision, and reasonable minds could reach the conclusion reached by the Commission, the Commission's decision should be reinstated.

It is clear from the discussion above that if the Circuit Court had reviewed the Full Commission's findings of fact it would have been compelled to find that substantial evidence existed to support the Full Commission's findings of fact. However, the Circuit Court in reaching the decision it desired in this case, avoided this dilemma by simply stating that the Commission failed to make specific findings of fact. This was clearly not the case.

Martinez's contention at the hearing was that the investigation was "unusual or extraordinary," because it involved a child and a former officer with whom she had previously worked. Of the sixteen (16) "Findings of Fact" made by the Commissioner and adopted by the Full Commission, eight (8) directly addressed Martinez's contention that she encountered an unusual or extraordinary condition in her employment on April 4, 2005. The pertinent findings of fact were:

3. Claimant's job as a forensic investigator required her to collect evidence in homicide, suicide and other death cases on a regular basis. Claimant testified to seeing accident victims who were decapitated, without arms and legs, and "the worst trauma imaginable." **Claimant admitted it was not unusual for a forensic investigator to see "blood and guts."** However, she contended that the incident on April 4, 2005 was different.

4. Claimant contended that working the death case of a child who was run over by a fellow police officer was unusual and extraordinary. She stated that police officers have a "special bond." **However, Claimant was not a close friend of the fellow officer,**

Anthony Johnson, although she worked on the same shift, and they would occasionally see each other at shift changes. She did not personally know the officer's wife or child, had never visited their home, and had never socialized with Anthony Johnson or his family.

5. Claimant had been to an investigation previously while working for the Greenville County Sheriff's Department in which a child's head had been run over by a dump truck. Claimant testified that the accident did not bother her. **She stated that if that type of situation bothered her, she would never have chosen to be a forensic investigator.**

6. Claimant had investigated and worked up approximately 100-150 death cases in her 3-4 years as a forensic investigator. She had also investigated approximately 24 suspicious death/homicide cases and participated in approximately 24-26 autopsies. **These investigations were a usual and ordinary part of her job.** Claimant also testified about an investigation of an auto accident in which an injured teenager had died in her arms.

7. When Claimant went to a crime scene, she would take up to 100 photographs and move the body. She also took measurements and put up barriers to prevent people from seeing the accident scene. **This was a part of her usual and ordinary job.**

10. CPT Steve Denton testified that the accident scene of the child's death on April 4, 2005 was a terrible sight but that Claimant was doing her ordinary job that day in investigating the death of the child. CPT Denton required the Claimant to stay and perform the accident investigation because that was her job. **The fact that the death scene involved the death of a child of a former Spartanburg County Deputy Sheriff did not remove the situation from being a part of her regular job.**

11. Spartanburg County Sheriff's Office had no rule prohibiting its employees from going to accident scenes where they knew the victim. CPT Denton testified that he had always maintained and still maintained that **no matter who the victim was, the Sheriff's Department investigators were required to work the accident scene.**

14. Investigating the death of a child, even the child of a former Sheriff's Deputy, was not an unusual or extraordinary condition of Claimant's employment.

(R.p. 42-44). (Emphasis added). The Commission found the above as facts so that there would be no question as to its reasoning when it found as a fact that Martinez had not encountered an unusual or extraordinary condition of employment on April 4, 2005. Further, the Commission indicated that it had reviewed the entire case record in finding no unusual or extraordinary conditions of employment:

15. Claimant failed to prove that she encountered an unusual or extraordinary condition in her employment on April 4, 2005, while employed by the Spartanburg County Sheriff's Department. This finding is based on all the evidence in the record.

(R.p. 44). The South Carolina Administrative Procedures Act dictates that a reviewing Court may reverse or modify the Commission's decision only if the Court finds that the Commission was "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record..." S.C. Code Ann. §1-23-380 (2007); Bass v. Kenco Group, 366 S.C. 450 (Ct. App. 2005). Likewise, it is incumbent on the Commission to base their ultimate findings "on the whole record." Id. However, the Circuit Court never once addressed, or even mentioned in its Order, any of the above Commission findings. The Circuit Court simply ignored findings of fact 3-11 as being the basis for the Full Commission's conclusion that there was no unusual or extraordinary condition of employment. Instead, the Circuit Court stated that only findings of fact 14, 15, and 16 were relevant to its decision and then concluded that the Commission gave no basis for its findings of fact 14-16.

B. Doe v. South Carolina Department of Disabilities and Special Needs

The Circuit Court held that the Commission failed to undertake the proper analysis, pursuant to Doe v. South Carolina Department of Disabilities and Special Needs, 377 S.C. 346, 660 S.E.2d 260 (2008), in determining whether Claimant encountered an unusual or extraordinary condition in her employment on April 4, 2005. However, the Court in Doe made no new ruling of law that would in any way affect the Commission's findings in this case.⁴ In fact, the Supreme Court's majority decision in Doe supports the Employer's argument that the Commission's decision should be upheld. Additionally, when the instant case is examined in the light of Chief Justice Toal's concurring opinion, it is also clear that this Court should reverse the Circuit Court and reinstate the findings of the Commission.

In Doe, the appellant employee alleged a work related mental injury. The Commission denied benefits, finding that it was not unusual for patients to move from one facility to another, for workers to be subjected to aggressive behavior from patients, or for patient care to change. The Circuit Court reversed based on a lack of substantial evidence to support these findings of fact. The Court of Appeals reversed the Circuit Court and reinstated the findings of the Commission, finding that there was substantial evidence in the record to support the Commission's conclusion of no unusual or extraordinary conditions. The Supreme Court reversed the Court of Appeals, because the factual evidence relied upon by the Court of Appeals was improperly taken out of context and did not support the Court of Appeal's conclusion. See Doe, supra at 350, 660 S.E.2d at 262. The Supreme Court in Doe did not re-weigh any evidence as the Circuit Court has done in this case. Rather, the

⁴ This comparison between the "extraordinary and unusual" and the "normal strains of Claimant's employment" is supported by the language used by the majority in Doe v. South Carolina Department of Disabilities and Special Needs, 377 S.C. 346, 351, 660 S.E.2d 260, 262 (March 24, 2008). It is also supported by this Court's decision in the recent case, Watt v. Piedmont Automotive, Opinion No. 4572 (Ct. App. June 24, 2009).

Court examined the Commission's findings of fact and determined that the record was void of any substantial evidence that would support the Commission's findings.

In summary, Doe is no more than a "substantial evidence" case. The Court merely reviewed the findings of fact in that case to determine if there was substantial evidence to support the Commission's findings. The instant case is readily distinguishable from Doe, because not only are the facts totally different but also the record is replete with substantial evidence to support the Commission's findings. Chief Justice Toal's concurring opinion in the Doe case, though not the law of the case, does provide her guidance as to the analysis to be employed under Stokes v. First Nat'l Bank, 298 S.C. 13, 377 S.E.2d 922 (Ct. App. 1988).

In the Chief Justice's view, the Court of Appeals and the Commission erred because:

In my view, that fatal flaw is the focus on the ordinary aspects of Petitioner's employment to the exclusion of an examination of the extraordinary, and the consequent use of those ordinary aspects to support the conclusion that Petitioner's injury is not compensable.

Doe at 352, 660 S.E.2d at 263. Chief Justice Toal asserted that the question of substantial evidence need not be reached, because the Commission made a reversible error of law.

In this case, the Commission examined all aspects of Martinez's investigation including those which Martinez asserted were unusual. Therefore the Commission's examination was squarely in line with the Chief Justice's instruction. The Commission examined Martinez's testimony about how her conditions of employment on April 4, 2005 were unusual or extraordinary and how it affected her. Martinez explained exactly what she believed was "unusual or extraordinary" about April 4, 2005:

Q. Had you ever investigated a scene like the April 4th, 2005, scene before that day where a fellow officer was involved with the death of his own child?

- A. No. I've never—like I said, I've never done anything that involves somebody that I know in any kind of violent crime.

(R.p. 72). The Commission found in comparing Martinez's testimony and the evidence regarding her job duties, that Martinez had **not** met her burden of proving that the conditions of her employment on April 4, 2005 were, "for her, unusual or extraordinary...." Doe at 352, 660 S.E.2d at 263. Because of their appropriate analysis under Doe and Stokes v. First Nat'l Bank, the Full Commission did not commit an error of law. More importantly, the Commission pinpointed specific evidence in the record to show a reviewing Court that their decision is supported by substantial evidence:

4. Claimant contended that working the death case of a child who was run over by a fellow police officer was unusual and extraordinary. She stated that police officers have a "special bond." **However, Claimant was not a close friend of the fellow officer, Anthony Johnson, although she worked on the same shift, and they would occasionally see each other at shift changes.** She did not personally know the officer's wife or child, had never visited their home, and had never socialized with Anthony Johnson or his family.

5. Claimant had been to an investigation previously while working for the Greenville County Sheriff's Department in which a child's head had been run over by a dump truck. Claimant testified that the accident did not bother her. **She stated that if that type of situation bothered her, she would never have chosen to be a forensic investigator.**

10. CPT Steve Denton testified that the accident scene of the child's death on April 4, 2005 was a terrible sight but that Claimant was doing her ordinary job that day in investigating the death of the child. CPT Denton required the Claimant to stay and perform the accident investigation because that was her job. **The fact that the death scene involved the death of a child of a former Spartanburg County Deputy Sheriff did not remove the situation from being a part of her regular job.**

(R.p. 42-44). (Emphasis added). These findings of fact as well as others in the Commission's Order clearly show that the Commission did examine whether the conditions

at the accident investigation on April 4, 2005, were unusual or extraordinary in comparison to the normal conditions of her employment. The Circuit Court's ruling that the Commission committed an error of law under the Doe case should be reversed, and the findings of the Commission should be reinstated.

Additionally, the Court of Appeals very recently decided the case of Watt v. Piedmont Automotive, Opinion No. 4572 (Ct. App. June 25, 2009). In Watt, the employee, a service manager for a car dealership, suffered a heart attack, which he alleged was the result of his employer instituting a program called "Net Profit." He contended that the new program placed extraordinary stress on him, aggravated his cardiovascular disease, and caused blockage of his coronary arteries. He specifically alleged that his work hours had greatly increased, that the new system angered customers, and that he would have to handle their complaints. The Employer denied the claim, and the Workers' Compensation Commission agreed that Watt failed to establish that the stressful employment conditions were unusual and extraordinary in comparison to the normal conditions of his employment. The Circuit Court reversed on all grounds. The Court of Appeals thereafter reversed the Circuit Court, holding that substantial evidence existed in the record to support the Commission's determination that Watt was not subject to unusual or extraordinary conditions of employment in comparison to the normal conditions of his employment. The Court of Appeals noted that, "[a]lthough...the record contains conflicting evidence, this court may not weigh the evidence." Watt, Opinion No. 4572 (Ct. App. June 25, 2009).

The Watt case is instructive with regard to the examination that an appellate court should undertake. It makes clear that an appellate court's review should determine whether substantial evidence exists in the record to support the Commission's findings of fact. In

Watt, the Court of Appeals showed great deference to the Commission as fact finder, and did not undertake to re-weigh conflicting evidence. Watt, like Doe, supports the analysis undertaken by the Commission in this case, which included a comparison between the “extraordinary and unusual” and the “normal strains of Claimant’s employment.” See Doe v. South Carolina Department of Disabilities and Special Needs, 377 S.C. 346, 351, 660 S.E.2d 260, 262 (March 24, 2008); Watt v. Piedmont Automotive, Opinion No. 4572 (Ct. App. June 25, 2009). Therefore, clearly the Commission did not commit an error of law under either Doe or Watt, and this Court should reverse the Circuit Court and reinstate the Order of the Commission.

II

**THE COMMISSION’S FINDING THAT THE
ACCIDENT INVESTIGATION ON APRIL 4, 2005 DID
NOT PROXIMATELY CAUSE MARTINEZ’S MENTAL
INJURY IS SUPPORTED BY SUBSTANTIAL
EVIDENCE.**

As stated in Argument I, the Circuit Court failed to apply the proper standard of review on the issue of whether the Claimant’s investigation on April 4, 2005, was an unusual or extraordinary condition of employment. If it had applied the “substantial evidence” rule, the Circuit Court would not have reached the second question regarding the Martinez investigation and its proximate relationship to her mental condition. However, the Circuit Court opted to further find that the Commission erred as a matter of law in finding that the accident investigation on April 4, 2005 did not proximately cause Martinez’s mental injury. Once again, the Circuit Court erred by failing to review the record for the existence of substantial evidence to support the decision of the Commission.

Despite the Circuit Court's characterization of the Commission's finding as an "error of law," the Circuit Court stated that "the only conclusion that can be drawn from the medical information is that there exists the necessary showing of proximate cause to link the accident investigation of her friend's child's death and her mental breakdown." (R.p. 14-15). By reaching this conclusion, the Circuit Court erred as a matter of law, because it clearly reweighed the evidence in the record rather than view the evidence in the light of the proper standard of review. Appellants submit that the applicable standard of review required the Circuit Court, and now requires this Court, to determine whether there is substantial evidence in the record to support the Commission's finding that the accident investigation on April 4, 2005, was only a factor in Martinez's mental condition, and therefore did not proximately cause her mental condition.

In Nawa v. Wackenhut Corporation, 288 S.C. 250, 341 S.E.2d 800 (1986), the employee contended that job related stress need only be a "contributing cause" of an injury to be compensable under the Workers' Compensation Act. Nawa, 288 S.C. at 252. The Court of Appeals rejected this contention:

[A] claimant must prove an employee's death is proximately caused by an accident arising out of employment. South Carolina requires the employee's job be more than one factor, to any extent, in the injury or death.

Nawa at 252. More recently, in Frame v. Resort Services Inc., 357 S.C. 520, 593 S.E.2d 491 (2004), the Court of Appeals held:

In order for [a claimant] to recover workers' compensation benefits, he must prove both: (1) that he was exposed to unusual and extraordinary conditions in his employment; and (2) **that these unusual and extraordinary conditions were the proximate cause of his mental breakdown.**

Frame, at 529, 496 (Emphasis added):

Furthermore, in Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000), the employee, like this Martinez, was a police officer. Shealy had gone undercover during the course of his employment as a narcotics agent and alleged that unusual and extraordinary conditions of employment caused a mental injury. The Shealy Court held:

In order for Shealy to recover workers' compensation benefits, he must prove both: (1) that he was exposed to unusual and extraordinary conditions in his employment; and (2) that these unusual and extraordinary conditions were the proximate cause of his mental breakdown.

Shealy at 459. In Shealy, the Employee/Police Officer was unable to prove by a preponderance of the evidence that a proximate relationship existed between his mental injuries and the extraordinary and unusual conditions of his employment. Like Martinez in this case, Shealy was suffering from non-work-related outside stressors. Because of the non-work-related outside stressors, Shealy could not prove the required proximate relationship by the greater weight of the evidence.

The law of South Carolina requires that the unusual and extraordinary conditions of employment and a Claimant's alleged mental injury be proximately related. This is precisely the analysis employed by the Commission in the instant case. The Commission examined all the evidence in the record and determined that Martinez did not meet her burden of proving that any job-related stressors on April 4, 2005, proximately caused her mental condition. The Commission found that Martinez had experienced other non-work related stressors in April of 2005, namely the death of her "cousin." The Commission found that Martinez did not mention the April 4, 2005 investigation until approximately four months after the incident. Before she ever mentioned the investigation to any medical provider, Martinez had been placed on an anxiety medication because of her "cousin's" death and had been

hospitalized on two occasions due to a withdrawal reaction after she abruptly stopped her Xanax medication. It was Martinez's burden to prove that the conditions of her employment on April 4, 2005 and her alleged mental injury were proximately related. The Commission found that the credible and reliable medical evidence established that the accident investigation on April 4, 2005, was only one factor amongst others in the development of Martinez's psychiatric condition.

Martinez's "cousin" passed away from AIDS on or about April 18, 2005. (R.p. 67).

Martinez testified that his death affected her:

It affected me. Michael, my cousin, Michael Adger Roberts - and forgive me, I call him my cousin, I'm so used to it. He's my ex-husband's cousin, but he lived with us every summer when - - after my husband and I got married, he and his brother would come and stay with us in the summer and during school breaks and things. So I considered him my cousin, but he is not flesh and blood. He's my ex-husband's cousin. . . .

I knew he had been H.I.V. positive. He had been gay for years. I knew he was H.I.V. positive and, and then he got AIDS, and from what I understand, the two most virulent ways of dying with AIDS is either certain cancers or with certain pneumonia. He had the problem with the cancers. So he had had off-and-on surgeries and treatment for the cancer, and he suffered for so long that it was - - we - - we spent as much time as we could together, but it was hard to see him suffering so much, and it hurt badly when he died. I mean, that's somebody that I love, somebody that I half raised, but it was a relief, too, 'cause there had been so much suffering. So it bothered me. It would have been crazy not to let it bother me. But it didn't destroy my life or anything.

(R.p. 67-68).

The first medical attention that Martinez received for emotional stress was from her family doctor, John R. Wieder, M.D. on April 19, 2005. Dr. Wieder recorded the following history:

This 46-year-old, white female who is a sheriff's deputy here, comes today to have her blood pressure checked. She is on Lotrel 5/20 and Coreg 6.25 mg. She takes Lotrel in the morning, and the Coreg once a day at bedtime. **She is very upset and crying. A very close friend and relative, a cousin with whom she was very close over the years, passed away yesterday. She is very upset about it. They were very close ever since they were little kids. She is very upset that she did not get to the hospital in time to say goodbye before he passed away.**

(R.p. 158). (Emphasis added). As a result of her stress, Dr. Wieder took Martinez out of work for a few days and sent a note to Sheriff Wright to advise him of the situation. Dr. Wieder also placed Martinez on Xanax "to help her get through this very trying time." (R.p. 160). Significantly, Martinez did not mention to Dr. Wieder about the accident investigation on April 4, 2005. Martinez returned to Dr. Wieder on April 25, 2005 for elevated blood pressure. Dr. Wieder sent Martinez to Mary Black Memorial Hospital where she was admitted for her blood pressure. (R.p. 160). Martinez returned to Dr. Wieder on April 29, 2005, after being hospitalized for three days at Mary Black Memorial Hospital. (R.p. 161). Dr. Wieder noted that Martinez had trouble focusing and thinking straight, which he believed was due to the Xanax "and the fact that she has been through a rough time the last few days." (R.p. 162). Again, Martinez did not mention to Dr. Wieder the accident investigation on April 4, 2005. Martinez returned to Dr. Wieder on May 5, 12, 26 and June 2, 7, 24, 2005. Martinez never mentioned in any of the office visits that she had any stress related to the accident investigation of April 4, 2005. (R.p. 162-167).

On August 7, 2005, Martinez was transported by EMS to Spartanburg Regional Medical Center because of "patient behavior suggesting psychiatric problems." (R.p. 187). The EMT report indicated that Martinez had been taken off Xanax and placed on Zoloft about 1-2 weeks ago. Martinez was seen at the hospital by a psychiatrist, Dr. Chris Caston.

Dr. Caston noted that the reason for Martinez's admission was delirium thought to be related to Benzodiazepine withdrawal symptoms. It was noted that Martinez had not had Xanax in 3-5 days and this resulted in bizarre behavior like breaking windows at her house and in her patrol car. Under social history, Dr. Caston noted "apparently the patient's friend recently died." (R.p. 180). Dr. Caston's diagnosis was clinical psychiatric disorders, Benzodiazepine withdrawal delirium, and anxiety disorder. In his discharge note of August 9, 2005, Dr. Caston stated:

The patient is a 46 year old white female who has been admitted due to delirium thought to be related to benzodiazepine withdrawal symptoms. The patient has not had Xanax in 3 to 5 days.

* * * * *

The patient had no previous history of psychiatric care. The patient apparently had recent problems with uncontrollable hypertension and also had problems with anxiety, insomnia and depression **related to the death of her best friend who apparently was a male cousin.**

(R.p. 192). (Emphasis added).

On August 10, 2005, Martinez was admitted to the Carolina Center for Behavioral Health for a psychiatric evaluation. A comprehensive assessment was performed at the hospital which noted that Martinez's chief complaint was:

I became psychotic last Sunday. I tore my home up and tore my police car up. I'm glad I didn't hurt anyone because I carry a gun. I stopped taking Xanax and became psychotic.

(R.p. 338). It was further noted in the assessment that the precipitating event had been:

My cousin died midApril 2005 and I took Xanax for my nerves. I stopped taking Xanax 1-2 weeks ago and became psychotic.

(Id.) (Emphasis added). Martinez was evaluated by Dr. Ralph J. Castriotta, on August 11, 2005. Dr. Castriotta noted in his report the reason for the admission as:

The patient was admitted after being hospitalized briefly at SRMC. She ended up there after having a brief reaction, possibly psychotic in nature to abruptly stopping her Xanax. She started the Xanax 2mg a day 6 weeks ago **after suffering an acute anxiety reaction to the death of a relative.** She was vulnerable at the time due to stressors at work. She works as a police officer. **She feels she was in an emotionally vulnerable state when the relative died. This heightened her reaction to it. She was placed on Xanax.** She did reasonably well. She felt that she needed to get off the medication. She did so basically by stopping it.

(R.p. 263). (Emphasis added). It was not until Martinez was readmitted to the Carolina Center for Behavioral Health on August 22, 2005 that Martinez first mentioned the accident investigation of April 4, 2005. (R.p. 267).

Martinez was also evaluated by Dr. John F. Abess, a Charleston psychiatrist, on June 8, 2006. It is important to note that Martinez had suffered significant traumatic events throughout her life. During her childhood in Puerto Rico, Martinez was sexually assaulted for almost two years by a male friend of her family. Martinez did not tell her parents about the sexual assault until the family moved back to the United States. Martinez advised Dr. Abess that this experience taught her that she did not like being a victim and she was determined never to be a victim again. (R.p. 309-310). Martinez also advised Dr. Abess that she had been raped at age 19 by a friend of her youngest brother. Again, Martinez never told her parents because of fear of the action that her family would take. Martinez advised Dr. Abess that after the rape she did not want to go out of the house or have any relationship "with guys." (R.p. 310). Martinez further advised that after the rape, she did not tolerate anything from anyone. (R.p. 311). Martinez also became depressed in 1996 and was prescribed Luvox which she took for 1½ years. (R.p. 313). At that time, she went to an Employee Assistance Program (EAP). Martinez advised that she was unhappy during this

period because of her separation and divorce from her husband. (Id.) Dr. Abess also noted Martinez's description of her job:

She estimates having participated in about 2 or 3 dozen autopsies. If there was an attended death, she would have to determine if it was natural or if there was a crime. She estimates having been an investigator at 50-100 death scenes. 'It never bothered me.' 'I have always been able to take grizzly stuff.'⁵

(R.p. 311-312).

It was Dr. Abess' impression that Martinez had post traumatic stress disorder by history after being sexually abused in childhood and being raped at age 19. (R.p. 318). It was also Dr. Abess' impression that Martinez had a pre-existing Bipolar Disorder.

(R.p. 319-321). In that regard, Dr. Abess stated in his report:

Bipolar Disorder is a heredity or genetic disorder. It can appear de novo due to the individual's unique genetic coding, or it can be handed down from parents. The clinical expression of the illness or an exacerbation of the illness can be triggered by a variety of experiential and environmental factors. In Claimant's case, strong emotions associated with the work related accident investigation on 4 April 2005 and the death of her ex-husband's cousin in mid April 2005 were factors in the exacerbation of her pre-existing bipolar illness. The discontinuation of Xanax along with the initiation of the antidepressant Zoloft was the actual precipitant for the development of a manic manifestation of her bipolar disorder. This psychotic reaction is better explained as a manic mood state than as a withdrawal delirium because at the time of her admission to the emergency room, her vital signs were normal. A withdrawal delirium from Xanax would be expected to cause tachycardia (false pulse) and hypertension (elevated blood pressure). Finally, Claimant is currently taking substantive anti-psychotic doses of Seroquel. If her psychotic mood state was attributable to a Withdrawal Delirium from Xanax, the anti-psychotic medication would be needed for

⁵ Dr. Abess noted in his mental status exam that when providing the details of her investigation into the child's death, Martinez did not demonstrate any difficulty talking about the event. Neither did she manifest tears, falter in her speech or show anger. In fact, she never cried during the entire interview with Dr. Abess. (R.p. 320).

only a few days. Claimant, therefore, has a persisting effective disorder which the record shows revealed itself early in her life. Such disorders are genetically developed and the patient has one sibling with a similar disorder.

(R.p. 322-323). (Emphasis added). Dr. Castriotta was also suspicious that Martinez may have a bipolar disease. In his evaluation of August 11, 2005, Dr. Castriotta's Axis I diagnosis was "psychosis secondary to withdrawal from Benzo's; rule out bipolar versus OCD." (R.p. 264). Dr. Shane Sherbondy, a psychiatrist with Carolina Center for Behavioral Health, also gave a discharge diagnosis of:

Axis I: Bipolar Disorder, not otherwise specified. Post traumatic stress disorder.

(R.p. 274). All of the above evidence conflicts with Martinez's position that her psychological problems were proximately caused by the events of April 4, 2005. Though the Circuit Court cites evidence in the record which supports Martinez's position, where the evidence is conflicting, "the Commission's findings of fact are conclusive." Sharpe v. Case Produce, Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999). Guided by the Supreme Court's directive that the Commission's findings of facts in a situation of this type are conclusive, this Court should be further guided by the Shealy case, where the Supreme Court addressed this identical situation and upheld the Commission's finding that the Appellant's non-work-related job stressors prevented him from proving that his mental injury and the unusual and extraordinary conditions of his employment were proximately related.

Despite the fact that there is no need for this Court to examine any issues related to proximate causation in view of the Commission's correct finding of no unusual or extraordinary conditions of employment, the decision of the Commission should nevertheless

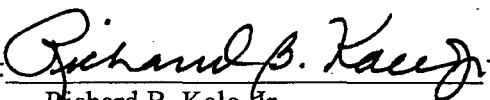
be affirmed because Martinez did not meet her burden of proving her alleged mental injury was proximately related to her employment on April 4, 2005, and there is substantial evidence to support the Commission's decision.

CONCLUSION

The findings of fact made by the South Carolina Workers' Compensation Commission should be reinstated. The Commission's findings of fact were specific and supported by substantial evidence in the record. The Circuit Court incorrectly found that the Commission's analysis regarding Martinez's employment on April 4, 2005 was contrary to the Supreme Court's decision in Doe v. S.C. Department of Disabilities and Special Needs, supra. To the contrary, the Commission's analysis was legally proper and supported by substantial evidence. Furthermore, substantial evidence exists in the record to support the Commission's finding that the events of April 4, 2005 did not proximately cause Martinez's mental condition. This Court should review the evidence in the record and, in light of the proper standard of review, reinstate the Order of the Commission.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2007 CP 42-1966

Raquel Martinez, Employee

Respondent

v

Spartanburg County, Employer,
and S C Association of Counties
Self Insurance Fund, Carrier

Appellants

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TABLE OF CONTENTS

	Page
Table of Authorities	3
Statement of Issues on Appeal	5
Statement of the Case	6
Facts	6
Argument	18
I. The decision of the Circuit Court should be affirmed because the Commission's finding of fact and ruling of law that the crime scene investigation performed by Martinez on April 4, 2005 was not unusual and extraordinary was affected by an error of law and not supported by substantial evidence	31
II. The decision of the Circuit Court should be affirmed because the Commission's finding of fact and ruling of law Martinez's mental injury was not proximately caused, contributed to, or aggravated by the crime scene investigation she performed on April 4, 2005 was affected by an error of law and not supported by substantial evidence	36
Conclusion	42

TABLE OF AUTHORITIES

Cases	Page
<u>Anderson v. Baptist Med. Ctr.</u> , 343 S.C. 487, 493, 541 S.E.2d 526, 528 (2001)	30
<u>Bridges v. Housing Authority of Charleston</u> , 278 S.C. 342, 295 S.E.2d 872 (S.C. 1982)	20
<u>Childers v. Gaslines, Inc.</u> , 141 S.E.2d 761 (1966).....	26
<u>Doe v. Dept. of Disabilities</u> , 364 S.C. 411, 615 S.E.2d 785 (S.C. App. 2005)	25, 29, 30, 33
<u>Doe v. Dept. of Disabilities</u> , 377 S.C. 346, 660 S.E.2d 260 (S.C. 2008)	24, 25, 26, 35, 42
<u>Ellison v. Frigidaire Home Prods.</u> , 371 S.C. 159, 638 S.E.2d 664 (S.C. 2006)	30, 39
<u>Etheredge v. Monsanto Co.</u> , 349 S.C. 452, 562 S.E.2d 679 (S.C. App. 2002)	19, 34, 25, 40
<u>Ferguson v. State Highway Dept.</u> , 197 S.C. 520, 15 S.E.2d 775 (S.C. 1941)	27
<u>Fleming v. Appleton</u> , 214 S.C. 81, 51 S.E.2d 363 (S.C. 949)	20
<u>Fowler v. Abbott Motor Co.</u> , 236 S.C. 226, 113 S.E.2d 737 (S.C. 1960).....	26, 37
<u>Frame v. Resort Services, Inc.</u> , 357 S.C. 520, 593 S.E.2d 491 (S.C. App. 2004)	28
<u>Gambrell v. Burleson</u> , 252 S.C. 98, 165 S.E.2d 622 (S.C. 1969).....	28
<u>Getsinger v. Owens-Corning Fiberglas Corp.</u> , 335 S.C. 77, 515 S.E.2d 104 (S.C. App. 1999)	20
<u>Gibson v. Spartanburg School District #3</u> , 338 S.C. 510, 526, S.E.2d 725 (S.C. App. 2000)	19, 34, 35, 40
<u>Glover v. Columbia Hospital of Richland County</u> , 236 S.C. 410, 114 S.E.2d 565 (S.C. 1960)	27
<u>Hamilton v. Bob Bennett Ford</u> , 336 S.C. 72, 518 SE2d 599 (S.C. App. 1999)	19
<u>Heirs v. Brunson Const. Co.</u> , 221 S.C. 212, 70 S.E.2d 211 (S.C. 1952)	27
<u>Jordan v. Dixie Chevrolet, Inc.</u> , 218 S.C. 73, 61 S.E.2d 794 (S.C. 1950)	34, 42
<u>Kearse v. Carolina Wildlife Resources Dept.</u> , 236 S.C. 241, 146 S.E.2d 856 (S.C. 1960)	27
<u>Kennedy v. Williamsburg County</u> , 242 S.C. 477, 131 S.E.2d 512 (S.C. 1963)	20
<u>Kinsey v. Champion Am. Service Center</u> , 268 S.C. 177, 232 S.E.2d 720 (S.C. 1977)	34, 42

<u>Lark v. Bi-Low, Inc.</u> , 276 S.C. 130, 276 S.E.2d 304 (S.C. 1981)	19
<u>McWhorter v. S.C. Dept. Of Ins.</u> , 252 S.C. 90, 165 S.E.2d 365 (S.C. 1969)	27
<u>Muir v. C. R. Bard, Inc.</u> , 336 S.C. 266, 519 S.E.2d 583 (S.C. App. 1999)	19
<u>Mullinax v. Winn-Dixie Stores, Inc.</u> , 318 S.C. 431, 458 S.E.2d 76 (S.C. App. 1996)	27, 34, 42
<u>Nawa v. Wackenhut Corp.</u> , 341 S.E.2d 800 (S.C. App. 1986)	28, 37
<u>Powell v. Vulcan Materials Co.</u> , 299 S.C. 325, 384 S.E.2d 725 (S.C. 1989)	21, 28
<u>Sanders v. Western Auto Supply Co.</u> , 183 S.E.2d 312 (1971)	26
<u>Shealy v. Aiken County</u> , 341 S.C. 448, 535 S.E.2d 438 (S.C. 2000)	22, 23, 24, 27, 28, 29, 33
<u>Smith v. NCCI, Inc.</u> , 369 S.C. 236, 631 S.E.2d 268 (S.C. App. 2006)	30, 39
<u>Stokes v. 1st National Bank</u> , 298 S.C. 13, 377 S.E.2d 922 (S.C.App. 1988) cert. granted, aff'd 306 S.C. 46, 410 S.E.2d 248 (S.C. 1991)	21, 26
<u>Sturkie v. Ballenger</u> , 268 S.C. 536, 235 S.E.2d 120 (S.C. 1977)	19, 34, 42
<u>Sylvan v. Sylvan Bros., Inc.</u> , 225 S.C. 429, 82 S.E.2d 794 (S.C. 1954)	34, 42
<u>Yates v. Life Ins. Co. of Georgia</u> , 291 S.C. 301, 353 S.E.2d 297 (S.C. App. 1987)	20

Statutes

S.C. Constitution, Art. 1, § 22	18
§ 1-23-380(g), S.C. Code Anno., 1976	19
§ 42-1-160, S.C. Code Anno., 1976 as amended	20, 21
§ 42-17-60, S.C. Code Ann., 1976	18

STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT ERR IN REVERSING THE FULL COMMISSION'S FINDING THAT THE RESPONDENT WAS NOT SUBJECTED TO AN UNUSUAL AND EXTRAORDINARY CONDITION OF EMPLOYMENT?**
- II. DID THE CIRCUIT COURT ERR IN REVERSING THE FULL COMMISSION'S FINDING THAT THE INVESTIGATION PERFORMED BY THE RESPONDENT WAS ONLY ONE FACTOR, AND NOT THE PROXIMATE CAUSE, OF HER MENTAL CONDITION?**

STATEMENT OF THE CASE

The Respondent is satisfied with the Appellant's Statement of the Case.

FACTS

We can all be thankful for our dedicated public servants who, like the Respondent, Deputy Raquel Martinez, are willing to perform difficult jobs to protect public safety. The Appellants' brief does a thorough job of describing in vivid detail the difficult jobs Martinez performed over her twenty-eight (28) year law enforcement career. Fortunately, none of her past experiences, difficult as they occasionally were, prevented her from performing her duties as a police officer or dissuaded her from wanting to become a crime scene investigator. (R. pp. 59, 73, 92). A job her Captain, Captain Steven L. Denton of the Spartanburg Sheriff's Department, said she performed for three and half (3 ½) years diligently, dependably, and without problem of any kind. (R. p. 125). Unfortunately, the crime scene investigation she was called upon to perform on April 4, 2005, that is the subject of this appeal, was neither usual nor ordinary when compared to any investigation she ever performed before.

The Respondent will attempt to do the same thorough job of describing in vivid detail the crime scene investigation Martinez performed on April 4, 2005 and the devastating effect it had upon Martinez's emotional health. On that date Martinez was dispatched to investigate a fatal motor vehicle accident involving a fellow police officer who tragically backed over and crushed his two (2) year old

daughter. When Captain Denton arrived on the scene he found Officer Johnson, a former deputy for the Spartanburg County Sheriff's Department, in the carport:

I observed our former officer, Officer Johnson, in his carport. The door was open, he was balled up, crunched up. Obviously, probably the most distraught I've ever seen anybody. He actually wanted to take his own life and attempted to do that prior to us getting there, however, his weapon was taken from him...

(R. p. 122). Captain Denton graphically described what happened:

[The officer] had backed over – evidently backed over his daughter, who I believe at the time was either two or just under the age of two, and essentially, it had crushed her. If you can imagine taking a watermelon or something like that and running it over with a car, that's essentially what you have, but it's a human being.

(R. p. 122). Captain Denton said emotionally it was the worst crime scene he'd ever seen:

Well, first of all, having known the officer and having a child run over by a vehicle, or the person having a child run over by a vehicle or the person you know causing the death of that, I've never encountered that. As far as ranking the grotesqueness of it, it's a child. It was run over by a police car. It was an accident. If I had to rank it as far as my feeling, my emotion, it would be the worst.

(R. p. 123). It was this dreadful scene that confronted Martinez when she arrived and learned it was her friend, Officer Johnson, who was the distraught father in the carport. (R. pp. 61-62).

The Appellants try to downplay the significance of Martinez's prior relationship with Officer Johnson. They point out that Martinez and Officer Johnson weren't best friends or social friends. That may be true but Martinez

never claimed Officer Johnson was her best friend or a social friend. Rather she claimed they shared a particular bond of friendship forged between fellow police officers who serve together on "the thin blue line." They backed each other up when they served together with the Spartanburg County Sheriff's Department:

The county was cut into like eight pieces, and each one was a zone; [Officer Johnson] was assigned another zone. Sometimes we had two to a zone. Sometimes we didn't have but one person working two zones. So, a lot of times if you were in this zone here and there was call in this this zone that you're not sure about it, it might be a bad call or whatever or just sounds suspicious, you go that way to go back up the officer that responds to the call. That way you don't have 20 minutes, you know, when they get into a fight or whatever to get there; you're already close to them. So, that's why I said that we backed each other up. Did we work in the same area? I don't think we ever worked the same area, but we worked side by side, and if he got into fights or if I got into fights, we would respond. He would be there and I would be there.

(R. p. 99). When questioned by the Commissioner, Martinez explained:

It's really us against them and -- ... this is the way I feel, anyway as a police officer. I can be in the middle of a park full of people, and if somebody jumps me to hurt me, then I've got to defend myself, but if there's somebody in uniform near me, I know that I'm not going to die because somebody's gonna be there to back me up. That person. I don't know about all the other 99 behind me, but that police officer has a bond that's going to make them help a fellow officer. That's just it. If you ever hear a bunch of lights and sirens going in one direction and more than one or two patrol cars, you know it's a fight that an officer has got and they're trying to get help to him as fast as they can.

(R. pp. 103-104).

It was prior relationship with Officer Johnson that made the investigation on April 4, 2005 unusual and extraordinary, not just for Martinez but for all the

police officers and emergency personnel who responded. Captain Denton testified it was not only unusual, it was the only time in his career that he'd investigated a violent crime where he personally knew the person involved:

- Q: In your 20-plus years in law enforcement, how many times have you investigated a crime scene where you knew the victim?
- A: I can't - I can't think of any violent crimes, burglaries, property crimes, I can probably name a few, but violent crimes where a person - either suicide or been killed, I can't - I can't recall any.
- Q: In your 20-plus years in law enforcement, how many times have you investigated a crime scene where you know the person that caused the crime or the accident?
- A: As far as know them in a personal way?
- Q: Right.
- A: Probably none. I have known them in a business/criminal/law enforcement way, but I won't have known them in a personal way.

(R. p. 130). He testified the crime scene investigation was extreme and out of the ordinary for Martinez:

- Q: ... Well let me ask you this: as a 20-plus year veteran of the Sheriff's Office with 70 to 75 percent of your time spent in death investigations and as [Martinez's] supervisor, would you say that the April 4th, 2005, investigation involving your former employee, A.J., killing his two-year-old child would have been an extreme situation in her employment?
- A: Yes.
- Q: Was this a scene that was out of the ordinary?
- A: Yes.

(R. pp. 135-136). When asked if the investigation was unusual and extraordinary when compared to Martinez's normal employment, the Appellants objected on

the grounds the question called for a legal conclusion. The Hearing Commissioner overruled the objection as untimely and said:

Well, actually, he's already said -- he's already answered the question and it's on the record. He said that he thinks it's unusual and extraordinary. In fact, he said in his entire career he thinks it's one of the most unusual.

(R. p. 137). The evidence having been admitted, Appellants' counsel thereafter fully cross examined Captain Denton but his opinion never wavered:

Q: In fact, everything she did out there as far as her activities at the scene in doing a crime scene investigation was a part of her ordinary duties that day?

A: If you remove the condition of the child itself and knowing the officer, remove that condition and that would be true.

Q: Well, you have to -- forensic investigators have to investigate deaths of children, don't they?

A: Sure.

Q: So the fact that she was investigating a child doesn't take it out of her ordinary investigations, does it?

A: I don't think the whole -- you get the whole story until you add the condition that existed, and the whole truth is that, that condition existed that day, and I think it was extraordinary because of that.

Q: Because...

A: I don't think it was ordinary that day.

Q: Pardon?

A: I don't think it was an ordinary job for anybody that day, and I think --

Q: But what she did was her job, was it not?

A: What she did was her job. Ordinary, if you're talking about, you know, had it been anywhere else that day, it would have been ordinary. But it wasn't anywhere else, and that's --

Q: Well, as far as the child is concerned -- let's take the father out of it. If some other child has been run over, would you consider that to be extraordinary?

A: That's not what happened.

Q: Well, I'm not asking you -- I'm saying assume. If it was some other person's child that had been run

over, they would that – and she investigated the child, would there be anything unusual or extraordinary about that?

A: No.

Q: So it boils down to the fact that this [child's father] was a former employee of the Spartanburg County's Sheriff's Department?

A: It boils down – that's half of the fact. The other half of the fact is, again, it's an infant that was run over by a police car that was driven by a former employee whom we were friends with. That's the whole fact.

(R. pp. 139-141).

Like Captain Denton, Martinez had never been called upon to investigate a crime scene involving somebody she knew, never mind a fellow police officer she considered a friend:

It's hard to believe that – that I can recall in all 28 years I have never had to deal with someone in a violent situation or in a violent death – I have never had to deal with someone that I actually knew, that I considered a friend, not to mention a co-police officer. We kind of stick together like a thin blue line, if y'all have ever heard that expression. We deal with things all the time that regular people don't see, so you get very close to your workers.

(R. p. 71). Martinez explained precisely how her prior relationship with Officer Johnson changed everything and affected her ability to do her job:

I think the difference is that like when you go to a burn scene, this is – and it sounds cold, but you get through it the way you get through it this is no longer a person; this is an object. And you have to keep a distance when you do these. I think [Officer Johnson's] case, or the child's case, was different because I have never seen it with anyone that I knew or that I couldn't turn her into an object. I couldn't just say that's just a little girl over there. I couldn't do that. You can't do that.

(R. pp. 81-82).

After learning the investigation involved her friend and fellow police officer, Officer Johnson, Martinez asked to be excused for the first time in her career. (R. pp: 63, 124). Her request was denied by Captain Denton who later regretted his decision:

I don't know that I feel guilt. What I do know feel is I would attack an investigation or a situation, it doesn't always mean that's probably the right way for each person, depending on gender, depending on experience levels, depending on those kind of issues. And if I had taken that into account that afternoon, knowing what I know now, I probably would have let somebody else more experienced come out there and listened to the employee instead of deciding that regardless we were gonna do our job.

(R. pp. 148-149). To her credit, Martinez performed her duties that day despite her misgivings. She worked the crime scene for four (4) hours. (R. p. 65). One of the first things she did was take the unusual step of putting up screens to block the view of "ghoulish" scene. (R. pp. 86-87). Then she looked for evidence, took measurements, and moved the body so it could be photographed by the Highway Patrol fatality team. (R. pp. 76-77). Later, describing what it was like to move the child to the Appellant's examiner, she said, "it was like a broken doll - when you moved her, it sounded like you were tumbling over some blocks..." (R. p. 312). But the worst part for her was having to climb under the car to look for evidence:

I had to get underneath [the car] to take - see if I see any evidence of where the child was underneath the vehicle, and there were clumps of her hair and skin on the tire and on the asphalt, and then on the part of the - I don't know the undercarriage of the car very well, but the biggest part, I guess is going to be the gasoline tank. There were fingerprints, and there was the impression of a hand, I

should say, not the whole hand but, just the little-bitty fingerprints dragging across the gasoline tank.

(R. pp. 66-67). The little-bitty fingerprints dragging across the gas tank was the image that would keep reoccurring in Martinez's nightmares.

The effect the crime scene investigation had on Martinez was dramatic and immediate. Captain Denton noticed a dramatic change in Officer Martinez, "specifically that day." (R. pp. 125, 127-128). That night she began crying about the child and having the nightmare about the fingerprints. (R. p. 66). A couple of days later, on April 7, 2005, her family physician, Dr. John Wieder, for the first time noted in his records "[t]here is a lot of stress on [Martinez's] job..." (R. p. 158). That same day Martinez broke down crying and told her father about the little girl's death. (R. p. 108).

Over the following days and weeks her condition and job performance deteriorated. Captain Denton asked two (2) chaplains to counsel Martinez but Martinez said:

...that didn't work, and it kept bothering me. I couldn't sleep at night. It would always be about the little girl, about the fingerprints under the tank.

(R. pp. 66, 129). She became vulnerable to other emotional events in her life. On April 19, 2005 her family physician's office note said she was upset and crying because her cousin had died from AIDS. He prescribed Xanax and took her out of work for "a few days." (R. pp. 158, 160). When she returned to work on April 24, 2005, however, she passed out and had to be taken to the emergency room and admitted to the hospital for four (4) days because of

uncontrollable high blood pressure. (R. p. 160). The Appellants overemphasize the role the expected death of her cousin had in Martinez's mental breakdown. While temporally related, her family physician suspected there was something else bothering Martinez. On May 26, 2005, he wondered in his office note:

But I am really at a loss as to explain why this girl's blood pressure is running so high. There has got to be either we are missing the boat somewhere or she is not taking her medicine. It has got to be one or the other, and I have a feeling I am missing the boat on something.

(R. p. 164). Officer Martinez returned to work again on June 7, 2005 but her family physician reported continued panic attacks and stress at work. (R. p. 167). On August 7, 2005 Officer Martinez suffered a complete mental breakdown.

Martinez's father described what he found when he was called to his daughter's home early that morning:

It was about 6:00 to 6:30 in the morning. I got a call from her next-door neighbor, she called and said, 'Mr. Martinez, Raquel is going up and down in the front yard, and she's talking weird. I mean, something is wrong with her. I think its good for you to come and look and it.' So I did. I got in my car and went over there. As soon as I got there, I saw something was really bad because the car windshield was smashed to pieces. So I continued going to her house door, knock on the door, and it wasn't locked. I opened the door, and I knew right away that something was real bad. It looked like a hurricane came through it. Everything was everywhere. The glass back door was to pieces, one of the window screens was all smashed. I mean it was a mess. So I went through the house asking, 'Raquel, Raquel, where are you?' And I could not find her, so I went outside and looked in the yard. I didn't see her, so I told the next-door neighbor, I said, 'Please call 911 because I'm gonna go and find -- and try to find Raquel. But when I find her, I want somebody here.' So I took my car, I went around the

neighborhood, and I could not find her. So when I was coming back, a lady said, 'Hey, sir, are you looking for somebody?' I said, "yes, ma'am." She said, "Well, there's a young lady behind these bushes.'

(R. pp.. 108-109). When he asked what was wrong, Martinez wanted him to meet an imaginary little girl because they were going to take a trip together. (R. pp. 68-69). She kept saying, "I want this little girl to be with me. I want her here. I want her here." (R. p. 112). Her mother testified Martinez was brushing the little girl's hair on the way to the hospital in the ambulance. (R. p. 117).

Martinez was admitted to the hospital for psychotic delusions, including a delusion she was traveling on a steamboat down the Mississippi River with an imaginary little girl. (R. p. 183, 110). She was discharged from the hospital to out-patient care but quickly had to be "stepped up" back to in-patient care. (R. p. 267, 273).

In group counseling her treating psychiatrist, Dr. Ralph Castriotta, realized "because of [Martinez's] work as a police officer, she feels reluctant to open up in group in case there are some people in some way related to open cases she's working on." (R. p. 267). Captain Denton confirmed it was against Department policy for police officers to discuss death cases. (R. pp. 133-134). In individual counseling instituted to address this concern Martinez finally opened up:

When I asked her why she was overtaking her medicines she returns to discussing a case she had several months back when a 2 year old was run over inadvertently by a police officer who ran over his own child. The would have been distressing but she knew the police officer and she had little support from her supervisor.

(R. p. 270).

Martinez continued to receive follow-up care by Dr. Castriotta, her psychiatrist, Luther A. Diehl, Ph.D., her clinical psychologist, and her family physician all of whom have related her breakdown to the investigation she performed on April 4, 2005. On June 16, 2006, Dr. Sherbondy stated his opinion:

The above referenced patient is currently under my care for Major Depressive Disorder the Post Traumatic Stress Disorder. It is my professional opinion that the patient's current condition is directly related to the incident that occurred in April of 2005 while employed with the Sheriff's Department. Ms. Martinez investigated the accidental death of a two year old child whose death occurred while her father was moving a car.

(R. p. 283). On April 18, 2006 Dr. Diehl stated in his opinion:

I am writing in response to your request about two issues related to Ms. Martinez and her psychiatric difficulties. She did experience a significant traumatic work related situation which occurred on April 4, 2005. This situation involved investigation of a death which was of a young child and the death was a result of her father's moving of a car. The father was a former Spartanburg County Deputy and current Greenville County deputy. The severity of injuries along with the personal involvement regarding the father were certainly an unusual and fairly unique set of circumstances. It would be my impression that Ms. Martinez had been functioning quite well in her employment situation with the Sheriff's Department for six years and prior to that in Probation and Parole in South Carolina for about ten years. While she experienced the recent death of a cousin, this individual has serious medical problems and was really considered to have a terminal prognosis. Based on these factors, it is my opinion that her current psychological difficulties and impairment in work functioning were precipitated by the work related stressor on April 4, 2005.

(R. p. 305). On May 3, 2006 her family physician, put the pieces together, and said:

Raquel comes back to the office today after a long absence she is no longer with the Sheriff's Department due to some very severe emotional problems that occurred during an investigation... She has been hospitalized for emotional problems after the investigation of a former deputy who ran over his little two-year-old girl in their driveway accidentally and it was just the last straw for Raquel.

(R. p. 168).

Apparently not satisfied with the unanimous opinions of Officer Martinez's treating psychiatrist, clinical psychologist, and family physician, the Appellants sent Martinez for an independent psychiatric evaluation by Dr. John F. Abess.

Dr. Abess asked Martinez:

... why, given her familiarity with death, death investigations, and forensic autopsies, that she had a difficult time with this specific investigation. She stated, 'It was horrible because it was an accident. He (the officer) had virtually taken his eyes off the child for a few seconds. I knew the father. Seeing him breaking down and when moving the child - it was like a broken doll - when you moved her, it sounded like you were tumbling over some block, it was not rigid like a skeleton so to speak - I remember having to get under the patrol car and on the gasoline tank were her finger marks.

(R. p. 312). In response to specific written questions posed by the Appellants' counsel, Dr. Abess answered:

1) WHAT IS YOUR DIAGNOSIS OF MS. MARTINEZ'S PSYCHIATRIC CONDITION?

Her primary psychiatric diagnoses are:
Post Traumatic Stress Disorder, Recurrent Episode,
Chronic Bipolar I Affective Disorder

- 2) IN YOUR OPINION, DID SHE HAVE ANY OF THESE CONDITIONS PRIOR TO 4 APRIL 2005?

Claimant has evidence of Bipolar Mood Disorder existing prior to her related trauma although the diagnosis was not officially recognized.

- 3) IN YOUR OPINION WAS ANY OF MS. MARTINEZ'S PSYCHIATRIC CONDITIONS CAUSED OR AGGRAVATED BY THE ACCIDENT INVESTIGATION CONDUCTED BY MS. MARTINEZ ON APRIL 4, 2005?

Yes. Both Bipolar and Post Traumatic Stress Disorders were aggravated by the trauma experienced during the accident investigation she conducted on April 4, 2005.

(R. pp. 321-322).

It is undisputed Martinez remains totally disabled because of her mental injury.

ARGUMENT

Judicial review is guaranteed as a constitutional check on administrative adjudication of private rights. S.C. Constitution, Art. 1, § 22. Administrative agencies, including the Workers' Compensation Commission, are required to follow the law as enacted by the Legislature and interpreted by the Courts. Judicial review from the decisions of the Workers' Compensation Commission is codified in § 42-17-60, S.C. Code Ann., 1976, which provides, in its applicable part, "[t]he award of the commission ... is conclusive and binding as to all questions of fact. However, either party to the dispute ... may appeal from the decision of the commission to the court of common pleas ... for errors of law

under the same terms and conditions as govern appeals in ordinary civil actions.” Section 1-23-380(g), S.C. Code Anno., 1976, of the Administrative Procedures Act, also governs appeals from administrative agencies, and provides, in its applicable part, “[t]he 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 ... affected by other error of law or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record...” See: Lark v. Bi-Low, Inc., 276 S.C. 130, 276 S.E.2d 304 (S.C. 1981).

While Courts may not substitute their judgment for that of the Commission on questions of fact, they may reverse the Commission when its decision is affected by an error of law. See: Sturkie v. Ballenger, 268 S.C. 536, 235 S.E.2d 120 (S.C. 1977); Etheredge v. Monsanto Co., 349 S.C. 452, 562 S.E.2d 679 (S.C. App. 2002); Muir v. C. R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (S.C. App. 1999); Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 SE2d 599 (S.C. App. 1999). In reviewing factual findings, the substantial evidence required to support a finding 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 in order to justify its action. Etheredge v. Monsanto Co., *supra.*; Gibson v. Spartanburg School District #3, 338 S.C. 510, 526, S.E.2d 725 (S.C. App. 2000).

This appeal involves the compensability of a purely mental injury, sometimes called a "mental-mental" injury, under the Workers' Compensation Act. South Carolina Courts had little difficulty interpreting the term "accident," as defined in § 42-1-160, S.C. Code Anno., 1976 as amended, to include mental injuries when proper medical evidence established the mental injury was caused by a compensable physical injury. See: Kennedy v. Williamsburg County, 242 S.C. 477, 512 (S.C. 1963)(schizophrenia caused by compensable assault on prison guard); Getsinger v. Owens-Corning Fiberglas Corp., 335 S.C. 77, 515 S.E.2d 104 (S.C. App. 1999)(depression caused by chronic pain from compensable leg injury). Initially, there was a little more uncertainty whether the Courts would hold purely mental injuries were compensable but, generally, it appeared the Court would have found them compensable under what is sometimes called the "heart attack rule" if proper medical evidence had established they were caused by unusual or extraordinary conditions of employment. See: Fleming v. Appleton, 214 S.C. 81, 51 S.E.2d 363 (S.C. 1949)(nervous breakdown not compensable because caused by usual work performed in cotton mill); Bridges v. Housing Authority of Charleston, 278 S.C. 342, 295 S.E.2d 872 (S.C. 1982)(mental breakdown not compensable because caused by usual work of a security guard); Yates v. Life Ins. Co. of Georgia, 291 S.C. 301, 353 S.E.2d 297 (S.C. App. 1987)(attempted suicide not compensable because caused by normal work of a debit insurance salesman). Later cases affirmatively resolved the question and held purely mental injuries

were compensable when caused by unusual or extraordinary conditions of employment. See: Stokes v. 1st National Bank, 298 S.C. 13, 377 S.E.2d 922 (S.C. App. 1988) *cert. granted, aff'd* 306 S.C. 46, 410 S.E.2d 248 (S.C. 1991)(mental breakdown caused by unusual and extraordinary conditions of employment during corporate merger); Powell v. Vulcan Materials Co., 299 S.C. 325, 384 S.E.2d 725 (S.C. 1989)(mental breakdown caused by unusual and unexpected verbal altercation with supervisor).

The South Carolina Legislature codified the South Carolina Court decisions by amending the statutory definition of an "accident" in 1996 to provide:

Stress arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury is not a personal injury unless it is established that the stressful employment conditions causing the mental injury were extraordinary and unusual to the normal conditions of the employment.

§ 42-1-160, S.C. Code Anno., (Supp. 2002).

Although the question of compensability appeared to have been resolved, the Commission and Courts had difficulty applying the unusual and extraordinary rule in purely mental injury cases. Two issues repeatedly arose. The first issue was, in deciding whether the employee was exposed to unusual and extraordinary conditions of employment, is the focus on the usual and ordinary aspects of the employee's general employment or is it on the particular employee's normal working conditions. And, the second issue was whether the unusual and extraordinary conditions of the employment had to be the sole cause of the mental injury or whether, like in all other workers' compensation

cases, the unusual and extraordinary conditions of the employment had to either cause, aggravate, or contribute to the mental injury. Both of these questions arise again in this appeal.

The first question worked its way up through the appellate process to the South Carolina Supreme Court in the case of Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (S.C. 2000). The facts in that case involved an undercover police agent who had infiltrated a bar to obtain drug trafficking evidence. Obviously, being an undercover agent involves a risk of discovery and retaliation. Another agent found out the violent drug dealers suspected the undercover agent of being an informant and had threatened to kill him. There was what the Supreme Court termed "a high tension confrontation involving guns" between the undercover agent and the drug dealers. Thereafter, while still under the death threat, the Sheriff's Department decided to terminate the undercover drug program thereby depriving the undercover agent of police protection and the right to carry a weapon for self defense. The undercover agent suffered a mental breakdown and was hospitalized for depression, suicidal thoughts, post-traumatic stress disorder, and acute alcoholism. The Commission, after remand from the Circuit Court for specific findings, found the incidents alleged were a usual and ordinary part of the job of an undercover police agent and denied the claim. The Circuit Court and Court of Appeals affirmed on the ground the findings were supported by substantial evidence. Shealy v. Aiken County, Op. No. 98-UP-573 (S.C. App. filed December 16, 1998).

The Supreme Court, granted certiorari and reversed the Court of Appeals. After reviewing the statutory and case law, the Supreme Court ruled as a matter of law the unusual and extraordinary rule is not an objective test but rather a subjective test. The condition or combination of conditions of the employment alleged to have caused the mental injury are not compared with the usual and ordinary conditions of the type of employment generally but are to be compared to the conditions of the employee's particular employment to determine whether they are unusual or extraordinary. The Supreme Court held:

This Court has never applied an objective standard of reasonable employment when considering whether a worker was exposed to unusual or extraordinary work conditions, but rather has compared the conditions to the worker's particular employment.

Shealy, 535 S.E.2d at 443. The Supreme Court then applied the substantial evidence standard of review and concluded the substantial evidence on the whole record established the combination of conditions alleged to have caused the undercover agent's mental injury were unusual and extraordinary when compared to the conditions of his particular employment. In reaching this conclusion the Supreme Court did not dispute that death threats, incidents with violent drug dealers, or fear of disclosure and retaliation might all be part of the usual and ordinary conditions of the employment of an undercover police agent. The Supreme Court focused, however, on other undisputed facts which lead to conclusion that knowing there was a plot to be murdered by drug dealers willing and able to commit such a crime was "certainly extraordinary." Shealy, 535

S.E.2d at 444. "Furthermore, to have knowledge of an imminent death threat and then be stripped of the protection of the Sheriff's Department constitutes an extraordinary condition of employment." Shealy, 535 S.E.2d at 444.

The same issue worked its way up through the appellate process again and was revisited by the Supreme Court in the more recent case of Doe v. Dept. of Disabilities, 377 S.C. 346, 660 S.E.2d 260 (S.C. 2008). The facts in that case involved a licensed practical nurse who worked in a community home for emotionally disturbed patients. The LPN was trained how to and occasionally had to deal with aggressive patients in her employment. As part of a downsizing program, however, the Department changed the population in the LPN's community home from one consisting of passive patients to a mix of passive and aggressive patients resulting in a dramatic increase in the level of violence in the home. The LPN began receiving psychiatric care and was hospitalized for severe depression.

The Commission found that the changes in the types of patients the LPN cared for, changes in the level of care patients required, and having to deal with aggressive patients were all usual and normal conditions of an LPN's employment and denied the claim. The Circuit Court in a lengthy Order containing 115 detailed findings of fact, reversed the Commission on the ground the substantial evidence on the whole established the mix of passive and aggressive patients was unusual and extraordinary when compared to the LPN's normal working conditions. The Court of Appeals reversed the Circuit Court on

the grounds the Commission's findings were supported by substantial evidence. Doe v. Dept. of Disabilities, 364 S.C. 411, 615 S.E.2d 785 (S.C. App. 2005).

The Supreme Court again granted certiorari and reversed the Court of Appeals. The majority decision of the Supreme Court concluded the substantial evidence on the whole record indicated the particular combination of conditions alleged to have caused the mental injury were unusual and extraordinary. In reaching this conclusion the Supreme Court did not dispute LPN's are trained and have to deal with aggressive patients, that patients are sometimes moved from one facility to another, or that the amount of care patients require can also change. Again, however, the Supreme Court focused on additional undisputed facts and found because the community home became "more chaotic" and there was a "significant increase" in violent behavior the new mix of passive and aggressive patients was unusual and extraordinary when compared to the normal conditions of the particular LPN's employment. Doe, 660 S.E.2d 262. In a separate concurring opinion, Chief Justice Toal took a somewhat different approach and would have reversed as a matter of law because:

The reasoning of the single commissioner shares a fatal flaw with that employed by the court of appeals in reinstating the single commissioner's decision. In my view, that fatal flaw is the focus on the ordinary aspects of Petitioner's employment to the exclusion of an examination of the extraordinary, and the consequent use of those ordinary aspects to support the conclusion that Petitioner's injury is not compensable.

* * *

In my view, both the single commissioner and the court of appeals failed to consider whether the changed conditions of Petitioner's employment were, for her, unusual or extraordinary, and similarly failed to evaluate how the

changed conditions affected Petitioner. I believe this was error under *Stokes* [*supra*. 410 S.E.2d 248 (S.C. 1991)], and based on this error of law, I would reverse.

Doe, 660 S.E.2d 260, 263.

Similarly, the second question, whether the unusual or extraordinary conditions of employment have to be the sole proximate cause of the mental injury, has continued to arise. The concept of proximate cause, sometimes called the "cause in fact," "legal cause," or "but for cause," is no better defined in workers' compensation law than in tort law. A generally accepted definition of proximate cause is a cause which, in a natural and continuous sequence, produces the injuries and damages, and without which the injuries and damages would not have occurred. It is recognized that there may be more than one (1) proximate cause of an injury and where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributed to all or any of the causes. Childers v. Gaslines, Inc., 141 S.E.2d 761 (1966); Sanders v. Western Auto Supply Co., 183 S.E.2d 312 (1971).

South Carolina Courts have applied this general concept of proximate cause in workers' compensation cases. It has been held in workers' compensation cases, "[a]n accident arises out of the employment when it arises because of it, as when the employment is a contributing proximate cause." Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (S.C. 1960). One way the concept of proximate cause has been applied in workers' compensation

is in cases involving the aggravation of pre-existing conditions. It has been held the aggravation, acceleration, or lighting up of a pre-existing or latent infirmity or weakened physical condition is compensable, even though the accident would not have caused an injury to a perfectly healthy individual. Ferguson v. State Highway Dept., 197 S.C. 520, 15 S.E.2d 775 (S.C. 1941); Heirs v. Brunson Const. Co., 221 S.C. 212, 70 S.E.2d 211 (S.C. 1952); Glover v. Columbia Hospital of Richland County, 236 S.C. 410, 114 S.E.2d 565 (S.C. 1960). The aggravation of a pre-existing condition is compensable unless it is due solely to the natural progression of the pre-existing condition. Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76, 80 (Ct.App. 1996). This is the rule that was applied in heart attack cases requiring unusual or extraordinary stress or over exertion when there was pre-existing cardiac pathology that contributed to the heart attack. See: Kearse v. Carolina Wildlife Resources Dept., 236 S.C. 241, 146 S.E.2d 856 (S.C. 1960); McWhorter v. S.C. Dept. Of Ins., 252 S.C. 90, 165 S.E.2d 365 (S.C. 1969).

The problem with applying the concept of proximate cause in mental injury cases appears to have arise because two (2) Court decisions have been read together and misinterpreted to support a much narrower definition of proximate cause. The first decision is Shealy, supra., 535 S.E.2d at 442, which held "[i]n order for [a claimant] to recover workers' compensation benefits [for a purely mental injury], he must prove both: (1) that he was exposed to unusual and extraordinary conditions in his employment; and (2) that these unusual and

extraordinary conditions were the proximate cause of his mental breakdown.” The second decision is Nawa v. Wackenhut Corp., 341 S.E.2d 800 (S.C. App. 1986) which held South Carolina law “requires the employee’s job be more than one factor, to any extent, in the injury or death. Nawa, 341 S.E.2d 801. Read together these cases have been misinterpreted to require that the unusual and extraordinary condition must be the sole cause of the mental injury.

It is respectfully submitted the Supreme Court never intended for the preposition “the” to be interpreted to mean “the sole” cause. The Supreme Court went on in Shealy, supra. 593 S.E.2d 496, to cite Powell v. Vulcan Materials Co., *supra.*, Gambrell v. Burleson, 252 S.C. 98, 165 S.E.2d 622 (S.C. 1969) both stating the claimant must only prove a causal connection between the injury and the subsequent condition in workers’ compensation cases. *See also*: Frame v. Resort Services, Inc., 357 S.C. 520, 593 S.E.2d 491 (S.C. App. 2004).

Nawa certainly proves the old adage bad facts make bad law. In that case the claimant had a pre-existing brain aneurysm. He suffered a fatal stroke at home while having sexual intercourse with his wife. His family claimed stress at work was a factor contributing to his stroke and their lawyer claimed if stress was a factor, to any degree, the stroke was compensable. The Commission, Circuit Court, and Court of Appeals refused to adopt the expansive definition of proximate cause suggested by the claimant’s counsel, that the stressful conditions arising out of the employment need only be a factor, no matter how remote, and affirmed the denial of the claim finding the decision was supported

by substantial evidence. In reaching its decision the Court of Appeals noted the testimony of the claimant's supervisor disputing the claimant was under undue stress at work, the medical evidence a person with an aneurysm is always at risk for spontaneous rupture, the medical evidence that blood pressure raises 40% during sexual intercourse and that aneurysms frequently rupture during intercourse, and expert medical testimony the claimant most probably would not have suffered the ruptured aneurysm had he not been having sexual relations. Clearly, there was substantial evidence, including expert medical testimony, the claimant would not have suffered the stroke "but for" having sex with his wife. Unfortunately, this case has been misinterpreted to require that the unusual and extraordinary conditions of employment be the one and only cause of an alleged mental stress injury. This is the interpretation taken by the Commission below and the Appellants in this appeal. (Appellants' Final Brief, pp. 31-32).

Such an interpretation is not only contrary to the definition of proximate cause, it would preclude an aggravation of a pre-existing mental condition from being compensable under any circumstances. The issue whether the aggravation of a pre-existing mental condition was compensable was raised in Shealy, supra., but not preserved for appellate review. Shealy, 535 S.E.2d 444 - 445. It was raised again, however, in Doe, supra. According to the Court of Appeals decision, the Commission's denial of benefits was reversed by the Circuit Court because "a physical injury need not be the direct cause of a mental injury." Doe, 615 S.E.2d 785, 790. The Court of Appeals reversed the Circuit

Court on the grounds there was substantial evidence supporting the Commission finding the mental injury was not "caused or induced by" by the minor physical injuries the claimant sustained and there was substantial evidence "that other stressors in her life that were unrelated to work caused her mental injuries." Doe, 615 S.E.2d 785, 790. The Supreme Court held:

Finally, the Court of Appeals observed that Claimant had non-work related stressors, including a prior bout with depression in 1980 and her father's cancer and death in December 1997, that 'could impact her mental injury.' There is no support in the record for the conclusion that any of these outside factors caused or even contributed to Claimant's disability. The only evidence of causation is that Claimant's mental injury was caused by her stress at work as stated by Dr. Lowe. Moreover, a history of pre-existing depression does not preclude workers' compensation benefits for a mental-mental injury. See: Ellison v. Frigidaire Home Prods., 371 S.C. 159, 638 S.E.2d 664 (S.C. 2006).

See also: Smith v. NCCI, Inc., 369 S.C. 236, 631 S.E.2d 268 (S.C. App. 2006) (the right of a claimant to compensation for the aggravation of a pre-existing condition psychiatric condition arises where there is a dormant condition which has produced no disability but which becomes disabling by reason of the aggravating injury) *citing* Anderson v. Baptist Med. Ctr., 343 S.C. 487, 493, 541 S.E.2d 526, 528 (2001).

The applicable law for determining the compensability of a purely mental injury can thus be summarized as follows:

- (1) a mental injury that is alleged to have been caused by stress arising out of and in the course of employment unaccompanied by physical injury is not compensable unless the stressful employment conditions causing the mental injury were extraordinary and unusual;

- (2) In determining whether the stressful condition or combination of conditions arising out of and in the course of the employment were unusual and extraordinary the focus is not upon the usual and ordinary conditions of the type of employment generally but upon the normal conditions of the particular employee's employment; and
- (3) A mental injury is compensable if the physical injury or the unusual and extraordinary stressful conditions arising out of and in the course of the employment either cause or are a contributing cause of the mental injury or aggravate a dormant pre-existing mental condition resulting in disability.

It is in accordance with this applicable law that the questions presented for appellate review can now be considered.

I. THE DECISION OF THE CIRCUIT COURT SHOULD BE AFFIRMED BECAUSE THE COMMISSION'S FINDING OF FACT AND RULING OF LAW THAT THE CRIME SCENE INVESTIGATION PERFORMED BY MARTINEZ ON APRIL 4, 2005 WAS NOT UNUSUAL AND EXTRAORDINARY WAS AFFECTED BY AN ERROR OF LAW AND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

In the present case, the Circuit Court correctly ruled the Commission's decision was affected by an error of law because it improperly focused on the usual and normal aspects of Martinez's employment to the exclusion of the unusual and extraordinary circumstances surrounding the crime scene investigation she performed on April 4, 2005 and failed to perform any analysis of the effect such circumstances had upon her. (R. pp. 12 - 13). The Circuit Court further ruled the Commission's finding that the investigation of the death of a child, even the child of a former Sheriff's Deputy, was not an unusual or extraordinary condition of Martinez's employment was not supported by substantial evidence on

the whole record. (R. pp. 44, 10 – see footnote 4). The Circuit Court noted the Commission gave no factual basis for this finding. (R. p. 8). And, the Circuit Court further ruled the Commission's finding Martinez failed to prove she encountered an unusual or extraordinary condition in her employment on April 4, 2005 was not supported by substantial evidence on the whole record. (R. pp. 44, 10 – see footnote 4). The Circuit Court also noted the Commission gave no factual basis for this finding either, except to say "it was based on all the evidence in the record." (R. p. 8).

The Circuit Court based its ruling the finding there was nothing unusual or extraordinary in the investigation of the child's death on August 4, 2005 involving a fellow police officer was not supported by substantial evidence on the testimony of both Martinez and Captain Denton, the only witnesses who testified, that the investigation was unusual and extraordinary in their combined forty-eight (48) years of law enforcement experience. Not only was the investigation unusual and extraordinary, it was unique because neither Martinez nor Captain Denton had ever been called upon to investigate a violent death that involved a person they knew and a fellow officer. (R. p. 13). The Appellants challenge this ruling by pointing to other testimony, also given by Martinez and Captain Denton, which showed all that Martinez actually did on the day in question was collect evidence, take photographs and measurements, process data, and write reports, all of which were usual duties of a crime scene investigator. (Appellants' Final Brief, pp. 19 - 20). No one disputes this is what she did or that these activities were part of her

normal duties but, in the words of Captain Denton, "that's half of the fact" and, until you include the gruesome condition of the child and knowing Officer Johnson, you don't get the "whole story." The Appellants invite this Court to commit the same fatal error committed in Shealy, supra., and Doe, supra. To ignore the elephant in the room. To ignore Martinez's prior relationship with Officer Johnson which made it impossible for her to turn her friends crushed little girl into an object she could distance herself from emotionally.

Realizing the prior relationship between Martinez and Officer Johnson is the very reason the investigation on that day was usual and extraordinary, the Appellants argue the Commission, as the exclusive finder of fact, considered the relationship but found Martinez and Officer Johnson were neither best friends nor social friends. Further, when they served together as fellow police officers, they patrolled different areas of the Spartanburg County. (Appellant's Final Brief, pp. 20 - 21). Again, all that may be true but the Appellants ask this Court to simply ignore another undisputed fact. It was undisputed Martinez and Officer Johnson actually backed each other up while on patrol. In the words of Martinez, "Did we work in the same area? I don't think we ever worked the same area, but we worked side by side, and if he got into fights or if I got into fights, we would respond. He would be there and I would be there." (R. p. 99). Just as Martinez has not disputed the facts described by the Appellants, the Appellants have not disputed the additional facts described by her. These additional undisputed facts cannot simply be ignored. Judicial review of the substantial evidence is based on

the whole record, not evidence viewed blindly from one side of the case. Etheredge v. Monsanto Co., *supra.*; Gibson v. Spartanburg School District #3, *supra.* No one disputes that police officers and crime scene investigators are called upon to investigate violent deaths, or that Martinez herself may herself have been called upon to investigate violent deaths during her twenty-eight (28) year law enforcement career. But, by the same token, no one disputes the crime scene investigation Martinez she performed on April 4, 2005 was more than just an ordinary and normal violent death, if there even is such a thing. It was the gruesome, violent death of the two (2) year old daughter of Martinez's friend and fellow police officer, Officer Johnson, so unlike the usual and normal conditions of her employer that Martinez couldn't turn the crushed little girl into an object she could distance herself from emotionally. Where the facts are admitted, or established, or where the evidence is susceptible of but one reasonable inference, the question of compensability is one of law for the Court, rather than one reserved exclusively for the Commission. Jordan v. Dixie Chevrolet, Inc., 218 S.C. 73, 61 S.E.2d 794 (S.C. 1950); Sylvan v. Sylvan Bros., Inc., 225 S.C. 429, 82 S.E.2d 794 (S.C. 1954); Kinsey v. Champion Am. Service Center, 268 S.C. 177, 232 S.E.2d 720 (S.C. 1977); Sturkie v. Ballenger, *supra.*; Mullinax v. Winn-Dixie Stores, Inc., *supra.* The additional undisputed facts establish the crime scene investigation Martinez performed on April 4, 2005 was unusual and extraordinary. Furthermore, substantial evidence must be such evidence as would allow reasonable minds to reach the conclusion reached by the administrative agency.

Etheredge v. Monsanto Co., *supra.*; Gibson v. Spartanburg School District #3, *supra.* It is respectfully submitted it is patently unreasonable for the Commission or anyone to find, in the absence of a personal or social friendship while off duty, a bond of friendship cannot develop between police officers, soldiers, firemen, or any of our dedicated public servants who face life and death situations while serving together to protect our safety.

Having found the investigation Martinez performed on April 4, 2005 was neither unusual nor extraordinary, the Commission never performed any analysis of the effect her friendship or relationship with Officer Johnson had upon her. As stated by Justice Toal, the Commission was required to not only consider whether the conditions of the investigation were, for Martinez, unusual or extraordinary, but also to consider how the conditions affected her. Doe, 660 S.E.2d at 263. The undisputed evidence is the effects were immediate and dramatic. Upon learning the investigation involved Officer Johnson, Martinez, for the first time in her career, asked to be excused from performing her duties. (R. pp. 63, 124). To her credit she did her duty and worked the crime scene for four (4) hours. (R. p. 65). Captain Denton noticed a dramatic change Martinez, "specifically that day." (R. pp. 125, 127-128). That night she testified she began crying, couldn't sleep, and began having nightmares about the little-bitty fingerprints under the gas tank. (R. pp. 66).

The findings of the Commission reversed by the Circuit Court were affected by an error of law because they improperly focused on the usual and normal

aspects of Martinez's employment as a crime scene investigator to the exclusion of the unusual and extraordinary circumstances surrounding the investigation Martinez performed on April 4, 2005 and because the Commission failed to perform any analysis of the effect such circumstances had upon her. The findings of the Commission reversed by the Circuit Court that the investigation of the death of a child, even the child of a fellow police officer, was not an unusual or extraordinary condition of Martinez's employment were an unusual or extraordinary condition in her employment were not supported by substantial evidence on the whole record. The finding of the Commission reversed by the Circuit Court that a bond of friendship cannot develop between fellow police officers absent a personal or social friendship outside of work is patently unreasonable. The Circuit Court Order remanding the case to the Commission for findings consistent with his Order should be affirmed.

II. THE CIRCUIT COURT ORDER SHOULD BE AFFIRMED BECAUSE COMMISSION'S FINDING OF FACT AND RULING OF LAW THE MARTINEZ'S MENTAL INJURY WAS NOT PROXIMATELY CAUSED, AGGRAVATED, OR CONTRIBUTED TO BY THE CRIME SCENE INVESTIGATION SHE PERFORMED ON APRIL 4, 2005 WAS AFFECTED BY AN ERROR OF LAW AND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

The Circuit Court began its discussion of the causation issue by noting the Commission's decision Martinez failed to prove her mental injury was compensable was deficient as a matter of law because it required the Court to speculate how, factually, she did not meet her burden of proof. (R .pp. 44, 14 - 15). The Circuit Court correctly ruled the Commission's decision was affected by

an error of law because it misinterpreted Nawa, supra., to require Martinez prove the crime scene investigation of April 4, 2005 was the proximate cause of her mental injury and failed to consider that an aggravation of a pre-existing psychiatric condition can be compensable. (R. pp. 15-17). And, the Circuit Court correctly ruled the Commission's decision was unsupported by substantial evidence because the unanimous opinions of the medical experts, including the Appellants' consulting psychiatrist, was that the crime scene investigation of April 4, 2005 either caused or contributed to Martinez's mental injury or aggravated a pre-existing dormant mental condition resulting in her disability. (R. pp. 17-18).

The Circuit Court Judge based his ruling on the unanimous opinions of Martinez's treating physicians the crime scene investigation of April 4, 2005 was a contributing proximate cause of Martinez's mental injury. Fowler v. Abbott Motor Co., supra. Her treating psychiatrist said, "[i]t is my professional opinion that the patient's current condition is directly related to the incident that occurred in April of 2005 while employed with the Sheriff's Department." (R. p. 283). Her treating clinical psychologist said, "it is my opinion that her current psychological difficulties and impairment in work functioning were precipitated by the work related stressor on April 4, 2005." (R. p. 305). Her family physician, when he put the pieces together, said, "[s]he has been hospitalized for emotional problems after the investigation of a former deputy who ran over his little two-year-old girl in their driveway accidentally and it was just the last straw for Raquel." (R. p. 168).

The Decision and Order of the Commission failed to even mention any of these opinions.

The Appellants challenge this finding and point out Martinez's treating physician's also noted Martinez had other mental stressors in her life. They ask this Court to ignore the obvious fact every mental health professional called upon to diagnose and treat a patient for a mental condition obtains a complete family, social, and medical history, including information about other emotional stresses in the patient's life. The mental health professional then considers this information, together with his or her clinical interview and treatment of the patient, any relevant medical evidence, and the results of any diagnostic tests or studies that have performed in reaching their diagnosis of the patient's condition. The Appellants' Brief points to the history of other stressors but excludes consideration of the physician's ultimate opinions.

The Appellants point to evidence that goes all the way back to when Martinez was "sexually abused for almost two years as a child by a male family friend in Puerto Rico." (R. p. 44). While this may be true, there was no medical testimony her sexual abuse as child caused or contributed to her mental breakdown. The closest any physician came to suggesting this or any other emotional stress Martinez may have suffered had anything to do with her mental breakdown was the opinion of the Appellants' consulting psychiatrist. In a response to a specific question by Appellants' counsel as to causation, he suggested Martinez had undiagnosed pre-existing bi-polar and post traumatic

stress disorders that were aggravated by the crime scene investigation of April 4, 2005. (R. p. 322). Even if Martinez had these undiagnosed mental conditions as suggested, it was undisputed Martinez served for twenty-eight (28) years in law enforcement. It was undisputed nothing in her past and nothing in her experience as a police officer prevented her from performing her duties or dissuaded her wanting to become a crime scene investigator, a job her Captain, Captain Denton, testified she performed her duties as a crime scene investigator for three and a half (3 ½) years diligently, dependably, and with no problem of any kind. It was undisputed she never asked to be excused from performing her duties. If Martinez had undiagnosed bi-polar and post traumatic stress disorders, they were certainly dormant and there is no evidence they manifested themselves in any disability.

The Appellants' argument fails as a matter of law. Even accepting the opinion of the Appellants' consulting psychiatrist as constituting substantial evidence, the aggravation of those conditions by the crime scene investigation of April 4, 2005 that resulted in a complete nervous breakdown and total disability would still be compensable as a matter of law. Ellison v. Frigidaire Home Prods., *supra*; Smith v. NCCI, Inc., *supra*. When asked if Martinez's mental injury was either caused or aggravated by the crime scene investigation aggravated, the Appellants' psychiatrist said, "[y]es. Both Bipolar and Post Traumatic Stress Disorders were aggravated by the trauma experienced during the accident investigation she conducted on April 4, 2005." (R. p. 322).

The substantial evidence required to support an administrative finding is not based on selected facts viewed blindly from one side of the case, but based on the whole record. Etheredge v. Monsanto Co., *supra.*; Gibson v. Spartanburg School District #3, *supra.* The undisputed facts in this case are that the crime scene investigation of April 4, 2005 had an immediate and dramatic effect on Martinez. Captain Denton said he noticed a change in her "specifically that day." (R. pp. 125, 127-128). She started crying and had her first nightmare about the little-bitty fingerprints on the gas tank that night. (R. p. 66). Two days later, her family physician noted she had a lot of stress on the job and she broke down crying and told her father about the investigation. (R. pp. 158, 108). She couldn't sleep because of her recurring nightmare. (R. p. 66). She became vulnerable to other emotional events in her life, including the expected death of her cousin who suffered from AIDS, for which her family physician prescribed Xanax medication and he took her out of work for a few days. (R. pp. 158, 160). When she returned to work she passed out, was taken to the emergency room, and hospitalized for uncontrollable high blood pressure. (R. p. 160). Even her family physician realized there was something serious bothering Martinez and commented in his record:

But I am really at a loss as to explain why this girl's blood pressure is running so high. There has got to be either we are missing the boat somewhere or she is not taking her medicine. It has got to be one or the other, and I have a feeling I am missing the boat on something.

(R. p. 164). When she returned to work again she continued to suffer panic attacks. On August 7, 2005 she suffered a complete mental breakdown. She destroyed her home, broke the windows of her police cruiser, and was found hiding in the neighbor's bushes. When her father asked what was wrong she wanted him meet the imaginary little girl she was going on a trip with. (R. pp. 68-69, 110). The same imaginary little girl her mother said she was brushing the hair of in the ambulance on the way to the hospital where she was admitted for psychotic delusions including the delusion she was traveling on a steamboat down the Mississippi with an imaginary little girl. (R. pp. 68-69, 117).

The Appellants point out Martinez's initial admission and hospital records did not relate her mental breakdown to the crime scene investigation of April 4, 2005. This again is true but simply ignores the undisputed evidence which explained this omission. Her treating psychiatrist became concerned "because of her work as a police officer, she feels reluctant to open up in group in case there are some people in some way related to open cases she's working on." (R. p. 267). Captain Denton confirmed it is against department policy to discuss death cases. (R. pp. 133-134). In individual counseling, instituted to address this concern, Martinez finally opened up and all of her treating mental health professionals related her mental breakdown to the crime scene investigation of April 4, 2005.

Not only the substantial evidence, but the only medical evidence presented on the issue of causation, including the opinion of the Appellants'

independent consulting psychiatrist, established the investigation of April 4, 2005 was either a contributing proximate cause of Martinez's mental injury or constituted an aggravation of a prior dormant psychiatric condition that resulted her becoming totally disabled. Doe, supra. Where the facts are admitted, or established, or where the evidence is susceptible of but one reasonable inference, the question of compensability is one of law for the Court, rather than one reserved exclusively for the Commission. Jordan v. Dixie Chevrolet, Inc., 218 S.C. 73, 61 S.E.2d 794 (S.C. 1950); Sylvan v. Sylvan Bros., Inc., 225 S.C. 429, 82 S.E.2d 794 (S.C. 1954); Kinsey v. Champion Am. Service Center, 268 S.C. 177, 232 S.E.2d 720 (S.C. 1977); Sturkie v. Ballenger, supra.; Mullinax v. Winn-Dixie Stores, Inc., supra. The finding of the Commission reversed by the Circuit Court that Martinez failed to meet her burden of proof as to causation was affected by an error of law and not supported by substantial evidence. The Circuit Court's Order reversing the decision of the Commission and remanding the claim for further findings consistent with the Court's decision should be affirmed.

CONCLUSION

For the foregoing reasons, it is respectfully submitted the Circuit Court's Order reversing the decision of the Workers' Compensation Commission as affected by errors of law and unsupported by substantial evidence, and remanding the claim to the Commission for further findings consistent with the Circuit Court Order, should be affirmed.

Respectfully submitted,

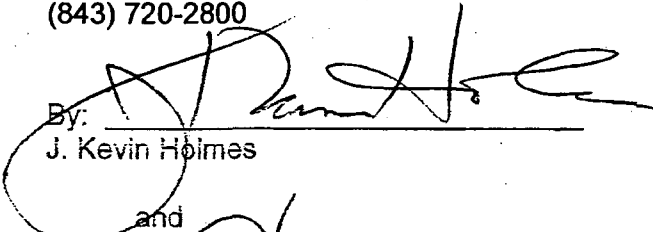
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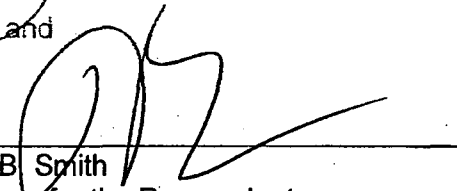
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2007-CP-42-1966

Raquel Martinez, Employee,

Respondent,

v.

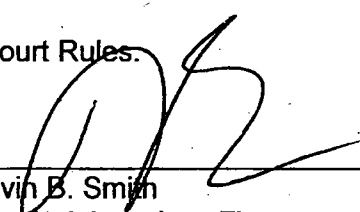
Spartanburg County, Employer,
and S.C Association of Counties
Self-Insurance Fund, Carrier,

Appellants.

CERTIFICATE OF COUNSEL

Counsel hereby certifies that this Brief complies with the requirements of
Rule 211 of the South Carolina Appellate Court Rules.

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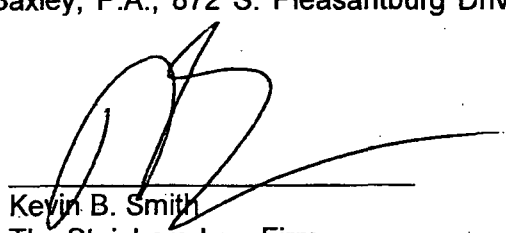
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Self-Insurance Fund, Carrier,

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PROOF OF SERVICE

I certify that I have served the Respondent's Final Brief, by depositing a copy of it in the United States Mail, postage prepaid, on December 28, 2009, addressed to the attorneys of record, Richard B. Kale, Jr., Esquire, and Mitchell K. Byrd, Jr., Wilson, Jones, Carter & Baxley, P.A., 872 S. Pleasantburg Drive, Greenville, South Carolina 29607.



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THE STATE OF SOUTH CAROLINA
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Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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Raquel Martinez,

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Spartanburg County and
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Self-Insurance Fund,

Appellants.

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TABLE OF CONTENTS

Table of Authorities	ii
Arguments	
I. RESPONDENT IMPROPERLY ASKS THIS COURT TO REWEIGH THE FACTUAL EVIDENCE CONTRARY TO THE APPLICABLE STANDARD OF REVIEW	1
II. RESPONDENT CITES FACTS FAVORABLE TO HER POSITION REGARDING MEDICAL CAUSATION, BUT NEGLECTS THE SUBSTANTIAL EVIDENCE IN THE RECORD WHICH SUPPORTS THE DECISION AND ORDER OF THE COMMISSION	6
Conclusion	9

TABLE OF AUTHORITIES

Cases

<u>Bass v. Isochem,</u> 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005).....	1
<u>Frame v. Resort Servs., Inc.,</u> 357 S.C. 520, 527, 593 S.E.2d 491, 494 (Ct. App. 2004).....	1, 2
<u>Grant v. Grant Textiles,</u> 361 S.C. 188, 191, 603 S.E. 2d 858, 859 (Ct. App. 2004).....	1
<u>Hargrove v. Titan Textile Co.,</u> 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004).....	1, 2
<u>Hicks v. Piedmont Cold Storage, Inc.,</u> 335 S.C. 46, 515 S.E.2d 532 (1999)	2
<u>Howell v. Pacific Columbia Mills,</u> 291 S.C. 469, 354 S.E.2d 384 (1987)	1
<u>Hunter v. Patrick Const. Co.,</u> 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986)	1
<u>Lark v. Bi-Lo, Inc.,</u> 276 S.C. 130, 276 S.E.2d 304 (1981)	1
<u>Lowe v. Am-Can Transport Services, Inc.,</u> 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984).....	2
<u>Lyles v. Quantum Chem. Co. (Emery),</u> 315 S.C. 440, 434 S.E. 2d 292 (Ct. App. 1993).....	1, 2
<u>Pratt v. Morris Roofing,</u> 357 S.C. 619, 622, 594 S.E. 2d 272, 274-75 (2004)	2, 6
<u>Muir v. C.R. Bard, Inc.,</u> 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999).....	2
<u>Ross v. American Red Cross,</u> 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989)	1
<u>Sharpe v. Case Produce, Inc.,</u> 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999)	9

ARGUMENTS

I.

RESPONDENT IMPROPERLY ASKS THIS COURT TO REWEIGH THE FACTUAL EVIDENCE CONTRARY TO THE APPLICABLE STANDARD OF REVIEW.

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the workers' compensation commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Bass v. Isochem, 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005); Hargrove v. Titan Textile Co., 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004). In workers' compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). The Appellate Court's review of these findings of fact is limited to determining whether the findings are supported 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).

The substantial evidence rule of the APA governs the standard of review in a workers' compensation decision. Frame v. Resort Servs., Inc., 357 S.C. 520, 527, 593 S.E.2d 491, 494 (Ct. App. 2004). Pursuant to the APA, this Court's review is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law. See Grant v. Grant Textiles, 361 S.C. 188, 191, 603 S.E.2d 858, 859 (Ct. App. 2004) ("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."); See also Lyles v. Quantum

Chem. Co. (Emery), 315 S.C. 440, 434 S.E.2d 292 (Ct. App. 1993) (noting that in reviewing decision of workers' compensation commission, the Court of Appeals will not set aside the Commission's findings unless they are not supported by substantial evidence or they are controlled by error of law).

The appellate panel is the ultimate fact finder in workers' compensation cases and is not bound by the single commissioner's findings of fact. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). The final determination of witness credibility and the weight to be accorded evidence is reserved to the appellate panel. Frame, 357 S.C. at 528, 593 S.E.2d at 495. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Muir, 336 S.C. at 282, 519 S.E.2d at 591. Where there are conflicts in the evidence over a factual issue, the findings of the appellate panel are conclusive. Hargrove, 360 S.C. at 290, 599 S.E.2d at 611.

The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. Hicks v. Piedmont Cold Storage, Inc., 335 S.C. 46, 515 S.E.2d 532 (1999). The appellate court is prohibited from overturning findings of fact of the Commission, unless there is no reasonable probability that the facts could be as related by the witness upon whose testimony the finding was based. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). It is not within this Court's province to reverse findings of the appellate panel which are supported by substantial evidence. Pratt v. Morris Roofing, 357 S.C. 619, 622, 594 S.E.2d 272, 274-75 (2004).

It is clear from Martinez's brief that she is asking this Court to reweigh factual evidence which has already been considered by the Commission. In her brief, Martinez does little more than spin her own version of the facts in the hopes that this Court will be persuaded to improperly act as a fact finding body. Rather, Appellants encourage this Court to seek out the evidence which was used by the Commission to support their findings of fact. It is clear that there is real, substantial evidence in the record to support the Commission's findings.

The main theme of Martinez's Brief is that her prior relationship with Officer Anthony Johnson is what made her April 4, 2005 investigation of the death of Officer Johnson's two year old daughter unusual and extraordinary. Martinez admits as much on several occasions throughout her brief. (Brief of Respondent, pp. 7, 8, 31, 33). Martinez then presents a factual scenario in furtherance of her effort to have this Court reweigh the evidence with the hope for a different result than that arrived at by the Commission. Not only does Martinez leave out a plethora of information which would only serve to hinder her self-serving version of the factual evidence, but Martinez also asks this Court to improperly act as a fact finding body.

Martinez argues that she and Officer Anthony Johnson were friends, and that Appellants try to "downplay" the significance of her prior relationship with Johnson. However, in the breadth of the very same argument, Martinez immediately brings in extraneous factual evidence of a "shared particular bond of friendship forged between fellow police officers who serve together on the 'thin blue line.'" (Brief of Respondent, p.7).

Martinez asks this Court to overlook its proper legal role, contrary to the applicable standard of review. It is abundantly clear that the Commission took Martinez' relationship with Officer Anthony Johnson into account when it issued its Decision and Order:

4. Claimant contended that working the death case of a child who was run over by a fellow police officer was unusual and extraordinary. She stated that police officers have a "special bond." **However, Claimant was not a close friend of the fellow officer, Anthony Johnson, although she worked on the same shift, and they would occasionally see each other at shift changes. She did not personally know the officer's wife or child, had never visited their home, and had never socialized with Anthony Johnson or his family.**

(R.p. 42). (Emphasis added). The Commission pointed directly to substantial evidence that supports its finding regarding Martinez' and Johnson's relationship. There was no "elephant in the room" that was ignored by the Commission. Rather, Martinez simply asserts that her position regarding her relationship with Officer Johnson should be accorded greater weight. (Brief of Respondent, p.31). Martinez' "thin blue line" argument, regarding her relationship with Officer Johnson, makes much of testimony that Johnson and Martinez "backed each other up." (R.p. 99). She asserts that this is an "undisputed" fact which cannot be ignored. By this very assertion, it could not be clearer that Martinez is asking this Court to reweigh the evidence in the record. Martinez essentially takes the position that the fact that she and Johnson "backed each other up" is a more important fact than those facts actually relied upon by the Commission. The evidence clearly established that Martinez only knew Anthony Johnson for 1-1 ½ years during the time that he was employed by the Spartanburg County Sheriff's Office. (R.p. 83). Martinez and Johnson were assigned to different platoons at the Spartanburg County

Sheriff's Office, and they worked different zones. (R.p. 99-100). They might see each other at roll call or at the end of a shift. (R.p. 100). However, they were not social friends and their families did not socialize together or know each other. (R.p. 83-84). Though not cited in her Brief, Martinez testified that she did not know whether her reaction would have been the same if the officer who had run over his child had worked on a different shift. (R.p. 104). Additionally, and perhaps the most important piece of information which Martinez fails to cite in her Brief, is the fact that Officer Anthony Johnson left the Spartanburg County Sheriff's Office at least 3 ½ years prior to this accident, while Martinez was still serving on Uniform Patrol. (R.p. 82). Martinez and Anthony Johnson had not worked together for at least 3 ½ to 4 years prior to this accident. Appellants are in no way asserting that a bond of friendship cannot develop between police officers, as Martinez suggests in her Brief. Rather, Appellants are pointing to specific, substantial evidence in the record which supports the Commission's findings regarding the relationship between Martinez and Anthony Johnson.

Neither Martinez nor Captain Denton testified regarding any specific instances where she backed up Johnson, or vice versa. While Martinez cites an abundance of Captain Denton's testimony from the initial hearing, Martinez fails to discuss any of Denton's testimony that the Commission actually used to support the findings in its Decision and Order. Captain Denton testified that taking photographs, making measurements, and moving the child's body at the accident scene on April 4, 2005 was an ordinary part of Martinez' job. (R.p. 138). There was no policy prohibiting employees from investigating an accident scene when they knew the victim. (R.p. 131).

Additionally, Denton testified:

Q. ...Forensic investigators have to investigate deaths of children, don't they?

A. Sure.

(R.p. 139-140). (Emphasis added). Captain Denton testified that when Martinez was doing her investigation that day, it was an ordinary part of her job. (R.p. 138). In fact, with regard to his directive to Martinez to process the scene, he testified:

R. And when you made that decision, you were basically saying, "You've got to do your job," right?

A. Yes.

(R.p. 149). (Emphasis added). It is appropriate for this Court to consider the evidence in the record that the Commission *actually* cited and upon which it relied. It is not within this Court's province to reverse findings of the appellate panel which are supported by substantial evidence. Pratt, 357 S.C. at 622, 594 S.E.2d at 274-75. The findings made by the Commission in its Decision and Order are supported by substantial evidence and should be affirmed.

II.

RESPONDENT CITES FACTS FAVORABLE TO HER POSITION REGARDING MEDICAL CAUSATION, BUT NEGLECTS THE SUBSTANTIAL EVIDENCE IN THE RECORD WHICH SUPPORTS THE DECISION AND ORDER OF THE COMMISSION.

Martinez cites factual evidence from the record that favors her position on medical causation and characterizes it as "undisputed," presumably in an effort to shift this Court's focus away from the "substantial evidence" standard of review. While it is certainly true that this Court can set aside findings of the Commission that are controlled

by an error of law; in this case, Martinez is attempting to distract this Court from examining the body of factual evidence upon which the Commission relied in issuing their Decision and Order which does *not* support her position.

In her Brief, Martinez re-tells the story of her mental breakdown and sets out medical evidence which she believes is supportive of her version of the facts of the case. Once again, it is clear that Martinez is asking this Court to reweigh the facts and medical evidence rather than seek out what the Commission focused on in making its findings. For example, in her Brief, Martinez makes only passing mention of the death of her "cousin," Michael Adger Roberts. Martinez completely overlooks all of the evidence in the record regarding the death of her "cousin." However, this was part of the medical evidence upon which the Commission relied when it decided that Martinez had experienced other, non-work related stressors. Martinez testified at the hearing that it was hard to see her "cousin" suffering from AIDS, developing cancers, and undergoing extensive treatments. (R.p. 67-68). She sought treatment from her family doctor on April 19, 2005 related to problems surrounding her "cousin's" death. (R.p. 158-160). By the time Martinez mentioned the April 4, 2005 investigation to a doctor, approximately 4 months later, she was already on anti-anxiety medication because of her "cousin's" death. Martinez had already been hospitalized twice due to withdrawal reactions from discontinuing the use of Xanax before she ever mentioned the April 4, 2005 investigation to a medical provider. On August 9, 2005, Dr. Chris Caston noted that Martinez had anxiety, depression, and insomnia related to "the death of her best friend who was apparently a male cousin." (R.p. 192). The very next day, on August 10, 2005, Dr. Caston's notes indicated that Martinez's mental problems began when "[m]y cousin died

midApril 2005 and I took Xanax for my nerves. I stopped taking Xanax 1-2 weeks ago and became psychotic.” (R.p. 338). Additionally, Martinez overlooks evidence which demonstrated that she had suffered significant traumatic events in her life, including sexual abuse, rape, and a history of depression and pre-existing bipolar disorder.

Martinez also describes a factual scenario that involves dramatic high blood pressure problems, contending it followed the April 4, 2005 investigation. There is no medical opinion in the record which connects her blood pressure issues with the investigation on April 4, 2005. Moreover, Martinez mischaracterizes her high blood pressure as evidence that the April 4, 2005 investigation had an immediate effect on her. In fact, the record clearly demonstrated that Martinez was having high blood pressure problems *before* the April 4, 2005 investigation. Martinez saw Dr. John Weider on March 10, 2005, less than a month before the April 4, 2005 investigation, specifically for complaints of high blood pressure, and was prescribed Lotrel. (R.p. 157). And though Martinez points to Dr. Weider’s May 26, 2005 record as evidence that “something else” was causing Martinez’s blood pressure issues, the evidence in the record also indicated that Martinez returned to Dr. Weider on June 2, 2005, *one week later*, with her blood pressure completely under control. (R.p. 166). Martinez never mentioned the investigation of April 4, 2005 to Dr. Weider during the entire time period she sought treatment for high blood pressure (March 10, 2005 – June 24, 2005). (R.p. 157-167). Martinez *did*, however, almost immediately discuss the death of her “cousin,” his funeral, and her difficulties in coping with his death. (R.p. 158-160).

The Commission’s findings of fact regarding Martinez’ non-work related job stressors and her failure to prove that her mental condition was proximately related to any

work conditions are supported by substantial evidence. Martinez seeks for this Court to reweigh the evidence in the record with the hope that her position will be accorded greater weight. However, even if there is conflicting evidence in the record, "the Commission's findings of fact are conclusive." Sharpe v. Case Produce, Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999). If this Court reviews the entire record, it will find substantial evidence to support the findings of the Appellate Panel.

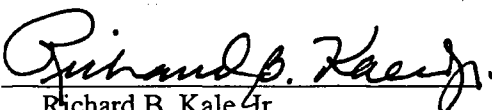
CONCLUSION

For the foregoing reasons, as set forth in Appellant's Initial and Reply Briefs, this Court should reverse the Circuit Court's Order and reinstate the Decision and Order of the South Carolina Workers' Compensation Commission. Respondent's recitation in her Brief of certain evidence is a distraction. This Court should examine whether there is substantial evidence in the record to support the Commission's determinations that Martinez failed to prove that she encountered an unusual or extraordinary condition of employment on April 4, 2005, or that her psychological problems were proximately caused by the investigation on April 4, 2005. This Court should reverse the Circuit Court and reinstate the Decision and Order of the South Carolina Workers' Compensation Commission.

Respectfully submitted,

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December 17, 2009

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2007-CP-42-1966

RECEIVED

JUN 28 2011

SC Court of Appeals

Raquel Martinez, Employee,

Respondent,

v.

Spartanburg County, Employer,
and S.C Association of Counties
Self-Insurance Fund, Carrier,

Appellants.

PETITION FOR REHEARING

The Respondent, Raquel Martinez, by her undersigned attorneys, respectfully Petitions for Rehearing of the Court's Opinion No. 4839 filed on June 15, 2011 pursuant to Rule 221(a), SCACR. This Petition for Rehearing is based on the grounds the Court overlooked or misapprehended that the substantial evidence required to support the decision of the Commission must be based on the whole record. See: § 1-23-380(5)(e), S.C. Code Anno., as amended 2008. Substantial evidence under § 1-23-380(5)(e) 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. Carroll v. Gaddy, 295 S.C. 426, 368 S.E.2d 909 (S.C. 1988).

The Respondent does not contend she was not performing her usual and ordinary job on day she was required to investigate this terrible tragedy. The Respondent does not contend her jobs both as a police officer and a crime scene investigator required her to investigate 100 to 150 death cases, including a death case where a child's head was run over by a dump truck, as described in the Commission's findings numbers 5, 6, 7, 10, and 11. The fact that the Sheriff's Office neither had a rule requiring nor prohibiting officers from investigating the death of a fellow officer's child, if anything, shows it is so unusual the Sheriff's Office has never felt the need for a policy and hardly makes having to do so usual or ordinary.

The Respondent contends her having served with and backed up the child's father in the line of duty as a fellow law enforcement officer does make this particular investigation everyone agrees was horrific unusual and extraordinary whether or not she socialized with the officer, knew his wife or daughter, or ever visited their home. The Respondent's captain, Steve Denton, testified at length how his and the Respondent's serving with the officer who ran over his two year old daughter changed everything:

Q: In your 20-plus years in law enforcement, how many times have you investigated a crime scene where you knew the victim?

A: I can't - I can't think of any violent crimes, burglaries, property crimes, I can probably name a few, but violent crimes where a person - either suicide or been killed, I can't - I can't recall any.

Q: In your 20-plus years in law enforcement, how many times have you investigated a crime scene where you know the person that caused the crime or the accident?

A: As far as know them in a personal way?

Q: Right.

A: Probably none. I have known them in a business/criminal/law enforcement way, but I won't have known them in a personal way.

(R. p. 130). He testified the crime scene investigation was extreme and out of the ordinary:

Q: Well let me ask you this: as a 20-plus year veteran of the Sheriff's Office with 70 to 75 percent of your time spent in death investigations and as [Martinez's] supervisor, would you say that the April 4th, 2005, investigation involving your former employee, A.J., killing his two-year-old child would have been an extreme situation in her employment?

A: Yes.

Q: Was this a scene that was out of the ordinary?

A: Yes.

(R. pp. 135-136). Appellants' counsel fully cross examined Captain Denton but his opinion never wavered:

Q: In fact, everything she did out there as far as her activities at the scene in doing a crime scene investigation was a part of her ordinary duties that day?

A: If you remove the condition of the child itself and knowing the officer, remove that condition and that would be true.

Q: Well, you have to – forensic investigators have to investigate deaths of children, don't they?

A: Sure.

Q: So the fact that she was investigating a child doesn't take it out of her ordinary investigations, does it?

A: I don't think the whole – you get the whole story until you add the condition that existed, and the whole truth is that, that condition existed that day, and I think it was extraordinary because of that.

Q: Because...

A: I don't think it was ordinary that day.

Q: Pardon?

A: I don't think it was an ordinary job for anybody that day, and I think-

Q: But what she did was her job, was it not?

A: What she did was her job. Ordinary, if you're talking about, you know, had it been anywhere else that day, it would have been ordinary. But it wasn't anywhere else, and that's –

Q: Well, as far as the child is concerned – let's take the father out of it. If some other child has been run over, would you consider that to be extraordinary?

A: That's not what happened.

Q: Well, I'm not asking you – I'm saying assume. If it was some other person's child that had been run over, they would that – and she investigated the child, would there be anything unusual or extraordinary about that?

- A: No.
- Q: So it boils down to the fact that this [child's father] was a former employee of the Spartanburg County's Sheriff's Department?
- A: It boils down – **that's half of the fact. The other half of the fact is, again, it's an infant that was run over by a police car that was driven by a former employee whom we were friends with. That's the whole fact.** (emphasis added).

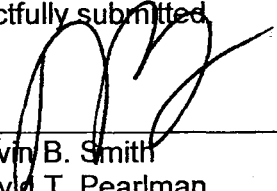
(R. pp. 139-141). The substantial evidence on the whole record includes this testimony about what made this particular investigation unusual and extraordinary in addition to Captain Denton's description of the Respondent's usual and ordinary job. It is respectfully submitted cherry picking only part of crucial testimony to blindly support one side of the case is clearly erroneous and not how reasonable minds should decide important questions.

This motion will be further based on recent Supreme Court decision in the case of Charlotte-Mecklenburg Hospital Authority v. S.C. Dept. of Health and Environmental Control, 387 S.C. 265, 692 S.E.2d 894 (S.C. 2010). The right to judicial review under § 1-23-380 is available only when all administrative remedies have been exhausted and the agency has made its final decision. The Court overlooked that the Circuit Court's Order was not a final order. *Charlotte-Mecklenburg* reiterates that an order is interlocutory if there is some further act to be done in the case. *Id.* 692 S.E.2d at 894. The Circuit Court Order in this case is not a final judgment, does not dispose of the subject matter of this action, or terminate the proceedings. *Id.* 692 S.E.2d at 895. On remand the Appellate Panel is tasked with applying the law as construed by the Circuit Court. The Appellate Panel may find, as it did before, that the Respondent's mental breakdown was not caused by an unusual or extraordinary condition of her

employment. Or, on the other hand, the Appellate Panel may make different findings based upon the whole record.

This Court cannot overlook the issue of appealability. Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 668 S.E.2d 795 (2008) (noting "jurisdictional appealability" issues are governed by statute). In previous cases, the courts have raised the issue on their own motion. Main Corp. v. Black, 357 S.C. 179, 592 S.E.2d 300 (2004) (affirming court of appeals decision to raise appealability ex mero motu and dismiss appeal); Ashenfelder v. City of Georgetown, 389 S.C. 568, 698 S.E.2d 856 (Ct. App. 2010) (addressing the issue of appealability ex mero motu); St. Francis Xavier Hosp. v. Ruscon/Abco, 285 S.C. 584, 330 S.E.2d 548 (Ct. App. 1985) (same).

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2007-CP-42-1966

RECEIVED

JUN 28 2011

SC Court of Appeals

Raquel Martinez, Employee,

Respondent,

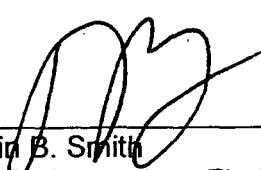
v.

Spartanburg County, Employer,
and S.C Association of Counties
Self-Insurance Fund, Carrier,

Appellants.

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing, by depositing a copy of it in the United States Mail, postage prepaid, on June 27, 2011, addressed to the attorneys of record, Richard B. Kale, Jr., Esquire, and Mitchell K. Byrd, Jr., Esquire, Wilson, Jones, Carter & Baxley, P.A., 872 S. Pleasantburg Drive, Greenville, South Carolina 29607.



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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2007-CP-42-1966

Raquel Martinez, ...Respondent,
v.
Spartanburg County and
S.C. Association of Counties Self-Insurance Fund, ...Appellants.

RETURN TO PETITION FOR REHEARING

Respondent sets forth in her Petition for Rehearing two grounds as a basis for this Court to reconsider its decision, Opinion No. 4839, filed June 15, 2011. Neither of Respondent's grounds for rehearing is sufficient for this Court to grant the Petition for Rehearing, and the Petition should be denied.

Respondent's first argument is nothing more than an attempt to have this Court improperly re-weigh the evidence in the record. Nearly three pages of Respondent's Petition are dedicated to citation of testimony given during the initial hearing by Captain Steve Denton. The testimony of Captain Denton was considered by both the Single Commissioner as well as the Appellate Panel. While some of Captain Denton's testimony may be supportive of Respondent's

claim, other parts of his testimony were not. It is well settled that “the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” Lark v. Bi-Lo, Inc., 276 S.C. 130, 135-136, 276 S.E.2d 304, 307 (1981)(quoting with approval Consolo v. Federal Maritime Comm’n, 383 U.S. 607, 620, 86 S. Ct. 1018, 1026 (1966)). See also, Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 407 (1991) (“Where there is a conflict in the evidence, either of different witnesses or of the same witnesses, the findings of fact of the Commission as triers of fact are conclusive.”) Respondent’s statement that the “substantial evidence on the whole record includes this testimony” demonstrates a misapprehension of the analysis that this Court undertook pursuant to the “substantial evidence” standard of review. As this Court noted in its Opinion, “The findings of the commission are presumed correct and will be set aside only if unsupported by substantial evidence.” Martinez v. Spartanburg County, Opinion No. 4839, p. 3 (filed June 15, 2011). In her Petition, Respondent continues to argue that the evidence in the Commission’s record is *more supportive* of her position in the case. Respondent makes no legitimate argument that the Commission’s findings are unsupported by substantial evidence in the record. Instead, Respondent simply accuses the Court of “cherry picking” parts of testimony to support its decision, which is precisely what Respondent has done in her Petition for Rehearing.

This Court’s decision that the Commission’s findings were supported by substantial evidence in the record was clearly correct. As stated in Judge Few’s concurring opinion, “whether the individual event meets the test for extraordinary and unusual set forth by the supreme court in Shealy is a question of fact for the commission to decide. On appeal from the commission’s decision, if substantial evidence supports it, an appellate court must affirm.” Martinez, Op. No. 4839, at p. 8, filed June 15, 2011 (citing Forrest v. A.S. Price Mech., 373 S.C.

303, 306, 644 S.E.2d 784, 785-86 (Ct. App. 2007) (emphasis added). There is substantial evidence in the record to support the Commission's decision, as detailed in this Court's Opinion. The Respondent's Petition, which effectively asks this Court to make the determination that Respondent suffered an unusual or extraordinary condition of her employment, is without merit and should be denied.

As to the second ground, Respondent argues that the Circuit Court's Order is not a final order, and, therefore, is not immediately appealable. "[A] final judgment is one which operates to divest some right in such a manner as to put it beyond the power of the Court making the order to place the parties in their original condition" Good v. Hartford Acc. & Indem. Co., 201 S.C. 32, 21 S.E.2d 209 (S.C. 1942). "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory [and not final]." Mid-State Distribs. Inc. v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777 (1993) (emphasis added). Here, the Circuit Court has determined the rights of the parties, and, therefore, the Circuit Court's Order was properly appealable.

While the Circuit Court remanded the action to the Commission for "further action consistent with this Order" (R.p. 3), the Circuit Court's Order makes clear that the Commission made several errors of law, and the Circuit Court has directed the Commission how to determine the disputed issues. In this mental-mental case, the Commission must determine whether "stressful employment conditions causing the mental injury were extraordinary and unusual in comparison to the normal conditions of the employment." S.C. Code Ann. § 42-1-160. The Circuit Court, in reversing the Commission, re-weighed the facts and ruled that the employment conditions were extraordinary and unusual, and caused the injury, thus determining that issue between the parties. (See R.p. 10, fn.4) ("There is nothing in the record which this Court can

find to support the factual conclusion that investigating the death of a child of a former Sheriff's deputy was "usual or ordinary."); (R.p. 12, fn.6) ("An aspect of the Claimant's life which the Commission appears to fail to consider is . . ."); (R.p. 14, fn.8) ("[T]he record does not support the decision made by the Commission."); (R.p. 17) ("The only causation conclusion that can be drawn from the record below is that the Appellant established her burden of proof that her mental injuries were proximately caused by the stress from the accident investigation.")

Furthermore, in its review of the facts, the Circuit Court ruled that the Commission made several errors of law, which makes the Order final and appealable. Section 1-23-380(5)(d), S.C. Code Ann. (1977). See Elliott v. S.C. Dep't of Transp., 362 S.C. 234, 607 S.E.2d 90 (Ct. App. 2004) (reviewing the Commission's findings for errors of law). Here, the Circuit Court's conclusions that the Commission erred as a matter of law are immediately appealable. See (R.p. 12) ("[T]he Commission failed to conduct the proper analysis."); (R.p. 13) ("The Commission's Order in the present case is void of the required analysis and, therefore, as a matter of law is reversed) (emphasis added); (R.p. 18, fn.11) ("Where the evidence is susceptible of but one reasonable inference, the question is one of law for the court rather than one of fact The Commission's finding . . . is affected by an error of law.).

Because the Circuit Court's Order remanded the case for "further action consistent with this Order," the Circuit Court has determined 1) the issue of compensability and 2) the issue of proximate cause as a matter of law. Therefore, the Order is a final order and appealable. The Court of Appeals had proper jurisdiction of this appeal.

However, even if the Circuit Court's Order is determined to be interlocutory, the nature of the Order shows it to be immediately appealable. Section 14-3-330 of the South Carolina Code of Laws provides appellate jurisdiction for "[a]ny intermediate judgment, order or decree

in a law case involving the merits in actions commenced in the court of common pleas. See Jefferson by Johnson v. Gene's Used Cars, Inc., 295 S.C. 317, 368 S.E.2d 456 (1988) (an order "involves the merits" when it finally determines "some substantial matter forming the whole or a part of some cause of action or defense"). As shown in the respective Orders of the Commission and the Circuit Court, the primary defense to the claim was that the Claimant's injury was not compensable, because the employment conditions were not extraordinary and unusual. The Circuit Court found that "[t]here is nothing in the record which this Court can find to support the factual conclusion that investigating the death of a child of a former Sheriff's deputy was "usual or ordinary.") (R.p. 10, fn.4) Furthermore, the Court found that the incident proximately caused the Claimant's injury, effectively determining these issues on remand to the Commission. Because the Circuit Court's Order necessarily involves the merits and would deprive the employer of a defense, it is immediately appealable, and, therefore, appellate jurisdiction was proper.

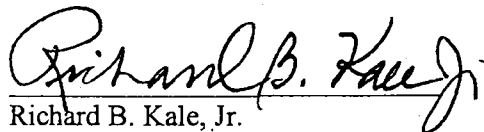
Additionally, Respondent misapprehends the applicability of Charlotte-Mecklenburg Hospital Authority v. S.C. Department of Health & Environmental Control, 387 S.C. 265, 692 S.E.2d 894 (2010). Charlotte-Mecklenburg holds that judicial review may be sought only from a final judgment of the Administrative Law Court. Id. at 266, 894. In this case, it is undisputed that the Workers' Compensation Commission made a final determination. "A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined." Id. at 267, 894. In this case, the Single Commissioner provided a seventeen-page written order terminating the case, including sixteen findings of fact and conclusions of law. This order was affirmed in its entirety by the Workers' Compensation Commission Appellate Panel. Respondent correctly

points out that the “right to judicial review under § 1-23-380 is available only when all administrative remedies have been exhausted and the agency has made its final decision.” “The appellate panel is the ultimate fact finder in workers’ compensation cases” Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 620, 611 S.E.2d 297 (Ct. App. 2005). Therefore, the jurisdictional requirements of § 1-23-380 have been satisfied.

In Charlotte-Mecklenburg, the Administrative Law Court’s order was interlocutory in nature, because it remanded part of the case to DHEC for additional factual determination. Therefore, there had been no final administrative adjudication. That is not the case here. The Workers’ Compensation Appellate Panel made a final determination, and the administrative remedies have terminated. The Circuit Court’s Order, while reversing the Appellate Panel, is not part of the administrative process and, therefore, its order reversing the case is not an interlocutory order as discussed in Charlotte-Mecklenburg. Both the Circuit Court and this Court have appellate jurisdiction of a case where all administrative remedies have been exhausted.

Respectfully submitted,

July 6, 2011



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