

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Susan S. Barden, Commissioner
Gene McCaskill, Commissioner
Andrea C. Roche, Commissioner

W.C.C. FILE NO.: 1111934

12589
RECEIVED
JUN 20 2014
SC Court of Appeals

 Thomas Chad Hilton APPELLANT.

v.

Flakeboard America Limited, Employer, and Liberty Mutual Insurance Company,
Carrier RESPONDENTS.

NOTICE OF APPEAL

Thomas Chad Hilton hereby appeals the Decision and Order of the South Carolina Workers' Compensation Commission's Appellate Panel dated May 21, 2014, which vacates the decision of the Commission's hearing commissioner dated June 4, 2013. Pursuant to S.C. Code Ann. Section 42-17-60 (Supp. 2008), Mr. Hilton states the following grounds for the appeal, as well as the alleged errors of law:

- 1) The Appellate Panel erred as a matter of law in raising "issues" relative to the need for further neurological evaluation, the admissibility of Mr. Hilton's testimony, his competency and the need for a Guardian ad Litem because none of these issues were either raised to the single commissioner or preserved through any exceptions contained in Respondents' June 17, 2013 W.C.C. Form 30 Request for Commission Review.

2) The Appellate Panel erred as a matter of law in raising “issues” relative to the need for further neurological evaluation, the admissibility of Mr. Hilton’s testimony, his competency and the need for a Guardian ad Litem because its raising/considering these “issues” exceeded the statutory authority granted per S.C. Code Ann. Section 42-17-50 (2012 Supp.), as well as prior construction of this statute by our appellate courts and renders the May 21, 2014 Order null and void.

3) The Appellate Panel erred as a matter of law in raising “issues” relative to the need for further neurological evaluation, the admissibility of Mr. Hilton’s testimony, his competency and the need for a Guardian ad Litem because its raising/considering these “issues” resulted in a denial of due process, as our appellate courts have consistently held that: (a) Appellate Panel review is limited to only those issues falling within the exceptions contained in Respondents’ Form 30 Request for Commission Review; and (b) consideration of any other matters not preserved through these exceptions result in a denial of due process and renders the May 21, 2014 Order null and void.

4) The Appellate Panel erred as a matter of law in raising “issues” relative to the need for further neurological evaluation, the admissibility of Mr. Hilton’s testimony, his competency and the need for a Guardian ad Litem because its raising/considering these “issues”: (a) results in a violation of Article I, Section 22 of the South Carolina Constitution; and (b) renders the May 21, 2014 Order null and void.

5) The Appellate Panel erred as a matter of law in remanding this claim for further proceedings (allowing Respondents to obtain another neurological evaluation with concomitant determinations as to competency and need for appointment of Guardian ad Litem) because: (a) this action clearly resulted from impermissible raising/consideration of “issues” that were neither

presented to the single commissioner nor preserved through any exceptions contained in Respondents' June 17, 2013 W.C.C. Form 30 Request for Commissioner Review; (b) exceeded the authority granted through S.C. Code Ann. Section 42-17-50 (Supp.); (c) violated Article I, Section 21 of the South Carolina Constitution; (d) resulted in a denial of due process; and (e) rendered the May 21, 2014 Order null and void.

6) The Appellate Panel erred as a matter of law in issuing an Order which contained no findings of fact, conclusions of law or explanation as to the rationale for its ultimate ruling because this procedure violates: (a) the provisions of S.C. Code Ann. Sections 1-23-350 (2005) and 42-17-40 (1976, as amended), which require an Order of this nature to contain detailed factual findings, identification of controlling legal authorities and an explanation as to the underlying rationale for any rulings; and (b) various appellate court decisions that not only mandate the particular contents required by Sections 1-23-350 and 42-17-40, but also hold that Orders of the nature issued by the Panel in this instance are "illegal".

7) The Appellate Panel erred as a matter of law in vacating the single commissioner's June 4, 2013 Order in its entirety because: (a) inspection of Respondents' June 17, 2013 W.C.C. Form 30 Request for Commission Review clearly confirms that various factual findings contained in the single commissioner's Order, as well as certain legal conclusions, do not fall within the parameters of Respondents' exceptions; (b) these unappealed findings and conclusions are the law of this case; (c) any attempt to vacate these unappealed factual findings and legal conclusions not only exceeds the statutory authority granted by the General Assembly, but also violates Article I, Section 21 of the South Carolina Constitution and due process; and (d) this legally impermissible action is null and void.

8) The Appellate Panel erred in remanding this matter for the purposes referenced in the May 21, 2014 Order because: (a) none of these “issues” were preserved through the exceptions contained in Respondents’ W.C.C. Form 30 Request for Commission Review; (b) any consideration of or action in connection with these “issues” not only exceeds the authority granted to the Commission by the General Assembly, but also violates Article I, Section 22 of the South Carolina Constitution and results in a violation of due process; (c) these legal errors render the May 21, 2014 ruling null and void; and (d) the implications of these legal errors (including nulling/voiding of May 21, 2014 Order) invalidate any further proceedings within the Commission.

9) The Appellate Panel erred in failing to conclude the issues relative to the source of Mr. Hilton’s back symptoms and persistent left leg pain are “medically complex” within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while also requiring proof through submission of “medical evidence” per S.C. Code Ann. Sections 42-9-35 (2007) and 42-15-60 (2007) because the plain language of each of these statutes, in light of the South Carolina Supreme Court’s decision in Michau v. Georgetown County, 396 S.C. 589, 723 S.E. 2d 805 (2012), clearly verifies resolution of these issues absolutely required/hinged upon medical evidence.

10) The Appellate Panel erred in failing to conclude the issues relative to Mr. Hilton’s current medical treatment needs are “medically complex” within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while also requiring proof through submission of “medical evidence” per S.C. Code Ann. Sections 42-9-35 (2007) and 42-15-60 (2007) because the plain language of each of these statutes, in light of the South Carolina Supreme Court’s decision in Michau v.

Georgetown County, 396 S.C. 589, 723 S.E. 2d 805 (2012), clearly verifies resolution of these issues absolutely required/hinged upon medical evidence.

11) The Appellate Panel erred in failing to conclude the issues relative to the presence and impact of physical brain damage and resulting cognitive deficits are “medically complex” within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while also requiring proof through submission of “medical evidence” per S.C. Code Ann. Sections 42-9-35 (2007) and 42-15-60 (2007) because the plain language of each of these statutes, in light of the South Carolina Supreme Court’s decision in Michau v. Georgetown County, 396 S.C. 589, 723 S.E. 2d 805 (2012), clearly verifies resolution of these issues absolutely required/hinged upon medical evidence.

12) The Appellate Panel erred as a matter of law in failing to conclude Respondents had failed to submit any evidence which rebutted the single commissioner’s rulings relative to any medical issues (including, but not limited to, causation of Mr. Hilton’s current back and left leg symptoms, his current medical needs, Mr. Hilton’s present functional/work status, the presence of physical brain damage and the nature/impact of any cognitive deficits resulting from this physical brain damage) because: (a) a review of S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), in light of the South Carolina Supreme Court’s decision in Michau v. Georgetown County, 396 S.C. 589, 723 S.E. 2d 805 (2012), unquestionably verifies that the resolution of these issues require/hinges upon submission of medical evidence; and (b) Respondents introduced no competent evidence which specifically addressed any of these issues.

13) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact Nos. 1 – 7, 11, 14, 15, 18, 19, 20, 21, 23, 24, 26, 27, 29, 40, 41, 42 and 44, as well as Conclusion of Law Nos. 1 and 3 because: (a) none of these findings of fact or conclusions of law fall within

the parameters of the exceptions contained in Respondents' June 17, 2013 W.C.C. Form 30 Request for Commission Review; and (b) these unappealed factual findings and legal conclusions became an and are the law of this case.

14) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact Nos. 8 – 10, 12 – 13, 16 – 17, 22, 25, 28, 30 – 39, 43 and 45 – 54 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

15) The Appellate Panel erred as a matter of law in failing to affirm/adopt Conclusion of Law Nos. 2, and 4 -9 contained in the single commissioner's June 4, 2013 Order because: (a) each of these legal rulings is amply supported by the only reasonable inference arising from the evidence of record; and (b) these legal conclusions accurately reflect applicable/controlling legal authorities.

16) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 8 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

17) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 9 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-

160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

18) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 10 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

19) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 12 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

20) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 16 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

21) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 17 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

22) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 22 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

23) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 25 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

24) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 28 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

25) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 30 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

26) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 31 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-

160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

27) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 32 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

28) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 33 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

29) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 34 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

30) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 35 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

31) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 36 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

32) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 37 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

33) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 38 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

34) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 39 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

35) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 50 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-

160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

36) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 51 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

37) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 52 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

38) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 53 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

39) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 54 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including the medical evidence required by S.C. Code Ann. Sections 42-1-160 (2007), 42-9-35 (2007) and 42-15-60 (2007), firmly establishes the accuracy, viability and propriety of each of these factual findings.

40) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 13 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

41) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 43 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

42) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 45 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

43) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 46 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

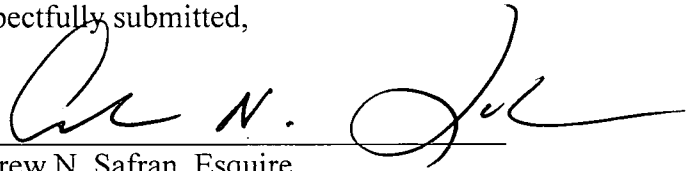
44) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 47 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

45) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 48 because the only reasonable inference which may be gleaned from the evidence contained

in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

46) The Appellate Panel erred as a matter of law in failing to affirm Finding of Fact No. 49 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record firmly establishes the accuracy, viability and propriety of each of these factual findings.

Respectfully submitted,



Andrew N. Safran, Esquire
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Columbia, South Carolina 29211
Attorney for Appellant

June 20, 2014

OTHER COUNSEL OF RECORD:

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Attorney for Respondents

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Susan S. Barden, Commissioner
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Andrea C. Roche, Commissioner

W.C.C. FILE NO.: 1111934

Thomas Chad Hilton APPELLANT,

v.

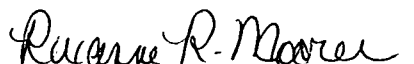
Flakeboard America Limited, Employer, and Liberty Mutual Insurance Company,
Carrier RESPONDENTS.

CERTIFICATE OF SERVICE

I, Roxanne R. Moorner, paralegal for Andrew N. Safran, Esquire, Attorney for Appellant, do hereby certify that on the 20th day of June, 2014, I caused to be filed, via hand delivery, the original and three (3) copies of the Appellant's Notice of Appeal with the Clerk of the South Carolina Court of Appeals. One (1) copy of the Appellant's Notice of Appeal was furnished to counsel for Respondents via first class mail at the following addresses:

L. Brenn Watson, Esquire
Willson, Jones, Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607

South Carolina Workers' Compensation Commission
Judicial Department
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Columbia, South Carolina 29202-1715



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June 20, 2014

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June 20, 2014

HAND DELIVERED

The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED
JUN 20 2014
SC Court of Appeals

RE: Thomas Chad Hilton v. Flakeboard America Limited and
Liberty Mutual Insurance Company
W.C.C. File No.: 1111934

Dear Ms. Kitchings:

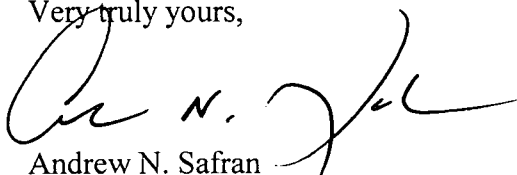
Enclosed please find an original and three copies of a Notice of Appeal, which I am filing on behalf of Mr. Thomas Chad Hilton relative to the above-captioned matter. Additionally, I have: (a) attached copies of the Order from which this appeal arises; and (b) enclosed our firm's check in the amount of \$100.00 in satisfaction of your filing fee. At this time, I would greatly appreciate your filing these documents and returning three clocked copies to my courier.

By copy of this letter, I am serving a copy of this Notice, with attachments, on Brenn Watson, attorney for Respondents. As always, in the event he has any questions or comments concerning this matter, I invite him to contact me.

Thank you for your cooperation.

With kindest regards, I am

Very truly yours,


Andrew N. Safran

ANS/rrm

Enclosures

cc: South Carolina Workers' Compensation Judicial Department
L. Brenn Watson, Esquire