

APPELLATE PANEL DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. FILE NO: 1306305

Clarence Winfrey

EMPLOYEE,  
CLAIMANT/RESPONDENT

VS.

Archway Services Inc

EMPLOYER,

AND

American Fire & Casualty Insurance Company  
c/o Liberty Mutual Group

CARRIER,  
DEFENDANTS/APPELLANTS,

---

Appellate Panel Review held in Columbia, South  
Carolina, on May 19, 2014 per notices timely  
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

JULY 25, 2014

APPEARANCES: Claimant/Appellant represented by Preston F. McDaniel, Esquire  
Defendants/Respondents represented by Brett H. Bayne

## STATEMENT OF THE CASE

This claim arises out of an alleged work-related accident on May 22, 2013. On that date, Claimant contends he was momentarily shocked by a rotisserie oven he was working on. Following the accident, Claimant continued to work for the remainder of the day and the following day. On May 28, 2013—six days after the accident—Claimant presented to Doctor's Care and Lexington Medical Center with severe three vessel coronary disease as well as an acute myocardial infarction which caused an acute ventricular septal defect. At Doctor's Care, Claimant reported he was having no chest pressure and had started sweating that morning (May 28th). At Lexington Medical Center, Claimant indicated he was not having chest pain but had been sweating. Following the diagnosis, Claimant underwent surgery to repair the ventricular septal defect caused by the acute myocardial infarction. The medical records in the case revealed that Claimant has a distinct family history of coronary disease with his father passing away at a similar age from coronary disease and a myocardial infarction. Further, the medical records indicated that Claimant was a 35 year pack-a-day smoker and drank a case of beer per week. Based on all of the medical records available to Carrier, this claim was ultimately denied by verbal communication to Claimant on September 13, 2013.

Immediately following the denial of benefits, Claimant filed a Form 15, Section III requesting a hearing as well as a Summons and Complaint in Richland County Circuit Court alleging a bad faith denial of benefits, alleging that S.C. Code Ann. § 42-9-260 is unconstitutional, seeking a temporary restraining order to stop Defendants from denying the claim, and seeking an Order from Judge Lee finding the claim compensable and awarding benefits. Judge Lee issued and then rescinded the temporary restraining order sought by Claimant. A hearing on the merits of Claimant's Complaint has not been set by the Court. After

the temporary restraining order was rescinded, the Commission set Claimant's Form 15, Section III for a hearing before Commissioner Beck. In addition, Defendants filed several motions with the Commission including a Motion to Quash the deposition of the adjuster, a Motion to Quash discovery of the adjuster's claim file, and a Motion to Postpone the Hearing.

A hearing on all of the motions and on Claimant's Form 15, Section III was set on September 30, 2013 for November 11, 2013. Prior to the hearing, Commissioner Beck conducted a standard pre-hearing conference as well as a Motions Hearing wherein Commissioner Beck ruled on all outstanding issues raised by the motions including Defendants' Motion to Postpone. Each of these motions affected the ability to conduct the Form 15 hearing and were necessary to have prior to the hearing. Commissioner Beck gave Claimant the opportunity to postpone the Form 15 hearing in order to spend time preparing for each of the motions that were timely served. Claimant turned down that opportunity. At the hearing, all parties agreed that the only issue for Commissioner Beck was to determine whether or not Defendants had conducted a good faith investigation. In order to make that determination, Commissioner Beck limited the review of evidence to only those documents produced prior to the date of denial – September 13, 2013. Following the hearing, Commissioner Beck issued a Decision and Order on December 5, 2013 finding that Defendants had conducted a good faith investigation. Thereafter, Claimant timely filed a Form 30. The Full Commission has issued a preliminary Decision and Order in that portion of the case and a final Order is forthcoming.

On October 22, 2013, after the Form 15 hearing was set by the Commission, Claimant filed a Form 50 requesting a hearing on compensability for alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other organs, members, and bodily parts. A hearing notice for the Form 50 hearing was sent by the Commission on December 6, 2013 with explicit instructions

that the hearing would be to determine compensability of Claimant's alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other organs, members, and bodily parts. The Form 50 hearing was held before the Single Commissioner on January 13, 2014. Following the hearing, the Single Commissioner issued a Decision and Order on February 27, 2014. Defendants timely filed a Form 30 based on legal errors contained in the Single Commissioner's Decision and Order. The Full Commission conducted a review hearing on Defendants' Form 30 on May 19, 2014 and now issues this Decision and Order. Based on a review of the evidence submitted to the Commission and oral arguments before the Full Commission, the Single Commissioner's Decision and Order on compensability is hereby AFFIRMED IN PART and REVERSED IN PART as set forth below.

#### **SINGLE COMMISSIONER FINDINGS OF FACT**

1. Claimant injured his neck and left shoulder in an admitted accident on May 22, 2013. Claimant alleges that he also injured his heart on the date of accident, which injury (a) aggravated a pre-existing condition, and (b) ultimately resulted in a myocardial infarction and subsequent ventricle septal defect.
2. Claimant is 51 years of age (testimony of Claimant).
3. Claimant finished the 12<sup>th</sup> grade, but did not receive a diploma (Claimant's Deposition, pages 6-7).
4. Claimant's prior employment includes work (a) at USC installing Wi-Fi, (b) as electrical maintenance man at F.B. Johnson, (c) as an electrician for a company that "roughs in" wiring for new houses; and (d) as a roofer (Claimant's Deposition, pages 9-11 and 13; testimony of Claimant).

5. On the date of the accident, Claimant's job with Employer was equipment maintenance worker for deli and bakery departments at Publix and Wal-Mart stores (testimony of Claimant; Defendants' APA #9, page 94; Claimant's Deposition, page 11).
6. In the mechanics of the accident, Claimant was shocked with 240-480 volts of electricity; Claimant believed the actual voltage was 480 volts. Defendants' witness admitted at the hearing that he was unsure of the voltage amount involved, and Defendants did not present any evidence to rebut Claimant's estimation even though Employer had access to the rotisserie in question. The fact that Defendants did not present any specific evidence leads me to rely on Claimant's estimation. (Defendants' APA #7, page 90; testimony of Warren; Claimant's APA #5, page 78).
7. Temporal medical evidence from May 28, 2013, supports Claimant's testimony that Claimant experienced pain (the worst of which was in his neck, but was also in the front of his shoulder and his left arm as well) from the moment of the accident which got progressively worse. Dr. Greenfield testified that Claimant (a) rubbed his arm during the examination, and (b) reported that his arm hurt. Claimant began sweating the same night of the Thursday accident and also the next morning. (Defendants' APA #7, page 90; Defendants' APA #8, page 91; Claimant's APA #2, page 56; Claimant's APA #3, page 66; Deposition of Dr. Feldman, page 35, Claimant's Deposition, pages 13-16, 18, 20-21, and 32; Deposition of Dr. Greenfield, including but not limited to pages 5, 8, 16, and 21).
8. Dr. Travis stated that neck pain is a common presentation for a heart attack (Deposition of Dr. Travis, page 21).
9. Three physicians have all opined to a reasonable degree of medical certainty that the electric shock ultimately resulted in Claimant's heart attack, regardless of the date on

which the infarction occurred. The deposition testimony of Dr. Travis (the treating cardiovascular surgeon) is very compelling, as he—unlike any of the other physicians involved in this case—actually examined Claimant’s heart in the operating room. Dr. Lide (the treating cardiologist) also links the electrical shock to Claimant’s post-accident heart condition; in fact, Dr. Lide testified twice that he does not “see any way” that Claimant’s infarction and VSD are not related to the injury. The third physician is a general physician board certified in family medicine (Claimant’s APA #1, page 1; Claimant APA #2, pages 23-24; Claimant’s APA #3, page 65; Deposition of Dr. Greenfield, pages 30-31; Deposition of Dr. Travis, including but not limited to pages 8, 13-17, and 23-32; Deposition of Dr. Lide in its entirety, including but not limited to pages 14, 23-24, 28, and 39).

10. Even if I discount or disregard the opinion of the general physician (board certified in family medicine), I give great weight to the opinions of Drs. Travis and Lide, who both opine that the heart condition is causally related. I fully considered the opinion of Dr. Feldman (the only physician who stated that there is no nexus between the electrical shock and the heart condition), but his opinion is outweighed by the opinions of the three other doctors, all three of whom treated Claimant rather than simply reviewing his medical records. I note that Dr. Feldman (a) did not examine Claimant or even speak with Claimant; (b) did not see Claimant’s heart, as opposed to Dr. Travis who held it in his hand; (c) initially states in his written opinion that it is “possible” that there was no connection between the plaque rupture and the electrical shock, and then in the very next sentence states that it is of the “highest certainty;”; (d) Dr. Feldman is a cardiologist and not a cardiovascular surgeon; nor has he undergone a surgical residency; and (e) Dr.

Feldman was specifically asked to opine in writing as to whether there was a connection between an electrical shock and a VSD, although he does address other pertinent issues for Defendants in his deposition (Defendants' APA #10, page 97; Deposition of Dr. Feldman in its entirety, including but not limited to pages: 5-6, 10-11, and 17—lines 15 through 25; page 18—lines 1-4; pages 22-23, 31, 42-43, and 45-47; Deposition of Dr. Greenfield, page 4).

11. The statement by Ruppe is dispositive only of the fact that Claimant has a good work ethic. (Defendants' APA, Exhibit 1).
12. Claimant has not reached maximum medical improvement.
13. Drs. Travis and Lide are hereby named the treating physicians. Although Defendants have denied compensability of Claimant's heart condition, Defendants do not object to Drs. Travis and Lide serving as treating physicians.
14. The Claimant is specifically requesting a finding of compensability for the heart and no medical evidence was presented that Claimant sustained or even may have sustained a head or brain injury. I therefore find that at this point he has not met his burden of proof with regard to any injury to head/brain, and any benefits for the head/brain are denied at this juncture.
15. While the head and brain are listed a bodily parts involved under #3 in the Pre-Hearing Brief, the Claimant also notes in his Pre-Hearing Brief that this is a systemic electrical shock and requests treatment for, "all organs, members and bodily parts determined to be related." I note from the testimony and records of Dr. Greenfield that the Claimant had tenderness in the left arm and shoulder and was diagnosed with muscle shock. In her deposition she stated that this tenderness found on examination is more indicative of

actual injury to those areas than just the pain that is caused by a heart attack. Dr. Lide in his treatment notes and specifically on September 17, 2013, recorded that, “we tried this patient on Neurontin last month when he appears to have peripheral neuropathy secondary to electrocution at work. Dr. Lide also recorded on the August 13<sup>th</sup> visit that he was having numbness in his great toe and suggested this neurological symptom was due to the electrical shock he experienced rather than the myocardial infarction. Thus, if any problems are opined to have stemmed from the electrical shock injury which is outside of the area and expertise of Dr. Lide and Dr. Travis, those doctors may request referral for him to other physicians for evaluation and treatment but the Defendants retain the right to contest whether those are related to the accident and to select the physicians for treatment for any causally related problems.

16. For purposes of the hearing before the undersigned, Claimant is very credible. I base this finding on my observations of Claimant’s demeanor and on the delivery of his testimony.
17. In reaching my conclusions, I fully considered the facts that Claimant (a) is a smoker, (b) has hypertension, (c) has a family history of “premature coronary artery disease, and (d) had pre-existing severe 3-vessel disease n the date of the accident. However, those four facts were also specifically considered by the 3 physicians who provided opinions to a reasonable degree of medical certainty. Further, Claimant does not allege that his pre-existing disease was caused by the accident; he only alleges an aggravation resulting in an injury to his heart (Defendants’ APA #8, pages 91-92; Defendants’ APA #9, page 94; Claimant’s APA #2, pages 26 and 28, Deposition of Dr. Feldman, page 37; Claimant’s Deposition, pages 26 and 29).

18. Although certainly not dispositive on the issue of compensability, I do not that Claimant had no coronary symptoms prior to the date of the electrical shock (Claimant's Deposition, page 27; Deposition of Dr. Lide, page 7, lines 21-22).
19. Claimant to receive temporary total disability benefits from September 15, 2013, through the present and continuing until further Order of the Commission or by agreement of the parties.
20. Claimant to receive ongoing treatment until he reaches maximum medical improvement.
21. Permanency is premature.
22. The issue of average weekly wage/compensation rate is held in abeyance.

#### **SINGLE COMMISSIONER CONCLUSIONS OF LAW**

In accordance with SC Code §42-17-40, the following conclusions of law apply in this case:

1. Under SC Code §42-1-160, the decision is made as an injury by accident arising out of and in the course of the employment. The medical problems which the Claimant has and which have resulted in his disability stem from the physical injury, the electrical shock that he sustained on May 22, 2013. Any medical condition and/or disability that either results directly from the physical injury or which is a pre-existing condition that is aggravated, accelerated or caused to become symptomatic by the physical injury is compensable as injury by accident under SC Law. See for example, Buff v. Columbia Baking Co., 215 S.C. 41, 53 S.E.2d 879 (1949); Walker v. City of Columbia, 247 S.C. 241, 146 S.E.2d 856 (1966); (as to the pre-existing conditions being compensable), Mullinax v. Winn Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (SC App. 1995).

2. Under SC Code §42-9-10 and SC Code §41-2-120, the determination is made as to the entitlement to disability compensation.
3. Under SC Code §42-15-60 the determination is made as to the provision of medical care.
4. Under the stipulation of the parties, venue is proper and the applicable average weekly wage and compensation rate that applies for the purpose of this hearing is determined. As to jurisdiction, SC Code §42-3-180 provides that this Commission has jurisdiction to decide all questions arising under the Title and states in pertinent part, "all questions arising under this Title...shall be determined by the Commission except as otherwise provided in this Title." The Defendants main argument in taking the position that this Commission does not have jurisdiction is based upon the doctrine of Law of the Case and is based upon certain Findings made by Commissioner Beck in his Order. However, after review of the position of the parties, arguments of the parties, and after review of Commissioner Beck's Order and the general jurisdiction of this Commission to decide issues arising under the Title and the Form 50 and 51 filed in this matter, this Commissioner is found, as a matter of law, to have jurisdiction over these proceedings. The Form 51 filed in this matter specifically admits that both employee and the employer were subject to the Workers' Compensation Act at the time in question. Further, Commissioner Beck's Order which serves as the basis for the Defendants' argument states and holds:

"IT IS FURTHERMORE ORDERED that all other issues in contention, specifically including the question of whether the Claimant sustained an injury by accident arising out of and in the course of his employment with Defendants resulting on compensable disability is preserved for adjudication at the hearing set pursuant to Claimant's October 21, 2013 Form 50 Employee's Request for Hearing."

5. Under the issues before the Commission for decision, all other issues are held in abeyance for further decision by the Commission.

**LEGAL ISSUES RAISED BY DEFENDANT-APPELLANTS**

- I. Did the Single Commissioner err in holding the hearing over Defendants' objections because, by conducting the hearing and ruling on material compensability issues, the Single Commissioner operated in an appellate capacity without proper jurisdiction?
- II. Did the Single Commissioner err in holding the hearing over Defendants' objections when specific rulings from a prior Single Commissioner Decision and Order may become the law of the case and, if upheld in that proceeding, would render any decision by the Single Commission to be in error?
- III. Did the Single Commissioner err in failing to find a date on which Claimant suffered a plaque rupture in Claimant's heart?
- IV. Did the Single Commissioner err in failing to find what caused the plaque rupture in Claimant's heart?
- V. Did the Single Commissioner err in failing to find a date on which Claimant suffered a myocardial infarction?
- VI. Did the Single Commissioner err in relying on Dr. Travis' written medical opinion when the evidence presented at the hearing and deposition testimony directly contradicts his written medical opinion?
- VII. Did the Single Commissioner err in relying on Dr. Lide's written medical opinion when the evidence presented at the hearing and deposition testimony directly contradicts his written medical opinion?

- VIII. Did the Single Commissioner err in relying on Dr. Greenfield's written medical opinion when the evidence presented at the hearing and deposition testimony directly contradicts her written medical opinion?
- IX. Did the Single Commissioner err in failing to deny compensability for a brain injury because Claimant presented no evidence of any brain injury even though Claimant specifically included a brain injury on his Form 50 and Form 58 as an issue to be determined at the hearing before the Single Commissioner?
- X. Did the Single Commissioner err in failing to deny compensability for a head injury because Claimant presented no evidence of any head injury even though Claimant specifically included a head injury on his Form 50 and Form 58 as an issue to be determined at the hearing before the Single Commissioner?
- XI. Did the Single Commissioner err in failing to deny compensability for a left hand injury because Claimant presented no evidence of any left hand injury even though Claimant specifically included a left hand injury on his Form 50 and Form 58 as an issue to be determined at the hearing before the Single Commissioner?
- XII. Did the Single Commissioner err in failing to deny compensability for a left arm injury because Claimant presented no evidence of any left arm injury even though Claimant specifically included a left arm injury on his Form 50 and Form 58 as an issue to be determined at the hearing before the Single Commissioner?
- XIII. Did the Single Commissioner err in failing to deny compensability for all other organs, members, and bodily parts because Claimant presented no evidence of any injury to any organs, members, or bodily parts even though Claimant specifically included other

organs, members, and bodily parts on his Form 50 and Form 58 as an issue to be determined at the hearing before the Single Commissioner?

- XIV. Did the Single Commissioner err in Finding of Fact #1 in that the Finding is limited only to Claimant alleging an injury to his heart when the record is clear that Claimant alleged injuries to his head, brain, left hand, left arm, and all other organs, members, and bodily parts?
- XV. Did the Single Commissioner err in Finding of Fact #6 by finding that Claimant believed the actual voltage to be 480 volts when Claimant's own testimony refutes that finding?
- XVI. Did the Single Commissioner err in Finding of Fact #6 that Defendants had access to the rotisserie oven when the record is clear that the oven belonged to a third party and Defendants did not own or control the oven?
- XVII. Did the Single Commissioner err in Finding of Fact #7 by finding that Claimant began sweating the night of the electrical shock when Claimant's own testimony refutes that finding?
- XVIII. Did the Single Commissioner err in Finding of Fact #9 that three physicians have opined the electrical shock resulted in Claimant's heart attack regardless of the date on which the heart attack occurred?
- XIX. Did the Single Commissioner err in Finding of Fact #14 that Claimant specifically requested a finding of compensability for the heart when there is no evidence in the record the hearing was limited in scope to the heart, when Claimant's own Form 50 and Form 58 demanded a hearing on compensability of the left hand, arm, shoulder, neck, head, brain, chest, and all organs, members, and bodily parts determined to be related and when the Notice of Hearing from the Commission included a determination of

compensability for the left hand, arm, shoulder, neck, head, brain, chest and all organs, members, and bodily parts determined to be related?

XX. Did the Single Commissioner err by not making any findings of fact or conclusions of law related to an aggravation of a pre-existing heart condition as alleged by Claimant?

### **EVIDENCE OF THE CASE**

Claimant filed a Form 50 on October 21, 2013 alleging injuries to his “heart, left hand/arm/shoulder, neck, head (brain), chest.” Thereafter, Defendants filed a Form 51 on or about November 19, 2013 denying every alleged injury and stated that “Claimant has failed to meet his burden of proving that he sustained a compensable injury or illness pursuant to the Act.” This matter was set for a hearing on January 13, 2013 by a Notice of Hearing issued on December 6, 2013. That Notice of Hearing specifically stated that the purpose of the hearing was to “determine issues as set forth on Forms 50 and 51.” Claimant’s Pre-Hearing Brief filed on December 23, 2013 clearly states that the types of injury and body parts to be determined at the January 13, 2013 hearing are “heart, left hand/arm/shoulder, neck, head (brain), chest.”

At the hearing, the issues were stated for the record and included an allegation of a head and possible brain injury. The Defendants position was that there was not any credible medical evidence establishing a relationship between the neck and any heart or brain injury.

Claimant notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (Def. APA p. 8). Employment records of Claimant indicate that he continued working the remainder of the day and the entire following day. (Def. APA p. 10-11). An email from Claimant to Employer indicates that he was experiencing neck pain on May 27, 2013 (5 days post-accident). (Def. APA p. 9). Claimant first presented to Doctor’s Care on May 28, 2013 (6 days post-accident) complaining that he woke up sweating that morning (Def. APA p. 1).

Claimant was treated by Dr. Greenfield at Doctors' Care. Dr. Greenfield noted that Claimant had some tenderness in his shoulder and neck area. Id.

Claimant was then referred to and saw Dr. Dasgupta at the South Carolina Heart Center on May 28. Dr. Dasgupta also noted sweating and noted that Claimant denied chest pain but did have minimal left shoulder pain. (Def. APA p. 2). Dr. Dasgupta diagnosed Claimant with an acute myocardial infarction. Id. Dr. Dasgupta also noted that Claimant appeared to have a ventricular septal defect as a possible completion of his acute myocardial infarction. (Def. APA p. 2). Dr. Dasgupta referred Claimant to Lexington Medical Center where Dr. Travis performed surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (Def. APA p. 5-7).

All of the submissions to the Single Commissioner were reviewed, including the testimony presented at the hearing; medical opinions and records; and depositions of the Claimant, Dr. Lanneau Lide, Dr. Karen Greenfield, Dr. Barry Feldman and Dr. Jeffrey Travis.

#### **FULL COMMISSION FINDINGS OF FACT**

1. Claimant injured his neck and left shoulder in an admitted accident on May 22, 2013. Claimant alleges that he also injured his heart on the date of accident, which injury (a) aggravated a pre-existing condition, and (b) ultimately resulted in a myocardial infarction and subsequent ventricle septal defect.
2. Claimant is 51 years of age (testimony of Claimant).
3. Claimant finished the 12<sup>th</sup> grade, but did not receive a diploma (Claimant's Deposition, pages 6-7).
4. Claimant's prior employment includes work (a) at USC installing Wi-Fi, (b) as electrical maintenance man at F.B. Johnson, (c) as an electrician for a company that "roughs in"

wiring for new houses; and (d) as a roofer (Claimant's Deposition, pages 9-11 and 13; testimony of Claimant).

5. On the date of the accident, Claimant's job with Employer was equipment maintenance worker for deli and bakery departments at Publix and Wal-Mart stores (testimony of Claimant; Defendants' APA #9, page 94; Claimant's Deposition, page 11).
6. In the mechanics of the accident, Claimant was shocked with 240-480 volts of electricity; Claimant believed the actual voltage was 480 volts. Defendants' witness admitted at the hearing that he was unsure of the voltage amount involved, and Defendants did not present any evidence to rebut Claimant's estimation even though Employer had access to the rotisserie in question. The fact that Defendants did not present any specific evidence leads us to rely on Claimant's estimation. (Defendants' APA #7, page 90; testimony of Warren; Claimant's APA #5, page 78).
7. Temporal medical evidence from May 28, 2013 supports Claimant's testimony that Claimant experienced pain (the worst of which was in his neck, but was also in the front of his shoulder and his left arm as well) from the moment of the accident which got progressively worse. Dr. Greenfield testified that Claimant (a) rubbed his arm during the examination, and (b) reported that his arm hurt. Claimant began sweating the same night of the Thursday accident and also the next morning. (Defendants' APA #7, page 90; Defendants' APA #8, page 91; Claimant's APA #2, page 56; Claimant's APA #3, page 66; Deposition of Dr. Feldman, page 35, Claimant's Deposition, pages 13-16, 18, 20-21, and 32; Deposition of Dr. Greenfield, including but not limited to pages 5, 8, 16, and 21).
8. Dr. Travis stated that neck pain is a common presentation for a heart attack (Deposition of Dr. Travis, page 21).

9. Three physicians have all opined to a reasonable degree of medical certainty that the electrical shock resulted in Claimant's heart attack, regardless of the date on which the infarction occurred. The deposition testimony of Dr. Travis is very compelling, as he actually examined Claimant's heart in the operating room. Dr. Lide also links the electrical shock to Claimant's post-accident heart condition. Dr. Lide testified that he does not "see any way" that Claimant's infarction and VSD are not related to the injury. (Claimant's APA #1, page 1; Claimant APA #2, pages 23-24; Claimant's APA #3, page 65; Deposition of Dr. Greenfield, pages 30-31; Deposition of Dr. Travis, including but not limited to pages 8, 13-17, and 23-32; Deposition of Dr. Lide in its entirety, including but not limited to pages 14, 23-24, 28, and 39).
10. We give great weight to the opinions of Drs. Travis and Lide, who both opine that the heart condition is causally related. We fully considered the opinion of Dr. Feldman (the only physician who stated that there is no nexus between the electrical shock and the heart condition), but his opinion is outweighed by the opinions of the three other doctors, all three of whom treated Claimant rather than simply reviewing his medical records. We note that Dr. Feldman (a) did not examine Claimant or speak with Claimant; (b) did not see Claimant's heart; (c) states in his written opinion that it is "possible" that there was no connection between the plaque rupture and the electrical shock and later states that it is of the "highest certainty;"; (d) is a cardiologist and not a cardiovascular surgeon; and (e) was specifically asked to opine in writing as to whether there was a connection between an electrical shock and a VSD, although he does address other pertinent issues in his deposition (Defendants' APA #10, page 97; Deposition of Dr. Feldman in its entirety,

including but not limited to pages: 5-6, 10-11, and 17—lines 15 through 25; page 18—lines 1-4; pages 22-23, 31, 42-43, and 45-47; Deposition of Dr. Greenfield, page 4).

11. The statement by Ruppe is dispositive only of the fact that Claimant has a good work ethic. (Defendants' APA, Exhibit 1).
12. Claimant has not reached maximum medical improvement.
13. Drs. Travis and Lide are hereby named the treating physicians. Although Defendants have denied compensability of Claimant's heart condition, Defendants do not object to Drs. Travis and Lide serving as treating physicians.
14. Claimant filed a Form 50 on October 21, 2013 alleging injuries to his "heart, left hand/arm/shoulder, neck, head (brain), chest."
15. Defendants filed a Form 51 on or about November 19, 2013 denying every alleged injury and stated that "Claimant has failed to meet his burden of proving that he sustained a compensable injury or illness pursuant to the Act."
16. This matter was set for a hearing before the Single Commissioner on January 13, 2013 by a Notice of Hearing issued on December 6, 2013.
17. That Notice of Hearing specifically stated that the purpose of the hearing was to "determine issues as set forth on Forms 50 and 51."
18. Claimant's Pre-Hearing Brief filed on December 23, 2013 clearly states that the types of injury and body parts to be determined at the January 13, 2013 hearing are "heart, left hand/arm/shoulder, neck, head (brain), chest."
19. There is no question that Claimant alleged a head and/or brain injury on his Form 50.
20. There is no question that the Notice of Hearing indicated that all issues on the Form 50 would be determined at the hearing.

21. There is no question that Claimant had sufficient notice of the hearing and what was contained on his own Form 50.
22. There is no question that Claimant filed a Pre-Hearing brief indicating that he was seeking compensation for a head and/or brain injury.
23. There is no question that Defendants filed a Pre-Hearing Brief denying compensability of this claim.
24. There is no question that Claimant did not withdraw his allegations related to a head and/or brain injury prior to or at the hearing.
25. Claimant did not present any evidence at the hearing to substantiate his alleged head and/or brain injury.
26. Claimant had the absolute burden of proving the right to compensation for each and every injury alleged on the Form 50. If Claimant failed to present evidence, as he did in this claim related to the head and/or brain injury, then his right to compensation for the alleged head and/or brain injury should be denied.
27. We decline to leave the claim open for possibly unlimited future hearings to determine compensability of presently alleged body parts as it would be grossly prejudicial to Defendants.
28. Because Claimant failed to present any evidence of a head and/or brain injury, his claim for a head and/or brain injury is denied.
29. We note from the testimony and records of Dr. Greenfield that the Claimant had tenderness in the left arm and shoulder and was diagnosed with muscle shock. In her deposition she stated that this tenderness found on examination is more indicative of actual injury to those areas than just the pain that is caused by a heart attack. Dr. Lide in

his treatment notes and specifically on September 17, 2013, recorded that, “we tried this patient on Neurontin last month when he appears to have peripheral neuropathy secondary to electrocution at work. Dr. Lide also recorded on the August 13<sup>th</sup> visit that he was having numbness in his great toe and suggested this neurological symptom was due to the electrical shock he experienced rather than the myocardial infarction. Thus, if any neuropathic problems are opined to have stemmed from the electrical shock injury which is outside of the area and expertise of Dr. Lide and Dr. Travis, those doctors may request referral for him to other physicians for evaluation and treatment but the Defendants retain the right to contest whether those are related to the accident and to select the physicians for treatment for any causally related problems.

30. In reaching our conclusions, we fully considered the facts that Claimant (a) is a smoker, (b) has hypertension, (c) has a family history of “premature coronary artery disease, and (d) had pre-existing severe 3-vessel disease n the date of the accident. However, those four facts were also specifically considered by the 3 physicians who provided opinions to a reasonable degree of medical certainty. Further, Claimant does not allege that his pre-existing disease was caused by the accident; he only alleges an aggravation resulting in an injury to his heart (Defendants’ APA #8, pages 91-92; Defendants’ APA #9, page 94; Claimant’s APA #2, pages 26 and 28, Deposition of Dr. Feldman, page 37; Claimant’s Deposition, pages 26 and 29).
31. Although certainly not dispositive on the issue of compensability, we do note that Claimant had no coronary symptoms prior to the date of the electrical shock (Claimant’s Deposition, page 27; Deposition of Dr. Lide, page 7, lines 21-22).

32. Due to the compensable injury to his heart, Claimant shall receive temporary total disability benefits from September 15, 2013, through the present and continuing until further Order of the Commission or by agreement of the parties.
33. Claimant shall receive ongoing treatment until he reaches maximum medical improvement.
34. A finding of permanency for Claimant's injuries is premature at this juncture.
35. The issue of average weekly wage/compensation rate is held in abeyance.

#### **FULL COMMISSION CONCLUSIONS OF LAW**

In accordance with S.C. Code Ann. § 42-17-50, the following conclusions of law apply in this case:

1. Reg. 67-701 provides the mechanism for the Full Commission review hearing.
2. Pursuant to S.C. Code Ann. § 42-1-160, Claimant sustained a compensable injury to his heart as a result of his May 22, 2013 work accident.
3. Pursuant to S.C. Code Ann. § 42-15-60, Claimant is entitled to medical treatment for his heart condition.
4. Pursuant to S.C. Code Ann. § 42-15-60, Claimant may be entitled to additional medical treatment for other causally related conditions subject to the findings of fact as stated herein.
5. Pursuant to S.C. Code Ann. § 42-15-60, Claimant is not entitled to any medical treatment or evaluation for any alleged head and/or brain injury.
6. Pursuant to S.C. Code Ann. § 42-15-60, Defendants have the right to choose authorized treating physicians for any additional medical care recommended for Claimant.

7. Pursuant to S.C. Code Ann. § 42-15-60, Drs. Travis and Lide will remain the authorized treating physicians for Claimant's heart condition.
8. Pursuant to Reg. 67-607, the Hearing Notice issued by the Commission shall contain the purpose of the hearing. In the present case, the Hearing Notice indicated the purpose of this underlying hearing was to resolve all issues on Claimant's Form 50 and Defendants' Form 51.
9. Pursuant to Reg. 67-610, the Claimant had the right to amend his Form 50 prior to the hearing. Claimant did not amend his Form 50 related to the alleged head and/or brain injury.
10. Pursuant to Reg. 67-611, Claimant was required to file a Form 58 Pre-Hearing Brief and was required to supplement or amend the Form 58 if there was any change. Claimant did not amend his Form 58 related to the alleged head and/or brain injury.
11. Pursuant to Reg. 67-613, the Commission may continue a Hearing if additional discovery is necessary or if it is premature to hear the case. Claimant did not seek a continuance for the purposes of additional discovery or timeliness of the hearing related to the alleged head and/or brain injury.
12. Pursuant to S.C. Code Ann. § 42-9-10 and 42-1-120, Claimant is entitled to temporary total disability benefits at this time.
13. Pursuant to S.C. Code Ann. § 42-3-180, we find the Single Commissioner had jurisdiction over this matter such that a hearing on compensability could be conducted despite the ongoing appeal from a prior order of the Commission.

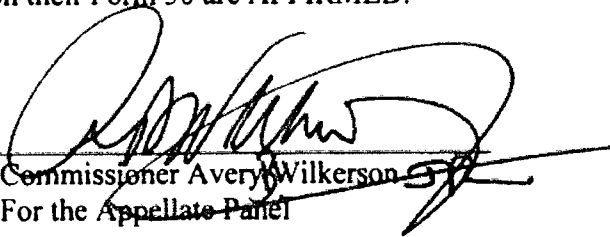
**ORDER**

**IT IS HEREBY ORDERED** that the Single Commissioner's findings of facts and conclusions of law related to the alleged head and/or brain injury are REVERSED.

**IT IS FURTHER ORDERED** that Claimant's alleged head and/or brain injury is hereby DENIED due to insufficient medical evidence presented to the Commission after raising the alleged head and/or brain injury as an issue before the Commission.

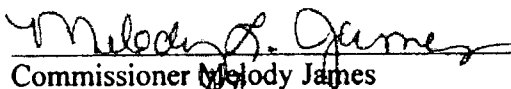
**IT IS FURTHER ORDERED** that all remaining issues decided by the Single Commissioner and appealed by Defendants on their Form 30 are AFFIRMED.

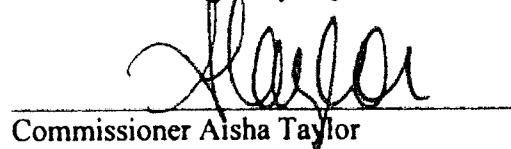
**SO ORDERED.**

  
Commissioner Avery Wilkerson  
For the Appellate Panel

**WE CONCUR:**

1st

  
Commissioner Melody James

  
Commissioner Aisha Taylor

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

**By Kim Falls on July 25, 2014**