

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM  
THE WORKERS' COMPENSATION COMMISSION

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Case Tracking No 2014-002127  
SCWCC Case No 1206447

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William M. Rogers, . . . . . Appellant,

vs.

Lindstrom Metric, LLC, Employer, and  
Netherlands Ins. Co., Carrier, . . . . . Respondents

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**INITIAL BRIEF OF APPELLANT**

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**SC Court of Appeals**

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## STATEMENT OF ISSUES ON APPEAL

- I Did the Commission err in failing to limit itself to the issues placed before it by Rogers and making findings related to permanency when the issue was not before it for determination?
- II Did the Commission err in failing to limit itself to the issues placed before it by Rogers and making findings related to whether he sustained injuries beyond the admitted left lower extremity injury when the issue was not before it for determination?
- III Did the Commission err in failing to find Rogers sustained injury to his skin in addition to the admitted injury to his left lower extremity?
- IV Did the Commission err in failing to find Rogers' diabetes aggravates his work-related injuries under S C Code Ann § 42-9-35(A)(2)?

## STATEMENT OF THE CASE

This is an appeal from the Workers' Compensation Commission. William Rogers sustained injuries at work as a result of an accident on March 15, 2012 when a part came off of a machine that he was running and struck him on the left leg. His employer and its workers' compensation insurance carrier – Lindstrom Metric, LLC and Netherlands Insurance Company, respectively (hereafter referred to together as "Lindstrom") – admitted he sustained compensable injury to his left leg and provided medical benefits for a time. This treatment included caring for an open wound on his left leg, treatment for a skin infection (cellulitis) in the left leg, and treatment for a vascular injury to the left leg causing severe swelling. Rogers was eventually able to return to work for a time, but he left work again on or about April 30, 2013 because of admission to the hospital to treat an infection related to his left leg wound re-opening. Rogers has remained out of work since that hospitalization. Lindstrom denied that this hospitalization was related to his work accident and did not pay for that or subsequent medical treatment, leaving claimant without income and with outstanding medical bills.

Rogers filed a Form 50 hearing request with the Workers' Compensation Commission on or about November 19, 2013 seeking payment of temporary total disability compensation benefits and the outstanding medical bills. On his Form 50, Rogers specifically stated that any permanent disability determination was premature.

The claim was called for hearing before Commissioner Wilkerson on February 7, 2014. Rogers stated that the only issues that he was putting before the Commission for determination

at that time were payment of benefits related to the admitted left lower extremity injury, specifically the denied medical bills following his hospitalization on or about April 30, 2013 and payment of temporary total disability compensation from that point forward. As in his Form 50, Rogers specifically reserved any and all permanency determinations for a future hearing.

In response, Lindstrom contended Rogers had reached maximum medical improvement and that the Commissioner was required to determine any and all body parts injured as a result of the injury by accident in order to determine whether maximum medical improvement (“MMI”) had in fact been reached. Rogers countered that it was not then necessary to determine additional injuries, since the issues before the Commission – payment of the specific medical bills and temporary total disability – related only to the admitted left lower extremity injury. Further, he argued that under Bass v. Kenco Group, 366 S.C. 450, 622 S.E.2d 577 (Ct. App. 2005), the Commission can determine maximum medical improvement separately for individual injuries resulting from an injury by accident.

Evidence was presented and following the hearing, the Commissioner issued an Order on March 17, 2014 finding that the hospitalization was related to the admitted injury by accident, that Lindstrom was responsible for payment of medical bills related to the hospitalization, and that Rogers was entitled to temporary total disability compensation from the date of the hospitalization to the date of MMI, which the Commissioner found to be October 21, 2013 (R. pp. x-x). The Commissioner went on to make findings on multiple issues not before him at the hearing, including that Rogers did not suffer injury to any other body part than his left lower extremity and was limited to a permanency determination under S.C. Code Ann. § 42-9-30 for the left leg only.

Rogers appealed to the Full Commission Panel contending the Commissioner reached issues not before him at the hearing, including but not limited to whether a future permanency determination is limited to a single body part under § 42-9-30 and whether his due process rights were thus violated. The Commission's Appellate Panel affirmed the Commissioner's Order without change. (R. pp. x-x)

## STATEMENT OF FACTS

Rogers' work for Lindstrom involved running a bolt-threading machine. At the time of his work accident, he had worked for Lindstrom for about two years. Rogers testified that on the day of the accident, he was performing his normal duties, running his machine, when the "handwheel came off" and struck him on the left leg (tr. p 20)

The first record from a medical professional after the accident is from nurse practitioner Elaine Noonan. On March 19, 2012, Nurse Noonan saw Rogers for a diabetes follow up and noted that he reported injuring his left leg at work and that it was tight, swollen, red, and painful. Because she was concerned that Rogers might have a deep venous thrombosis (DVT), she sent him for a Doppler ultrasound and x-rays (defs' APA #7, pp 126-128). Fortunately, ultrasound and radiology showed no DVT. (defs' APA #8, pp. 154-158)

Rogers followed up with Dr. James Franklin, his family doctor, on March 21, 2012. Dr. Franklin noted that Rogers had swelling, redness, and pain in his left leg, diagnosed cellulitis, and prescribed medications (cl's APA #1, p. 2). He restricted Rogers from working from March 19, 2012 until March 23, 2012 (cl's APA #1, p. 4). In follow-up on April 4, 2012, Dr. Franklin reported that Rogers was experiencing decreased pain and was able to stand for longer periods of time but was still having leg swelling. (cl's APA #1, p. 6). On April 16, 2012, he recorded that Rogers was continuing to struggle with cellulitis and edema but reported decreased pain and swelling and was able to work on his feet on a daily basis, and he prescribed continued medications and follow-up (cl's APA #1, pp. 10-11). On

June 25, 2012, Dr. Franklin observed that Rogers was having increasing problems with his left leg, including redness, swelling, and several ulcerations on the lower left leg with clear drainage. For these problems, Dr. Franklin referred Rogers to a vascular specialist (Claimant's APA #1, pgs. 13-15)

Rogers presented to Dr. Stephen Chastain at Vascular Medicine on July 6, 2012. Dr. Chastain noted moderate pitting edema on the left calf, small blisters, and a larger area of broken skin. He also noted pink coloration around the left ankle. Dr. Chastain diagnosed leg swelling, tinea pedis, and leg pain, prescribed medications, and instructed Rogers to bandage his leg and elevate it as much as possible (cl's APA #2, pp. 62-64). On July 24, 2012, Dr. Chastain noted that Rogers' symptoms had improved somewhat, and he recommended knee-high stockings during the day. (cl's APA #2, pp. 65-67). On August 21, 2012, Dr. Chastain observed persistent swelling in the left leg but no signs of worsening cellulitis, and he continued to recommend compression stockings. (cl's APA #2, pp. 68-70). On November 20, 2012, Dr. Chastain noted that Rogers reported that his leg was improving, that he wore his compression stockings daily, and was not then having any pain. He opined that Rogers had improved "about as much as [he] expected him to," but he stated that Rogers had a chronic condition and would benefit from continued compression stockings indefinitely (cl's APA #2, p. 71).

On April 30, 2013, Rogers presented to Dr. Franklin with complaints of low abdominal pain, vomiting, and fever. After examination and a blood testing report showing a high white blood cell count, Dr. Franklin admitted him to the hospital for further evaluation (cl's APA #1, pp. 17-20). Rogers was in the hospital until May 11, 2013, and the diagnoses at the time of discharge included sepsis and cellulitis and swelling of the left

leg (cl's APA #3, pp 86-94) The discharging physician opined that the sepsis was "likely" a result of the cellulitis and that the cellulitis was in the area of the previous injury. The discharging physician also noted "(p)ossible diverticulitis" but opined that "this 'abdominal pain' is more likely inguinal pain secondary to adenopathy from his cellulitis." (cl's APA #3, p. 92) The physician who admitted Rogers to the hospital, Dr Pamela Wilson, opined on November 6, 2013 that "(i)t is more likely than not that William Rogers' hospital admission in May 2013 was a result of and was treatment for his work injuries of March 2012, including his cellulitis and left lower extremity edema." (cl's APA #3, p. 94)

Rogers followed up with Dr Franklin after his discharge, and Dr Franklin noted continued chronic left leg edema, for which he referred Rogers back to Dr Chastain Dr Franklin also began writing Rogers out of work at this time, and he has continued to do so. (cl's APA #1, pp. 21-25) On August 26, 2013, Dr Franklin opined via questionnaire that "(i)t is more likely than not that William Rogers' cellulitis, left lower extremity edema, and left knee pain were all either caused or were aggravated by his accident at work on or about March 15, 2012 when a part came off a vise and struck his left leg " (cl's APA #1, p 48) He also opined that "William Rogers remains unable to work as a result of the injuries sustained in his work accident of March 2012 " (cl's APA #1, p 51)

In his deposition, Dr. Franklin testified that by November 20, 2012, Rogers had chronic swelling and discoloration of his left leg. He stated that with regard to the hospitalization in April of 2013, he admitted Rogers due to abdominal concerns. (depo of Franklin, p 18) But he opined that the sepsis diagnosed in the hospital was caused by the left leg cellulitis and that the cellulitis was caused by the left leg injury. (depo of Franklin, p 26) He stated that the cellulitis will likely continue to reappear. (depo of Franklin, p 29)

Further, he opined that Rogers' chronic venous insufficiency is most likely a result of the work accident and will be chronic. (depo of Franklin, p 29) Dr. Franklin testified that Rogers needs continued treatment related to his work injuries, which could include compression stockings, elevation at home, oral medication, and continued monitoring. (depo of Franklin, p 33 ) He also testified that he would defer to Dr. Darby on issues related to treatment of the left leg (depo of Franklin, p. 34.)

After reviewing an old medical record dated October 22, 2010, Dr Franklin also testified in his deposition that Rogers had what could be described as uncontrolled diabetes at that time (depo of Franklin, p. 5.) Dr. Franklin went on to opine that this preexisting diabetes aggravates Rogers' left lower extremity and skin injuries in that the diabetes makes it more difficult for those injuries to properly heal (depo of Franklin, pp 31-32)

Dr Franklin testified that he has kept Rogers out of work since his hospitalization in April of 2013. (depo of Franklin, p 25) However, he did admit that since August 26, 2013, multiple factors have made it impossible for Rogers to work, including his left leg injury (depo of Franklin, pp 20-21)

Rogers returned to Dr Chastain on May 22, 2013 with complaints of persistent swelling and redness of the left leg, and Dr. Chastain diagnosed leg swelling and chronic venous insufficiency He continued to recommend daily compression therapy (cl's APA #2, pp 74-76) Dr Chastain opined on October 22, 2013 that "(i)t is more likely than not that William Rogers's post-traumatic chronic leg swelling/chronic venous insufficiency is a result of his work accident of March 2012 when a metal part struck his left leg while he was performing his work duties" (cl's APA #2 , p 79)

Rogers' care at Vascular Medicine was assumed by Dr. Lisa Darby when Dr. Chastain moved out of state. Dr. Darby's first evaluation of Rogers was on July 23, 2013, when she noted that his swelling and discoloration were at baseline but that he still experienced occasional aching pain in his leg. Dr. Darby diagnosed chronic venous insufficiency and swelling of the limb, and she also recommended continued use of compression stockings (cl's APA #2, pp. 80-82). She noted that the swelling was still there in follow-up on October 21, 2013, and she recommended a renal evaluation, cardiology evaluation, and follow up with Dr. Franklin. She instructed Rogers to follow up in six months (defs' APA #13, pp. 171-173). Dr. Darby opined on October 10, 2013 that "(i)t is more likely than not that William Rogers's chronic leg swelling is a result of the combination of the trauma sustained in his work accident of March 2012 and his other comorbidities, including the use of blood pressure medications" (cl's APA #2, pp. 84; see also depo of Darby, p. 40).

In her deposition, Dr. Darby testified that Rogers has had swelling and other problems in both legs, but the left is worse than the right. She opined that this is due to a combination of things, including the injury to the left leg (depo of Darby, p. 36). Dr. Darby testified that the only thing she had left to offer Rogers in treatment is compression stockings and conservative measures. (depo of Darby, p. 37). Dr. Darby testified that part of the cellulitis diagnosed during his hospitalization was caused by the work-related accident, but she could not state how much of a role it played (depo of Darby, p. 39). Finally, Dr. Darby testified that Rogers continues to need compression stockings and that he has chronic leg swelling as a result of the trauma and other comorbidities (depo of Darby, p. 40).

Rogers was evaluated by dermatologist Dr John Kuhl on July 2, 2013. Dr Kuhl diagnosed stasis dermatitis, and he recommended continuing compression treatment and leg elevation. He also opined that Rogers is at risk for recurrent cellulitis due to his prior cellulitis, trauma, and diabetes. (cl's APA #4, pp. 95-96)

Dr Franklin opined that Rogers' continued skin difficulty is a result of the cellulitis from the blow to his left lower extremity, that the skin in that area will likely break down again depending on the level of continued swelling from his related and ongoing chronic venous insufficiency, and that he will need continued medical treatment for these skin breakdowns. (depo of Franklin, pp 26-27, 29-31)

Rogers testified at his hearing that he has had swelling, pain, recurrent cellulitis, and discoloration in the skin of his left leg since the date of the accident. He stated that the discoloration has stayed the same since the accident and that the swelling and pain varies. Rogers testified that the skin on his left leg has cracked open on several occasions. He showed this discoloration and the changes in his skin to the Commissioner at his hearing. Rogers stated that in his opinion, his right leg is normal and without swelling.

Concerning his April 2013 hospital admission, Rogers testified that he had an open wound on his left leg at the time, but he continued to work as best he was able until the morning he was hospitalized. He testified that it felt like he had the flu, including high fever, chills, and vomiting. Rogers stated that his belief and understanding is that the hospitalization was necessary because of his left leg injury. He testified that he has been out of work since he was hospitalized because he cannot be on his leg for very long for more than a few hours before the pain and swelling increase to an intolerable level. (tr. p. 28) Rogers stated that the skin on his left leg did not break open before his injury at work, and

he continues to experience swelling, burning, pain, and throbbing in his left leg. He admitted that he was aware that Dr. Darby had noted some swelling in his right leg, but he testified that his left leg is always more swollen than his right. (tr. p. 28)

## ARGUMENTS

In Brown v Greenwood Mills, Inc., this Court explained at length the standard of review in appeals from the Workers' Compensation Commission.

The South Carolina Administrative Procedures Act (“APA”) establishes the standard for judicial review of decisions of the workers' compensation commission. A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are “clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.” Under the scope of review established in the APA, this Court may not substitute its judgment for that of the appellate panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law.

The substantial evidence rule of the APA governs the standard of review in a workers' compensation decision. Pursuant to the APA, this Court's review is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law. 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 conclusion the administrative agency reached in order to justify its action.

The appellate panel is the ultimate fact finder in workers' compensation cases and is not bound by the single commissioner's findings of fact. The final determination of witness credibility and the weight to be accorded evidence is reserved to the appellate panel. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Where there are conflicts in the evidence over a factual issue, the findings of the appellate panel are conclusive.

The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. It is not within our province to reverse findings of the appellate panel which are supported by substantial evidence

Brown v Greenwood Mills, Inc., 366 S C. 379, 391-93, 622 S E 2d 546, 553-54 (Ct App 2005)(citations omitted).

**I The Commission erred in failing to limit itself to the issues placed before it by Rogers and making findings related to permanency when the issue was not before it for determination.**

It has been stated many times that due process requires notice of the issues to be heard and decided at any hearing. See e.g. Ham v Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940). Further, the Commission must limit itself to deciding the issues placed before it by the parties in a case. Ham. Here, the Commission did not limit itself to the issue brought before it under the Form 50 but went beyond that and made findings on issues that were not before it. Such is legal error.

On his Form 50, Rogers specifically indicated that any and all permanency issues were premature. (R. p. x – Form 50). At the hearing, Rogers stated that the only issues before the Commission were payment of the outstanding, denied medical bills and related temporary total disability compensation. Rogers specifically stated that he was not seeking any permanency determinations at the hearing. (tr pp x-x). Lindstrom did not place the permanency issue before the Commission by filing a Form 21 hearing request of its own. Since the Notice of Hearing issued by the Commission relates back to claimant's Form 50 and that Form 50 did not seek any permanency determination, the Commission's Notice of Hearing gave no notice

that such issues would be reached (R. p x – hearing notice) Therefore, based on Ham, the Commission’s decision to reach and make findings on permanency issues – including whether Rogers’ injuries were limited to the single member statute, S.C Code Ann § 42-9-30, or extended beyond the admitted left lower extremity injury to entitle him to additional compensation under the general disability statutes – violated Rogers’ due process rights

Any and all permanency determinations – including but not limited to Finding of Fact #11 – are in error and should be reversed by this Court

**II The Commission erred in failing to limit itself to the issues placed before it by Rogers and making findings related to whether he sustained injuries beyond the admitted left lower extremity injury when the issue was not before it for determination.**

Similarly, the determination of the issues that were before the Commissioner – payment of temporary total disability compensation benefits and outstanding medical bills from the denied hospitalization – related only to the admitted left lower extremity injury. It was not necessary to determine whether Rogers sustained any injuries beyond that admitted left lower extremity injury, and Rogers did not place the issue of additional injuries before the Commission for determination at the hearing. As such, the Commission’s decision to go beyond the issues placed before it before Rogers and determine whether there were additional injuries beyond the admitted left lower extremity injury violates Rogers’ due process rights.

Defendants’ argument that the Commissioner *had* to determine all of the body parts injured in the accident in order to determine whether claimant has reached maximum medical improvement is simply incorrect. This Court’s decision in Bass v Kenco Group,

366 S.C. 450, 622 S.E 2d 577 (Ct App. 2005) makes clear that the Commission can determine maximum medical improvement separately for individual injuries resulting from an injury by accident. There is no legal support for the contention that the issue of whether Rogers has sustained maximum medical improvement from the left lower extremity injury requires a determination of any and all additional injuries he may have suffered as a result of the injury by accident or whether the left lower extremity injury affects other body parts as a part of the permanency determination

Under Ham, cited above, the Commission's findings concerning injury to additional body parts beyond the admitted left lower extremity injury – including but not limited to Finding of Fact #9 – are in error and should be reversed by this Court

**III The Commission erred in failing to find Rogers sustained injury to his skin in addition to the admitted injury to his left lower extremity.**

While Rogers continues to maintain his argument that the issue was not before the Commission for decision, if for some reason this Court should disagree, at a minimum the evidence on the record proves that he has sustained injury to his skin in addition to his left lower extremity.

In addition to the medical evidence discussed below, Rogers placed his body before the Commission at the hearing and showed the place on his leg where his skin has been injured as a result of the accident. The single Commissioner noted the difference in appearance, and Rogers explained that the skin in the area of his left lower leg breaks down and becomes infected. (tr pp. 21-23) Dr James Franklin specifically opined that this breaking down of the skin is a result of the cellulitis from the blow to Rogers' left lower

extremity, that Rogers' skin in that area will likely break down again depending on the level of continued swelling from his related and ongoing chronic venous insufficiency, and that Rogers will need continued medical treatment for these skin breakdowns (depo of Franklin, pp. 26-27, 29-31) Dermatologist Dr. John Kuhl concurred, as he opined Rogers is at risk for recurrent cellulitis due to his prior cellulitis, trauma, and preexisting diabetes. (cl's APA #4, pp 95-96)

This lay and medical evidence proves that Rogers has sustained injury to his skin in addition to the admitted injury to his left lower extremity. Of note, Lindstrom submitted *no* evidence countering the opinions of Dr. Franklin and Dr. Kuhl. The evidence discussed above is the only evidence on the record and, thus, should have resulted in a finding of injury to the skin.

Further, the Commission made no true finding on the issue explaining why it did not find injury to the skin. The only finding made, Finding of Fact #9, is a conclusory finding, which is improper. Administrative law clearly requires findings of fact sufficient to explain an award and allow appellate review, and under the circumstances, Finding of Fact #9 is not sufficient. See S.C. Code Ann. § 1-23-350 (2012), *Able Communications, Inc. v. S.C. Public Serv. Comm'n*, 290 S.C. 409, 351 S.E.2d 151 (1986). The Court should reverse the Commission on this issue.

It follows that the Court should accordingly also reverse Finding of Fact #11 as contrary to fact and law. The skin is a separate "scheduled" body part under the Workers' Compensation Act and the Commission's rules. See S.C. Code Reg. 67-1101; S.C. Code Ann. § 42-9-30(22). Because the skin was also injured within the meaning of the Act, the Commission's finding that "(t)his is a single body part claim involving only [Rogers'] left

leg” is legally in error and should be reversed See Simmons v. City of Charleston, 349 S.C 64, 562 S E 2d 476 (Ct.App. 2002)(injured worker not limited to single member injury Compensation where there are relate problems with another scheduled member).

Finally, as Rogers has sustained an injury to his skin, the Commission’s finding that continuing treatment is limited to treatment for his vascular injuries with Dr Lisa Darby should be amended to include the dermatologist Dr. Kuhl Both Dr. Franklin and Dr. Kuhl opined on this issue. (See cl’s APA #4)

**IV The Commission erred in failing to find Rogers’ diabetes aggravates his work-related injuries under S.C. Code Ann. § 42-9-35(A)(2).**

While Rogers continues to maintain his argument that the issue was not before the Commissioner for decision, if for some reason this Court disagrees, the evidence on the record also proves that his preexisting diabetes aggravates his work-related left lower extremity injury within the meaning of S C Code Ann § 42-9-35(A)(2)

The code section at issue provides that

- (A) The employee shall establish by a preponderance of the evidence, including medical evidence, that
  - (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment, or
  - (2) **the preexisting condition or the permanent physical impairment aggravates the subsequent injury**
- (B) The commission may award compensation benefits to an employee who has a permanent physical impairment or preexisting condition and who incurs a subsequent disability from an injury arising out of and in the course of his employment for the resulting disability of the permanent physical impairment or preexisting condition and the subsequent injury However, if the subsequent injury is

limited to a single body part or member scheduled in Section 42-9-30, except for total disability to the back as provided in Section 42-9-30(21), the subsequent injury must impair or affect another body part or system in order to obtain benefits in addition to those provided for in Section 42-9-30.

S C Code Ann § 42-9-35 (2012)(emphasis added)

Here, Dr. Franklin opined that Rogers' preexisting diabetes aggravates his left lower extremity and skin injuries in that the diabetes makes it more difficult for those injuries to properly heal. (depo of Franklin, pp. 31-32) Lindstrom presented *no* evidence to counter this opinion. Lindstrom's repeated references to the fact that Rogers' diabetes existed before his work injury – and even that it may have been uncontrolled to some extent – is irrelevant in face of the medical evidence that the condition is aggravating Rogers' work injuries within the meaning of § 42-9-35. Nevertheless, the Commission again made no specific findings on Rogers' contention but simply made its conclusory Finding of Fact #9. Such finding is contrary to law. See S.C. Code Ann § 1-23-350 (2008), Able Communications, Inc v S C Public Serv Comm'n, 290 S C 409, 351 S E 2d 151 (1986). The Court should reverse the Commission on this issue.

Further, it again cannot be said that Rogers' injuries are limited to the left lower extremity or that he is limited to permanency based on the single member section. See Simmons v City of Charleston, 349 S.C. 64, 562 S E 2d 476 (Ct App 2002)(injured worker not limited to single member injury Compensation where there are relate problems with another scheduled member). Because he has presented evidence that his preexisting condition aggravates his work injuries, Rogers is entitled to the determination of disability provided in § 42-9-35(B). The Commission's Finding of Fact #11 is clearly erroneous.

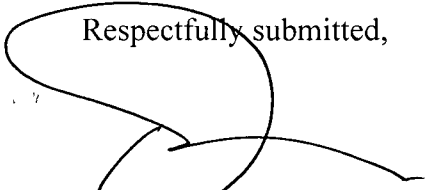
The Court should reverse the Commission to find such aggravation and to remove  
Finding of Fact #11 as contrary to fact and law.

## CONCLUSION

It is, therefore, respectfully submitted that the Commission erred in reaching and making any permanency determinations, as permanency issues were reserved in the Form 50 and were then necessarily not a part of the notice of issues for the hearing. Reaching those issues is a violation of Rogers' right to due process. The same goes for the Commission's decision to determine whether Rogers sustained injuries beyond the admitted left lower extremity injury. All related finding of fact and rulings of law, including Findings of Fact Nos 9 and 11, should be reversed and reserved for a future hearing

However, in the alternative, to the extent the Court may disagree with Rogers on the above issues, evidence on the record proves that Rogers sustained additional injury to his skin and that his preexisting diabetes aggravates his work-related injuries. However, the Commission failed to make proper findings. This Court should so find, and should then also reverse Finding of Fact #11, as Rogers' injuries are not limited to a single, scheduled body part. Furthermore, as Rogers has sustained an injury to his skin, the Commission's finding that continuing treatment is limited to treatment for his vascular injuries with Dr Lisa Darby should be reversed to include the dermatologist Dr Kuhl.

Respectfully submitted,



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2/4/15

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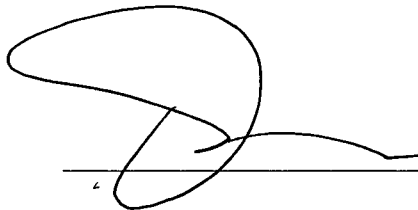
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**CERTIFICATE OF SERVICE**

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This is to certify that the undersigned did cause the **INITIAL BRIEF OF APPELLANT AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** to be served upon the Defendants by mailing a copy of same to their attorney of record at the address shown below by United States Mail, proper postage prepaid, on the 2/4/15 ~~February 2015~~.

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