

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission

---

Opinion No. 5205

---

Case No. 2013-000005

---

Neal Beckman, Employee, ..... Appellant,

v.

Sysco Columbia, LLC, Employer, and Gallagher Bassett Services, Inc., Carrier . . . Respondents.

---

RETURN TO PETITION FOR REHEARING

---

**RECEIVED**

APR 08 2014

**SC Court of Appeals**

Fred W. Riesen, Jr.  
RIESEN LAW FIRM, LLP  
3660 W. Montague Avenue  
N. Charleston, SC 29418  
(843) 760-2450

Stephen B. Samuels  
SAMUELS LAW FIRM, LLC  
1320 Richland Street  
Columbia, SC 29201  
(803) 779-4000  
stephen@samuelslawfirm.net

Attorneys for Appellant

## ARGUMENT

### 1. The Court applied the appropriate standard of review.

In their Petition for Rehearing, Respondents contend the Court misapplied the standard of review. Respondents argue that appellate review is limited to reviewing whether there is substantial evidence to support the Commission's finding that Beckman "has sustained a 35% loss of use of the spine." [Petition for Rehearing, page 2]. Essentially, Respondents seek an up or down vote of the scheduled member award – thus procedurally avoiding the issues raised before the Commission and on appeal.

This argument is untenable and unsupported by precedent. Furthermore, it confuses the *standard of review* with the *issues on appeal*. The standard of review governs the level of deference given to the findings below. See, e.g., Shealy v. Aiken Cnty., 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) ("Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the Full Commission reached."). The *issues on appeal* govern whether the specific issue is preserved for appellate review. See Nettles v. Spartanburg School Dist. #7, 341 S.C. 580, 588 n.4, 535 S.E.2d 146, 150 n.4 (Ct. App. 2000) ("The commission's failure to explicitly rule on an issue raised to it in a Form 30 does not create an error preservation problem although a similar omission in a civil proceeding would be fatal.") .

In this case, there is no question Beckman preserved the issues addressed by the Court. He has consistently sought an award for loss of earnings capacity. Indeed the issue was so squarely before the Commission that both sides presented vocational experts to opine on the extent of his lost earnings. [R. p. 198-204, 207-210].

In the instant case, application of the “two-body part rule” is a legal error properly addressed by the Court. It would create an absurd result if the appellate courts were unable to look beyond the literal findings made below. Any order below which omitted critical findings would be unassailable and uncorrectable. Multiple important decisions of this Court and the South Carolina Supreme Court have turned on the inherent authority to address issues raised by the parties.

Moreover, the specific issue in this case – whether radiculopathy into the leg constitutes an “affect” on a second body part – has been previously addressed by the Court. See Hutson v. S.C. State Ports Authority, 390 S.C. 108, 700 S.E.2d 462 (Ct.App. 2010), *reversed on other grounds*, 732 S.E.2d 500, 399 S.C. 381 (2012)(affirming Commission’s finding that radicular symptoms in the right leg showed an injury to the back “with affects to the right leg.”). Surely if the Court is able to review the evidence to support a finding, then it should equally be able to review the evidence to reverse an unsupported finding. Broughton v. South of the Border, 336 S.C. 488, 520 S.E.2d 634, 637 (Ct. App. 1999)((court may reverse or modify the Commission’s decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are affected by other error of law). See, also Hutson v. S.C. State Ports Authority, 399 S.C. 381, 732 S.E.2d 500 (2012)(reversing because lay testimony was not only contrary to expert testimony but also rested solely on speculation, “thus, there is no evidence in the record supporting the commissioner’s order.”).

**2. The Court accurately cited the pertinent evidence in the record.**

In their Petition, Respondents suggest the Court overlooked or miscited pertinent evidence in the record. A close comparison of the evidence with the Court’s opinion shows otherwise – in fact, it was the Commission which overlooked and miscited pertinent evidence.

Respondents devote the bulk of their argument to an analysis of Dr. Boyd's report. Yet, in the very first paragraph, Respondents quote the very language that illustrates the error made by the Commission, to wit: "His pain occasionally *radiates down into his left leg* and he states that *he has some numbness around his foot.*" [R. 205 (emphasis added)]. Dr. Boyd's report exposes the complete lack of evidentiary support for the Appellate Panel's finding that: "We find the greater weight of the evidence shows only the Claimant's back was affected by the March 25, 2010 admitted injury by accident. [R. p. 28].

Dr. Boyd specifically saw Beckman for a one-time surgical evaluation. His report – particularly as to Beckman's radicular complaints – essentially comports with that of Dr. Zgleszewski. Respondents submit that "Dr. Boyd did not conclude or diagnose the Appellant with radiculopathy or numbness in his lower extremity." [Petition for Rehearing, page 3]. This is precisely the point – Dr. Boyd did not address radiculopathy one way or the other. To infer that this absence of an opinion supports the Commission's findings is to rely on speculation. See Burnette v. City of Greenville, 737 S.E.2d 200, 401 S.C. 417 (Ct. App. 2012) ("the medical opinion of the single commissioner, adopted by the Commission," is not evidence and cannot form the basis of a finding).

Respondents isolate various snippets from the record, suggesting that these points may have been overlooked by the Court. However, the Court exhaustively reviewed the record – as demonstrated by the detailed analysis in the Opinion. No pertinent facts were overlooked; no evidence went unreviewed.

This is simply a case where the decision below is unsupported by substantial evidence. Therefore, the Petition for Rehearing should be denied.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition for Rehearing.

Respectfully Submitted,



Fred W. Riesen, Jr.  
RIESEN LAW FIRM, LLP  
3660 W. Montague Avenue  
N. Charleston, SC 29418  
(843) 760-2450

Stephen B. Samuels  
SAMUELS LAW FIRM, LLC  
1320 Richland Street  
Columbia, SC 29201  
(803) 779-4000  
stephen@samuelslawfirm.net

Attorneys for Appellant

April 6, 2014  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Avery B. Wilkerson, Derrick L. Williams, Appellate Panel

WCC File No. 1002925

Neal Beckman, Employee, ..... Appellant,

v.

Sysco Columbia, LLC, Employer, and Gallagher Bassett Services, Inc., Carrier, . . . Respondents.

**PROOF OF SERVICE**

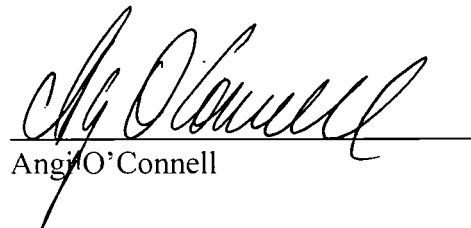
I certify that I am paralegal to Stephen B. Samuels and I have served the **Return to Petition for Rehearing** upon the Respondents by mailing a copy of the same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on **April 7, 2014**, addressed as follows:

J. Hubert Wood, III, Esquire  
Attorney for Respondents  
Wood & Warder, LLC  
One Wesley Drive  
Charleston, SC 29407

**RECEIVED**

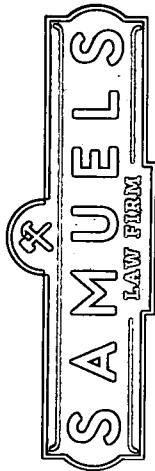
APR 08 2014

**SC Court of Appeals**

  
Angie O'Connell

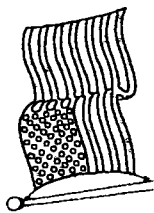
Columbia, South Carolina

April 7, 2014



1320 RICHLAND STREET  
COLUMBIA, SC 29201

Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211



UNITED STATES POSTAGE  
02 1P  
\$002.870  
0000522007 APR 07 2014  
MAILED FROM ZIP CODE 29201

