

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM FLORENCE COUNTY  
COURT OF COMMON PLEAS

THE HONORABLE MICHAEL G. NETTLES, CIRCUIT COURT JUDGE **SG Supreme Court**

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CASE No. 2007-CP-21-2065

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CLIFTON SPARKS, ..... PETITIONER,

v.

PALMETTO HARDWOOD, INC., AND  
PALMETTO TIMBER S.I. FUND C/O WALKER,  
HUNTER & ASSOCIATES, ..... RESPONDENTS.

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**BRIEF OF RESPONDENTS**

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## STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE COURT OF APPEALS PROPERLY UPHELD THE COMMISSION'S 2007 DECISION, AS IT COMPLIED WITH THE 2007 CIRCUIT COURT ORDER, AND IT APPLIED THE PROPER DEFINITION OF "PHYSICAL BRAIN DAMAGE"?
- II. WHETHER THE COURT OF APPEALS PROPERLY UPHELD THE 2007 COMMISSION DECISION THAT CLAIMANT DID NOT SUFFER PHYSICAL BRAIN DAMAGE DESPITE THE UNAPPEALED FINDING THAT CLAIMANT SUSTAINED A COMPENSABLE INJURY TO HIS BRAIN?
- III. WHETHER THE COURT OF APPEALS CORRECTLY HELD THAT SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSION'S FINDING THAT CLAIMANT FAILED TO MEET HIS BURDEN OF PROVING HE SUSTAINED "PHYSICAL BRAIN DAMAGE"?
- IV. WHETHER THE COMMISSION'S CREDIBILITY DETERMINATION SHOULD BE UPHELD?
- V. WHETHER THE COURT OF APPEALS PROPERLY UPHELD THE COMMISSION'S FINDING THAT CLAIMANT DID NOT MEET HIS BURDEN OF PROVING ENTITLEMENT TO LIFETIME BENEFITS UNDER S.C. CODE ANN. § 42-9-10 DESPITE THE FACT THAT HE IS TOTALLY AND PERMANENTLY DISABLED AND ALSO SUFFERED A COMPENSABLE INJURY-BY-ACCIDENT TO HIS HEAD AND BRAIN?

## STATEMENT OF THE CASE

Petitioner/Claimant Clifton Sparks sustained a series of injuries while working as a saw operator for Employer Palmetto Hardwoods, Inc. He suffered successive injuries to his lower back in September 2000 and March 2001. On May 21, 2001, Claimant was struck on the head by a three to four inch steel cube propelled from a pressurized canister. Claimant alleged that the May 2001 accident injured his brain, neck, and arms, causing headaches, hearing loss, vision problems, tremors, loss of coordination, gait problems, bowel and bladder incontinence, and psychological problems, and sought compensation for permanent and total disability. Furthermore, due to his alleged physical brain damage, he sought lifetime medical and disability compensation pursuant to S.C. Code Ann. § 42-9-10. The issues on appeal relate only to Claimant's allegations of physical brain damage as contemplated under S.C. Code Ann. § 42-9-10.

This claim was heard thereafter by Single Commissioner Bass on June 9, 2005. By Order dated October 5, 2005, Single Commissioner Bass made the following findings of fact, in pertinent part, relating to Claimant's alleged head injury:

7. The accident of 5/21/01 was admitted. Claimant sustained a compensable injury-by-accident not only to his head, but also to his neck (affects function of arms), bladder, head (headaches), brain and psyche. ...
8. The primary point of contention is whether Claimant suffered a physical brain injury. The opinions varied. Drs. Waid and Bumgartner stated no physical brain injury, but implied there may be a mild brain injury intermingled with other problems, including pain and psychiatric disturbances. Drs. Evans, Kolehma and Brabham opined a physical brain injury was sustained by Claimant. Dr. Kang also stated no physical brain injury; however, Dr. Kang is a physiatrist and there is no indication that he has expertise, either through training and/or experience, to speak to that issue. Claimant was referred to Dr. Kang by me for an opinion about his pain management. It is unclear why Dr. Kang

chose to venture an opinion about physical brain injury.

...

12. There is clear and convincing evidence that following the admitted head injury, Claimant was dazed and confused and suffered nausea, vomiting, cognitive impairments and post-concussive headaches.

13. The record as a whole clearly establishes a closed head injury with a concussion. I find that Claimant did suffer physical brain damage.

...

15. The Claimant did suffer permanent injuries to his low back, (affecting lower extremities) neck (affecting upper extremities, bladder, psyche, and brain. Related symptoms include tremors, loss of coordination and gait problems.

16. The Claimant is permanently and totally disabled under § 42-9-10.

17. The Claimant's physical brain damage from the 5/21/01 injury contributes to his disability.

...

20. I found the Claimant to be credible. I do not know what happened to Dr. Kang, but the record as a whole establishes the legitimacy of the Claimant's injuries and complaints, including physical brain damage.

(R. pp. 51-52). The Single Commissioner ruled that “[u]nder S.C. Code §42-9-10, the Claimant is entitled to recovery of weekly compensation of \$532.77 from June 2001 through the present and continuing for the rest of his life, by reason of his total and permanent disability and physical brain damage.” (R. p. 54).

Respondents timely filed a Form 30 alleging, among other things, that the Single Commissioner erred in concluding that Claimant suffered physical brain damage as contemplated under S.C. Code Ann. § 42-9-10. After hearing oral argument, in an order dated June 12, 2006, the Appellate Panel reversed the Single Commissioner's findings of fact and

conclusions of law relating to Claimant's alleged physical brain damage, altering the Single Commissioner's findings of fact as follows, in pertinent part: **[check this transcript to see if Cl. raised the issue of improper contact with Drs]**

7. The accident of 5/21/01 was admitted. Claimant sustained a compensable injury-by-accident not only to his head, but also to his neck (affects function of arms), bladder, head (headaches), brain and psyche. ...
8. The primary point of contention is whether Claimant suffered a physical brain injury. The opinions varied. Drs. Waid and Bumgartner stated no physical brain injury. Drs. Evans, Kolehma and Brabham opined a physical brain injury was sustained. However, Dr. Kang also stated no physical brain injury.
9. **Medical records consistently describe Claimant's condition as a mild concussion, with no loss of consciousness, and all radiographic studies of Claimant's head and brain were normal. Claimant has undergone CT scans of the head, Visual Evoked Response, Auditory Brainstem Evoked Response, EEG, multiple MRIs of the Brain, and a Brain SPECT, all of which were normal.**
10. **Claimant was not credible in his testimony relating to his brain injury. He said he was hit in the head, "got a hole," and "white milky looking stuff" ran out of his head. He also stated he left work immediately and went to Dr. Suggs. In actuality, the Claimant was not seen by Dr. Suggs until two days after the accident, and the medical report did not include anything about a hole in the head or any substances running out of it.**
11. **Based on Findings of Fact #9 and #10 the claim for physical brain injury borders on the frivolous.**
12. There is **no** clear and convincing evidence that following the admitted head injury, Claimant was dazed and confused and suffered nausea, vomiting, cognitive impairments and post-concussive headaches.  
...
14. The Claimant did suffer permanent injuries to his back, (affecting lower extremities) neck (affecting upper extremities, bladder, and psyche. Related symptoms include tremors, loss of coordination and gait problems.

15. The Claimant is permanently and totally disabled under § 42-9-30.

The Commission specifically deleted the Single Commissioner's Finding of Fact No. 17 that "Claimant's physical brain damage from the 4/21/01 injury contributes to his disability." (Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission, filed June 12, 2006, R. pp. 60-61) (emphasis added) ("2006 Commission Decision").

Claimant appealed to the Circuit Court, arguing that the Commission erred in confusing "brain injury" and "brain damage," in lacking substantial evidence to support its finding regarding "physical brain damage," and in using the wrong standard of proof in rendering its decision. (R. pp. 114-118). After hearing oral argument, the Circuit Court remanded the case to the Appellate Panel of the Commission for an explanation of "what it means by the use of the term 'physical brain injury,' whether it is different from 'physical brain damage,' or is intended to be the same as 'physical brain damage,'" and to resolve the apparent inconsistency between Finding of Fact No. 7 (which found that "Claimant sustained a compensable injury-by-accident not only to his head, but also to his ... head (headaches), brain"), and Finding of Fact No. 11 (which found the claim regarding "physical brain injury borders on the frivolous"). (Circuit Court Order, filed August 14, 2007, R. pp. 1-2) ("2007 Circuit Court Order"). On remand, the Appellate Panel amended its findings of fact by deleting its former Finding of Fact No. 11 and replacing it with the following:

11. Claimant has failed to carry his burden of proof to establish physical brain damage as contemplated by S.C. Code Ann. § 42-9-10. Although Finding of Fact #7 above notes an injury-by-accident to the brain, this does not constitute damage to the brain.

((Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation

Commission, filed October 31, 2007, R. pp. 72-73) (emphasis added) (“2007 Commission Decision”). The rest of the Appellate Panel’s Decision was materially the same as the 2006 Commission Decision.

Claimant timely appealed this order to the Circuit Court. Affirming the 2007 Commission Decision, the Circuit Court held that competent, substantial evidence supported the Commission’s factual and credibility findings, affirmed the Commission’s interpretation of “physical brain damage,” and rejected Claimant’s argument that the Commission applied the wrong standard of proof. (Circuit Court Order, filed June 16, 2008, R. pp. 5-13) (“2008 Circuit Court Order”). The Circuit Court observed that, “[w]hile the [2007 Commission Decision] may not be as eloquently drafted as may be hoped for, it is clear that the Workers’ Compensation Commission has found that while the [Claimant] may have sustained an injury to his brain in the form of a mild concussion, he did not suffer any brain damage as contemplated by the statute.” (R. p. 8).

On July 16, 2008, Claimant timely appealed to the Court of Appeals, which affirmed the 2008 Circuit Court Order upholding the 2007 Commission Decision. (Appx. pp. 1-2). Claimant filed a petition for rehearing, which was denied. (Appx. pp. 42-43). Within the proscribed time, Claimant petitioned this Court for review on eight separate issues. (Claimant’s Petition for Writ of Certiorari, filed March 28, 2011). This Court granted Claimant’s petition for review on only five of the eight issues. (Order of the Supreme Court, filed June 8, 2012) (granting review of Petitioner’s questions II, III, V, VII and VIII, but denying review of Petitioner’s questions I, IV and VI).

#### **FACTS**

The relevant facts are as follows: On May 21, 2001, under the employ of Respondent

Palmetto Hardwood, Inc., Claimant was struck on the head by a three to four inch steel cube ejected from a pressurized cylinder. (R. p. 718). He reportedly did not lose consciousness and continued to work for the rest of the day. (R. pp. 478, 718, 471, 474). Although Claimant testified that he saw Dr. Suggs of the Medical Group the day the incident occurred, (R. p. 240, line 12 – p. 241, line 19), the medical records reflect that Claimant was not seen until two days later. (R. p. 412). Despite the fact that Claimant testified that his “head was running blood and white stuff ... white milky stuff,” (R. p. 232, lines 14-24), Dr. Suggs noted only a small abrasion on Claimant’s right parietal area. (R. p. 412).<sup>1</sup> Dr. Suggs found Claimant’s pupils’ to be equal, and saw no abnormality in speech, reflexes or balance. (R. p. 412). Dr. Suggs ordered a CT scan of the head, which showed no evidence of abnormality. (R. p. 411). Dr. Suggs diagnosed Claimant as suffering from a mild concussion. (R. p. 412).

During a two-week follow up on June 4, 2001, Claimant complained to Dr. Suggs of mild headache and inability to concentrate. (R. p. 413). Upon examination, Dr. Suggs stated that he “did not find any significant physical findings,” and released Claimant to return to work. (R. p. 413). Follow-up visits noted complaints of headaches but “no nausea or vomiting,” and that Claimant had returned to work three days a week, five to six hours per day, and continued to improve. (R. pp. 414-416).

In October 2001, Claimant was seen by a neurologist, Dr. R. Joseph Healy, concerning complaints of tinnitus and occasional numbness in the hands and face. An EEG returned normal results; however, Dr. Healy opined that his impression was that Claimant “suffered a closed head injury although five months ago. As to whether or not there is any element of post-traumatic encephalopathy probably form [sic] a neuropsychological testing would have to be done.” (R. p.

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<sup>1</sup> Contrary to Claimant’s assertion that the facts and circumstances of Claimant’s May 21, 2001 injury are “uncontroverted,” (Pet. Br. p. 7), the Commission found parts of Claimant’s testimony regarding this incident to be not credible because they were in conflict with other evidence in the record. (R. p. 72).

474).

In November 2001, Claimant underwent neurological assessment by Dr. W. James Evans. (R. pp. 476-479). An EEG, MRI and SPECT of the brain were performed with normal results. (R. pp. 481-82, 486, 489). Visual and Auditory evoked response tests showed normal brain functioning. (R. pp. 479-480).

In July and September 2002, Dr. L. Randolph Waid conducted an extensive neuropsychological assessment of Claimant. (R. pp. 514-419). Dr. Waid noted that Claimant's "chronic pain and somatic difficulties interfered with his capacity to meet the demands of testing," (R. p. 514), and as a result, Claimant's neurocognitive evaluation was somewhat limited. (R. p. 517). Dr. Waid stated that Claimant's "incapacity to meet the demands of neurocognitive/intellectual testing cannot be attributed solely to brain dysfunction as there is no compelling evidence on Neuro Speck [sic], MRIs or CT scans of physical injury to the brain." He concluded that "while there is the possibility of having sustained a concussion, I believe [Claimant's] greatest morbidity is his ongoing pain and somatic difficulties as well as co-morbid psychiatric disturbance." (R. p. 518). Dr. Waid also concluded that "there is no way to disentangle the contribution of a potential concussion or render an opinion that he has suffered physical injury to his brain." (R. p. 519).

In April 2003, Dr. James L. Bumgartner, a neurologist, examined Claimant. (R. pp. 725-726). Dr. Bumgartner noted that Claimant's history was "consistent with mild concussion and post-traumatic pain syndrome," and concluded that his "primary problem is one of psychiatric dysfunction and chronic pain. A mild concussion alone would not produce this clinical picture. I concur with Dr. Waid's assessment of significant psychiatric comorbidity." (R. p. 726). Dr. Bumgartner also stated, with a reasonable degree of medical certainty, that, "[t]hough Mr. Sparks

sustained a mild concussion by history 5/21/01, there is no data to suggest post-traumatic cognitive impairment.” (R. p. 724).

In May 2003, a psychological evaluation conducted by Dr. William G. Kee, Ph.D., (R. pp. 527-532), concluded that Claimant suffered from major depression, generalized anxiety disorder, post-traumatic stress disorder, and pain disorder associated with medical and psychological factors. (R. p. 532). In December 2003, Dr. John M. Roberts performed a psychiatric evaluation of Claimant. (R. pp. 586-594). Dr. Roberts concluded that Claimant’s history “would warrant a diagnosis of post-concussion syndrome or late effect head injury.” (R. p. 592). Claimant was also examined by Dr. Kerri A. Kolehma in December 2003, (R. pp. 601-604), who diagnosed him with “[c]hronic headaches related to mild brain injury and cervical tension/occipital neuralgia,” as well as a number of other issues. (R. p. 603).

A January 2005 MRI of Claimant’s brain again revealed normal results. (R. pp. 625, 723, 771). In March 2005, Dr. Bumgartner opined that Claimant’s “history remains consistent with mild concussion or post-traumatic syndrome,” but concluded that his “primary problem is one of psychiatric dysfunction and chronic pain. Mild concussion as described would not produce [this] clinical picture. I concur with Dr. Waid’s assessment of significant psychiatric comorbidity as the primary problem.” (R. p. 723).

Also in March 2005, Claimant underwent a second battery of neuropsychological testing by Dr. Waid. (R. pp. 625-629). As part of this evaluation, Dr. Waid reviewed the updated medical records. (R. p. 626). Dr. Waid stated that, while Claimant “may have experienced a mild concussion as the result of the 3<sup>rd</sup> work related accident in May of 2001, review failed to suggest an extended period of loss of consciousness or highly disruptive acute neurological sequelae that would provide compelling evidence that he sustained physical injury to the brain.”

He further opined that, although Claimant “is quite compromised, ... [t]he current pattern and profile of neurocognitive impairments ... is inconsistent with that which would be expected as a sequelae of a mild concussion.” He concluded that Claimant’s “difficulties were attributed to psychiatric disturbance, chronic pain, and physical limitations. There is no compelling evidence that he has sustained a physical injury to the brain or that this is the primary mechanism mediating his current difficulties.” (R. p. 629).

Claimant was referred to Dr. Kang for an Independent Medical Examination in March of 2005. (R. p. 2 (Single Commissioner’s March 28, 2005 Order simply directed: “Employer/Carrier shall have Claimant evaluated by a physiatrist, Dr. C. Gregory Kang, M.D. as soon as possible”)). After reviewing the medical records and examining Claimant, (R. pp. 727-729), Dr. Kang concluded that Claimant suffered a mild concussion, “but did not suffer a serious head injury on 05/21/01. The hallmark of a serious head injury is loss of consciousness.” Dr. Kang also noted symptom magnification, demonstration of “multiple Waddell signs,” and remarked that Claimant’s “pain and complaints are far out of proportion to what [Dr. Kang could] detect objectively both from physical examination as well as from review of medical records.” (R. p. 729).

#### **STANDARD OF REVIEW**

Judicial review of a Workers’ Compensation Commission decision is governed by S.C. Code Ann. § 1-23-380 (Supp. 2011) of the Administrative Procedures Act (“APA”); Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (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 APA “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).

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). 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). It is not within the appellate courts’ purview to reverse findings of the Full Commission which are supported by substantial evidence. Whitworth v. Window World, Inc., 377 S.C. 637, 640, 661 S.E.2d 333, 335 (2008). 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). Where there is a conflict in the evidence, either by different witnesses or the testimony of the same witnesses, the factual findings of the Commission are conclusive. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492-93, 541 S.E.2d 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).

The Commission is the final arbiter of witness credibility and the weight to be accorded to evidence. Brunson v. American Koyo Bearings, 395 S.C. 450, 455, 718 S.E.2d 755, 758 (Ct. App. 2011). Furthermore, it is the Commission’s prerogative to believe or disbelieve expert

testimony. See Pack v. South Carolina Dept. of Transp., 381 S.C. 526, 536, 673 S.E.2d 461, 466-67 (Ct. App. 2009) (observing that the “Commission need not accept or believe medical or other expert testimony, even when it is unanimous, uncontroverted, or uncontroverted”); see also Sharpe, 336 S.C. at 161, 519 S.E.2d at 106 (stating that “in compensation proceedings, where uncontroverted medical opinions are merely deductions drawn from certain symptoms, the final conclusion remains with the triers of fact”).

### ARGUMENT

**I. The Court of Appeals properly upheld the Commission’s 2007 Decision, as it complied with the 2007 Circuit Court order, and it applied the proper definition of “physical brain damage.”**

The central issue before the Commission in this case was whether Claimant’s May 2001 head injury constituted “physical brain damage” as contemplated by the third paragraph of S.C. Code Ann. § 42-9-10, which provides:

Notwithstanding the five-hundred-week limitation prescribed in this section or elsewhere in this title, a person determined to be totally and permanently disabled who as a result of a compensable injury is a paraplegic, quadriplegic or who has suffered physical brain damage is not subject to the five-hundred-week limitation and shall receive the benefits for life.

Claimant’s first point of appeal to this Court really raises two separate issues: 1) whether the Commission complied with the 2007 Circuit Court remand order; and 2) whether the Commission applied the proper definition of “physical brain damage” to his claim. Respondents address these two issues in reverse order.

A. The 2007 Commission Decision applied the proper definition of “physical brain damage.”

Claimant correctly notes that the South Carolina Workers’ Compensation Act (“Act”) does not define the term “physical brain damage” or even “physical” or

“brain damage,”<sup>2</sup> but then proceeds to build an erroneous and illogical argument based on various dictionary definitions of each of those terms separately in order to support his claim to lifetime compensation, opining that “any reasonable doubts [should be] resolved in favor of coverage.” (Pet. Br. p. 8).<sup>3</sup> Claimant’s statutory interpretation, analysis and reasoning are flawed and must be rejected.

“The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature.” Brown v. Bi-Lo, 354 S.C. 436, 439, 581 S.E.2d 836, 838 (2003). Where a statute’s language conveys a clear and definite meaning, the Court must apply the statutory language according to its plain and ordinary meaning. Catawba Indian Tribe v. South Carolina, 372 S.C. 519, 525, 642 S.E.2d 751, 754 (2007). Nonetheless, “[h]owever plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention. [citation omitted] If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.” Kiriakides v. United Artists Comms., Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). In addition, if the statutory language is susceptible of more than one meaning or is vague and indefinite, a court must construe the language in a manner that favors a “just, beneficial, and equitable operation of the law.” Wieters v. Bon-Secours – St. Francis Xavier Hosp., Inc., 378

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<sup>2</sup> The term “injury” is defined in the Act as “injury by accident arising out of and in the course of the employment ....” S.C. Code Ann. § 42-1-160. A “compensable injury” is simply an injury that arises out of and in the course of employment. See, e.g., Grant v. Grant Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007).

<sup>3</sup> Claimant cites Dickert v. Metropolitan Life Ins. Co., 306 S.C. 311, 411 S.E.2d 672 (Ct. App. 1991) for the proposition that any reasonable doubts should be resolved in favor of coverage. (App. Br. p. 8). What Claimant fails to note is that the issue in Dickert was whether, as a matter of law, Dickert’s tort claims fell within and were therefore barred by the workers’ compensation statute, 306 S.C. at 311, 411 S.E.2d at 673, and not the factual resolution of whether a particular claimant in fact suffered a particular injury under the Act. Furthermore, “even a liberal construction of the Workers’ Compensation Act ‘does not authorize the amendment, alteration or extension of its provisions beyond its obvious meaning.’” Anderson, 343 S.C. at 498, 541 S.E.2d at 531; see also Hernandez-Zuniga v. Tickle, 374 S.C. 235, 243, 647 S.E.2d 691, 695 (Ct. App. 2007) (holding “a construction should not be adopted that does violence to the specific provisions of the Act”).

S.C. 160, 170, 662 S.E.2d 430, 435 (Ct. App. 2008). Courts should not construe a statute “by concentrating on an isolated phrase.” Duvall v. South Carolina Budget & Control Bd., 377 S.C. 36, 43, 659 S.E.2d 125, 128 (2008). Instead, the “statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of particular words.” Sloan v. South Carolina Bd. of Phys. Therapy Exam’rs, 370 S.C. 452, 468, 636 S.E.2d 598, 606-07 (2006).

At issue in this case is the statutory construction of the term “physical brain damage” as contemplated in S.C. Code Ann. § 42-9-10. Claimant mires construction of the term “physical brain damage” in circular reasoning. (Pet. Br. pp. 8-11). Claimant argues that the words “injury” and “damage” have the same meaning; therefore, a compensable injury by accident equates to “physical brain damage.”<sup>4</sup> However, it is well-settled that, “where different language is used in different parts of a statute, it is presumed that the language is used with a different intent.” 73 AM. JUR. 2d *Statutes* § 131. If the legislature intended to assign the same meaning to the word “damage” as its defined word “injury,” then it could have used one of the two words exclusively. *See, e.g., Resolution Trust Corp. v. Eagle Lake and Golf Condos.*, 310 S.C. 473, 477, 427 S.E.2d 646, 648 (1993) (stating that legislature knew how to impose limitation on the term “lien” but chose not to). By choosing the word “damage” instead of “injury” within S.C. Code Ann. § 42-9-10, the legislature clearly expressed its intent that “damage” carry a different meaning than “injury.”

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<sup>4</sup> Claimant asserts that his definitions of injury and damage “suggest that ‘physical,’ when used to modify the word ‘injury’ or ‘damage,’ refers to a force from outside the body impacting upon the body in a harmful way.” (Pet. Br. p. 10). Claimant cites no source or authority for his self-serving conclusion. The word “physical,” is commonly defined as “of or pertaining to that which is material,” or, alternatively, “of or pertaining to the body,” which implies either some external, material force as the cause of the brain damage, or is intended to distinguish between psychological damage and actual damage to the material of the brain. *See* “Physical,” Dictionary.com, *available at* <http://dictionary.reference.com/browse/physical>.

In discussing Claimant's head injury, the Single Commissioner and the 2006 Commission Decision initially created confusion by failing to consistently use the precise statutory phrase "physical brain damage" in their findings of fact and, instead, at points used the phrase "physical brain injury." (R. pp. 51-52, 60-61). For example, both the Single Commissioner Decision and the 2006 Commission Decision used the phrase "physical brain injury" in Finding of Fact No. 8 describing the central issue in this case. (R. pp. 51, 60). In Finding of Fact No. 13, the Single Commissioner used the statutory phrase in finding that Claimant had suffered "physical brain **damage**." However, in Finding of Fact No. 11, the 2006 Commission Decision rejected the claim of "physical brain **injury**."<sup>5</sup>

The Circuit Court remanded to the Commission for two purposes: 1) to explain whether the phrase "physical brain injury" was meant to be the same or different from the phrase "physical brain damage," and 2) clarify the inconsistency between Finding of Fact No. 7 (which held Claimant had sustained a compensable injury to his head and brain) and Finding of Fact No. 11 (which rejected his claim of a "physical brain injury"). (R. p. 2). On remand, in its 2007 Commission Decision, the Commission revised its findings of fact, deleting its former Finding of Fact No. 11 and replacing it with:

11. Claimant has failed to carry his burden of proof to establish physical brain damage as contemplated by S.C. Code Ann. §42-9-10. Although Finding of Fact #7 above notes an injury-by-accident to the brain, this does not constitute damage to the brain.

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<sup>5</sup> Claimant argues that, because Commissioner Barden "repeated under her signature her personal belief that 'the claim for physical brain injury borders on the frivolous,'" and because the 2006 Commission Decision found Claimant suffered "compensable" brain injury but not a "physical" brain injury means the Commission "at that time **must** have believed injury and damage were synonymous, interchangeable terms ..." (Pet. Br. pp. 11-12, n.7) (emphasis added). First, Claimant imputes intentions and beliefs to the Commission that are based on conjecture and unsupported. Second, the 2006 Commission Decision was remanded for clarification and is not presently before this Court. Third, even if the Commission used imprecise language, such an inadvertent error does not and cannot serve as the basis to award Claimant lifetime compensation. Fourth, the 2007 Commission Decision unambiguously and properly held that Claimant did not meet his burden of proving he suffered physical brain damage, (R. p. 73), resolving the issue of the Commission's meaning against Claimant.

(R. pp. 72-73). In this manner, the Commission clarified that, regardless of the fact that Claimant suffered an “injury-by-accident not only to his head, but also to his ... brain ...,” which entitled him to medical treatment for that injury, he did not carry his burden of proving he was entitled to lifetime compensation for physical brain damage as contemplated in S.C. Code Ann. § 42-9-10.

Unfortunately, the 2007 Commission Decision again repeated the phrase “physical brain injury,” first employed by the Single Commissioner in Finding of Fact No. 8, stating that “[t]he primary point of contention is whether Claimant suffered a physical brain injury.” (R. pp. 51, 72). However, use of the phrase “physical brain injury” in Finding of Fact No. 8 was no more than an inadvertent error and it is clear that the Commission meant “physical brain damage.” Because it had just stated that Claimant suffered a compensable injury to his brain, the following finding of fact stating the “primary point of contention” is whether there is “physical brain injury” logically can only be intended to mean something besides a compensable brain injury. See Dowling v. South Carolina Tax Comm’n, 312 S.C. 194, 199-200, 439 S.E.2d 825, 829 (1993) (inadvertent error in Circuit Court order was harmless and of no consequence where the court properly decided the ultimate issue); Watkins v. Smith, 40 N.C. App. 506, 510, 253 S.E.2d 354, 356 (N.C. Ct. App. 1979) (instructing that “[j]udgments should be liberally construed so as to make them serviceable instead of useless”).

The Commission reviewed the medical records, noting that some medical opinions found that Claimant had suffered a physical brain injury and some found that he had not. (R. p. 72). Note that the medical evidence uses various terms to describe Claimant’s condition: Dr. Healy stating that Claimant “suffered a closed head injury” but could not determine whether any brain dysfunction had occurred without further neuropsychological testing (R. p. 474); Dr. Waid

concluding that, while Claimant may have suffered a mild concussion, “there is no way to disentangle the contribution of a potential concussion or render an opinion that he has suffered physical injury to his brain” (R. p. 519); Dr. Bumgartner noting probable mild concussion but also that Claimant’s MRI’s were normal (R. pp. 723, 725-726); Dr. Roberts noting Claimant suffered a “head injury” with a diagnostic impression of “post concussion syndrome” (R. pp. 678, 681); Dr. Kolehma diagnosing Claimant with, among other things, “[c]hronic headaches related to mild brain injury and cervical tension/occipital neuralgia” (R. p. 603); and finally, Dr. Kang opining that Claimant did not suffer a “serious head injury” (R. p. 729). However, medical experts are not expected to conform their medical findings to match statutory language.

Claimant cites Crisp v. SouthCo. Inc., 390 S.C. 340, 701 S.E.2d 762 (Ct. App. 2010), as a case where both the Commission and this Court “used ‘physical brain injury’ as being synonymous with the statutory phrase ‘physical brain damage.’” (App. Br. p. 9 n.5). First, even if the Commission and courts inadvertently have used the phrase “physical brain damage” and “physical brain injury” interchangeably, that does not mean that the terms “injury” and “damage” are always synonymous or that someone who has sustained a compensable injury to his brain, however minor and temporary, is automatically entitled to lifetime benefits under S.C. Code Ann. § 42-9-10. Second, in Crisp, the claimant had not yet reached Maximum Medical Improvement, so the issue of a permanent award was not before either the Commission or the Court of Appeals. Third, even if the Commission and/or the courts have inadvertently used the terms “physical brain damage” and “physical brain injury” interchangeably in a case, such use cannot alter the meaning of the statute.

Furthermore, Crisp confirms that the Commission’s Decision in this case should be upheld. In Crisp, the Full Commission affirmed the Single Commissioner’s Order which the

Appellate Panel incorporated by reference.<sup>6</sup> The Single Commissioner found that the claimant “sustained a head injury resulting in cognitive disorders to his brain, but has not sustained a physical brain injury,” and that “[a]s a result of his injury by accident and his physical and head injuries, claimant has sustained injury to his psyche, or psychological overlay.”<sup>7</sup> Thus, the Commission held that Claimant suffered some injury to his head that resulted in some injury (cognitive disorders) to his brain, but that he did not suffer a physical brain injury. In addition, although the claimant in Crisp complained of severe headaches and nausea following his accident, and although there was some medical evidence that he had suffered physical brain damage as a result of his compensable accident, the Commission relied on other credible evidence (including the fact that all of the MRIs, CT scans and other radiological imaging of claimant’s brain were normal) to hold that the claimant had not suffered a physical brain injury.<sup>8</sup> As the Court of Appeals properly noted in that case, where there is conflicting evidence on an issue, the findings of the Commission are conclusive so long as they are based on substantial evidence in the record. Crisp, 390 S.C. at 346-47, 701 S.E.2d at 766.

In addition, rules of statutory construction support an element of permanency in the term “physical brain damage” as used in S.C. Code Ann. § 42-9-10. First, the term “physical brain damage” must be interpreted within the context of other words within S.C. Code Ann. § 42-9-10. Estate of Ada B. Nicholson v. South Carolina Dep’t of Health & Human Servs, 377 S.C. 590, 595-596, 660 S.E.2d 303, 305 (Ct. App. 2008). In other words, “according to the doctrine of *noscitur a sociis*, the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute.” Southern Mut. Church Ins. Co. v. S.C. Windstorm &

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<sup>6</sup> Crisp v. SouthCo, Inc., Appellate Panel Decision & Order of the South Carolina Workers’ Compensation Commission, 2007 SC Wrk. Com. LEXIS 377, \*2-3 (April 3, 2007).

<sup>7</sup> Crisp v. SouthCo, Inc., Order of the South Carolina Workers’ Compensation Commission, 2006 SC Wrk. Com. LEXIS 1224, \*24 (Aug. 1, 2006).

<sup>8</sup> Id. at \*11, 21-24.

Hail Underwriting Ass'n, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991). The third paragraph of S.C. Code Ann. § 42-9-10 provides that, “any person determined to be totally and permanently disabled who as a result of a compensable injury is a paraplegic, a quadriplegic, or who has suffered physical brain damage ... shall receive benefits for life.” Paraplegia is “the complete paralysis of the lower half of the body due to spinal disease or injury.” See “Paraplegic,” Dictionary.com, available at <http://dictionary.reference.com/browse/paraplegic>. Quadriplegia is “complete paralysis of all four limbs or the entire body.” See “Quadriplegia,” Dictionary.com, available at <http://dictionary.reference.com/browse/quadriplegia?qsrc=2446>. These conditions are characterized by a presumed permanency of the paralysis. In addition, other conditions for which total and permanent compensation is awarded under the second paragraph of S.C. Code Ann. § 42-9-10 – the “loss of both hands, arms, shoulders, feet, legs, hips, or vision in both eyes, or any two thereof” – all embody permanent physical damage to the body. Thus, the only logical conclusion is that “physical brain damage” must contribute to the finding of permanent and total disability, meaning both that the “physical brain damage” must be permanent and that it must contribute to the total disability.<sup>9</sup> It would be absurd suggest the Legislature intended to award a claimant lifetime benefits for a mild and temporary brain concussion but limit compensation to 500 weeks for a claimant who has lost both hands or legs.

Furthermore, “[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” Glover v. Suitt Constr. Co., 318 S.C. 465, 469, 458 S.E.2d 535, 537

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<sup>9</sup> Thus, to the extent Claimant argues to this Court, as he did below, that the language of S.C. Code Ann. § 42-9-10 entitles him to lifetime compensation because its use of the past tense verb “has suffered” means that “physical brain damage” does not need to be permanent or ongoing, that argument should be rejected. Past tense verbs must be considered in light of the overall context of the statute. Busby v. Moore, 330 S.C. 201, 204, 498 S.E.2d 883, 884 (1998); *overturned on other grounds by* Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). It would be nonsensical for the Legislature to have intended to award lifetime benefits for a temporary brain injury that resolves and does not affect a workers’ ability to earn wages, while at the same time limiting compensation to 500-weeks for permanent and total disability.

(1995). The Commission's 2007 Decision indicates the phrase "physical brain damage" incorporates an element of permanency. The Commission pointed out that the medical records indicated that Claimant suffered a mild concussion with no loss of consciousness, and all of the radiographic studies, CT scans, Visual Evoked Response, Auditory Brainstem Evoked Response, EEG, MRIs and Brain SPECT were normal. Importantly, in Finding of Fact No. 14, the Commission omitted Claimant's head and brain injuries from its list of injuries that caused permanent disability, indicating that Claimant's mild concussion was a transient condition that resolved and did not contribute in any way to his permanent disability. (R. pp. 61, 73).<sup>10</sup> Finally, the Commission clearly and unambiguously revised its Finding of Fact No. 11 to state that Claimant's head injury did not constitute "physical brain damage" as contemplated within S.C. Code Ann. § 49-9-10. From these findings, read as a whole, one can reasonably conclude that the Commission properly interpreted the phrase "physical brain damage" to include an element of permanency. This is in accord with prior case law. *See Glover*, 318 S.C. at 467 n.1, 458 S.E.2d at 537 n.1 (explaining that "S.C. Code Ann. § 42-9-10 (1985) eliminates the 500 week cap on compensation for total, **permanent** disability **due to** physical brain damage ...") (emphasis added). In other words, under the Commission's interpretation, an "injury" may be compensable for purposes of medical treatment, but not necessarily constitute permanent "physical brain damage" for purposes of S.C. Code Ann. § 42-9-10. The 2008 Circuit Court Order confirmed the Commission's clarification, stating that, "while the Appellant may have had an injury to his brain, there was no damage or permanent disability to the brain." (R. p. 11).

Accepting Claimant's argument to interpret "damage" to mean the same as "injury" would yield a result that is absurd and contrary to legislative intent. *See Kiriakides*, 312 S.C. at

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<sup>10</sup> There is no evidence that Claimant appealed Finding of Fact No. 14, (*see* R. p. 304, line 25 – p. 305, line 9; R. p. 384, line 18 – p. 385, line 1), which is, therefore, the law of the case.

275, 440 S.E.2d at 366 (courts will reject the ordinary meaning of words used in a statute “when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislation intention”). The third paragraph of S.C. Code Ann. § 42-9-10 provides an additional measure of financial security to workers suffering from certain specific injuries that are particularly devastating to quality of life, and require a greater degree of support than other injuries. Inarguably, the purpose of S.C. Code Ann. § 42-9-10 is to provide lifetime support for workers who sustain traumatic, lifelong injuries that permanently affect their ability to support themselves. See Wigfall v. Tideland Utils., Inc., 354 S.C. 100, 105, 580 S.E.2d 100, 102 (2003) (noting that, in S.C. Code Ann. § 42-9-10, “the Legislature has categorized certain types of injuries as *per se* totally disabling,” including loss of both hands, arms, feet, legs or vision in both eyes, or paraplegia, quadriplegia “or who has suffered physical brain damage ...”). Interpreting “brain damage” in light of this purpose leads to the inescapable conclusion that “damage” must mean permanent physical impairment. Without this element of permanency, there would be no need to provide for lifetime compensation under S.C. Code Ann. § 42-9-10. If the terms “damage” and “injury” had the same meaning under the Act, then a claimant could be awarded lifetime benefits for an injury that was not permanent, which makes no sense given that the legislative intent behind S.C. Code Ann. § 42-9-10 is to provide long-term financial security for those who are permanently and totally disabled as a result of particularly devastating physical conditions (paraplegia, quadriplegia and brain damage). Without some element of permanency in the definition of “physical brain damage,” the word “damage” would absurdly become, as Claimant argues, interchangeable with the word “injury,” giving claimants the opportunity to obtain lifetime benefits for all sorts of temporary brain dysfunction, such as a mild concussion that completely

heals with no residual physical effect. This clearly cannot be what the Legislature intended. Wigfall, 354 S.C. at 116, 580 S.E.2d at 108 (workers compensation awards “are not designed to compensate the employee for his injury, but merely to provide him with the bare minimum of income and medical care to keep him from being a burden to others”).

Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997), is consistent with these rules of interpretation. In Pearson, an employee was injured when he fell and struck his head. The Commission and Circuit Court upheld the single commissioner’s conclusion that the employee was totally and permanently disabled and entitled to lifetime benefits due to physical brain damage. The employer argued that the record lacked substantial evidence to support the finding of physical brain damage. 327 S.C. at 399, 489 S.E.2d 222. The court held that “the record overwhelmingly supports the Commission’s findings that Pearson is totally and **permanently** disabled **as a result** of physical brain damage ....” 327 S.C. at 399, 489 S.E.2d at 222 (emphasis added).

From Pearson’s holding that the employee was “totally and **permanently** disabled **as a result** of physical brain damage,” 327 S.C. at 399, 489 S.E.2d at 222 (emphasis added), it is reasonable to conclude that, to be entitled to lifetime compensation under S.C. Code Ann. § 42-9-10, the physical brain damage must be permanent and must be at least a cause of a claimant’s permanent disability. To hold otherwise would ignore the purpose and intent of S.C. Code Ann. § 42-9-10. See Creech v. S.C. Public Service Comm’n, 200 S.C. 127, 138, 20 S.E.2d 645, 649 (1942) (instructing that a “Court may not, in order to give affect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent”).

Claimant relies on Pearson for the proposition that physical brain damage does not need to be “the sole or primary problem.” (Pet Br. p. 17 n.11). Claimant’s reliance is misplaced because, unlike the claimant in Pearson, here Claimant’s head injury did not contribute in any way to the Commission’s finding of total and permanent disability. (R. p. 73). Pearson requires that physical brain damage be at least a cause of permanent disability even if not the **sole** cause. 327 S.C. at 400, 489 S.E.2d at 222. Here, based on substantial evidence in the record, the Commission found that Claimant suffered permanent injuries to his back, neck, bladder and psyche, but not to his head or brain. (R. p. 73). For all these reasons, Pearson supports the conclusion that Claimant is not entitled to lifetime benefits under S.C. Code Ann. § 42-9-10.

Finally, Claimant cites three cases in support of his argument that “physical brain damage” means “an injurious force from outside the body impacting adversely upon the injured person’s head and brain.” (Pet. Br. p. 10). However, those cases are entirely irrelevant to the case and issues presently before this Court and should be dismissed. Ivey v. Trans Global Gas & Oil, 3 S.W.3d 441, 1999 Tenn. LEXIS 424 (Tenn. 1999), involved a chronic mental disorder that arose after the claimant was robbed at gunpoint while working at a convenience store, and did not involve any allegation of physical trauma to the head or brain. Although the Tennessee Supreme Court discussed the definition of the term “mental faculties” as used in the Tennessee workers’ compensation statute, that term is not at issue in this case and there is no indication whatsoever that the Tennessee statute bears any resemblance to the South Carolina Act in general or S.C. Code Ann. 42-9-10 in particular. Sider v. Borough of Waynesboro, 933 A.2d 681, 2007 Pa. Commw. LEXIS 553 (Pa. Commw. Ct. 2007), is not even a workers’ compensation case but, instead, involved a common law negligence claim against a local municipality, and the proper interpretation of the term “bodily function” in a limitations

provision of that state's tort claims act. Homes of the Innocents, Inc. v. Beauchamp, 2003 WL 22974994 (Ky 2003), involved allegations of "an organic brain injury from exposure to unknown toxic substances," and whether such exposure constituted an "injury" under the Kentucky workers' compensation statute, which defines injury as referring to "a traumatic event rather than to the harm that results." Id. at \*4. Whether Claimant suffered an injury is not at issue in this case and, again, there is no indication whatsoever that the Kentucky statute bears any resemblance to South Carolina's Act. These cases do not provide any support for Claimant's concocted definition of "physical brain damage," and should be dismissed.

Despite Claimant's attempts to isolate each word of the phrase "physical brain damage" in order to fabricate a definition that is beneficial to his case, the result of his exercise is an interpretation that is absurd and does not square with the legislative intent as expressed in the Act. This Court should apply long-standing rules of statutory interpretation to the phrase "physical brain damage" as used in S.C. Code Ann. § 42-9-10 and as applied by the Commission, and hold that physical damage to the brain must both be permanent and contribute to a claimant's total and permanent disability in order for a claimant to be entitled to lifetime compensation.

B. The 2007 Commission Decision fully complied with the 2007 Circuit Court Order.

On remand, the Commission clarified that, regardless of the fact that Claimant suffered a compensable injury to his head and brain, he failed to meet his burden of establishing physical brain damage as contemplated by S.C. Code Ann. § 42-9-10. (R. p. 73). In so holding, the 2007 Commission Decision makes it clear that it distinguishes between a compensable injury-by-accident to the brain and physical brain damage for purposes of lifetime compensation under S.C. Code Ann. § 42-9-10.

Claimant nonetheless contends that the Commission “disobeyed,” or “disregarded the instructions of the Circuit Court [because] the Panel did not define or explain what it meant by ‘physical brain injury’ nor ‘physical brain damage.’” (Pet. Br. pp. 5, 12, 13-14, 16-17 n.10). First, the 2007 Circuit Court Order did not require the Commission to provide a textbook definition of the terms “physical brain injury” and “physical brain damage,” but instead instructed it to “explain what it means by the use of the term ‘physical brain injury’, whether it is different from ‘physical brain damage’, or is intended to be the same as ‘physical brain damage.’” (R. p. 2). In fact, Claimant’s counsel specifically and repeatedly asked Judge Lockemey to require the Commission on remand “to explain their definition that they are using of physical brain damage.” (R. p. 346, lines 1-13; R. p. 348, lines 22-25; R. p. 351, line 25 – p. 352, line 1). Judge Lockemey refused to require the Commission to provide a definition of “physical brain damage,” and confirmed several times that what concerned him was the inconsistency between Finding of Fact Nos. 7 and 11 in the 2006 Commission Decision. (R. p. 346, line 20 – p. 347, line 9; R. p. 351, lines 18-22; R. p. 352, lines 3-10 (“I am going to ask only that ... why did they say no physical brain damage? ... State whether or not they found physical brain damage, and if not, why not?”)).

By finding that Claimant suffered an injury-by-accident to his head and brain, which entitled him to medical treatment for those injuries, but denying Claimant lifetime compensation under S.C. Code Ann. § 42-9-10, the Commission clearly indicated that it considers the injury-by-accident to Claimant’s head and brain, and physical brain damage, as contemplated in that statutory provision, to mean different things. This was an adequate response to the 2007 Circuit Court Order. *See Mohasco Corp., Dixiana Mill Div. v. Rising*, 292 S.C. 489, 491, 357 S.E.2d 456, 457-58 (1987) (holding that an “implicit” finding in a Commission order was sufficient).

Contrary to Claimant's assertion, (Pet Br. p. 13), the Commission's finding with regard to physical brain damage is not merely a "conclusory statement." Instead, it is supported by other factual findings that are, in turn, supported by substantial evidence, as is discussed in more detail below. (R. pp. 72-73). Although the 2007 Commission Decision's explanation did not reach the result that Claimant hoped for, it nonetheless provided a satisfactory answer through the revision of its findings of facts. In as much, the 2007 Commission Decision adequately complied with the 2007 Circuit Court Order and should be upheld.

**II. The Court of Appeals properly upheld the 2007 Commission Decision that Claimant did not suffer physical brain damage despite the unappealed finding that Claimant sustained a compensable injury to his brain.**

Claimant's arguments regarding the effect of the unappealed finding that Claimant sustained a compensable injury to his brain amount to little more than a reiteration of his definition of "physical brain damage," and his argument that "damage" and "injury" must mean the same thing. (Pet. Br. pp. 14-15). His argument requires this Court to accept his concocted and unworkable definitions of "injury," "damage," and "physical brain damage" and then, assuming those have been accepted, concludes that Claimant "has suffered physical brain damage as a matter of law." (Pet Br. p. 14). Like a house of cards, however, Claimant's argument is built on supposition and thin air and will not withstand a breath of scrutiny. For the reasons explained in detail above, Claimant's definition of "physical brain damage" does not make sense in light of the surrounding terms or the purpose of the Act and, therefore, must be rejected. Southern Mut. Church, 306 S.C. at 342, 412 S.E.2d at 379 (words in a statutory provision are interpreted in light of other words found in the same provisions); Sloan, 370 S.C. at 468, 636 S.E.2d at 606-07 (statutes must be interpreted in a "practical, reasonable, and fair" manner, "consonant with the purpose, design, and policy of lawmakers, [and] [t]he real purpose

and intent of the lawmakers will prevail over the literal import of particular words”).

As explained above, the Commission’s unappealed finding that Claimant suffered a compensable injury to his brain entitled him to medical treatment for that injury. There is nothing contradictory and the Commission did not err in also finding that Claimant failed to prove he suffered physical brain damage, as contemplated under S.C. Code Ann. § 42-9-10, which would entitle him to lifetime compensation. It would be incongruous and contradict the purpose and structure of the Act to award a claimant lifetime benefits for a mild concussion where: 1) there is no loss of consciousness, 2) there is no concrete evidence of any physical damage to his brain, and 3) where the injury completely resolves, while at the same time limiting compensation to 500 weeks for another claimant with far more severe and disabling injuries, such as the loss of both eyes or both feet. By linking entitlement to lifetime compensation for paraplegics, quadriplegics and workers who have suffered physical brain damage, the Legislature carved out an exception from the 500-week limitation for only those workers who have experienced the most severe, life-changing and permanent physical damage. Awarding Claimant lifetime compensation under S.C. Code Ann. § 42-9-10 under the facts of this case would amount to a windfall based on a superficial, disjointed and incorrect interpretation of the phrase “physical brain damage.” Therefore, this Court should not find as a matter of law that Claimant has suffered physical brain damage but, instead, should uphold the Court of Appeals’ finding that the Commission’s interpretation of the Act is correct and the 2007 Commission Decision is supported by substantial evidence in the record.

**III. The Court of Appeals correctly held that substantial evidence supports the Commission’s finding that Claimant failed to meet his burden of proving he sustained “physical brain damage.”**

As the Court of Appeals correctly held, there is substantial evidence in the record to

support the Commission's decision in this case, including its rejection of Claimant's claim of physical brain damage. (Appx. p. 2).<sup>11</sup> Ultimately, the burden rests on a claimant to prove he or she is entitled to compensation under the Act. *E.g.*, Therrell v. Jerry's Inc., 370 S.C. 22, 30, 633 S.E.2d 893, 897 (2006); Clade v. Champion Labs, 330 S.C. 8, 11, 496 S.E.2d 856, 858 (1998) (the burden is on the claimant "of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture of speculation").

The Commission did not "cherry pick" evidence in order to reach a pre-ordained result as Claimant suggests. Claimant's assertions that "[m]any observers believe that the S.C. Workers' Compensation Commission disfavors physical brain damage claims, and this case exemplifies that reality," and that the Commission employed "strained, unexplained and unreasonable mental gymnastics ... with a strong-willed desire to deny lifetime compensation," (Pet. Br. pp. 16, 19), are entirely baseless and unsupported, and should be rejected on their face. Claimant's assertion is belied by Pearson, where the Commission upheld the Single Commissioner's finding that the claimant suffered a physical brain damage that entitled him to lifetime compensation. 327 S.C. at 396, 489 S.E.2d at 220.

Furthermore, the case Claimant relies on for this point, Doe v. South Carolina Dept. of Disab. & Spec. Needs, 377 S.C. 346, 660 S.E.2d 260 (2008), is entirely distinguishable from the case before the Court. In Doe, the **only** evidence supporting the Commission's decision was hearing testimony that had been taken completely out of context. 377 S.C. at 350, 660 S.E.2d at 262. In fact, the only medical evidence in the record supported the claimant's claim. Id. at 351, 660 S.E.2d at 263. In contrast, here there are no issues with witness testimony being taken out of

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<sup>11</sup> Claimant's argument in this section of his Brief that, under his theory that the terms "injury" and "damage" are synonymous, the Commission's finding that he has not suffered "physical brain damage" does not make sense, (Pet. Br. p. 16), goes to the issue of statutory interpretation, which is addressed above, and does not address in any way whether substantial evidence supports the 2007 Commission Decision.

context. More importantly, in this case, there are conflicting medical opinions that the Commission evaluated and weighed in coming to its factual conclusion that Claimant had not met his burden of proof. (R. pp. 72-73). In such instances, the Commission's resolution of the conflicting evidence must be upheld on appeal. Anderson, 343 S.C. at 492-93, 541 S.E.2d at 528.

Substantial evidence supporting the 2007 Commission Decision includes the following: Claimant did not lose consciousness following his head injury, and he continued to work for the rest of the day. (R. pp. 478, 718, 471, 474). Two days after the incident, Claimant saw Dr. Suggs of the Marion Medical Group. Dr. Suggs noted only a small/superficial abrasion on Claimant's right parietal area, which required no sutures. (R. pp. 412, 586, 725). Dr. Suggs found Claimant's pupils to be equal, and saw no abnormality in speech, reflexes or balance. (R. p. 412). Dr. Suggs ordered a CT scan of the head, which showed no evidence of infarction, hemorrhage, lesion or fluid accumulation. The brain parenchyma, ventricles, cisterns and calvarium all were normal. (R. p. 411). Dr. Suggs diagnosed Claimant as suffering from only a mild concussion. (R. p. 412).

Dr. Healy, a neurologist, stated his belief that Claimant suffered a "closed head injury" but was unable to determine whether the injury caused "encephalopathy," or brain dysfunction, without neuropsychological testing. (R. p. 474). An EEG, several CTs and MRIs, Visual Evoked Response test, Auditory Brain Stem Evoked Response test, and SPECT of the brain were performed with normal results.<sup>12</sup> (R. pp. 411, 479-482, 486, 771).

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<sup>12</sup> Claimant again repeats his argument that the Appellate Panel may have erroneously believed that physical brain damage must be proved radiographically. (Pet. Br. p. 13 n.8). Not only was this argument not accepted for review (*see* Claimant's Petition for Writ of Certiorari, p. 17 n.9 including this footnote as part of argument No. IV, which this Court did not accept for review (Order of the Supreme Court, filed June 8, 2012 (granting review of Petitioner's questions II, III, V, VII and VIII, but denying review of Petitioner's questions I, IV and VI)), but also this is an entirely fabricated red herring. Medical evidence such as MRIs, CTs and the like are designed to aid the Commission in its decision-making, along with other evidence such as expert testimony and lay testimony. Sharpe,

Dr. Bumgartner, a neurologist, opined that Claimant's "history remains consistent with mild concussion or post-traumatic syndrome," but concluded that his "primary problem is one of psychiatric dysfunction and chronic pain." (R. p. 723). Dr. Waid, a neuropsychologist, concluded after an extensive examination that Claimant's "difficulties were attributed to psychiatric disturbance, chronic pain, and physical limitations." Dr. Waid further added that "there is no compelling evidence that he has sustained a physical injury to the brain or that this is the primary mechanism mediating his current difficulties." (R. p. 629). Dr. Kang, a physiatrist, concluded that Claimant suffered a mild concussion "but did not suffer a serious head injury." (R. p. 729).<sup>13</sup>

Claimant argues that certain expert opinions should be discounted for various reasons. (Pet. Br. pp. 17-18 n. 11). Claimant's criticism of the diagnoses, qualifications or motivations of the experts on which the Commission relied is irrelevant, for "the final determination of ... weight of the evidence is reserved to the full commission." Bartley v. Allendale County School Dist., 381 S.C. 262, 271, 672 S.E.2d 809, 813 (Ct. App. 2009). In reaching its decision concerning physical brain damage, the Commission considered and weighed the relative merits of the evidence. "It is not the task of the court to weigh the evidence as found by the commission." Shealy v. Aiken County, 341 S.C. 443, 455, 535 S.E.2d 438, 442 (2000). The fact that there is some evidence in the record that tends to support Claimant's position does not mean the Commission's decision lacks adequate support. "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported

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336 S.C. at 160, 519 S.E.2d at 106. The Commission gave no indication that the presence of objective medical evidence is an absolute requirement for finding physical brain damage. Instead, the Commission weighed all the evidence, including Claimant's testimony, medical reports and the test results, and found that Claimant had failed to "carry his burden of proof to establish physical brain damage." (R. p. 73).

<sup>13</sup> Although Claimant takes issue with Dr. Kang expressing an opinion on the existence and/or extent of Claimant's alleged brain damage, Commissioner Bass's March 28, 2005 Order simply directed, "[t]he Employer/Carrier shall have the Claimant evaluated by a physiatrist, Dr. C. Gregory Kang, M.D. as soon as possible." (R. p. 18). There was no limitation in that Order as to what Dr. Kang was supposed to evaluate Claimant for.

by substantial evidence.” Sharpe, 336 S.C. at 160, 519 S.E.2d at 105; *see also* Brunson, 395 S.C. at 460, 718 S.E.2d at 761 (acknowledging that, even if an appellate court “may have weighed the evidence differently, we are cognizant that this court is not the ultimate fact-finder”). Furthermore, it is axiomatic that, where there is a conflict in evidence, the factual findings of the Commission are conclusive. Anderson, 343 S.C. at 492-493, 541 S.E.2d at 528.

The Commission weighed the extensive record in this case, including medical records, reports and Claimant’s testimony, and concluded that Claimant did not meet his burden of proving he had sustained physical brain damage as contemplated by S.C. Code Ann. § 42-9-10. (R. pp. 72-73).<sup>14</sup> Reasonable minds would have no trouble reaching the same conclusion. Based on the substantial evidence that supports it, this Court should uphold the 2007 Commission Decision.

#### **IV. The Commission’s credibility determination should be upheld.**

Claimant argues that the Appellate Panel’s determination that Claimant’s testimony was not credible reveals “bizarre and distorted” reasoning on the part of the Commission. (Pet. Br. p. 17). However, the APA “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, 312 S.C. at 381, 440 S.E.2d at 403. Both “[t]he final determination of witness credibility and the weight to be accorded evidence is reserved to the Commission and it is not the task of the court to weigh the evidence as found by the Commission.” Anderson, 343 S.C. at 494-95, 541 S.E.2d at 529; *see also* Sanders v. MeadWestvaco Corp., 371 S.C. 284, 289, 638 S.E.2d 66, 69 (Ct. App. 2006) (admonishing that “[t]he Appellate Panel is specifically reserved the task of assessing the

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<sup>14</sup> Claimant’s statement that “[t]he Panel never expressly found an absence of physical brain damage,” (Pet. Br. p. 15 n.9), is irrelevant. The burden was on Claimant to prove his entitlement to compensation, Therrell, 370 S.C. at 30, 633 S.E.2d at 897; Clade, 330 S.C. at 11, 496 S.E.2d at 858, and the Commission properly held that he failed to meet his burden.

credibility of the witnesses and the weight to be accorded evidence”).

As such, the Commission is not required to explain in the findings of fact why it found Claimant to be not credible, and the Commission’s determination of credibility should not be subject to appellate review. Hassell v. Onslow County Bd. of Educ., 182 N.C. App. 1, 9, 641 S.E.2d 324, 329 (NC 2007) (applying the same standard of review in workers’ compensation cases that is applied in South Carolina, that “the Commission is the sole judge of the credibility of the witnesses and the weight to be given their testimony,” and holding that the Commission “does not have to explain its findings of fact by attempting to distinguish which evidence or witnesses it finds credible”), *quoting* Deese v. Champion Int’l Corp., 352 N.C. 109, 116, 530 S.E.2d 549, 553 (NC 2000). “Requiring the Commission to explain its credibility determinations and allowing the Court of Appeals to review the Commissioner’s explanation of those credibility determinations would be inconsistent with our legal system’s tradition of not requiring the fact finder to explain why he or she believes one witness over another or believes one piece of evidence is more credible than another.” Hassell, 182 N.C. App. at 9, 641 S.E.2d at 329. Claimant cites to no authority requiring the Commission’s credibility determination to be supported by the same type of substantial evidence that supports a factual finding such as whether a claimant suffered a compensable injury. Therefore, this Court should dismiss Claimant’s challenge to the Commission’s determination that his testimony regarding his brain injury was not credible.

Even if the Commission is required to justify its determination of witness credibility, however, substantial evidence in this record supports the Commission’s credibility finding. The Commission pointed to statements made by Claimant that, when he was injured, he “got a hole” and “white milky looking stuff” ran out of his head, and the fact that Claimant adamantly and

repeatedly testified that he had gone to see Dr. Suggs the “same day” of the accident. (R. p. 72) (R. p. 219, line 24; p. 223, line 24; p. 224, line 4; p. 232, lines 13-24; R. p. 240, line 12- p. 241, line 14). This testimony is flatly contradicted by the medical evidence. (R. p. 412 (Claimant was first seen by Dr. Suggs two days after the accident, and the only physical evidence of the piece of metal striking Claimant was “a small abrasion”)) (R. p. 725 (Dr. Bumgartner’s review of the medical records indicates Claimant had only a small abrasion that did not require sutures)).<sup>15</sup>

Claimant’s counsel’s attempt to explain away these inconsistencies invites this Court to engage in his unsupported inferences and conjectures. (Pet. Br. p. 19 n. 12). For example, Claimant’s counsel refers to “Claimant’s obvious intent,” regarding his statements that he had a hole in his head and that “surely” he had wiped away the “white milky looking stuff” prior to seeing Dr. Suggs. Claimant’s counsel also invites this Court to buy into his inference that perhaps, just maybe, Claimant actually did go to the doctor on May 21, 2001 but was seen, not by Dr. Suggs, but by “a nurse practitioner or other colleague of Dr. Suggs.” To be sure, Claimant has an explanation for why there are no medical records substantiating this concocted explanation: “those records were not made available to be included in the APAs.” (Pet. Br. p. 19 n.12). However, the burden is on Claimant to prove his entitlement to an award under the Act, Therrell, 370 S.C. at 30, 633 S.E.2d at 897; Clade, 330 S.C. at 11, 496 S.E.2d at 858, and the consequences of any failure to produce medical records that substantiate his claim rests with him. Despite Claimant’s attempts to explain these glaring inconsistencies in his testimony by pointing to his cognitive impairments, (Pet. Br. pp. 17-18), the fact remains that Claimant testified in detail, and at times quite extensively, about his various accidents. (R. p. 212, line 13 – p. 221, line 3).

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<sup>15</sup> Dr. Kang specifically noted symptom magnification and “multiple Waddell signs.” (R. p. 729). See Fishburne v. ATI Syst. Int’l, 384 S.C. 76, 82 n.2, 681 S.E.2d 595, 598 n.2 (Ct. App. 2009) for an explanation of Waddell symptoms and suspected “malingering.”

Claimant's alleged brain-injury Catch-22 argument does not hold up under scrutiny. The Commission is not looking to see whether a claimant is "smart and polished" – the Commission is looking to see whether a claimant testifies honestly about what happened to him or her. Claimant's statement that, "[f]or the Appellate Panel to judge so harshly the credibility or lack thereof of a brain damaged worker is astonishing," (Pet Br. p. 19), requires this Court to assume the unproven conclusion that Claimant is "brain damaged." Furthermore, as there is no evidence whatsoever that the Commission is "motivated" to find a lack of credibility in any particular case or that it raised "aggressive negative inferences" in this case, Claimant's unsupported suggestions regarding the Commission's motives should be disregarded entirely.

Claimant's recitation of the Single Commissioner's findings with regard to Claimant's credibility is of no import because, although the Commission may consider the Single Commissioner's credibility determinations, it is not bound by them. McGuffin, 307 S.C. at 186, 414 S.E.2d at 163 (explaining that, "[a]lthough it is logical for the Full Commission, which did not have the benefit of observing the witnesses, to give weight to the hearing commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the hearing commissioner"); *see also* Sanders, 371 S.C. at 289, 638 S.E.2d at 69 (the task of assessing the credibility of the witnesses is "specifically reserved" to the Commission).

Finally, Claimant's exhaustive footnote regarding the alleged evidence of cognitive impairments, (Pet. Br. p. 17-18 n.11), recounting and criticizing Dr. Waid's, Dr. Baumgartner's and Dr. Kang's medical opinions, was initially included argument No. VI in his Petition for Writ of Certiorari, filed March 28, 2011, pp. 20-21, n.10. As noted above, this Court declined to hear argument No. VI, and Claimant's attempt to insert those arguments under another framework

should be rejected. In addition, Claimant raises yet again in this footnote his argument that there was some improper contact between Respondents and Drs. Waid and Kang. There is no support for Claimant's assertion that Dr. Waid was "consulted by" a rehabilitation nurse working for Respondents. Instead, the pages cited by Claimant merely indicate that Claimant was referred to Dr. Waid by Respondents in order to obtain an opinion as to whether Claimant sustained any physical brain damage. (R. pp. 514, 712). There was nothing improper in these referrals. Even more objectionable is Claimant's assumption, without any evidence whatsoever of any impropriety, that there was improper contact between Respondents and Dr. Kang. (Pet. Br. p. 18 n.11). Claimant's counsel admitted to Judge Lockemey, (R. p. 323, line 24 – p. 325, line 25), and to Judge Nettles, (R. p. 385, line 25 – p. 386, line 15), that he has no evidence whatsoever to back up any of these allegations, which were soundly dismissed, (R. p. 386, lines 16-17), and should be rejected by this Court as well.

In addition, this issue is not properly before this Court. "When a Circuit Court does not explicitly address in its order a specific argument raised by the appellant, and the appellant fails to make a motion to alter or amend a judgment pursuant to Rule 59(e), SCRPC, to obtain a ruling on the argument, this Court cannot consider the argument on appeal." Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991); Floyd v. Floyd, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct. App. 2005). The 2008 Circuit Court Order generally rejected Claimant's arguments that the medical opinions of Drs. Kang and Waid should have been disregarded by the Commission, but did not specifically rule on the issue of alleged improper communication. (R. p. 9). Claimant failed to move to alter or amend this Order pursuant to Rule 59(e), SCRPC, in order to seek a specific ruling on this argument. Consequently, that issue is not preserved for appeal.

For all the reasons stated above, this Court should affirm the Commission's

determination that Claimant did not provide credible testimony regarding his brain injury.

**V. The Court of Appeals properly upheld the Commission's finding that Claimant did not meet his burden of proving entitlement to lifetime benefits under S.C. Code Ann. § 42-9-10 despite the fact that he is totally and permanently disabled and also suffered a compensable injury-by-accident to his head and brain.**

To frame the question as Claimant has in Section V of his Brief is to supply the answer. In essence, he argues that, since he is totally and permanently disabled "and has suffered physical brain damage as a result of his compensable injury," by law the Commission should have awarded him lifetime benefits under S.C. Code Ann. § 42-9-10. Of course, the Circuit Court and even Claimant acknowledge that the key issue on appeal is whether Claimant sustained "physical brain damage" as contemplated under S.C. Code Ann. § 42-9-10. *See* (R. p. 5) (Pet. Br. pp. 2, 8). The fact that Claimant has been determined totally and permanently disabled does not also mean that he has "suffered physical brain damage," as contemplated by S.C. Code Ann. § 42-9-10. Further, as explained above, the fact that he has been found to have suffered a compensable injury-by-accident to his head and brain does not mean he has "suffered physical brain damage," as contemplated by S.C. Code Ann. § 42-9-10. Instead, the unappealed findings of this case only establish that Claimant sustained a compensable head and brain injury, for which he was entitled to medical treatment, and that he suffered permanent injuries to his back, neck bladder and psyche. (R. pp. 60-61, 72-73). Claimant simply did not suffer physical brain damage as contemplated under S.C. Code Ann. § 42-9-10. (*See* Section I.A. above).

Claimant's argument amounts to little more than an attempt to bootstrap an award of lifetime benefits based on a strained and illogical interpretation of the phrase "physical brain damage." The Commission clearly distinguished a compensable injury-by-accident to the head and brain from physical brain damage in its 2007 Commission Decision. (R. pp. 72-73). There

can be little question about what the Commission intended in Finding of Fact No. 11, that “Claimant has failed to carry his burden of proof to establish physical brain damage as contemplated by S.C. Code ann. §42-9-10.” Simply put, Claimant has not proven that he suffered physical brain damage as contemplated by the statute. If there was any remaining confusion regarding the finding of injury-by-accident to the brain, the Commission cleared that up by explaining that it did not equate a compensable injury to a finding of physical brain damage that would entitle Claimant to lifetime compensation. “Although Finding of Fact #7 above notes an injury-by-accident to the brain, this does not constitute damage to the brain.” (R. p. 73).

While it is true that the Commission found Claimant to be totally and permanently disabled, as noted above, Claimant’s head and brain injury did not contribute to the Commission’s finding of total and permanent disability. Claimant asserted injury to his back, head, brain, neck, both arms, both legs, bladder, bowel and psyche. The Single Commissioner found that Claimant suffered “permanent injuries to his low back (affecting lower extremities), neck (affecting upper extremities), bladder, psyche and brain.” (R. p. 51). On appeal, the Commission upheld the Single Commissioner’s finding that Claimant “sustained a compensable injury-by-accident” to his head and brain, (R. pp. 60, 72), but reversed the Single Commissioner with regard to whether those injuries were permanent. (R. pp. 61, 73). Thus, the head injury was not a contributing cause of Claimant’s permanent and total disability.

The Commission’s findings are consistent with other provisions of the Act and case law. “Disability” is defined in the Act as “incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.” S.C. Code Ann. § 42-1-120; *see also Keeter v. Clifton Mfg Co.*, 225 S.C. 389, 392, 82 S.E.2d 520, 522

(1954) (explaining that “[c]ompensation under the Act is not awarded for the physical injury as such, but for ‘disability’ produced by such injury”). A disability is permanent “if no functional or marked change can be expected in the future.” Grady L. Beard et al., *THE LAW OF WORKERS’ COMPENSATION INSURANCE IN SOUTH CAROLINA*, Fourth Edition, 2005, pp. 11-22. A compensable injury may or may not amount to a permanent disability. The Commission’s finding that “Claimant sustained a compensable injury-by-accident ... to his ... head (headaches) [and] brain.” does nothing to change this basic fact. As explained above, finding that a claimant has suffered a compensable “injury” under the Act means that the claimant to medical treatment and/or possibly temporary disability compensation until reaching maximum medical improvement, after which, Claimant may or may not receive compensation for permanent disability. *See, e.g., Curiel v. Environmental Mgmt. Servs*, 376 S.C. 23, 29, 655 S.E.2d 482, 484 (2007) (worker compensation benefits accrue along a time continuum, from the date of injury through the date of maximum medical improvement, after which permanent benefits may be awarded). Having a “compensable injury-by-accident” does not guarantee a finding of permanent disability. “The extent of an injured workman’s disability is a question of fact for determination by the Appellate Panel and will not be reversed if it is supported by competent evidence.” *Fishburne*, 384 S.C. at 86, 681 S.E.2d at 600. The Commission acknowledged that Claimant suffered a compensable injury to his head and brain, but found that those injuries were not permanent. As such, the head and brain injuries were not included in the conditions that caused permanent disability. This is the law of the case.

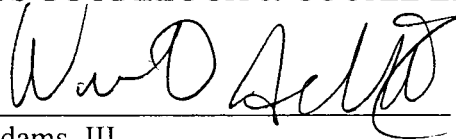
Finally, despite Claimant’s urging, this Court cannot find as a matter of law that Claimant suffered physical brain damage because there is conflicting evidence below on this issue and the Commission’s resolution is supported by substantial evidence. Therefore, the Commission’s

resolution of this issue must be upheld on appeal. Anderson, 343 S.C. at 492-93, 541 S.E.2d at 528.

### CONCLUSION

The Court of Appeals did not err in upholding the Circuit Court's affirmation of the 2007 Commission Decision, which adequately and properly clarified the Commission's findings regarding whether Claimant "suffered physical brain damage" as contemplated by S.C. Code Ann. § 42-9-10 despite the fact that he sustained a compensable injury to his head and brain. The Commission's interpretation of "physical brain damage" should be upheld under long-standing principles of statutory interpretation. Moreover, substantial evidence supports the Commission's finding that Claimant did not meet his burden of proving he suffered physical brain damage that entitles him to lifetime benefits under S.C. Code Ann. 42-9-10, which should be upheld. Finally, this Court should affirm the Commission's credibility determination.

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August 6, 2012

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM FLORENCE COUNTY  
COURT OF COMMON PLEAS

THE HONORABLE MICHAEL G. NETTLES, CIRCUIT COURT JUDGE

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CASE No. 2007-CP-21-2065

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CLIFTON SPARKS, .....PETITIONER,

v.

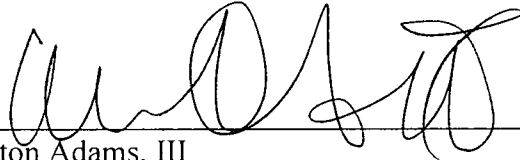
PALMETTO HARDWOOD, INC., AND  
PALMETTO TIMBER S.I. FUND C/O WALKER,  
HUNTER & ASSOCIATES, .....RESPONDENTS.

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**CERTIFICATE OF COUNSEL**

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The undersigned certified that this Brief of Respondents complies with Rules 211 and 267, SCACR. The undersigned further certifies that the Brief of Respondents complies with the South Carolina Supreme Court's August 13, 2007 Order re: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.



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August 6, 2012

*Attorneys for Respondents*

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM FLORENCE COUNTY  
COURT OF COMMON PLEAS

S.C. Supreme Court

THE HONORABLE MICHAEL G. NETTLES, CIRCUIT COURT JUDGE

CASE No. 2007-CP-21-2065

CLIFTON SPARKS, ..... PETITIONER,

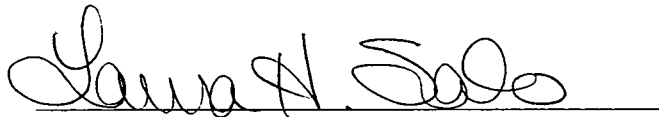
v.

PALMETTO HARDWOOD, INC., AND  
PALMETTO TIMBER S.I. FUND C/O WALKER,  
HUNTER & ASSOCIATES, ..... RESPONDENTS.

**PROOF OF SERVICE**

I certify that I have served the **Brief of Respondents** Palmetto Hardwood, Inc., and Palmetto Timber S.I. Fund c/o Walker, Hunter Associates on Clifton Sparks by depositing a copy of it in the United States Mail, postage prepaid, on August 6, 2012, addressed to his attorney of record:

Edward L. Graham, Esquire  
GRAHAM LAW FIRM, P.A.  
383 West Cheves Street  
Post Office Box 550  
Florence, South Carolina 29503



Laura H. Sabo  
Paralegal to Weston Adams, III  
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Reply To  
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COLUMBIA

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AUG 06 2012

S.C. Supreme Court

August 6, 2012

**VIA HAND DELIVERY**

The Honorable Daniel E. Shearouse  
Supreme Court of South Carolina  
1231 Gervais Street  
Columbia, South Carolina 29201

RE: Clifton Sparks v. Palmetto Hardwood and Palmetto Timber S.I. Fund c/o Walker,  
Hunter & Associates, Inc.  
Civil Action No.: 2007-CP-21-2065  
Our File No.: 2069.05027  
Appellate Tracking No.: 2011-186526

Dear Mr. Shearouse:

Enclosed for filing please find the original and 15 copies of Brief of Respondents Palmetto Hardwood, Inc., and Palmetto Timber S.I. Fund c/o Walker, Hunter Associates in the above-referenced matter. Also, enclosed please find the original and one copy of the Proof of Service. Please file these documents and return clocked in copies to my courier.

If you have any questions, please contact me.

Very truly yours,

McAngus Goudelock & Courie, LLC

Weston Adams, III

WAIII/lhs  
Enclosures

cc: Claudia Weed, Walker, Hunter & Associates, Inc.  
Edward L. Graham, Esquire