THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

G. THOMAS COOPER, JR., CIRCUIT COURT JUDGE

APPELLATE CASE NUMBER: 2013-001382

Latonya Footman, ... **PETITIONER.**

v.

Johnson Food Services, LLC, Employer, and The Hartford, ...**RESPONDENTS.**

PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Pursuant to Rules 240 and 242, SCARC, Petitioner, Latonya Footman, petitions this Court to issue a Writ of Certiorari to review the Court of Appeals' decision in Latonya Footman, Employee, v. Johnson Food Services, LLC, Employer, and The Hartford, Carrier, Unpublished Op. No. 2015-UP-010.

Ms. Footman respectfully asserts the Court of Appeals erred in affirming the South Carolina Workers' Compensation Commission's (Commission's): (a) finding she "has been released with no restrictions, and has returned to work (full duty) with both of her Employers", despite the absence of evidentiary support for this finding; (b) determining this factual finding, which had a material impact upon the Commission's assessment of her residual permanent partial disability, was supported by substantial evidence; and (c) declining to recognize the legal insufficiency of the arbitrary/capricious process through which the Commission afforded "great weight" to a stale/remote 2008 physician statement that had no relevance to its 2012 appraisal of her residual permanent disability.

Specifically, Ms. Footman believes: (a) the Court of Appeals' decision completely overlooks the fact her treating physician's final work status statement clearly limited the use of her left hand to only those activities which she could tolerate, as well as her undisputed need for "accommodations" in connection with performance of her job duties; (b) given these undisputed facts, the Court of Appeals erred in failing to conclude the Commission's findings to the contrary are devoid of evidentiary basis, inconsistent with the only reasonable inference which may be gleaned from the evidentiary record and not supported by substantial evidence; (c) as the Commission identified no legally

sustainable rationale for determining Dr. Joseph P. Jackson, Jr.'s February 1, 2008 statement that "consistency of effort in grip strength . . . [was] a basic element of building a doctor/patient relationship" warranted "great weight" simply because she had personally sought evaluation from this physician, particularly in view of the absence of any references to sub-maximal effort in grip strength testing during any time thereafter, the Court of Appeals erred in affirming this arbitrary/capricious ruling; and (d) the Court of Appeals erred in failing to recognize the fact finding duty repeatedly mandated by this Court, including an unquestioned obligation to identify a legally cognizable rationale for its determinations, unquestionably required the Commission to explain why this stale/isolated warranted great weight at this stage of the proceedings.

RULE 226 (D) (1), SCACR, CERTIFICATION

Counsel for Petitioner certifies at a Petition for Rehearing was made to the Court of Appeals on January 27, 2015 and denied by the Court of Appeals on February 19, 2015.

I. QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals err in affirming the South Carolina Workers' Compensation Commission's May 30, 2012 permanent disability award when: (a) this determination is materially based upon a factual finding that Appellant, Latonya Footman, "has been released with no restrictions, and has returned to work (full duty) with both of her employers"; (b) the undisputed facts of record firmly establishes that neither her authorized treating physician nor the second opinion specialist granted the purported "full duty" release; (c) a review of the undisputed facts, as referenced in the Commission's Order, unquestionably confirms she is working within restrictions imposed by the second opinion specialist, while receiving accommodations in connection with her limitations; and (d) this absence of evidentiary support rendered the Commission's disability assessment legally erroneous per S.C. Code Ann. Section 1-23-380 (A) (5) (Supp. 2012)?

2. Did the Court of Appeals err in failing to conclude the Commission has engaged in a legally insufficient fact finding process relative to its determination to afford a remote (February 1, 2008) reference to grip strength consistency "great weight" in connection with the 2012 assessment of her permanent disability when: (a) the purported basis for this finding ("these are notes of Claimant's own expert") provides no insight as to the relationship between this isolated statement and Ms. Footman's degree of residual permanent disability; (b) our Appellate Courts have consistently required an administrative agency to enter factual findings which sufficiently explain the underlying rationale for its rulings; (c) the decision to afford this statement "great weight" has no rational basis and can only be construed as an impermissible Commission-generated

medical opinion; and (d) entry of this conclusory finding, which offers no legally tenable explanation as to the reasoning behind attributing "great weight" to this comment, constituted an error of law?

II. STATEMENT OF THE CASE

In 2006, Ms. Latonya Footman developed bilateral arm symptoms that were diagnosed to be reflective of carpal tunnel syndrome. Although The Hartford initially denied liability for these conditions, it subsequently acknowledged their compensability per the South Carolina Workers' Compensation Act when Dr. Joseph P. Jackson, Jr. concluded her bilateral carpal tunnel syndrome "most probably result[ed] . . . from her performance of repetitive activities incidental to her job" as a cook for Johnson Food Services, LLC. (See, Record on Appeal, pp. 242 - 243).

Rather than allowing Ms. Footman to remain under Dr. Jackson's care, Respondents directed her to Dr. Michael S. Green, who acknowledged the presence of "bilateral moderate carpal tunnel syndromes", performed a release on the right side and initially discharged her from care on April 9, 2007. (See, Record on Appeal, pp. 261-265). However, as she continued to experience bilateral arm symptoms, Ms. Footman sought reevaluation by Dr. Jackson, who indicated she was also exhibiting evidence of bilateral cubital tunnel syndrome and suggested that she undergo updated testing. (See, Record on Appeal, pp. 244 – 245).

This recommendation prompted Respondents to redirect Ms. Footman to Dr. Green, who agreed "EMG/NCS of both upper extremities to evaluate her ulnar nerve function" was warranted. (See, Record on Appeal, p. 266). While this testing confirmed the presence of both left carpal tunnel syndrome and right cubital tunnel syndrome, Dr. Green, who mistakenly assumed Ms. Footman had "underwent a procedure for both of these conditions, one on the right upper extremity and one on the left", offered no additional treatment and again discharged her from active care effective February 15,

2008. (See, Record on Appeal, pp. 267 - 270). In conjunction with this release, he assigned impairment ratings of 2% to each upper extremity. (See, Record on Appeal, p. 270).

During this timeframe (February 1, 2008), Ms. Footman was reevaluated by Dr. Jackson, who believed her test results were indicative of bilateral cubital tunnel syndrome, for which he identified further treatment options. (See, Record on Appeal, pp. 246 - 247). At that time, he also noted: (a) her effort in connection with grip strength testing performed during this evaluation "probably was not consistent on the right"; and (b) "consistency of effort in grip strength [was] . . . a basic element of building a doctor/patient relationship." (Id.).

After examining Ms. Footman on May 15, 2008, Dr. Jackson verified she had, to date, only undergone one surgical procedure, as well as the causal relationship of her bilateral cubital tunnel syndrome to her compensable injuries. (See, Record on Appeal, pp. 248 – 252). Additionally, he assigned medical impairment ratings and indicated her work restrictions included no repetitive use of her arms and no lifting or exertion of force in excess of 20 lbs. (Id.).

Shortly thereafter, Respondents again directed Ms. Footman to Dr. Green (June 27, 2008), who: (a) agreed with Dr. Jackson's diagnoses; (b) concurred with his suggestion of splinting for the right cubital tunnel syndrome; and (c) again released her from active treatment (August 11, 2008), as he did not believe she was "ready for any surgical procedure". (See, Record on Appeal, p. 272).

At that juncture, Respondents deposed Dr. Green, who acknowledged the causal relationship of all four diagnosed conditions (bilateral carpal tunnel and cubital tunnel

syndromes) to the consequences of Ms. Footman's injuries. He also agreed: (a) Dr. Jackson's ratings fell within the range that could reasonably be assigned for Ms. Footman's particular pathology; and (b) this range (2% – 5%) would be applicable to each of Ms. Footman's distinct injury components (carpal and cubital tunnel syndromes). (See, Record on Appeal, pp. 26 – 27; 34).

When Ms. Footman's symptoms persisted and diagnostic testing revealed a worsening of her nerve dysfunction, Dr. Green performed a left carpal tunnel surgery (November 9, 2010). Although he allowed her to resume working approximately six weeks later, Dr. Green did not release Ms. Footman to unrestricted activity, **but instead indicated she could "progressively use the hand as tolerated."** (See, Record on Appeal, p. 50).

In response to a March 28, 2011 inquiry from Respondents' counsel, Dr. Green opined Ms. Footman had reached maximum medical improvement and assigned a 2% left upper extremity impairment rating relative to the left carpal tunnel syndrome component. (See, Record on Appeal, p. 308). **Significantly, this designated treater neither rescinded, amended nor qualified his December 27, 2010 restriction limiting her use of the left hand "as tolerated."**

After completing a final examination on April 20, 2011, Dr. Jackson reiterated the causal relationship of Ms. Footman's multiple injury components and assigned impairment ratings for these respective conditions. At that time, this orthopaedic surgeon also **identified continuing physical restrictions, including "lifting no more than 25 lbs, lifting no more than 12 pieces of chicken on a tray. . . [and] only opening 10 large cans per day."** (See, Record on Appeal, pp. 253 – 254).

Following a June 8, 2011 hearing, the single commissioner, per Order dated September 16, 2011, noted: (a) **Ms. Footman's "present job duties and responsibility with the Defendants are within the restrictions, which were placed upon the Claimant by Dr. Jackson"**; (b) **"she does experience ongoing pain and problems with her left upper extremity and right upper extremity while in the course and scope of her employment with the Defendants"**; and (c) **"Defendants readily provide the Claimant with accommodations when she experiences left upper extremity and right upper extremity pain and problems while working with Defendants."** (See, Record on Appeal, p. 9).

When analyzing the evidence that was particularly relevant to assessment of Ms. Footman's degree of residual permanent disability, the single commissioner found the inconsistency/ambiguity of Dr. Green's impairment ratings necessitated focusing on "other factors", particularly:

> (a) Dr. Jackson's February 1, 2008 reference to grip strength consistency, which was **"give[n] . . . great weight for the reason that these are the notes of Claimant's own expert"**;
>
> (b) her lack of prescription medication use or need for "future medicals"; and
>
> (c) the fact **she "has been released with no restrictions, and has returned to work (full duty) . . . ."** (See, Record on Appeal, p. 12).

Based upon these findings, the single commissioner determined Ms. Footman had experienced a 6% permanent partial disability to each arm per S.C. Code Ann. Section 42-9-30 (1976). Although Ms. Footman subsequently challenged the single commissioner's rulings on various grounds, including a lack of evidentiary support and the use of an arbitrary/unlawful method of analysis, an Appellate Panel of the Full

Commission: (a) declined to specifically address these issues; (b) affirmed the single commissioner's factual findings in their entirety; and (c) mistakenly calculated the value of her permanent disability compensation entitlement. (See, Record on Appeal, pp. 34 – 38).

III. ARGUMENTS

A. THE COURT OF APPEALS ERRED IN AFFIRMING THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S MAY 30, 2012 PERMANENT DISABILITY AWARD BECAUSE: (A) THIS DETERMINATION IS MATERIALLY BASED UPON A FACTUAL FINDING THAT APPELLANT, LATONYA FOOTMAN, "HAS BEEN RELEASED WITH NO RESTRICTIONS, AND HAS RETURNED TO WORK (FULL DUTY) WITH BOTH OF HER EMPLOYERS"; (B) THE UNDISPUTED FACTS OF RECORD FIRMLY ESTABLISHES THAT NEITHER HER AUTHORIZED TREATING PHYSICIAN NOR THE SECOND OPINION SPECIALIST GRANTED THE PURPORTED "FULL DUTY" RELEASE; (C) A REVIEW OF THE UNDISPUTED FACTS, AS REFERENCED IN THE COMMISSION'S ORDER, UNQUESTIONABLY CONFIRMS SHE IS WORKING WITHIN RESTRICTIONS IMPOSED BY THE SECOND OPINION SPECIALIST, WHILE RECEIVING ACCOMMODATIONS IN CONNECTION WITH HER LIMITATIONS; AND (D) THIS ABSENCE OF EVIDENTIARY SUPPORT RENDERED THE COMMISSION'S DISABILITY ASSESSMENT LEGALLY ERRONEOUS PER S.C. CODE ANN. SECTION 1-23-380 (A) (5) (SUPP. 2012).

S.C. Code Ann. Section 1-23-380 (A) (5) (Supp. 2012), which governs judicial review in the current context, provides in pertinent part:

> The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decision are:
>
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

This Court has repeatedly held that where "there is no evidence to support a finding of fact made by the Commission", the resulting determination should be reversed. Sanders v. Richardson, 251 S.C. 325, 162 S.E. 2d 257, 259 (1968); Hutson v. South

Carolina State Ports Authority, 399 S.C. 381, 732 S.E. 2d 500, 504 (2012). This rule stems from the recognition that, absent this evidentiary basis, the Commission's award necessarily "rest[s] . . . upon [impermissible] . . . surmise, conjecture, or speculation." Glover v. Rhett Jackson Company of Bush River Road, 274 S.C. 644, 267 S.E. 2d 77, 80 (1980); Hutson, 732 S.C. 2d at 503.

The Court has similarly ruled on various occasions that the absence of disputed facts transforms an issue into a question of law. See, Gilliam v. Woodside Mills, 319 S.C. 385, 461 S.E. 2d 818, 819 (1995) (". . . [G]iven the undisputed facts in this case, it is a matter of law whether the hip socket is part of the pelvis or part of the leg."); Grant v. Grant Textiles, 372 S.C. 196, 641 S.E. 2d 869, 872 (holding, based upon review of undisputed facts, "commission's conclusion that the accident did not arise out of and in the course of Claimant's employment is incorrect."); Nicholson v. S.C. Department of Social Services, Op. No. 27478, ___ S.C. ___, ___ S.E. 2d ___, ___, 2015 WL 161719 (S.C. Sup. Ct. filed January 14, 2015) (analysis of undisputed facts confirmed injuries arose out of and occurred within the course of her employment). Consequently, ". . . [a]lthough the [c]ommission . . . is the fact finding body, where the evidence gives rise to one reasonable inference the question becomes one of law for the courts to decide." Kinsey v. Champion American Service Center, 268 S.C. 177, 232 S.E. 2d 720, 722 (1977); Moore v. Family Service of Charleston County, 269 S.C. 275, 237 S.E. 2d 84, 85 (1977); Glover, 267 S.E. 2d at 79.

A review of Dr. Green's December 27, 2010 report confirms that upon releasing Ms. Footman from care for the final time, he **did not, as on previous occasions, indicate**

she was capable of performing unrestricted work activities. Rather, he advised her that she could "progressively use the hand **as tolerated**." (Emphasis added).

While the Court of Appeals apparently adopted the Circuit Court's ruling that the December 27, 2010 statement did not constitute a work restriction, this holding conflicts with governing authorities. Specifically, in Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 454 S.E. 2d 320, 321 – 322 (1995) this Court: (a) observed the employee's physician allowed him to return to work, "but warned he 'should be somewhat careful with lifting, etc.'"; and (b) determined that as the nature of the employee's job "involved lifting and moving heavy objects . . ., there was no evidence [he] . . . had ever returned to work 'without restriction'". More recently, the Court of Appeals held that medical instructions "to refrain from 'heavy lifting' . . ., 'strenuous activity' . . . [and] 'take it easy'" were indicative of restrictions. Cranford v. Hutchinson Construction, 399 S.C. 65, 731 S.E. 2d 303, 308 (Ct. App. 2012). In this regard, Ms. Footman would respectfully submit Dr. Green's "as tolerated" admonition is no less a restriction than the warnings issued in Grayson and Cranford, which were each construed to constitute a less than full duty work release.

Additionally, after performing his final examination on April 20, 2011, Dr. Jackson similarly declined to allow Ms. Footman to resume "full duty" and again imposed several restrictions, specifically precluding her from lifting weights exceeding 25 lbs. or trays containing more than 12 pieces of chicken, while limiting her from opening more than 10 large cans per day.

The Commission's Order likewise references undisputed testimony verifying: (a) Ms. Footman's "present job duties and responsibilities with the Defendant . . . are within

the **restrictions, which were placed upon the Claimant by Dr. Jackson**"; (b) she continues to "**experience ongoing pain and problems with her left upper extremity and right upper extremity while in the course and scope of her employment with the Defendants**"; and (c) "Defendants **readily provided the Claimant with accommodations when she experiences left upper extremity and right upper extremity pain and problems while working with the Defendant.**"

Based upon these undisputed facts, the only reasonable inference arising from the evidence unquestionably establishes: (a) Dr. Green's "as tolerated" restriction remains in effect; (b) after gauging her actual functional capacity, Ms. Footman came to recognize the restrictions imposed by Dr. Jackson had proven to be accurate (See, Record on Appeal, p. 174); (c) she is obviously incapable of engaging in "full duty", a fact validated by her need for and receipt of "accommodations" from her employer; and (d) "her present job duties and responsibilities with the . . . [Respondents] are within the restrictions . . . placed upon [her] . . . by Dr. Jackson." (See, Record on Appeal, p. 9).

Based upon these facts, in light of the Grayson – Cranford rulings, **"there is, in reality, no evidence" to support the Commission's finding that Ms. Footman "has been released with no restrictions, and has returned to work (fully duty) . . . ."** Grayson, 454 S.E. 2d at 322. (Emphasis added). Simply stated, consideration of the undisputed facts, under any of the above-cited rules, reveals this essential finding was baseless.

When assessing permanent partial disability, the Commission is authorized to consider various factors, including the presence of medical restrictions and their impact on an individual's work capacity. See, Roper v. Kimbrell's of Greenville, Inc., 231 S.C.

453, 99 S.E. 2d 52, 56 – 57 (1957); Harbin v. Owens-Corning Fiberglas, 316 S.C. 423, 450 S.E. 2d 112, 116 – 117 (Ct. App. 1994). While the undisputed facts verify the presence of not only medical restrictions, but also accommodations, the Commission's ultimate disability determination is founded upon the wholly inconsistent notion that Ms. Footman was "released with no restrictions, and has returned to work (fully duty)", an error which certainly/negatively impacted upon its assessment of her residual permanent disability.

Accordingly, Ms. Footman requests that the Court grant her Petition, review the Court of Appeals' decision, permit oral argument and issue a decision finding the Court of Appeals' affirmance of this fundamental element of the Commission's permanent disability award is founded upon a material error of law. She further requests that this Court reverse the Court of Appeals' ruling on this issue and remand the case to the Commission for the purpose of conducting a *de novo* hearing, with instructions that her disability be assessed in light of the presence of medical restrictions and her inability to engage in unrestricted work activities.

B. THE COURT OF APPEALS ERRED IN FAILING TO CONCLUDE THE COMMISSION HAS ENGAGED IN A LEGALLY INSUFFICIENT FACT FINDING PROCESS RELATIVE TO ITS DETERMINATION TO AFFORD A REMOTE (FEBRUARY 1, 2008) REFERENCE TO GRIP STRENGTH CONSISTENCY "GREAT WEIGHT" IN CONNECTION WITH THE 2012 ASSESSMENT OF HER PERMANENT DISABILITY BECAUSE: (A) THE PURPORTED BASIS FOR THIS FINDING ("THESE ARE NOTES OF CLAIMANT'S OWN EXPERT") PROVIDES NO INSIGHT AS TO THE RELATIONSHIP BETWEEN THIS ISOLATED STATEMENT AND MS. FOOTMAN'S DEGREE OF RESIDUAL PERMANENT DISABILITY; (B) OUR APPELLATE COURTS HAVE CONSISTENTLY REQUIRED AN ADMINISTRATIVE AGENCY TO ENTER FACTUAL FINDINGS WHICH SUFFICIENTLY EXPLAIN THE UNDERLYING RATIONALE FOR ITS RULINGS; (C) THE DECISION TO AFFORD THIS STATEMENT "GREAT WEIGHT" HAS NO RATIONAL BASIS AND CAN ONLY BE CONSTRUED AS AN IMPERMISSIBLE COMMISSION-GENERATED MEDICAL OPINION; AND (D) ENTRY OF THIS CONCLUSORY FINDING, WHICH OFFERS NO LEGALLY TENABLE EXPLANATION AS TO THE REASONING BEHIND ATTRIBUTING "GREAT WEIGHT" TO THIS COMMENT, CONSTITUTED AN ERROR OF LAW.

It is axiomatic that the Commission's factual findings "must be founded on evidence of sufficient substance to afford a reasonable basis for" them. Wynn v. People's Natural Gas Co. of S.C., 238 S.C. 1, 118 S.E. 2d 812, 818 (1961); Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E. 2d 76, 83 (Ct. App. 1995); Burnette v. City of Greenville, 401 S.C. 417, 737 S.E. 2d 200, 206 (Ct. App. 2012). Additionally, ". . . [i]t is not the role of the Commission to render expert opinion." Edmonds v. Fresenius Medical Care, 165 N.C. App. 811, 600 S.E. 2d 501, 506 (2004) (Steelman, J. dissenting rev'd per curium for reasons stated in dissent), 319 N.C. 313, 608 S.E. 2d 755 (2005); Nale v. Ethan Allen, 199 N.C. App. 511, 682 S.E. 2d 231, 247 (2009) ("It is not for the Commission to render its own expert medical opinion"); accord Burnette, supra (holding "the medical opinion of the single commissioner" neither constituted nor was supported by substantial evidence).

It is equally certain that: (a) conclusory findings of fact "are insufficient." Baldwin v. James River Corporation, 304 S.C. 485, 405 S.E. 2d 421, 422 (Ct. App. 1991); and (b) "implicit findings of fact are. . . [likewise] not sufficient." Brayboy v. Clark Heating Company, Inc., 306 S.C. 56, 409 S.E. 2d 767, 768 (1991).

After examining Ms. Footman on February 1, 2008, Dr. Jackson "pointed out the consistency of effort in grip strength as a basic element of building a doctor/patient relationship." Although a review of the evidence of record verifies the absence of any similar references during the ensuing three year course of treatment (which included additional surgery), the Commission found this remote statement deserved "great weight for the reason that these are the notes of Claimant's own expert. . . ."

At this stage of the proceedings, the Commission is charged with the obligation of assessing Ms. Footman's degree of permanent partial disability/loss of use. While the respective orthopaedic surgeons have somewhat differing views as to the nature of her residual impairment, neither of these physicians: (a) questioned the legitimacy of the Footman's current symptoms/limitations; or (b) otherwise indicated Dr. Jackson's remote statement was, to any extent, relevant to the determination of her permanent disability/loss of use in 2012. As a consequence, Ms. Footman respectfully submits: (a) the decision to afford "great weight" to this now innocuous reference necessarily constitutes "the medical opinion of the single commissioner, adopted by the Commission"; (b) this rather stale evidence is hardly indicative of her permanent disability following the passage of four years and performance of surgery; and (c) there is no reviewable indication as to why this statement deserves "great weight" in this context. Burnette, 737 S.E. 2d at 206; See also generally, Smith v. South Carolina Department of

Mental Health, 329 S.C. 485, 494 S.E. 2d 630, 637 (Ct. App. 1997) (expressing concern that "[m]uch of the medical evidence upon which the single commissioner relied . . . [in assessing permanent disability] was more than two years old at the time of the hearing.").

In this regard, the fact finding duty imposed by S.C. Code Ann. Sections 1-23-350 (Supp. 2012) and 42-17-40 (1976, as amended) "requires not only. . . [that] findings of fact be made upon the essential factual issues, but that they. . . [also] be sufficiently definite and detailed to enable the appellate court to properly determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings." Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 127 S.E. 2d 288, 292 (1962); Hill v. Jones, 255 S.C. 219, 178 S.E. 2d 142, 144 (1970). "If a material fact is contested. . . [the Commission] must make a specific, express finding on it." Aristizabal v. I.J. Woodside-Division of Dan River, Inc., 268 S.C. 366, 234 S.E. 2d 21, 23 (1977).

A Court sitting in an appellate capacity "will not accept an administrative agency's decision at face value without requiring the agency to explain its reasoning." Able Communications, Inc. v. South Carolina Public Service Commission, 290 S.C. 409, 351 S.E. 2d 151, 152 (1986); Kiawah Property Owners Group v. Public Service Commission of South Carolina, 338 S.C. 92, 425 S.E. 2d 863, 865 (1999). Although the Commission clearly found Dr. Jackson's remote comment warranted "great weight", the stated rationale (because this physician was Ms. Footman's expert): (a) has no medical basis, to the extent it necessarily constitutes an impermissible medical opinion of the Commission that this isolated occurrence had some bearing on her current level of dysfunction; and (b) offers no legally plausible insight as to what relevance, if any, this

statement had in terms of resolving the factual disputes surrounding her degree of residual permanent disability. Further, as this issue was clearly contested, the controlling authorities demanded a specific factual finding that cogently outlined a legally sustainable basis for its ultimate determination.

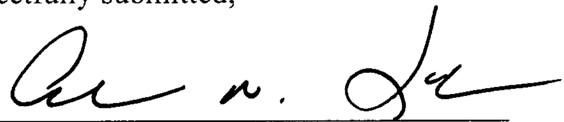
While Respondents argue a possible reason (witness credibility) may be inferred from the Commission's Order, this argument ignores: (a) the longstanding prohibition against implicit findings in this context. Aristizabal, supra; Able, supra; and (b) consistent holdings that "require an administrative agency to make specific findings of fact and explain its rationale . . . ." Porter v. South Carolina Public Service Commission, 333 S.C. 12, 507 S.E. 2d 328, 332 (1998).

Given the absence of any medical evidence which can conceivably be deemed to support the materiality of Dr. Jackson's February 1, 2008 statement in the context of Ms. Footman's 2012 disability, it is respectfully submitted that the Commission's determination to afford it "great weight": (a) constitutes, in and of itself, an error of law; (b) is the product of an inappropriate process of unusual finesse of reasoning that necessarily results from an equally impermissible rendering of medical opinion by the Commission; and (c) also lacks any semblance of the explanation/rationale repeatedly demanded by this Court.

Accordingly, Ms. Footman requests that the Court grant her Petition, review the Court of Appeals' decision, permit oral argument and issue a decision finding that: (a) the Court of Appeals' affirmance of the Commission's determination to place "great weight" on Dr. Jackson's February 1, 2008 statement simply because he was "her own expert" constituted legal error; (b) vacates the Commission's Order; and (c) remands this case to

the Commission for conducting a *de novo* hearing with instruction that, absent a legally sustainable rationale, Dr. Jackson's February 1, 2008 statement is not relevant to the determination of her degree of permanent residual disability.

Respectfully submitted,



Andrew N. Safran, Esquire
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and

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803-929-0029
Attorneys for Petitioner, Latonya Footman

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
MAR 23 2015
S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

G. THOMAS COOPER, JR., CIRCUIT COURT JUDGE

APPELLATE CASE NUMBER: 2013-001382

Latonya Footman, ... PETITIONER.

v.

Johnson Food Services, LLC, Employer, and The Hartford, ...RESPONDENTS.

CERTIFICATE OF SERVICE

I, Roxanne R. Moorer, paralegal for Andrew N. Safran, Esquire, Attorney for Petitioner, do hereby certify that on the 23rd day of March, 2015, I caused to be filed, via hand delivery, the original and six (6) copies of the Petitioner's Petition for Writ of Certiorari, with the Clerk of the South Carolina Supreme Court. One (1) copy of the Petitioner's Petition for Writ of Certiorari was furnished to counsel for Respondents via first class mail at the following address:

Jason W. Lockhart, III, Esquire
McAngus, Goudelock & Courie, LLC
Post Office Box 12519
Columbia, South Carolina 29211-2519
Attorney for Respondents

The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Roxanne R. Moorer

Roxanne R. Moorer
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March 23rd, 2015

ANDREW N. SAFRAN, LLC
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TELEPHONE 803 256 6689
FACSIMILE 803 799 1003

MAILING ADDRESS:
POST OFFICE BOX 12089
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March 23, 2015

RECEIVED
MAR 23 2015
S.C. Supreme Court

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

RE: Latonya Footman, Petitioner, v. Johnson Food Services, LLC and
The Hartford, Respondents
Appellate Case No.: 2013-001382

Dear Mr. Shearouse:

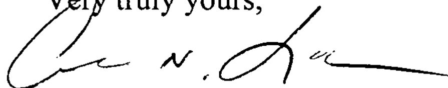
Enclosed please find an original and eight copies of a Petition for Writ of Certiorari that I am filing on behalf of Ms. Latonya Footman relative to the above-captioned matter. I have also included one unbound and four bound copies of the Appendix, as well as my firm's check in the amount of $100.00 is satisfaction of your filing fee. At this time, I would greatly appreciate your filing these documents and returning two clocked copies of the Petition and Appendix to my courier.

By copy of this letter, I am serving a copy of the Petition on Jason Lockhart, counsel for Respondents, and the South Carolina Court of Appeals. As always, in the event he has any questions or comments concerning this matter, I invite Jason to contact me.

Thank you for your cooperation.

With kindest regards, I am

Very truly yours,

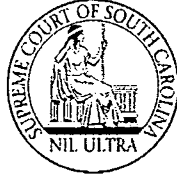


Andrew N. Safran

ANS/rrm

Enclosures

cc: Jason W. Lockhart, Esquire
The Honorable Jenny Abbott Kitchings
Ann McCrowey Mickle, Esquire



The Supreme Court of South Carolina

Andrew N. Safran, LLC 03/24/2015

RECEIPT #75450

Case No:	2015-000610
Case Short Title:	Latonya Footman v. Johnson Food Services
Event:	Petition for Writ of Certiorari and Responses - Petition and Appendix
Fee Type:	Case Initiation Fee
Amount:	$100.00
Payment Type:	Check
Reference No:	12060
Check/Money Order Date:	03/23/2015
Comments:	Latonya Footman v. Johnson Food Services