THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Panel
T. Scott Beck, Commissioner

WCC File No. 1103604

Appellate Case No. 2013-001515

Michael Philip Worthen,
Employee, Claimant, Appellant,

v.

Laurens County, Employer,
And SC Association of
Counties SIF, Carrier,
Defendants, Respondents.

BRIEF OF APPELLANT

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TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

Appellant Michael Philip Worthen, pursuant to Rule 201, SCACR, and S.C. Code Ann. § 14-8-200, respectfully submits this Brief of Appellant and Memorandum of Law and Authorities in support of the Appeal.

STATEMENT OF ISSUES ON APPEAL

This is a workers' compensation case, in which Appellant alleges he suffered a heart attack that was a work-related compensable injury arising out of and in the course of his employment with Respondent Employer, Laurens County, on February 26, 2011. Appellant asks this Court to review a Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel ("The Commission") filed on June 14, 2013, reversing the Order of the Single Commissioner filed on November 7, 2012, and denying Appellant's claim for benefits under the South Carolina Workers' Compensation Act ("The Act"). (See generally R. pp. 18-31). The questions presented in this Appeal are as follows:

1. Did the Commission err in finding and concluding Appellant did not sustain an injury by accident arising out of and in the course of his employment with Respondent Employer on February 26, 2011?

2. Did the Commission err in finding Appellant's myocardial infarction/heart attack was not induced by unexpected strain or overexertion in the performance of the duties of his employment and/or by unusual and extraordinary conditions of employment?

3. Did the Commission err in finding Appellant's defibrillator implantation, coronary artery bypass surgery and lost time from work were not causally related to the heart attack Appellant sustained on February 26, 2011?

STATEMENT OF THE CASE

This case arises out of a heart attack Appellant suffered on February 26, 2011, while working as an EMT with Respondent Employer. Respondents received timely notice of Appellant's claim under the Act. Respondents denied the claim.

Appellant filed a Form 50 on June 22, 2012, alleging his heart attack was a compensable injury by accident arising out of and in the course of his employment. (R. pp. 33-34). On June 25, 2012, Respondents filed a Form 51 denying Appellant's claim. (R. pp. 36-37). A hearing was subsequently held before Commissioner Gene McCaskill on August 14, 2012.

At the hearing, Appellant presented testimony and evidence his heart attack is compensable under the Act because it was induced by unusual strain or overexertion during the course of his employment with Respondent Employer and/or by unusual and extraordinary conditions in the employment. As a result of Appellant's injury, he sought payment of all causally related medical expenses, including, but not limited to, coronary bypass surgery and defibrillator implantation, as well as temporary total disability benefits from February 26, 2011 through July 1, 2011.

On November 7, 2012, Commissioner McCaskill issued a Decision and Order finding Appellant suffered a heart attack within the course and scope of his employment and that his duties were the triggering factor in the heart attack. The Commissioner found the right to compensation is not affected by the possibility a pre-

existing pathology may have been a contributing factor to the heart attack. Appellant's heart attack was found a compensable injury under the Act because it was induced by an unexpected strain or overexertion in the performance of his duties or employment, or by unusual extraordinary conditions of the employment. In his Decision and Order, Commissioner McCaskill ordered Respondents pay Appellant TTD for time he was unable to work from February 26, 2011 to July 1, 2011, and to pay for all medical expenses, past and future, causally related to the heart attack and covered under the Act. (See generally R. pp. 4-16).

On November 13, 2012, Respondents filed a Form 30, Request for Commission Review. (R. pp. 39-40). In their appeal, Respondents contended (1) Appellant's heart attack could have happened at any time due to his pre-existing coronary artery disease and, therefore, is not compensable under the Act; (2) alternatively, it was not unexpected, unusual or extraordinary for a Laurens County EMT to lift a patient the size of the subject patient; and (3) assuming the compensability of Appellant's heart attack, his bypass surgery and defibrillator implantation were not causally related to his heart attack.

On June 14, 2013, the Commission issued a Decision and Order reversing the Single Commissioner's Decision and Order, and denied Appellant's claim for benefits under the Act. (R. pp. 18-31). The Commission concluded, under S.C. Code Ann. § 42-1-160, Appellant did not sustain an injury by accident arising out of and in the course of his employment with Respondent Laurens County. (R. p. 30, ¶ 2). In particular, the Commission found Appellant failed to prove his heart attack was either the result of an unusual strain or overexertion in the performance of his duties as an

EMT for Respondent Laurens County, or that it was the result of an unusual or extraordinary condition of his employment. (R. p. 30, ¶ 27)

Appellant timely filed a Notice of Appeal setting forth the various grounds and alleged errors of law discussed more fully herein that form the basis of his appeal from the Commission's Order.

STATEMENT OF FACTS

Respondent is an EMT employed with Respondent, Laurens County EMS. (R. p. 61, lines 4-7). A certified EMT for over 20 years, he has worked for Respondent Employer since September 2007. (R. p. 25, ¶ 3; p. 66, line 9-p. 68, line 4). Over the course of his career, Appellant has responded to and assisted in several thousand emergency calls. (R. p. 69, lines 14-25). As an EMT, Appellant is responsible for assessing patients, providing limited medical treatment and transporting patients to the hospital for further treatment. (R. p. 26, ¶ 8).

On February 26, 2011, Appellant and his partner, Mike Lundis ("Lundis"), responded to call from National Health Care of Clinton ("NHC"). (Id., ¶ 9). Upon arrival, they attended to a large patient who was in severe respiratory distress with swollen legs and fluid in his lungs. (R. p. 74, line 20-p. 75, line 14; p. 132, lines 19-25). Appellant described the subject patient as a "very large individual," estimated to be over 6-and-a-half feet tall based upon the fact the patient's body extended approximately 8 inches beyond the end of the 76.5-inch stretcher. (R. p. 76, line 1-p. 77, line 9; see also R. p. 353).

In order to secure a patient being transported, the stretcher had side rails and also had straps built in attached at the leg, thigh, knee and chest areas. (R. p. 74, lines

9-16). Once the subject patient was placed on the stretcher, Appellant and Lundis were unable to raise and secure the patient with side rails because his body exceeded the width of the stretcher. (R. p. 77, line 22-p. 78, line 8; R. p. 353). Therefore, straps were required to secure the patient. (R. p. 78, lines14-25).

The stretcher's built-in chest straps did not extend far enough to reach around the subject patient's chest. (Id.) Instead, due to his abnormal size, a separate, reserve, 9-foot strap that was not standard on the stretcher was required. (Id.; R. p. 79, line 15-p. 80, line 7). The uncontested testimony was that use of the 9-foot strap was highly unusual because most patients are not as large and can be secured with the standard, upper strap affixed to the stretcher. (R. p. 78, line 14-p. 79, line 24). In Appellant's experience – that includes thousands of different emergency call runs – he has only used the 9-foot strap only an estimated 10 total times. (R. p. 79, lines 8-14). Appellant estimated 99 percent of the time the smaller straps were sufficient. (Id., lines 22-24) In addition, Lundis also testified it was unusual to resort to use of the 9-foot strap. (R. p. 147, lines 3-25).

Appellant estimated the subject patient's weight between 400 and 450 pounds and Lundis agreed he was "larger than [the] average sized patient." (R., p. 10, ¶¶ 12-13; p. 112, lines 3-18; p. 128, lines 10-20; p. 130, line 4-p. 313, line 12). Appellant and Lundis also both testified they believed the subject patient was larger than their 325-pound, 6-foot-1-inch, co-worker, Magistrate Earnest Michael O'Brien, Sr. ("O'Brien"). (R. p. 76, lines 7-13; p. 131, lines 13-25; p. 157, lines 17-23). In any event, the Commission ultimately found the subject patient was 6'2" tall and weighed

approximately 262 pounds based on the evidence in the record as a whole. (R. p. 27, ¶ 14).[1]

In a typical case involving the transport of an obese or otherwise large, heavy individual, such as the subject patient, Appellant and his partner would request assistance from local fire department personnel. (R. p. 82, line 11- p. 83, line 15; p. 129, line 20-p. 130, line 3). Standard protocol when encountering somebody the size of the subject patient normally would be to call dispatch and request assistance in lifting the patient. (R. p. 82, line 19-p. 83, line 1). In this instance, however, Appellant and his partner were required to act urgently, lifting the patient without assistance and move him from the bed onto the stretcher due to the patient's dire condition. (R. p. 75, lines 3-14; p. 83, lines 6-10; p. 132, line 19-p. 133, line 12). Had Appellant known the circumstances at the time the call for service was made, he would have requested the fire department to be dispatched initially. (R. p. 83, lines 16-21).

In lifting and moving the patient, Appellant had to reach underneath the patient's arms because he was unable to reach around the patient's chest. (R. p. 26, ¶ 10; R. p. 75, lines 21-25). He then grabbed the patient's wrists to lift him onto the stretcher. (Id.) Due to the patient's weight and configuration of the room, it took approximately 7 to 8 seconds of holding and free-lifting the patient to move him from the bed to the stretcher. (R. p. 81, lines 10-15).

Because Appellant had to lean across the patient and the bed, the majority of the patient's weight was placed on Appellant's arms, requiring considerable exertion.

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[1] While Appellant maintains his position the subject patient was a larger individual than the Commission's finding indicates, for purposes of this appeal, this is a distinction without a difference. Notwithstanding the Commission's finding regarding the subject patient's size, Appellant submits the evidence in the record as a whole requires a finding of compensability.

(R. p. 81, lines 16-25). Appellant had to "really strain" to lift the patient off of the bed. (R. p. 82, lines 1-7). This was primarily due to the fact there were only two of them lifting without additional assistance, as they would have available in the usual case. (Id.) Appellant testified in other instances during his career with Respondent Employer in which he encountered similar circumstances there was time to wait for additional assistance in lifting and moving the patient. (R. p. 82, line 11-p. 83, line 1).

When first lifting the patient, Appellant felt a sharp pain behind his shoulder blade and "heaviness" in his chest. (R. p. 27, ¶ 11). Appellant continued to experience these symptoms when transporting the patient. (R. p. 84, lines 3-18). At the hospital, while transferring the patient from stretcher to bed, Appellant was sweating profusely and still experiencing pain and "heaviness" in his chest. (R. p. 27, ¶ 11; R. p. 84, lines 3-18).

After returning to the station, Lundis, a qualified paramedic, monitored Appellant and measured the rate and regularity of his heartbeats with an EKG machine. (R. p. 28, ¶ 16; R. p. 89, lines 7-16; p. 123, line 24-p. 124, line 20; p. 134, line 6-p. 135, line 12). The results of the EKG indicated a problem with Appellant's heart indicative of a myocardial infarction or heart attack. (Tr. 94:4-25). Appellant suffered a myocardial infarction on February 26, 2011, at which time he was admitted to the hospital. (R. p. 28, ¶ 16). At the respective hearings before the Commission and the Single Commissioner, Appellant contended his heart attack was caused by the aforementioned events that included overexertion and unusual strain, and/or the unusual and extraordinary condition of the employment. (R. p. 25, ¶ 4).

Following hospitalization for his heart attack, Appellant underwent a cardiac catheterization leading to the discovery he suffered from pre-existing coronary artery disease. (R. p. 28, ¶¶ 17-18).[2] On March 2, 2011, Appellant underwent quadruple bypass surgery. (Id., ¶ 19). Appellant was discharged from the hospital on March 14, 2011, and subsequently began treating with a cardiologist, Dr. Jon Bittrick. (See R. pp. 189-240; pp. 268-269).

As a result of his heart attack, Appellant is prescribed four medications he was not taking before the accident, and he had an implantable cardioverter defibrillator (ICD) surgically implanted. (R. p. 95, lines 2-17). Appellant was out of work from February 26, 2011, until he returned July 2, 2011, during which time he received no workers' compensation benefits. (R. p. 29, ¶ 23; p. 96, lines 19-23, 97, lines 14-22). He is still treating with Dr. Bittrick. (R. p. 97, lines 6-11).

When asked to speak to a reasonable degree of medical certainty, Dr. Bittrick testified the overexertion in lifting and transporting a large patient was the precipitating factor of Appellant's heart attack. (R. p. 364, lines 4-19; p. 378 line 4-p. 379, line 13; see also R. pp. 9-10, ¶ 15). He added, in his expert medical opinion, Appellant's ventricular fibrillation resulting in implantation of a pacemaker and defibrillator was caused by the heart attack. (R. p. 368, lines 6-10; p. 379, lines 5-13). Dr. Bittrick finally testified, although Appellant underwent bypass surgery to improve

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[2] Prior to his heart attack, Appellant was successfully treating for diabetes and had cleared annual physicals. (R. p. 63, line 5-p. 65, line 15; p. 101, lines 12-23). Approximately eight months earlier, Appellant had blood work and an EKG done prior to foot surgery and was found to have "an essentially normal electrocardiogram" and not at-risk for surgery. (R. p. 64, lines 3-19; R. p. 283). He had been cleared by his doctor to work out and was pursuing a weight lifting regimen and cardio workouts. (R. p. 92, line 23-p. 94, line 17). He had recently lost approximately 18 pounds and had no indications he might need surgery or that he otherwise might be prone to suffering a heart attack. (R. p. 94, line 4-p. 96, line 15).

blood flow relating to coronary artery disease, it is unknown when, if ever, he would have undergone such a procedure if he had not suffered the heart attack. (R. p. 378, line 4-p. 380, line 19).[3]

Dr. W. Travis Ellison performed a medical records review for Respondents. Dr. Ellison also testified Appellant's heart attack was triggered by the fact he overexerted himself in lifting a heavy patient. (R. p. 395, line 14-p. 396, line 23). At his deposition, he stated:

> Q. But as it pertains to this particular triggering event, do you still hold your initial opinion that you gave me that this strenuous event of transferring the patient triggered his heart attack?
>
> A. Yes, I think that's correct. It was a triggering event.
>
> Q. And you maintain that?
>
> A. Yes.
>
> Q. So regardless of what he had, hyperlipidemia, diabetes, the triggering event was this particular strenuous event; wouldn't you say?
>
> A. Yes.

(R. p. 417, lines 11-22). Although Dr. Ellison recognized Appellant's pre-existing coronary artery disease, he testified the event in this case was the proximate cause of Appellant's heart attack. (See id.) Also, consistent with Dr. Bittrick's testimony, Dr.

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[3] The Commission's Order fails to make any finding that Appellant's heart attack was caused by any pre-existing condition or other risk factors for developing coronary artery disease. (See generally R. pp. 25-30). Instead, the Commission's Order finds, against the substantial evidence on the whole record, that Appellant's pre-existing condition, and not his heart attack, was the cause of his bypass surgery and time out of work. (R. p. 29, ¶ 22).

Ellison testified it is unknown when, if ever, Appellant would have undergone bypass surgery if he had not suffered the heart attack. (R. p. 417, line 23-p. 418, line 23).

SUMMARY OF ARGUMENT

Appellant contends his heart attack and subsequent medical treatment and lost time from work, when viewed in light of the reliable, probative and substantial evidence on the whole record, were proximately caused by an unusual strain or overexertion in the performance of his duties on February 26, 2011, and/or that they were the result of an unusual or extraordinary condition of his employment. The findings of fact and conclusions reached by the Commission are not supported by substantial evidence in the record. Appellant's heart attack was caused by lifting, holding and transporting the subject patient, under unusual circumstances, without any additional assistance as typically utilized. Importantly, the Commission's finding that "the act of lifting and transporting a patient weighing approximately 262 pounds, with his partner, was not an unusual or extraordinary condition of Appellant's employment" is an arbitrary finding, based upon speculation, and is not supported by substantial evidence. (See R. p. 30, ¶ 26). It is not founded on evidence of sufficient substance to afford a reasonable basis for it. Appellant therefore asks this Court to reverse the Commission's Decision and Order, and further reinstate the Single Commissioner's Decision and Order.

ARGUMENTS

I. APPELLANT SUSTAINED AN INJURY BY ACCIDENT, PURSUANT TO S.C. CODE ANN. § 42-1-160, ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH RESPONDENT EMPLOYER ON FEBRUARY 26, 2011.

A review of the whole record in this case, in light of relevant case law, requires finding and concluding that Appellant sustained a compensable injury by accident while working for Respondent Employer resulting in a heart attack and related treatment. The South Carolina Administrative Procedure Act (APA) governs appeals from the decisions of an administrative agency. S.C. Code Ann. § 1-23-380 (Supp. 2011); Lark v. Bi-Lo, Inc., 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981). This Court may reverse or modify the Full Commission's decision if Appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. See Shealy v. Aiken County, 341 S.C. 448, 455, 535 S.E. 2d 438, 442 (2000) (citing S.C. Code Ann. § 1-23-380(A)(6)(d), (e) (Supp. 1997)). "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." Id. at 456, 535 S.E.2d at 442. Moreover, the Commission's findings "may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." Tims v. J.D. Kitts Const., 393 S.C. 496, 503, 713 S.E.2d 340, 343-344 (Ct. App. 2011). In the instant case, the Commission made findings and reached conclusions unsupported by the record before the Commission and, therefore, the Commission's Decision and Order should be reversed.

A claimant is entitled to workers' compensation benefits if he sustains an "injury by accident arising out of and in the course of the employment." S.C. Code

Ann. § 42-1-160 (2006). A heart attack is compensable under the Act as a worker's compensation accident "if it is induced by unexpected strain or overexertion in the performance of [the claimant's] duties of employment or by unusual and extraordinary conditions in the employment." Walker v. City of Columbia, 247 S.C. 241, 246 146 S.E.2d 856, 859 (1966). "[C]ompensability should be determined by unusual or extraordinary conditions of a complainant's employment," not in reference to conditions of employment in general. Shealy, 341 S.C. at 455, 535 S.E.2d at 442. In this instance, the Single Commissioner correctly found and held Appellant sustained a compensable heart attack. That Decision and Order was reversed, however, by disregarding the evidence in the record and failing to reach the only reasonable conclusion to be drawn, that the event that triggered Appellant's heart attack was the result of an unexpected strain or overexertion, or was due to the unusual and extraordinary conditions of employment as existed at the time of the accident.

Appellant's heart attack is compensable under the Act as a worker's compensation accident if it is induced by (1) unexpected strain or overexertion in Appellant's performance of his employment duties, or (2) by unusual and extraordinary conditions of employment. See Walker, 247 S.C. at 246, 146 S.E.2d at 859; Kearse v. S.C. Wildlife Resources Dep't, 236 S.C. 540, 544, 115 S.E.2d 183, 186 (1960) (holding such standard is well-settled in South Carolina). This standard is satisfied by either element being satisfied. It does not require satisfaction of both prongs. "In determining whether a work-related injury is compensable, the Workers' Compensation Act is liberally construed toward the end of providing coverage rather

than noncoverage in order to further the beneficial purposes for which it was designed." Shealy, 341 S.C. at 455, 535 S.E.2d at 442 (citing Dickert v. Metro. Life Ins., Co., 306 S.C. 311, 411 S.E.2d 672 (Ct. App. 1991). In this case, the evidence contained in the record demonstrates Appellant suffered a heart attack within the course and scope of his employment, that his duties were the triggering factor, and such heart attack is a compensable injury under the Act because it was induced by an unexpected strain or overexertion in the performance of his duties or employment, or by unusual and extraordinary condition of the employment.

A) Appellant's myocardial infarction was induced by unexpected strain or overexertion in the performance of the duties of his employment.

On February 26, 2011, while working for Respondent Employer, Appellant and his partner were required to take the unusual action of lifting and transporting a very large patient without any additional assistance due to the subject patient's dire health condition. "[T]he right to compensation [in heart attack cases] is not affected by the fact that the unusual or excessive strain which precipitates the heart attack occurs while the employee is performing work of the same general type as that in which he is regularly involved." Kearse, 236 S.C. at 544-545, 115 S.E.2d at 186 (citing Sweatt v. Marlboro Cotton Mills, 206 S.C. 476, 34 S.E.2d 762; and Ricker v. Vill. Mgmt. Corp., 231 S.C. 47, 97 S.E.2d 83 (1957)). The Commission's findings the Appellant "'frequently' treat[ed] and transport[ed] patients that weighed 250-260 pounds" and "[t]hat the act of lifting and transporting a patient weighing approximately 262 pounds, with his partner," in and of itself, "was not an unexpected strain or overexertion in the performance of the duties of [Appellant's] employment

as an EMT for Laurens County" are unsupported by the evidence in the record. (R. p. 29, ¶ 25-p. 30, ¶ 26) (emphasis in original).

"The phrase 'unusual or excessive strain' . . . is not so limited in its meaning as to include only work of an entirely different character from that customarily done." Kearse, 236 S.C. at 545, 115 S.E.2d at 186. Appellant conceded as much as his general routine job duties with Respondent Employer included transporting patients in need of medical attention. The record as a whole reflects, however, it is not within Appellant's normal job duties to lift and transport large individuals, such as an individual the size of the subject patient, without additional assistance from more than one other person. (See R. p. 177, line 25-p. 179, line 5; p. 180, line 24-181, line 20). Furthermore, the record reflects there was an additional unusual circumstance in Appellant having to hold and maintain the stress of the weight of the subject patient. There is not substantial evidence to the contrary to support the Commission's findings and conclusions.

The testimony in this case is that the subject patient was longer and wider than the 76.5-inch long x 23-inch wide stretcher used. (See R. p. 76, line 14-p. 78, line 9; p. 78, line 22-p. 79, line 8; p.353). Indeed, Lundis confirmed this particular transport was unusual, testifying as follows:

> Q. Was that transport [of the subject patient more] unusual than others?
>
> A. Besides the patient was larger than our average sized patient.
>
> Q. Please explain that to us.
>
> A. The patient was wider than the stretcher. We were unable to raise the rails because of this. It

> was unbalanced moving the stretcher around. The patient also was in excess of the height of the stretcher.

(R. p. 128, lines 13-20). Appellant, Lundis and O'Brien also confirmed it was highly unusual to have to resort to use of the reserve, 9-foot strap, as was required to secure the subject patient. (R. p. 78, line 14-p. 80, line 7; p. 147, lines 3-25). Specifically, O'Brien testified a patient would have to be unusually large to require use of the 9-foot strap, estimating it was only required in one out of a thousand calls. (R. p. 163, lines 10-19). The record contains no evidence to the contrary. Regardless of the subject patient's actual height and weight, the evidence in the record supports Appellant's position that the subject patient was at least of a size that would typically require the additional assistance of others to lift and transport. The Commission's Order fails to address the circumstances that usually result in the use of additional assistance to lift and transport a patient, ignoring the testimony consistent throughout the record that the circumstances surrounding the transport of the subject patient were not typical.

The premise of Appellant's claim is based upon the unusual situation and strain imposed by having to move a patient of this size and under these circumstances with only the assistance of his partner. The Commission's finding Appellant "frequently" encounters large patients (i.e., 250-260 pounds) requiring transportation and, therefore, any strain or exertion involved was of an ordinary variety is erroneous in view of the substantial evidence on the whole record. (See R. p. 29, ¶ 24). Appellant's testimony was, in such situations, fire department personnel are requested

to assist. (R. p. 114, lines 8-11). At the hearing before the Single Commissioner, Appellant testified on cross-examination as follows:

> Q. So you said in a month's time you may have to lift three large individuals?
>
> A. Yes, sir. **And we usually call the fire department for help.**

(Id.) (emphasis added).

O'Brien, another EMT with Respondent Employer, also testified additional help was required to lift such large patients. (R. p. 165, lines 4-7). O'Brien's testimony is clear that additional assistance is required in such situations, stating:

> Q. So it has happened that you have, as a paramedic, had to with a partner lift somebody weighing 350 pounds or 400 pounds or even more?
>
> A. Yes, **with help**.

(Id.) (emphasis added).[4]

The record developed in this case simply does not support the conclusion that lifting, moving and transporting a patient the size of the subject patient without additional assistance, and under the circumstances then existing, is within Appellant's usual and normal job duties.[5] Indeed, the events precipitating Appellant's heart attack on February 26, 2011 constitute "an unexpected strain and overexertion." This conclusion is not based upon the otherwise common routine of transporting a patient,

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[4] O'Brien further explained he and his partner would not move a patient that large without additional assistance due to the danger associated with lifting excessive weight and only under unusual circumstances has he taken such action. (R. p. 165, line 21-p. 167, line 4).

[5] The frequency or infrequency of Appellant attending to patients weighing less than the subject patient lacks any probative value on the issues in this case. The only evidence in the record suggests the subject patient weighed, at a minimum, 262 pounds. There is no evidence the subject patient's weight was less than 262 pounds.

but because the subject patient was so large and situated in an odd setting and, yet, had to be lifted, held and transported without any additional assistance.

Respondents argued to the Commission that Lundis' testimony supports the proposition that transportation of patients weighing between 200 to 299 pounds is routine. (See R. p. 174, lines 6-9). Lundis' testimony in this respect, however, is not relevant to the issue in this case – i.e., whether lifting and transporting a patient weighing approximately as much as the subject patient without additional assistance was expected, anticipated and usual for an EMT employed with Respondent Employer. See Shealy, 341 S.C. at 455, 457-458, 535 S.E.2d at 442-443 (holding compensability under the Act is determined by conditions of the particular job and employment in which the injury occurs, not the conditions of employment in general); and Black v. Barnwell County, 243 S.C. 531, 536, 134 S.E.2d 753 (1964) (holding compensability determined in light of the claimant's usual and normal work duties). Reliance upon Lundis' testimony is misplaced, as illustrated as follows:

> Q. Now, you indicated that **in your firm's practice [i.e., Vital Care EMS, not the practice of Respondent Employer]**, someone weighing in the 200 pound range would only require two people, correct?
>
> A. Typically, yes.
>
> Q. Do you see a lot of patients that weigh in the 200 pound range?
>
> A. Yes, every day.
>
> Q. Okay. Do you lift them and put them on stretchers and transport them every day?
>
> A. With the assistance of my partner, yes.

Q. And that would be true for anyone from 200 up to 299, correct?

A. Typically, yes.

(R. p. 144, line 14-p. 145, line 1) (emphasis added). Lundis' above-referenced testimony relates solely to his current employment with Vital Care EMS, a private non-emergency transport that focuses primarily on transporting dialysis patients and certain others. (R. p. 122, line 21-p. 123, line 12). The testimony cited to the Commission did not relate to Lundis' experience during his service with Respondent Employer. There is no evidence in the record the same practices of Vital Care EMS were employed or carried out by Defendant Employer. (See R. p. 182, line 2-p. 184, line 3).

As previously stated, Appellant's heart attack is a compensable injury by accident because it was induced by unexpected strain or overexertion in the performance of the duties of his employment. See Walker, 247 S.C. at 246, 146 S.E.2d at 859. On the issue of causation of particular injuries or conditions to the injury by accident, the Commission may consider both lay and expert evidence, including lay testimony concerning claimant's health before and after an accident. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 513 S.E.2d 843 (1999). "The causal sequence . . . may be more indirect or complex, but as long as the causal connection is in fact present the compensability of the subsequent condition is beyond question." Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 437, 458 S.E.2d 76, 80 (Ct. App. 1995). Here, both Appellant and O'Brien described the tremendous extraordinary amount of exertion that takes place in lifting somebody as heavy as the subject patient. (See R. p. 81, line 10-p. 82, line 7; p. 167, lines 5-20). The finding

that Appellant's heart attack did not result from unusual physical exertion and excitement attendant upon his participation in moving the subject patient is contrary to the testimony in the record, including, but not limited to, the testimony of Appellant, Lundis and O'Brien, as well as the testimony of Dr. Ellison and Dr. Bittrick.

The Commission's Order is silent on the issue of whether the lifting and holding of the subject patient triggered the heart attack. The record, however, is clear that the event caused Appellant's heart attack. Both testifying doctors in this case reached the same conclusion – that the event on February 26, 2011 triggered Appellant's heart attack. (See R. p. 12, ¶¶ 13-14). Dr. Bittrick testified the overexertion in lifting and transporting a very large patient "was the precipitating factor." (R. p. 364; pp. 378-379; p. 12, ¶ 15).[6] Dr. Ellison, an internist retained by Respondents to conduct a medical records review, agreed:

> Q. But as it pertains to this particular triggering event, do you still hold your initial opinion that you gave me that this strenuous event of transferring the patient triggered his heart attack?
>
> A. Yes, I think that's correct. It was a triggering event.
>
> Q. And you maintain that?
>
> A. Yes.
>
> Q. So regardless of what he had, hyperlipidemia, diabetes, the triggering event was this particular strenuous event; wouldn't you say?
>
> A. Yes.

[6] In addition, he stated on cross-examination Claimant may have suffered the heart attack even if he had not had any pre-existing coronary artery disease. (R. p. 375, lines 11-17).

(R. p. 417, lines 11-22; p. 13, ¶ 16).

In comparison to Appellant's usual and normal work duties, the Commission improperly found Appellant's lifting and transporting of the subject patient in this case without the typical additional assistance did not constitute "an unexpected strain or overexertion." The Commission's findings, inferences, conclusions and decision relating to whether the event caused an unexpected strain or overexertion in the performance of Appellant's job duties are erroneous in view of the reliable, probative, and substantial evidence on the whole record and, therefore, prejudiced substantial rights of Appellant. Moreover, such findings and conclusions were based clearly upon unwarranted exercise of discretion when viewed in light of the whole record and, therefore, further prejudiced Appellant. Therefore, Appellant respectfully requests the Commission's Decision and Order be reversed and the Single Commissioner's Decision & Order finding Appellant sustained a compensable heart attack on February 26, 2011 be reinstated.

B) Appellant's myocardial infarction was induced by unusual and extraordinary conditions of employment

In South Carolina, a heart attack is also compensable under the Act if it is induced by "unusual and extraordinary conditions of employment." See Walker, 247 S.C. at 246, 146 S.E.2d at 858. Here, the claim is not simply incidental to the normal employer/employee relations between Appellant and Respondent Employer. The particular condition of employment at issue was unusual and extraordinary, and, therefore, Appellant's injury is compensable.

In this case, the aggravating condition in Appellant's employment arose when he and his partner were required to lift, hold and transport a patient the size of the subject patient without additional assistance. The issue is whether the employment condition was extraordinary and unusual with respect to Appellant's profession as an EMT with Respondent Employer, in particular. When considering the evidence in the record as a whole, it was an error for the Commission to fail to find the ordinary condition of Appellant's employment with Respondent Employer involved only limited circumstances in which Appellant and his partner were required to lift and transport patients in need of medical attention without further assistance. In situations where an individual the size of the subject patient was encountered, Appellant and his partner ordinarily had the assistance of additional personnel. In this case, the condition of employment was unusual and extraordinary under the circumstances.

Appellant's heart attack occurred while he was acting within the scope of his employment as an EMT with Respondent Employer. Specifically, he was responding to a call and transporting a patient in dire condition to the Emergency Room. In lifting, holding and transporting the large patient, Appellant was subjected to unusual and extraordinary strain not normally incident to his position with Respondent Employer due to the unusual condition of having to transport the patient without additional assistance. Appellant experienced pain and exhibited symptoms of having a heart attack caused by such abnormal activity. The Commission's findings, inferences, conclusions and decision relating to Appellant's condition of employment are erroneous in view of the reliable, probative, and substantial evidence on the whole record and, therefore, prejudiced substantial rights of Appellant. Moreover, such

findings and conclusions were based clearly upon unwarranted exercise of discretion when viewed in light of the whole record and, therefore, further prejudiced Appellant. Therefore, the Commission's Decision and Order should be reversed and the Single Commissioner's Decision & Order finding Appellant sustained a compensable heart attack on February 26, 2011 should be reinstated.

II. APPELLANT'S DEFIBRILLATOR IMPLANTATION, CORONARY ARTERY BYPASS SURGERY AND LOST TIME FROM WORK WERE CAUSALLY RELATED TO THE HEART ATTACK APPELLANT SUSTAINED ON FEBRUARY 26, 2011.

Appellant's cardiac defibrillator implantation, coronary artery bypass surgery and resulting lost time from work were causally related to his heart attack on February 26, 2011, and are therefore properly covered under the Act. Appellant was found to have pre-existing coronary disease following the heart attack he suffered on the job. The right to compensation in a case such as this one, however, is not affected by the fact a pre-existing pathology may have been a contributing factor. Walker, 247 S.C. at 246, 146 S.E.2d at 858-859; see also Kearse, 236 S.C. at 544, 115 S.E.2d at 186 (holding the same is true even though there is a preexisting pathology which may have been a contributing factor); Walsh v. U.S. Rubber Co., 238 S.C. 411, 120 S.E.2d 685 (1961) (recognizing same).

The Commission's Order found, in error, that Appellant's need for coronary artery bypass surgery was not compensable because it was due to preexisting coronary artery disease and not his heart attack. (R. p. 29, ¶ 22). Both Dr. Bittrick and Dr. Ellison testified with an understanding Appellant was ultimately found to have pre-existing coronary disease. With that knowledge and understanding, Dr. Bittrick

nonetheless testified it is unknown when, if ever, Appellant would have undergone bypass surgery if he had not suffered the heart attack. (See R. pp. 378-381). Dr. Ellison testified consistently to Dr. Bittrick as follows:

> Q. And you mentioned . . . [Claimant] would have eventually had to have surgery, bypass, anyway; is that what you said?
>
> A. Well, you know, **that's speculative, obviously**. If he was found for some reason -- had angina, had some other event that says, you know, hey, you need a stress test and it's abnormal, or whatever, as soon as they found out what his heart muscles looked like, he would have bypassed.
>
> Q. Not that particular day, though, right, had it not been for this event [i.e., the heart attack]?
>
> A. Right. I mean, if he had had that event the next day, then it would have happened; if it happened two days before, one year later, one week later. **I mean, I can't tell you. There's too many other scenarios.** But because he had this event and because they found his coronary artery disease, he had his bypass.

(R. p. 417, line 23-p. 418, line 14) (emphasis added). The precipitating factor to Appellant's heart attack was the event involving the subject patient in this case. In turn, the precipitating factor to Appellant undergoing bypass surgery was his heart attack and the treatment relating to such heart attack. It is pure speculation and conjecture as to whether Appellant would have had bypass surgery had the event not occurred and he not suffered the resulting heart attack.

In regard to the defibrillator implantation, the undisputed testimony is Appellant was required to undergo the procedure implanting an internal defibrillator

as a result of his heart attack and not any pre-existing condition. Dr. Bittrick testified on both direct and cross-examination as follows:

> Q. What is the reason for [the defibrillator Claimant had implanted]?
>
> A. During his hospitalization he had ventricle fibrillation arrest, which led to the placement of his defibrillator.
>
> . . .
>
> Q. Do you know the reason or what causes this or what caused it or what could cause it?
>
> A. The discharge summary states postoperative ventricular fibrillation and arrest requiring implantable cardiac defibrillator. My presumed cause would be irritable myocardium heart muscle that's just recently been through an infarct and subsequent heart surgery.

(R. p. 367, lines 5-22).

> Q. Now, the defibrillator implant, could the ventricular fibrillation have been a result of the [bypass] surgery? I mean, the fact that he was having this coronary bypass, can that cause someone to have ventricular defibrillation?
>
> A. The actual surgery shouldn't cause the ventricular fibrillation. We attribute it almost exclusively to an ischemic or irritated myocardium. Probably, again, in his case, left over from the anterior wall infarct."

(R. p. 379, lines 5-13). Moreover, Dr. Bittrick left little doubt as to the reason Claimant required implantation of a pacemaker and defibrillator, stating succinctly, "[t]he ventricular fibrillation would probably be from the current heart attack." (R. p. 368, lines 6-7).

The Commission's findings, inferences, conclusions and decision relating to Appellant's medical treatment, surgery and resulting lost time from work following his heart attack are erroneous in view of the reliable, probative, and substantial evidence on the whole record and, therefore, prejudiced substantial rights of Appellant. Moreover, such findings and conclusions were arbitrary and based clearly upon unwarranted exercise of discretion, surmise and conjecture when viewed in light of the whole record and, therefore, further prejudiced Appellant. Therefore, the Commission's Decision and Order should be reversed and the Single Commissioner's Decision & Order finding Appellant sustained a compensable heart attack on February 26, 2011 should be reinstated.

CONCLUSION

For all of the foregoing reasons, Appellant, Michael Philip Worthen, respectfully requests that this Honorable Court reverse the Commission's Decision and Order, reinstate the Single Commissioner's Decision and Order, and grant such other relief to which Appellant may be entitled.

May 29, 2014

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Panel
T. Scott Beck, Commissioner

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Michael Philip Worthen,
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v.

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And SC Association of
Counties SIF, Carrier,
Defendants, Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR.

May 30, 2014

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PROOF OF SERVICE

I, J. Matthew Whitehead, the undersigned employee of The Carolina Law Group, LLC, attorney for the Appellant, do herby certify that I have served the Final Brief of Appellant on Respondents Laurens County and SC Association of Counties SIF by depositing a copy of it in the United States Mail, postage prepaid, on June 3, 2014, addressed to their attorney of record, Richard B. Kale, WILSON JONES CARTER & BAXLEY, P.A., 872 S. Pleasantburg, Greenville, South Carolina 29607.

(Signature on Following Page)

June 3, 2014

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