NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]
Frank Wilson vs. American LaFrance
(September 16, 2014)

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SC Court of Appeals

APPEAL FROM COUNTY OF DORCHESTER
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case Number 2013CP1801299

FRANK E. WILSON

Employee,
Claimant, **APPELLANT**

vs.

AMERICAN LaFRANCE,

Employer,
AND

AIG C/O GALLAGHER BASSETT SERVICES, INC.
RESPONDENT
Carrier,

Helen F. Hiser
McAngus, Goudelock and Courie
P. O. Box 650007
Mount Pleasant, SC 29465
(843) 576-2900
Attorney for Respondent

and

Erin Hantske
McAngus, Goudelock and Courie
P. O. Box 650007
Mount Pleasant, SC 29465
(843) 576-2900
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]
Frank Wilson vs. American LaFrance
(September 16, 2014)

NOTICE OF APPEAL

Frank E. Wilson appeals the **Judgment (ORDER)** from the State Of South Carolina County Of Dorchester In The Court Of Common Pleas- **Case Number** **2013CP1801299**. The Circuit Court Judge that issued the **Judgment (ORDER)** was Judge Maite Murphy. The date that the **Judgment (ORDER)** was issued was August 19, 2014. It is of note that the Appellant requested a Hearing due to the complexity of the case. The Appellent's request for **Case Number** **2013CP1801299** to be conducted in the form of a Hearing to allow the Appellant to explain and argue his position as it relates to a case which does have some form of complexity. Judge Maite Murphy denied the Appellant's right to explain and argue his position as it relates to the above case. I have enclosed the the **Judgment (ORDER)** for **Case Number** **2013CP1801299**- PAGES: 1 thru 25 and **Form 4** document- PAGES: 1 thru 2. ***It is of note that the **Judgment (ORDER)** for **Case Number** **2013CP1801299** was drafted and prepared by the Defendants/Respondents for which a great degree of suspicion involved which does bring a great amount of disappointment to the Appellant. Furthermore, the Appellant is still in a disappointed state of mind for which Judge Maite Murphy allow this disturbing behavior by the Defendants/Respondents to take place. The issue of the Defendants/Respondents only drafting and preparing the **Judgment (ORDER)** for **Case Number** **2013CP1801299** in a format and pattern that would only support the Defendants/Respondents position as it relates to **Case Number** **2013CP1801299**. Judge Maite Murphy allow the disturbing actions of the Defendants/Respondents while they continuously omitted overwhelming evidence from the **Judgment (ORDER)** that would have displayed a different outcome as it relates to the **Judgment (ORDER)** for the above case. The Appellant is unsure why Judge Maite Murphy allowed this to take place and eventually sign off on this disturbing action and behavior demonstrated by the Defendants/Respondents as it related to the **Judgment (ORDER)** for **Case Number** **2013CP1801299**. The Appellant will continue to serve my **LORD and SAVIOUR JESUS CHRIST** who is the head of my life. Once again, the Appellant is still very disturbed with the actions and behavior of any and everyone involved with attacking the Appellant. The only way the Appellant is surviving these attacks is due to my **FAITH** in my **LORD and SAVIOUR JESUS CHRIST** who is the head of my life. Finally, the Appellant is aware that my **LORD and SAVIOUR JESUS CHRIST** sees everyone who is treating the Appellant unfairly and attacking the Appellant!!! The Appellant is respectfully requesting that the State of South Carolina Court of Appeals In The Supreme Court address and determine the following issues

described below:

1.) **The Appellant's Thoracic Spine (mid to upper Back) Injury**

The Appellant was involved in a very extensive work related motor vehicle accident on May 16, 2005. The Appellant received multiple injuries which included the Back, Neck, Right Shoulder, Ribs, Lungs and Bladder. The Appellant's Left Shoulder injury occurred on or about the third (3rd) or fourth (4th) quarter of 2006 during a work conditioning program and a FCE. The Appellant respectfully request that the Defendants provide compensation, medical evaluation and medical treatment for the Appellant's Thoracic Spine (mid to upper Back) injury. The Appellant is respectfully requesting that the medical evaluation and medical treatment for the Appellant's Thoracic Spine (mid to upper Back) injury be provided by the **Authorized Treating Physician from the Southeastern Spine Institute**. This is based on the **DECISION AND ORDER** by The Honorable David W. Huffstetler from the South Carolina Workers' Compensation Commission Hearing held on March 10, 2009. The Honorable David W. Huffstetler's **DECISION AND ORDER** stated that IT IS THEREFORE ORDERED that the Defense shall provide medical treatment for the Claimant's Back through the Southeastern Spine Institute. This is due to Claimant not receiving the orthopaedic management outlined in the **DECISION AND ORDER** by Commissioner J. Alan Bass from the South Carolina Worker's Compensation Commission Hearing held on April 10, 2007. The Claimant had an initial visit with Don O. Stovall, Jr., MD of Lowcountry Orthopaedics And Sports Medicine on August 4, 2005. At the time of the Claimant's initial visit on August 4, 2005 with Dr. Stovall, the Claimant stated that the orthopaedic issues there were experiences of Neck pain, Low Back pain, Mid Back pain with leg pain and Right Shoulder pain. Dr. Stovall stated to the Claimant that he would initially evaluate and treat the Claimant's Neck, Low Back and Right Shoulder. As it relates to the Claimant's Mid Back, Dr. Stovall stated that he would not evaluate and treat the Mid Back because his primary focus would be the Claimant's Lumbar Spine (Low Back), Cervical Spine (Neck) and Right Shoulder. Dr. Stovall stated that once the Claimant's Lumbar Spine (Low Back) was completely evaluated and treated, then the Thoracic Spine (mid to upper Back) pain should be resolved or lessened. This certainly was not the case. The Claimant continued to experience both Lumbar Spine and Thoracic Spine ongoing and continuing pain. The Claimant returned back to Dr. Stovall on March 2, 2009 at the request of the Defendants. The Claimant would like to add that Dr. Stovall was **hand selected by the Defendants**. The Claimant's **strong opinion** is that Dr. Stovall displayed an act of **bias** throughout the course of the Claimant's initial visit on August 4, 2005 thru the Claimant's last visit on March 2,

2009. As it relates to the Claimant's March 2, 2009 office visit with Dr. Stovall, the Claimant stated to Dr. Stovall that he had been experiencing **severe ongoing and continuing Lumbar Spine pain** along with ongoing and continuing Thoracic Spine pain with leg pain, Cervical Spine pain, Right Shoulder pain and Left Shoulder pain. Dr. Stovall omitted the Claimant's complaint of **severe ongoing and continuing Lumbar Spine pain** along with ongoing and continuing Thoracic Spine pain and Left Shoulder pain from the Claimant's March 2, 2009 office visit medical report. After the issued **DECISION AND ORDER** from the South Carolina Workers' Compensation Commission Hearing on March 10, 2009 with The Honorable David W. Huffstetler which stated the IT IS THEREFORE ORDERED that the Defense shall provide medical treatment for the Claimant's Back through Southeastern Spine Institute. Once again this was due to the Claimant not receiving the orthopaedic management outlined in the issued **DECISION AND ORDER** from the South Carolina Workers' Compensation Commission Hearing with Commissioner J. Alan Bass on April 10, 2007. On June 17, 2009, the Claimant restarted his evaluation and treatment with the Southeastern Spine Institute for his Lumbar Spine injury, Thoracic Spine injury and Cervical Spine injury. On July 11, 2009 the Claimant had a Lumbar Spine **MRI** to address and determine the Claimant's **severe Lumbar Spine pain**. The Claimant's Lumbar Spine **MRI** was ordered by Thomas Roush, MD of Southeastern Spine Institute. The Lumbar Spine **MRI scan** revealed that the L5-S1 disc was completely collapsed and as a result the Claimant's Lumbar Spine was bone on bone at the L5-S1 levels. This was only four (4) months after the Claimant's March 2, 2009 office visit with Dr. Stovall and when Dr. Stovall omitted the Claimant's complaint of **severe ongoing and continuing Lumbar Spine pain** along with ongoing and continuing Thoracic Spine pain and Left Shoulder pain. The Claimant's Lumbar Spine **MRI scan** on July 11, 2009 explained the **severe ongoing and continuing Lumbar Spine pain**. It is the Claimant's **strong opinion** that the omitting of the Claimant's complaint of **severe ongoing and continuing Lumbar Spine pain** along with ongoing and continuing Thoracic Spine pain and Left Shoulder pain was done on purpose with an attempt to place the Claimant at **MMI (Maximum Medical Improvement)** although the Claimant had remaining issues with his Lumbar Spine, Thoracic Spine (mid to upper Back), Right Shoulder and Left Shoulder. Furthermore as a result of the neglect and or at least mismanagement of the Claimant's **orthopaedic injuries** which includes the Claimant's Lumbar Spine, Thoracic Spine (mid to upper Back), Right Shoulder and Left Shoulder, the Claimant finally underwent an expedited L5-S1 fusion surgery by Donald R. Johnson, II, MD of the Southeastern Spine Institute on April 2010. The Claimant also finally underwent three (3) Right Shoulder surgeries and one (1) recent Left Shoulder surgery. Due to the Claimant's neglect and or at least mismanagement of

2.) **Bilateral Lower Extremity EMG/nerve conduction study**

the Claimant's Back, the Claimant began to develop a worsening of **Bladder function** initially noted on or about September 2007. This would be supported by the medical reports, medical documents and all supporting documents to be introduced as evidence. Due to the fact that the Claimant has underwent **Lumbar Spine surgery** and is still experiencing Lumbar Spine pain, Thoracic Spine pain and ongoing and continuing bilateral leg symptoms, the **Authorized Treating Physician** of the Southeastern Spine Institute recommended and requested the **Bilateral Lower Extremity EMG/nerve conduction study**. This is the **Authorized Treating Physician** the Claimant was ordered to have his evaluation and treatment with. This **DECISION AND ORDER** was issued by the Honorable David W. Huffstetler from the South Carolina Workers' Compensation Commission Hearing held on March 10, 2009.

3.) **Left Shoulder Evaluation and Treatment Expenses Reimbursement**

The Claimant had a South Carolina Workers' Compensation Commission Hearing on April 10, 2007 with Commissioner J. Alan Bass. As it would relate to the Claimant's **Left Shoulder injury**, Commissioner Bass ordered the Defendants to provide an up-dated Cervical Spine MRI to address and determine the Claimant's Left Shoulder pain. If the updated Cervical Spine MRI did not reveal any significant changes from the pre-vious Cervical Spine MRI, then the Defendants were ordered to provide the Claimant with a Left Shoulder MRI. Commissioner Bass stated that the record would be held open for thirty (30) days for the Defendants to provided the Claimant both the updated Cer-vical Spine MRI and Left Shoulder MRI. The Defendants provided the Claimant an up-dated Cervical Spine MRI before the thirty (30) days but the Defendants would only authorized the Left Shoulder MRI after the thirty (30) days that Commissioner Bass stated the record would be held open. It is the Claimant's **strong opinion** that the De-Defendants intentionally delayed the authorizing of the Claimant's Left Shoulder **MRI** to prevent the Left Shoulder injury being made a part of the Claimant's South Carolina Workers' Compensation Commission claim. The Claimant finally began to seek the evaluation and treatment for his Left Shoulder injury on his own as the Claimant's Left Shoulder injury had began to worsen.

4.) **The Claimant's MOTION dated February 27, 2012**

The Claimant is respectfully requesting that this issue be addressed and determined at this

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In the Supreme Court]
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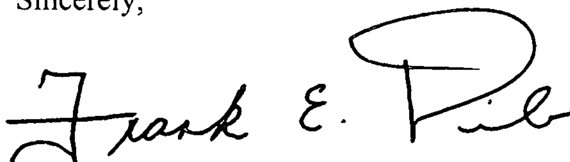
STATE OF SOUTH CAROLINA Court of Appeals.

5.) **The Claimant is respectfully requesting reimbursement for expenses as it would relate to the single Commissioner (Avery B. Wilkerson, Jr.) April 18, 2012 South Carolina Workers' Compensation Commission Hearing and the COMMISSION REVIEW panel Hearing on September 18, 2012. These expenses reimbursement request is for ,but not limited to, the Claimant's filing fees, photocopying fees, mailing and postage fees, the Claimant's transportation to and from the Hearings as it relates to this STATE OF SOUTH CAROLINA Court of Appeals process and the previous South Carolina Workers' Compensation Commission two (2) Hearings on April 18, 2012 and September 18, 2012.**

Sincerely,



DATE: September 16, 2014

Frank E. Wilson **(Appellant)**
8755 Jessica Court
North Charleston, SC 29406
(843) 327-9616

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]
Frank Wilson v. American LaFrance
(September 17, 2014)

RECEIVED
SEP 22 2014
SC Court of Appeals

Frank Wilson, Appellant,

v.

American LaFrance, Employer, and AIG C/O Gallagher Bassett Services, Inc., Carrier, Respondents.

Erin Hantske
McAngus, Goudelock and Courie
P. O. Box 650007
Mount Pleasant, SC 29465
(843) 576-2900
Attorney for Respondents

I hereby certify that on September 17, 2014 I filed a copy of the following documents with THE STATE OF SOUTH CAROLINA COURT OF APPEALS:

1.) **THE STATE OF SOUTH CAROLINA Court of Appeals Case Number 2013CP1801299 NOTICE OF APPEAL dated September 16, 2014- PAGES: 1 thru 6**

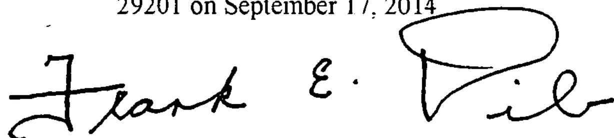
2.) **STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER IN THE COURT OF COMMON PLEAS Circuit Court Judge Maite Murphy- Judgment (ORDER) dated August 19, 2014- PAGES: 1 thru 25**

3.) **STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER IN THE COURT OF COMMON PLEAS FORM 4 dated August 19, 2014- PAGES: 1 thru 2**

4.) **THE STATE OF SOUTH CAROLINA COURT OF APPEALS filing fee in the amount of $100.00 with check number ~~2461~~** FE 2462

5.) **PROOF OF SERVICE OF A NOTICE OF APPEAL document dated September 17, 2014**

by depositing a copy of it in the United States Mail addressed to 1205 Pendleton Street, Columbia, SC 29201 on September 17, 2014



Frank E. Wilson
8755 Jessica Court
North Charleston, SC 29406
(843) 327-9616

FRANK E. WILSON
8755 JESSICA COURT
NORTH CHARLESTON, SC 29406

2462
68-7497/2560

9/17/14 Date

Pay to the Order of SOUTH CAROLINA COURT OF APPEALS $ 100.00

ONE HUNDRED DOLLARS AND NO CENTS Dollars

Security Features Details on Back.

FRANK WILSON VS. AMERICAN LAFRANCE
CASE NUMBER (2013CP189 1299)

NAVY FEDERAL Credit Union

For (FILING FEE)

Frank E. Wilson

⑆256074974⑆ 2462⑈ 6317338703⑈006

Harland Clarke

AMERICA THE BEAUTIFUL

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
(NON-JURY)

RECEIVED
SEP 22 2014
SC Court of Appeals

FRANK WILSON

Claimant/Appellant,

vs.

AMERICAN LaFRANCE

Employer,

AND

AIG c/o GALLAGHER BASSETT SERVICES, INC.

Carrier,

Defendants/Rospondents.

Civil Action No.: 2013-CP-18-01299

WCC File No.: 0506037

ORDER

CERTIFIED COPY
2014 AUG 19 PM 4: 54
CLERK OF COURT
DORCHESTER COUNTY

STATEMENT OF THE CASE

The instant proceeding was initiated by Claimant filing a Form 50 request for hearing with the Commission dated February 17, 2012. Claimant claimed the body parts that were affected by his work related injury were his back, neck, ribs, lungs, right shoulder, left shoulder, bladder, right leg, left leg, right arm, and left arm. He asserted that he was in need of additional medical care for his back and bilateral lower extremities in the form an EMG/nerve conduction study. In an attachment to his Form 50, Claimant raised seven issues, including:

1. That he is entitled to an MRI of his back as recommended by Dr. Donald R. Johnson, II;
2. That he was entitled to a bilateral lower extremity EMG/nerve conduction study as recommended by Dr. Johnson;

3. The lack of prescription drug coverage;
4. Allegation that Commissioner Bass' April 17, 2008 Decision and Order instructed Respondents to "provide the Claimant with a cervical spine MRI to determine if there were any significant changes that could be related to Claimant's left shoulder. If there were no significant changes noted on the Claimant's cervical spine MRI, then [Respondents] would provide the Claimant with a left shoulder MRI to verify and determine if there were any related issues noted on the Claimant's left shoulder MRI that could be related to Claimant's left shoulder pain," leaving the record open thirty days for these tests. Claimant also alleged that the 2008 single Commissioner Decision and Order had been altered and that Respondents purposefully delayed authorized of a cervical spine MRI in order to defeat his claim;
5. That the Commission address issues Claimant raised in a Motion filed on January 17, 2012 (as resubmitted on February 17, 2012 and February 23 2012) regarding "medical neglect, medical malpractice, bias, any inappropriate action and/or inappropriate practice (if any) as it relates to" exhibits presented at a hearing before Commissioner Roche on July 21, 2011;
6. That Utica-Mohawk language be included in any final settlements or agreements; and
7. Reimbursement for filing the Form 50 and for transportation to and from the Commission hearing.

In a Form 50 dated February 27, 2012, Respondents admitted Claimant suffered a compensable injury to his neck, low back, bilateral shoulders, ribs, bladder and lungs only as it relates to his May 16, 2005 work accident and denied compensability to any other body parts. Respondents also disagreed that Claimant was entitled to bilateral lower extremity EMG/nerve

conduction study and/or a thoracic MRI, as neither alleged injury was causally related to his compensable accident. Respondents explained that Claimant's prescription drug coverage through First Script was terminated unilaterally by the provider when that company ceased handling South Carolina claims and that, upon notification by Claimant, Respondent took steps to restore the prescription coverage.

The parties were heard on April 18, 2012 by Commissioner Avery B. Wilkerson, Jr. who issued his Decision and Order on June 21, 2012.[1] Single Commissioner Wilkerson noted that the parties had attempted to resolve the issues via telephone on March 3, 2012, March 5, 2012, and March 9, 2012; however, Claimant failed to return the Commissioner's calls in a timely manner and/or make himself available for these scheduled telephone conferences. Claimant explained that his failure to call during the entire month of March 2012 and/or make himself available for the scheduled telephone conferences was due to being sick.

Commissioner Wilkerson held that Claimant failed to carry his burden of proof, that he was entitled to treatment for his thoracic spine, right lower extremity, left lower extremity, or any other body part aside from the admitted injury body parts. Commissioner Wilkerson found that the delay in Claimant's prescription coverage was not the fault of Respondents, as "[t]here was a change with the prescription company and counsel for [Respondents] tried to call the Claimant and wrote letters to the Claimant without response." Commissioner Wilkerson denied Claimant's request for transportation costs to attend the hearing, because "the Claimant

[1] Throughout this claim's lengthy history, there have been no less than six separate single Commissioner Decisions to date: 1) Decision and Order of Single Commissioner J. Alan Bass, dated April 17, 2008 ("2008 Single Commissioner Decision"); 2) Decision and Order of Single Commissioner David W. Huffstetler, filed April 16, 2009 ("2009 Single Commissioner Decision"); 3) Decision and Order of Single Commissioner Derrick Williams, filed April 5, 2010 ("2010 Single Commissioner Decision"); 4) Decision and Order of Single Commissioner Andrea C. Roche, filed August 11, 2011 ("2011 Single Commissioner Decision"); 5) Decision and Order of Single Commissioner Avery B. Wilkerson, Jr., filed February 10, 2012 ("Feb 2012 Single Commissioner Decision"); and 6) Decision and Order of Single Commissioner Avery B. Wilkerson, Jr., filed June 21, 2012 ("June 2012 Single Commissioner Decision").

requested the hearing and he has been very uncooperative in the resolution of these issues." Although Respondents requested expenses in the amount of $1,150.00 incurred in preparing for and attending the hearing, that request was denied. Commissioner Wilkerson stated, "although he was inclined to award Respondents $500.00 in costs, due to the fact that [Respondents] would be bearing the costs of writing that Order," he waived awarding costs at that time but advised that he "would strongly consider a 100% reimbursement to [Respondents] on any future requests for defense costs in further defending this claim." Commissioner Wilkerson found "defense counsel and her firm to be trustworthy and diligent in efforts to assist the Claimant with his workers' compensation claim." Claimant agreed to return phone calls and to "communicate with all parties to help reduce expenses on all involved." Finally, Commissioner Wilkerson held that any award of permanency was premature at this time.

Claimant timely appealed to the Full Commission, raising nine separate issues in a Form 30 dated June 14, 2012, and resubmitted on or around June 27, 2012. In addition to the seven issues listed on his Form 50, Claimant also sought reimbursement for the right and left shoulder evaluation performed by Dr. Estes in 2009 as well as lifetime maintenance including hardware as it relates to his back injury. Claimant disagreed "with having to provide payment expenses of the Defendants in this claim," and also disputed statements made by Commissioner Wilkerson regarding defense counsel.

The Appellate Panel of the Full Commission heard the parties on September 18, 2012 and issued the Commission Decision and Order on January 7, 2013. With some modifications to the June 2012 Single Commissioner Decision, the Commission held that Claimant failed to carry his burden of proving he was entitled to treatment for his thoracic spine, right lower extremity, left lower extremity or any other body part aside from the admitted injuries. Any award of

permanency was premature and no costs were awarded. The Commission also addressed Claimant's argument that, in his request for a proposed Order, Commissioner Wilkerson included a finding that Claimant "had quite the run around from the carrier for treatment, checks and prescription problems" which has been inadvertently omitted from the June 2012 Single Commissioner Decision. The Commission noted the omission was the result of a scrivener's error and amended "all the previous Findings of Fact relating to the credibility of the parties." The Commission affirmed Commissioner Wilkerson's finding that the delay in prescription coverage was not Respondents' fault, in that "the main problem in this case," is Claimant's distrust of Respondents' counsel, her law firm and the insurance carrier.

Although Claimant initially appealed to the South Carolina Court of Appeals, this matter was transferred to this Court since the injury occurred prior to 2007, and S.C. Code Ann. Section 42-17-60 provides for direct appeals to the Court of Appeal only for injuries occurring after July 1, 2007. Claimant's notice of appeal raises five separate issues:

1) Whether his thoracic spine injury is compensable;
2) Whether he is entitled to a bilateral lower extremity EMG/nerve conduction study;
3) Whether he is entitled to reimbursement for evaluation and treatment expenses for his left shoulder incurred in 2009;
4) Issues raised in his February 27, 2012 Motion; and
5) Reimbursement for expenses and transportation costs related to the hearings before Single Commissioner Wilkerson and the Appellate Panel. Claimant's Notice of Appeal of the Commission Decision was dated February 6, 2013.

The Court initially heard oral arguments on this appeal in St. George, South Carolina, on September 6, 2013. Present at the hearing were Helen F. Hiser, Esquire, representing

Respondents American LaFrance and AIG c/o Gallagher Bassett Services, Inc., and *pro se* Claimant/Appellant Frank Wilson. Although this Court heard lengthy oral argument, it determined in an order filed December 17, 2013, that the record filed by the parties appeared to be incomplete. This Court found that without a complete and accurate record, it was impossible for an Appellate Court to make a determination on the issues raised on appeal. Pursuant to S.C. Code Ann. Section 1-23-380(A)(3), this Court ordered the South Carolina Workers' Compensation Commission to transmit a complete copy of the record of the proceeding under review.

Once this Court received the record from the Commission, the parties again appeared and were heard on March 12, 2014. At the hearing, the Court ordered the parties to resubmit their previously-filed briefs with the relevant portions of the Commission record attached.

On June 6, 2014, Claimant requested the above appeal be combined with the appeal that was filed on May 8, 2014 in Case No. 14-CP-18-880, stemming from a separate appeal of a separate Decision and Order from the South Carolina Workers' Compensation Commission. In a letter to the parties dated June 19, 2014, this Court advised the parties that the Court was in receipt of both the Respondents' and Appellant's resubmitted briefs with the relevant portions of the Commission record attached and that no further submissions were required from either party.

STANDARD OF REVIEW

Judicial review of a Commission decision is directed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(A)(5) (Supp. 2010). Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). A reviewing court should affirm the decision of the Full Commission unless it is clearly erroneous in view of the substantial evidence

of the whole record. Lark, 276 S.C. at 136, 276 S.E.2d at 307. The reviewing court may not substitute its own judgment for that of the Full Commission as to the weight of the evidence on a question of fact, but may reverse if the decision is affected by errors of law. S.C. Code Ann. §1-23-380(A)(5). The Administrative Procedures Act "mandates that the commission take the evidence, judge the credibility and weight of that evidence, and from that judgment determine the facts of the case." Rogers v. Kunja Knitting Mills, Inc., 312 S.C. 377, 381, 440 S.E.2d 401, 403 (Ct. App. 1994).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the administrative agency reached in order to justify its action. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). The findings of the Full Commission are presumed correct and can be set aside only if unsupported by substantial evidence or based on an error of law. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 186, 414 S.E.2d 162, 163 (1992).

The Full Commission is the ultimate fact finder in workers' compensation cases. Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). It is not within the appellate courts' purview to reverse findings of the Full Commission which are supported by substantial evidence. Broughton v. South of the Border, 336 S.C. 488, 496, 520 S.E.2d 634, 637 (Ct. App. 1999). Where there is a conflict in the evidence, either by different witnesses or the testimony of the same witness, the factual findings of the Commission are conclusive. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492-93, 541 S.E2d 526, 528 (2001). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's

finding from being supported by substantial evidence." Sharpe v. Case Prod., Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999).

DISCUSSION

I. Claimant did not prove a compensable injury to his thoracic spine, his right lower extremity or his left lower extremity and, therefore, is not entitled to treatment for same.

The Commission properly held, based on the testimony and evidence before it, that Claimant did not carry "his requisite burden of proof, required under the South Carolina Workers' Compensation Act, to establish that an injury involving the thoracic spine, right lower extremity, left lower extremity, or any other body part aside from the admitted injuries listed above arose out of or occurred in the course of his employment with [Respondents] on May 16, 2005." (Commission Decision, p. 12). This conclusion is supported by substantial evidence in the record. *See, e.g.*, Broughton, 336 S.C. at 496, 520 S.E.2d at 637.

1. Claimant did not prove that any problems he was having with his thoracic spine were related to his compensable injury.

Although Claimant argues that he is entitled to evaluation of and/or treatment for his thoracic spine based on Commissioner Huffstetler's 2009 Single Commission Decision, that Decision did not order treatment for his thoracic spine. The only back injury Commissioner Huffstetler found compensable in 2009 was to Claimant's low back. Thus, the treatment ordered to his "back" was to his low back only.

At the hearing before Commissioner Huffstetler, Claimant argued that he was entitled to shoulder and back surgery. More specifically, he testified that he first started seeing the doctors at Southeastern Spine because he was "getting frustrated with the lack of medical attention that was given to my lumbar spine, cervical spine. This actually took place ... with my family doctor. I asked him to refer me to the best spine doctor that I can go to and off the top of his

head, he said well the best you can go to is Southeastern Spine ... And, at that time, I said, well, can you refer me there ..." (2009 Hr'g Tr. p. 12, line 15 – 13, line 5). Claimant testified to treatment for his lumbar and cervical spine, but did not mention his thoracic spine. (2009 Hr'g Tr. p. 12, line 15 – 15, line 13). Dr. Roush's notes from June and July 2009 discuss issues with and treatment of Claimant's lumbar and cervical spine, but do not discuss or propose treatment to his thoracic spine. (Cl. 2010 APA, pp. 48-54). In fact, when reciting the reasons he could not return to work, Claimant pointed to "[m]ultiple pain levels and all of my injuries – my lower back, my lumbar spine, my cervical spine, right shoulder, left shoulder ..." but made no mention of his thoracic spine. (2009 Hr'g Tr. p. 19, lines 1-15). Claimant discussed updated MRI's he had had for his head, lumbar spine, cervical spine, and left shoulder. (2009 Hr'g Tr. p. 21, line 20 – p. 23, line 5). Commissioner Huffstetler specifically asked Claimant about the problems he was having, including his right shoulder, neck, lower back, right lung, and ribs, but neither Commissioner Huffstetler nor Claimant mentioned Claimant's thoracic spine. (2009 Hr'g Tr. p. 24, line 20 – p. 28, line 12). Thus, Claimant's thoracic spine was not raised in the 2009 Hearing and Commissioner Huffstetler was not ordering treatment for a condition that was not before him.

In addition, although Claimant is correct that Commissioner Huffstetler ordered Respondents to "provide medical treatment for the Claimant's back through Southeastern Spine Institute," (2009 Single Commissioner Decision p. 11), that treatment was for compensable, work-related injuries only. *See, e.g.*, Nettles v. Spartanburg Sch. Dist. # 7, 341 S.C. 580, 589, 535 S.E.2d 146, 150 (Ct. App. 2000) (holding that "Workers Compensation only awards benefits for disabilities causally connected to a work-related injury"); Munn v. Nucor Steel, 336 S.C. 28, 32, 518 S.E.2d 289, 290 (Ct. App. 1999) (holding that, under the Workers' Compensation Act

("Act"), "any medical treatment claimed under § 42-15-60 must be causally related to the 'injury by accident' arising out of and in the course of employment"). Conclusion of Law No. 2 states that Claimant "sustained a compensable injury by accident arising out of and occurring in the course and scope of his employment with [Respondents] on or about May 16, 2005, to his low back, neck, right shoulder, ribs, and lungs." (2009 Single Commissioner Decision p. 10). There is no mention of and no treatment was ordered for Claimant's thoracic spine in the 2009 Single Commissioner Decision. Thus, the treatment ordered for Claimant's back through Southeastern Spine Institute was to his cervical and lumbar spine, which had been determined to be compensable, but not to his thoracic spine, which had not. (2009 Single Commission Decision, pp. 10-11).

Although records from the Palmetto Comprehensive Center for Pain of the Southeastern Spine Institute for December 29, 2011 note that he was complaining of pain in his mid-back, or thoracic region, as well as thoracic radiculitis (Cl. APA pp. 9-10), this report does not link any issues he was having with his thoracic spine to his May 16, 2005 accident. The February 24, 2012 record from the same office noted a diagnosis of thoracic radiculitis, among other things, and notes Claimant was complaining of midback pain but, again, does not link any thoracic issues to his work-related accident. (Cl. APA pp. 11-12).

Furthermore, although Claimant provided Dr. Richardson with a letter, asking whether he agreed with Dr. Johnson's course of treatment and that injuries to his "Back, Legs and Arms" were causally related to his lumbar and cervical spine injuries, Dr. Johnson was treating Claimant for his lumbar spine problems and neither proposed nor provided any treatment whatsoever to his thoracic spine. (Cl. APA pp. 2-6). Specifically, Dr. Johnson provided a diagnosis of "low back injury, L5-S1, neck." (Cl. APA p. 6). Therefore, the only reasonable

interpretation of both Dr. Johnson and Dr. Richardson's statements regarding Claimant's back is that they were referring to his cervical and/or lumbar issues. Finally, simply opining that Claimant would benefit from the treatment outlined in the December 29, 2011 and/or February 24, 2012 office visits only demonstrates that Dr. Richardson agreed with the recommendation for an "MRI of his thoracic spine to rule out any type of thoracic pathology with his new on-set of pain," (Cl. APA p. 10), and that Claimant should "see his primary care physician as soon as possible to confirm that it is not his heart causing the associated symptoms he is having as [the Physician's Assistant] was concerned there may be a component of cardiac disease associated." (Cl. APA p. 12).

The fact that a claimant may benefit from medical care, standing alone, does not establish a causal link between compensable and non-compensable body parts. *See, e.g.*, Nettles, 341 S.C. at 589, 535 S.E.2d at 150; Munn, 336 S.C. at 32, 518 S.E.2d at 290. Without more, the facts that the Commission ordered treatment for Claimant's back through Southeastern Spine, and that the doctors there recommended that he receive treatment to his thoracic spine simply does not establish a causal connection between his work-related injury and any problems he is having with his thoracic spine. It is beyond debate that a claimant in a workers' compensation proceeding bears the burden of proving he is entitled to compensation and an award cannot rest on surmise, conjecture or speculation. Clade v. Champion Labs., 330 S.C. 8, 11, 496 S.E.2d 856, 858 (1998).

To the extent Claimant relies on medical reports that were never admitted as part of and, in fact, post-date the April 18, 2012 hearing before Commissioner Wilkerson, those records are not part of the record in this case and cannot be considered by an appellate forum. S.C. Code Ann. § 1-23-380(4) (appellate review is confined to the record before the Commission). The

Commission's Regulation 67-612(J) provides that "[a]ll available evidence and testimony shall be presented at the scheduled hearing or a party must move for an adjournment according to R. 67-613." S.C. Code Regs. § 67-612(J). If he believed later medical records, including the June 4, 2012 and January 11, 2013 medical records from Dr. William Blane Richardson and the May 21, 2012 MRI of his thoracic spine, would be relevant to his claim, Claimant could have moved at the hearing before Commissioner Wilkerson to hold the record open for additional evidence. *See* Martin v. Rapid Plumbing, 369 S.C. 278, 287, 631 S.E.2d 547, 552 (Ct. App. 2006). However, Claimant did not do so. Alternatively, Claimant could have moved to postpone the Hearing before Commissioner Wilkerson pursuant to S.C. Code Regs. §§ 67-613 and 67-708, but did not. In addition, Claimant has never moved the Commission to admit this evidence after the hearing pursuant to Regulation 67-707. S.C. Code Regs. § 67-707. This Court cannot consider this evidence for the first time because, in its appellate capacity, it is limited to determining whether the Commission Decision is supported by substantial evidence in the record but cannot find facts on its own. Ross, 298 S.C. at 492, 381 S.E.2d at 730.

Finally, to the extent Claimant argues that treatment ordered by Commissioner Huffstetler was based on his not receiving the appropriate orthopedic management outlined in the Commissioner Bass's prior order, Claimant is simply mistaken. Although Commissioner Huffstetler noted Claimant's testimony where he, "explained [that] he had not received the orthopaedic management outlined in Commissioner Bass' Order," (2009 Single Commissioner Decision p. 8), that was not a holding but was merely the Commissioner's recitation of the hearing testimony.

2. **Claimant did not prove that any bilateral lower extremity problems he was having were related to his compensable injury.**

For many of the same reasons that Claimant's thoracic spine is not compensable, Respondents are not responsible for paying for a Bilateral Lower Extremity EMG/nerve conduction study. This is because Claimant has not proven any problems he may be having with his bilateral lower extremities are causally related to his May 16, 2005 accident. The Commission properly and correctly found that Claimant failed to carry his burden of proof establishing compensable injuries to his right and left lower extremities. (Commission Decision, pp. 11-12). As this finding is supported by substantial evidence, this Court upholds the Commission's finding.

Claimant erroneously suggests that, by authorizing treatment with the Southeastern Spine Institute, Commissioner Huffstetler was also ordering treatment of his bilateral lower extremities and/or any other body part treated by Southeastern Spine. The fact that a treating physician ordered a test or treatment of a body part other than those accepted or determined by the Commission to be compensable does not mean those other body parts are automatically deemed compensable. Instead, Respondents are only responsible for paying for treatment for those injuries that have been determined to be causally related to Claimant's work-place accident. *See, e.g.*, Nettles, 341 S.C. at 589, 535 S.E.2d at 150; Munn, 336 S.C. at 32, 518 S.E.2d at 290.

With respect to the prior recommendation by Dr. Stovall that a nerve conduction study be performed, the "EMG and nerve conduction studies of the right lower extremity reveal[ed] a normal study, no evidence of lumbar radiculopathy." (Resp. 2010 APA pp. 142-143). At the hearing before Commissioner Huffstetler, Claimant agreed that at his last appointment, Dr. Stovall said there were no indications Claimant's urinary symptoms were the result of his neck or lower back. (2009 Hr'g Tr. p. 23, lines 7-11). Thus, Commissioner Huffstetler clearly was

not ordering any studies or treatment of Claimant's bilateral lower extremities. (2009 Hr'g Tr. p. 16, line 25 – p. 17, line 7).

Although records from the Palmetto Comprehensive Center for Pain of the Southeastern Spine Institute for December 29, 2011 note that he had been diagnosed with lumbar radiculitis and that he complained of "new on-set leg pain," and suggests "a bilateral lower extremity EMG/nerve conduction study to further evaluation [sic] this patient's lower extremity pain," (Cl. APA pp. 9-10), this report does not link any issues he was having with his bilateral lower extremities to his May 16, 2005 accident. The February 24, 2012 record from the same office also notes a diagnosis of lumbar radiculitis, among other things, but does not provide any causal link to his work-related injury. (Cl. APA pp. 11-12). Although Claimant provided Dr. Richardson with a letter, asking whether he agreed with Dr. Johnson's course of treatment and that injuries to his "Back, Legs and Arms" were causally related to his lumbar and cervical spine injuries, the only statement in this letter made "to a reasonable degree of medical certainty" was whether Claimant would "benefit from the evaluation and treatment requested and recommended in [Claimant's] December 20, 2011 office visit medical note." (Cl. APA pp. 2-6, 14). Benefitting from treatment is not the same as being causally related. *E.g.*, Munn, 336 S.C. at 32, 518 S.E.2d at 290.

Without more, the fact that the Commission ordered treatment for Claimant's back through Southeastern Spine, and that the doctors there recommended that he undergo a Bilateral Lower Extremity EMG/nerve conduction study does not establish a causal connection between his work-related injury and any problems he may be having with his bilateral lower extremities. The claimant in a workers' compensation proceeding bears the burden of proving he is entitled to

compensation, which award cannot rest on surmise, conjecture or speculation. Clade, 330 S.C. at 11, 496 S.E.2d at 858.

As was the case with Claimant's arguments regarding his thoracic spine, he attempts to rely on medical reports regarding his bilateral lower extremity issue that post-date the April 18, 2012 hearing before Commissioner Wilkerson. Those records are not part of the record in this case and cannot be considered by an appellate forum. *See* S.C. Code Ann. § 1-23-380(4); S.C. Code Regs. § 67-612(J); Martin, 369 S.C. at 287, 631 S.E.2d at 552.

In the end, Claimant simply failed to prove any problems he is having with his bilateral lower extremities are causally linked to his work-related injury. Consequently, the Commission properly declined to order treatment for those body parts. As the Commission Decision is supported by substantial evidence, this Court affirms such findings.

II. Claimant is not entitled to reimbursement for costs incurred in 2009 and before to evaluate and treat his left shoulder.

The Commission properly and correctly declined to order reimbursement for costs incurred by Claimant in 2009 and before related to his left shoulder. To begin with, this issue was resolved in a prior proceeding. Claimant requested "reimbursement for the two visits to Dr. William Estes in 2009 regarding the evaluation for his shoulders," before Commissioner Roche in 2011. (2011 Single Commissioner Decision, p. 4). She held that Respondents "are not responsible for reimbursement related to the Claimant's treatment with Dr. William Estes in 2009." (2011 Single Commissioner Decision, p. 5). This issue was not appealed to the Full Commission and, as such, is now the law of the case. *See, e.g.*, Brunson v. American Koyo Bearings, 367 S.C. 161, 165-66, 623 S.E.2d 870, 872 (Ct. App. 2005) (findings of fact and conclusions of law of the Single Commissioner become the law of the case unless appealed to the Full Commission), *citing* Green v. City of Columbia, 311 S.C. 78, 80, 427 S.E.2d 685, 687

(Ct. App. 1999). Because the uncontested 2011 Single Commissioner Decision became the final Commission Decision with respect to this issue, Claimant is barred from raising it again in this proceeding. *See, e.g.*, Garris v. Governing Bd. of the S.C. Reins. Fac., 333 S.C. 432, 449, 511 S.E.2d 48, 57 (1998) (explaining that the "primary purposes of the doctrine, commonly known today as claim preclusion, are to bring an end to litigation and prevent a defendant from being forced to defend the same action repeatedly").

The fact that Claimant was representing himself *pro se* in 2011 when Commissioner Roche issued her Decision does not absolve him of the obligation to preserve issues for appeal and/or to timely appeal decisions by the Single Commissioner or the Full Commission. *See* Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (the requirement of timely appeal is jurisdictional, and "if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline..."); State v. Policao, 402 S.C. 547, 558, 741 S.E.2d 774, 779 (Ct. App. 2013) (*pro se* litigants are responsible for preserving issues for appellate review). Because Claimant did not timely appeal Finding No. 7 in the 2011 Single Commissioner Decision to the Full Commission, it is the law of the case and cannot be overturned at this late date.

Even if this Court were to consider this issue, it would be denied for the same reasons that Commissioner Roche denied it in 2011. The medical appointments Claimant had with Dr. Estes in 2009 were not authorized and his left shoulder had neither been accepted by Respondents nor ordered compensable by the Commission in 2009. Compensability of his left shoulder was in dispute. (2011 Single Commissioner Decision, p. 4) (2012 Hr'g Tr. p. 33, line

13 – p. 37, line 10). It was not until 2010 that Commissioner Williams held Claimant's left shoulder to be compensable. (2010 Single Commissioner Decision, pp. 7-8).

Furthermore, although Claimant asserted in his Pre-Hearing Brief before the Commission that Commissioner Bass left the record open for Claimant's "Cervical Spine MRI and the Claimant's Left Shoulder MRI if there were no significant changes noted on the Claimant's Cervical Spine MRI," (Claimant's Form 58, attachment at p. 3), the only evidence for which the record was left open was the deposition of pulmonologist Dr. Fechter. (2008 Single Commissioner Decision, p. 5) (*see also* 2007 Hr'g Tr. p. 5, lines 19-22). To the extent Claimant argues that reimbursement of evaluation and/or treatment of his left shoulder was authorized by Commissioner Bass in an "off the record" conversation, there simply is no evidence of the same. If Commissioner Bass ordered any evaluation and/or treatment of Claimant's left shoulder, it was incumbent on Claimant to capture that statement on the record or have it included in the 2008 Single Commission Decision.[2] Claimant has failed to provide any evidentiary support for his allegations regarding what Commissioner Bass ordered, if anything, concerning his left shoulder which are rejected. Hutson v. South Carolina State Ports Auth., 399 S.C. 381, 389, 732 S.E.2d 500, 504 (2012) (Commission decision cannot be based on speculation).

Claimant's assertion that any evaluation of his left shoulder was delayed by Respondents "as an effort to omit [Claimant's] Left Shoulder injury from [Claimant's] South Carolina Workers' Compensation Commission claim," is entirely unsupported. He has presented no evidence of any such motive. Unsupported allegations and conjecture are insufficient to support a compensation award. Clade, 330 S.C. at 11, 496 S.E.2d at 858.

This Court denies Claimant's request for further review of this issue.

[2] This Court notes that Claimant was represented by counsel at the hearing before Commissioner Bass in 2007.

III. The Commission properly declined to address Claimant's February 23, 2012 Motion.

Claimant's February 23, 2012 Motion seeks to have the Commission investigate various issues of "medical neglect, medical malpractice, bias, any inappropriate action and or any inappropriate practice ..." (Cl. APA pp. 59-60). Claimant raised these issues before Single Commissioner Wilkerson in the lengthy pre-trial conference on November 30, 2011. (Feb. 2012 Single Commissioner Decision p. 5). At that time, Commissioner Wilkerson explained that the Commission lacks jurisdiction to hear the issues of alleged medical neglect or malpractice, bias or inappropriate actions or practices on behalf of the authorized treating physicians, or to list the physicians Claimant alleged mistreated him. (Feb. 2012 Single Commissioner Decision p. 8).

Because Claimant did not appeal Feb. 2012 Single Commissioner Decision, it is the law of this case and cannot be challenged at this late date. *E.g.*, Brunson, 367 S.C. at 165-66, 623 S.E.2d at 872 (findings of fact and conclusions of law of the Single Commissioner become the law of the case unless appealed to the Full Commission). Because the uncontested Feb. 2012 Single Commissioner Decision became the final Commission Decision with respect to this issue, Claimant is barred from raising it again in this proceeding. Garris, 333 S.C. at 449, 511 S.E.2d at 57.

The fact that Claimant is now requesting slightly different relief, *i.e.*, that if the Commission cannot resolve the issues raised in his Motion, the matter be referred to the State Attorney General's office, does not alter the outcome. Plum Creek Dev. Co., Inc. v. City of Conway, 334 S.C. 30, 35, 512 S.E.2d 106, 109 (1999) (simply changing the relief sought does not alter the preclusive effect of *res judicata* or claim preclusion).

Even if this Court were to view this as a jurisdictional issue for which it has de novo review under a preponderance of the evidence standard, Pikaart v. A&A Taxi, Inc., 393 S.C. 312,

317, 713, S.E.2d 267, 270 (2011), the Commission Decision nonetheless would be upheld. *See* Hernandez-Zuniga v. Tickle, 374 S.C. 235, 244, 647 S.E.2d 691, 695 (Ct. App. 2007) (explaining that the "question of subject matter jurisdiction is a question of law" and that, on appeal, the appellant bears the burden of showing that the lower tribunal's "decision is against the preponderance of evidence"). As Commissioner Wilkerson previously held, the Commission lacks jurisdiction to consider issues of medical neglect, malpractice, bias and any inappropriate action or practice. (Feb. 2012 Single Commissioner Decision, p. 8).

The "Commission's jurisdiction and authority is circumscribed by the Workers' Compensation Act." Price v. Peachtree Elec. Servs., Inc., 396 S.C. 403, 409, 721 S.E.2d 461, 464 (Ct. App. 2011), *citing* Marchbanks v. Duke Power Co., 190 S.C. 336, 2 S.E.2d 825 (1939). "An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose." Bazzle v. Huff, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995). "The right to workmen's compensation is wholly statutory and exists only under the circumstances provided in the Workmen's Compensation Act. The right of any claimant to compensation is dependent upon the terms of the Act." Dameron v. Spartan Mills, 211 S.C. 217, 218, 44 S.E.2d 466, 467 (1947) (noting that, "the rights acquired under the Workmen's Compensation Act being purely statutory, the parties are bound by the terms thereof ..."). There is no provision in the Act or the Commission's Regulations authorizing it to consider and resolve allegations of medical neglect, malpractice, bias and/or any inappropriate action or practice.

Similarly, the Commission does not have statutory authority to forward Claimant's complaints to the State Attorney General's office. Under S.C. Code Ann. § 42-9-440, the Commission is required to "report all cases of suspected false statement or misrepresentation, as

defined in Section 38-55-530(D), to the Insurance Fraud Division of the Office of the Attorney General for investigation and prosecution, if warranted, pursuant to the Omnibus Insurance Fraud and Reporting Immunity Act." However, that is the only provision of the Act requiring or authorizing the Commission to report anything to the State Attorney General's office. (*See* 2012 Hr'g Tr., p. 11, line 15 – p. 14, line 18).

In addition, to the extent Claimant argues, that this issue was not "acknowledged, addressed or determined" by Commissioner Wilkerson at the April 18, 2012 Hearing, he is incorrect. Commissioner Wilkerson explained that he had already ruled on the issue and that neither he nor the Commission had jurisdiction to resolve the medical malpractice/bias issue. (2012 Hr'g Tr., p. 11, line 15 – p. 14, line 18).

Beyond ordering medical care and treatment, and authorizing a change of physicians in appropriate cases (which was done here to accommodate Claimant), the Commission has no authority to hear and decide allegations of medical neglect, malpractice, bias and any inappropriate action or practice. Because the Act is in derogation of the common law, its terms are strictly construed, "leaving it to the Legislature to amend and define its ambiguities." Wigfall v. Tideland Utils., Inc., 354 S.C. 100, 110, 580 S.E.2d 100, 105 (2003).

This Court affirms that the Commission lacks authority to resolve this issue for Claimant.

IV. The Commission properly denied Claimant's request for reimbursement of his expenses for the April 18, 2012 and September 18, 2012 Commission hearings.

The Commission properly denied Claimant's request for reimbursement of expenses he incurred in the April 18, 2012 and September 18, 2012 hearings. The April 18, 2012 hearing was initiated by Claimant's filing a Form 50 seeking, among other things, additional medical treatment, resolution of the prescription drug coverage issue, as well as raising the allegations of

medical neglect, malpractice, bias and inappropriate actions on the part of the authorized treating physicians. (June 2012 Single Commissioner Decision, pp. 4-5). Attempts to resolve these issues via a telephone conference were defeated by Claimant's failure to timely return telephone calls to the Commission or to respond to correspondence from Respondents' counsel. (June 2012 Single Commissioner Decision, pp. 6, 10) (2012 Hr'g Tr., p. 3, lines 2-22) (*see also* 2012 Hr'g Tr. p. 7, lines 8-18) (2012 Hr'g Tr. p. 51, lines 19-25). Furthermore, the April 18, 2012 Hearing would have been held in Charleston, instead of St. George (thereby saving Claimant some travel expenses), had Claimant returned Commissioner Wilkerson's phone calls in March 2012. (2012 Hr'g Tr. p. 53, line 18 – p. 55, line 24).

As for the Hearing before the Appellate Panel on September 18, 2012, those costs are also denied. Claimant sought review of the 2012 Single Commissioner Decision. Although the Commission revised some of Commissioner Wilkerson's findings, by and large it affirmed the 2012 Single Commissioner Decision. (Commission Decision, p. 9). S.C. Code Ann. Section 42-17-80 provides that, "[i]f the Commission ... shall determine that such proceedings have been brought, prosecuted or defended without reasonable grounds, it may assess the whole cost of the proceedings upon the party who has brought or defended them." The fact that the Commission did not impose costs indicates that it concluded Respondents' defense was reasonable. *See* Dameron, 211 S.C. at 222, 44 S.E.2d at 467 (finding evidence in the case supported the Commission's factual conclusion regarding imposition of costs). Where a party prevails on most of the points appealed, it can hardly be found to have defended without reasonable grounds. Therefore, the Commission properly declined to award any costs or fees. (Commission Decision, p. 13).

To the extent Claimant is alleging that he is entitled to hearing costs because of the proposed finding in Commissioner Wilkerson's Directive/request for a proposed order, (Directive, mailed on April 27, 2012), his argument fails for several reasons. First, the proposed order was drafted and sent to both Claimant and Commissioner Wilkerson for review. Commissioner Wilkerson did not add or change any findings regarding whether Claimant "has had quite the runaround from the carrier for treatment, checks and prescription problems," prior to signing and issuing his June 2012 Single Commissioner Decision. Second, the Appellate Panel determined that the omission of this directive/finding was an inadvertent scrivener's error and amended "all the previous Findings of Fact relating to the credibility of the parties." (Commission Decision, p. 9). Notably, the Commission did not include any finding reflecting that Claimant has been subjected to a "runaround" but, instead, reaffirmed Commissioner Wilkerson's view that Claimant's distrust of Respondents' counsel and the insurer is "the main problem in this case," and denied his request for costs. (Commission Decision, pp. 9, 11).

Because the Commission Decision to not award Claimant costs is both proper and supported by substantial evidence, this Court affirms such finding.

V. To the extent Claimant attempts to raise the issue of whether Commissioner Wilkerson displayed bias toward him, this issue was not raised to the Commission and is not preserved for appeal.

Claimant filed a Motion with the Commission on January 16, 2013 raising allegations about Commissioner Wilkerson's demeanor toward him during the April 18, 2012 Hearing. The issue of whether Commissioner Wilkerson displayed bias toward Claimant was not raised in his Form 30 notice of appeal and, therefore, is not preserved for appellate review. Only issues raised in the application for review to the Full Commission are preserved for review. *E.g.*, Brunson, 367 S.C. at 166, 623 S.E.2d at 872. Furthermore, the issue of whether Commissioner Wilkerson

displayed bias toward Claimant was not argued to the Full Commission. In order to preserve an issue for appeal, it must be raised to the lower tribunal. Transportation Ins. Co. v. South Carolina Second Injury Fund, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010) (refusing to consider issues not raised below); Elam, 361 S.C. at 23, 602 S.E.2d at 780 (explaining that "[i]t is axiomatic that an issue cannot be raised for the first time on appeal ...); *see also* Bazzle, 319 S.C. at 446, 462 S.E.2d at 274 (issues not raised before the lower tribunal need not be addressed by the appellate court). In fact, Claimant's Motion was not filed until over a week after the Commission Decision was issued. Claimant's Motion asked that Commissioner Wilkerson be removed from and/or replaced as the Hearing Commissioner for a hearing scheduled for February 4, 2013, which was set to consider issues raised on a Form 50 Request for Hearing that Claimant filed with the Commission on September 6, 2012. Regardless of what issues were set for hearing on February 4, 2013, Claimant's Motion is beyond the scope of this proceeding and appeal. It is not part of the Record that was before the Commission when it heard the parties on September 18, 2012, as it was not even filed until after the Commission rendered its Decision. Pursuant to S.C. Code Ann. § 1-23-380(4), appellate review must be confined to the record.

Frankly, there is no evidence of and no reason to believe Commissioner Wilkerson was biased or expressing an inappropriate demeanor toward Claimant, simply because he ruled against him in his compensation claim. This Court denies Claimant's request to review this issue.

VI. Claimant's request to consolidate his two pending appeals is hereby denied as his second appeal is not immediately appealable

The Order of the South Carolina Workers' Compensation Commission that is subject of Claimant's second appeal, Appellate Panel Decision and Order dated April 9, 2014, is not a final decision and, therefore, not immediately appealable. *Montjoy v. Asten-Hill Dryer Fabrics*, 316

S.C. 52, 52, 446 S.E. 2d 618, 618 (1994); *Long v. Sealed Air Corp.*, 391 S.C. 483, 487, 706 S.E. 2d 34, 36 (Ct. App. 2011).

Claimant filed a Workers' Compensation claim against Respondent's alleging entitlement to additional medical treatment and requesting penalties, fines, and sanctions be assessed. After hearing the parties, the Single Commissioner issued an Order on October 8, 2013, finding Appellant entitled to reimbursement for his filing fees, but did not assess any penalties, fines or sanctions as requested by Claimant. Claimant then appealed this decision to the Appellate Panel of the Full Commission. The parties were heard on December 17, 2013 and the Appellate Panel of the Full Commission issued an Order on April 9, 2014. In its Decision and Order, the Commissioners considered the matter and ***remanded*** the Decision and Order to the Single Commissioner in order to make additional findings relating to the issues presented on appeal including whether the Defendants have complied with a prior Order of the Commission. Once a determination is made by the Single Commissioner, the matter is to be returned for oral argument before the Appellate Panel of the South Carolina Workers' Compensation Commission.

Because "there is some further Act which must be done by the [Single Commissioner] prior to a determination of the rights of the parties," the Commission's April 9, 2014 Decision and Order was interlocutory and not immediately appealable. *Charlotte-Mecklenburg Hosp. Auth. V. South Carolina Dept. of Health and Envt'l Cont.*, 387 S.C. 265, 267, 692 S.E. 2d 894, 894-95 (2010). *Charlotte-Mecklenburg* held that "Judicial Review" may only be sought from a final decision" of administrative agencies. 387 S.C. at 266, 692 S.E. 2d at 894; see also *Puniyani v. Avni Grocers,* 2010 S.C. App. Unpub. LEXIS 362 (June 29, 2010) (dismissing Workers' Compensation Appeal where the decision below had been remanded for further substantive proceedings).

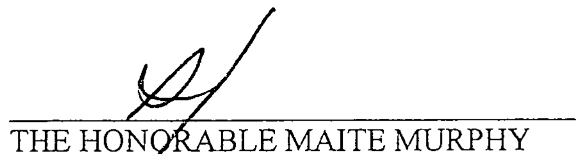
The factual determinations of whether Defendants have complied with previous Decision and Orders of the South Carolina Workers' Compensation Commission and whether the Defendants are subject to penalties, fines or sanctions are substantive factual inquires to be made by the Single Commissioner on remand. As such, this Court denies Claimant's Motion to consolidate both appeals and herby dismisses Claimant's appeal in Case No. 14-CP-18-880, as the April 9, 2014 Commission Decision and Order that is the subject of that appeal is not a final Order for purposes of appellate review.

ORDER

Based upon the foregoing, **IT IS ORDERED** that the Decision and Order of the Appellant Panel of the South Carolina Workers' Compensation Commission dated January 7, 2013 is **AFFIRMED IN ITS ENTIRETY.**

IT IS FURTHER ORDERED, Claimant's request to have his second appeal in Case No. 14-CP-18-880 consolidated with the instant appeal is hereby denied. After careful consideration of the record, the Court denies such consolidation and herby dismisses the appeal in Case No. 14-CP-18-880 as the April 9, 2014 Commission Decision and Order that is the subject of that appeal is not a final Order for purposes of appellate review.

AND IT IS SO ORDERED.



THE HONORABLE MAITE MURPHY

August 18, 2014
St. George, SC

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
(NON-JURY)

RECEIVED
SEP 22 2014
SC Court of Appeals

FRANK WILSON

Claimant/Appellant,

vs.

AMERICAN LaFRANCE

Employer,

AND

AIG c/o GALLAGHER BASSETT SERVICES, INC.

Carrier,

Defendants/Rospondents.

Civil Action No.: 2013-CP-18-01299

WCC File No.: 0506037

CERTIFICATE OF SERVICE

2014 AUG 19 PM 4:54
CLERK OF COURT
DORCHESTER COUNTY
CERTIFIED COPY

The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

TO: *Via U. S. Mail & Certified Mail/RRR*
Frank Wilson
8755 Jessica Court
North Charleston, South Carolina 29406

The Honorable Maite Murphy
P.O. Box 802
St. George, South Carolina 29477

DOCUMENT: ORDER

DATE OF MAILING: August 4, 2014

Susan M. Moten
Legal Assistant to Erin L. Hantske

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1801299

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DORCHESTER COUNTY

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SEP 22 2014
SC Court of Appeals

PLAINTIFF(S)	DEFENDANT(S)
Frank E Wilson	American LaFrance; AIG; Gallagher Bassett Services Inc

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: ____________

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: ____________

☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☒ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: ____________

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: ____________

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Maité Murphy	2166	8/19/2014
Circuit Court Judge	**Judge Code**	**Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on **8/19/2014**, and a copy mailed first class or placed in the appropriate attorney's box on **8/19/2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Frank E Wilson 8755 Jessica Court North Charleston, SC 29406

ATTORNEY(S) FOR THE PLAINTIFF(S)

Erin Leigh Hantske PO Box 650007 Mt. Pleasant, SC 29465
Helen Faith Hiser 735 Johnnie Dodds Blvd. Suite 200 Mount Pleasant, SC 29464

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

cc: SC Workers Comp. Comm.
PO Box 1715
Columbia SC 29202
#0506037

RECEIVED
SEP [illegible] 2014
SC Court of Appeals

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]
Frank Wilson v. American LaFrance
(September 17, 2014)

Frank Wilson, Appellant,

v.

American LaFrance, Employer, and AIG C/O Gallagher Bassett Services, Inc., Carrier, Respondents.

Erin Hantske
McAngus, Goudelock and Courie
P. O. Box 650007
Mount Pleasant, SC 29465
(843) 576-2900
Attorney for Respondents

I hereby certify that I have served the Respondents a copy of the following documents:

1.) **THE STATE OF SOUTH CAROLINA Court of Appeals Case Number 2013CP1801299 NOTICE OF APPEAL dated September 16, 2014- PAGES: 1 thru 6**

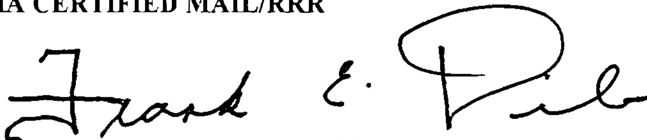
2.) **STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER IN THE COURT OF COMMON PLEAS Circuit Court Judge Maite Murphy- Judgment (ORDER) dated August 19, 2014- PAGES: 1 thru 25**

3.) **STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER IN THE COURT OF COMMON PLEAS FORM 4 dated August 19, 2014- PAGES: 1 thru 2**

4.) **PROOF OF SERVICE OF A NOTICE OF APPEAL document dated September 17, 2014**

by depositing a copy of it in the United States Mail, postage prepaid, on September 17, 2014, addressed to Erin Hantske of McAngus, Goudelock and Courie P. O. Box 650007, Mount Pleasant, SC 29465

VIA CERTIFIED MAIL/RRR



Frank E. Wilson
8755 Jessica Court
North Charleston, SC 29406
(843) 327-9616

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
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Frank Wilson v. American LaFrance
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Frank Wilson, Appellant,

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Carrier, Respondents.

Erin Hantske
McAngus, Goudelock and Courie
P. O. Box 650007
Mount Pleasant, SC 29465
(843) 576-2900
Attorney for Respondents

I hereby certify that on September 17, 2014 I filed a copy of the following documents with the South Carolina Workers' Compensation Commission:

1.) **THE STATE OF SOUTH CAROLINA Court of Appeals Case Number 2013CP1801299 NOTICE OF APPEAL dated September 16, 2014- PAGES: 1 thru 6**

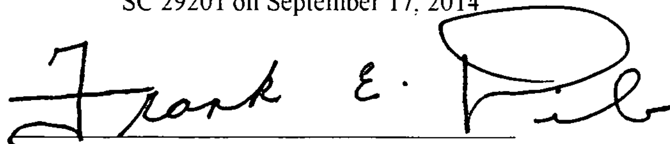
2.) **STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER IN THE COURT OF COMMON PLEAS Circuit Court Judge Maite Murphy- Judgment (ORDER) dated August 19, 2014- PAGES: 1 thru 25**

3.) **STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER IN THE COURT OF COMMON PLEAS FORM 4 dated August 19, 2014- PAGES: 1 thru 2**

4.) **THE STATE OF SOUTH CAROLINA COURT OF APPEALS filing fee in the amount of $100.00 with check number 2461**

5.) **PROOF OF SERVICE OF A NOTICE OF APPEAL document dated September 17, 2014**

by depositing a copy of it in the United States Mail addressed to 1333 Main Street, Suite 500, Columbia, SC 29201 on September 17, 2014



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