

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 REPLY BRIEF OF APPELLANT**

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**SC Court of Appeals**

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**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.**

In its response to Rogers' arguments I and II, Lindstrom argues that

The Commission's findings were not "permanency" findings. The Commission did not decide the extent of Rogers's permanent disability caused by his work-related injury. The Commission merely decided which body parts were related to the claim in order to determine if Rogers was entitled to ongoing TTD benefits.

However, this is simply not the case. While the Commission did not decide a percentage of loss of use of Rogers' leg, it did make findings related to permanency that prevent Rogers from arguing that he is entitled to compensation for loss of earning capacity. For instance, by finding that "this is a single body part claim involving only [Rogers'] left leg" (Finding of Fact #11, p. xx), the Commission prevents Rogers from arguing that the effects of the compensable injury extend to other body parts or systems to create greater disability than that caused by the leg injury alone. See Morgan v. JPS Automotives, 321 S.C. 201, 467 S.E.2d 457 (Ct.App. 1996)("...if the effects of the loss of the member extend to other parts of the body and interfere with their efficiency, the claimant should have the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section."). Such determination is a question separate from a determination of *direct injury* to a body part or system of the body as a result of the accident, and as such, have nothing at all to do with any determination of maximum medical improvement or entitlement to temporary compensation benefits. See Hutson v. S.C. State Ports Authority, 390 S.C. 108,

700 S.E.2d 462 (Ct.App. 2010)(radicular symptoms and an affect on a leg from a back injury establish a prima facie case for compensation beyond a single member). And *none* of these issues were placed before the Commission for determination.

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

In response to Rogers' argument III, Lindstrom argues that Rogers failed to prove injury to his skin because he did not show any *loss* of skin. To the extent that Lindstrom refers to *loss of use* of the skin, such is a permanency determination and not a part of the question whether an *injury* to the skin has occurred. See e.g. S.C. Code Ann. § 42-9-30 (22) (2012)(“...for the total or partial loss of, or loss of use of, a member, organ, or part of the body....”); S.C. Code Reg. 67-1101(C) (2012)(“For total loss, partial loss, or loss of use of an organ, member, or body part listed in this regulation...” and regulation includes “skin”). The question for *injury* is rather whether a body part or system has ceased to function as it is designed to function because of the injury by accident. See Roper v. Kimbrell's of Greenville, 231 S.C. 453, 99 S.E.2d 52 (1957)(“Whatever part of the human body thus has been made incapable of its normal use so that practically it has ceased to be available for the purpose for which it was adapted, is certainly injured according to the common understanding of men.”)

Here, Rogers has proven that his skin does not function as it is supposed to function because of the injury by accident. He testified 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, i.e. because of the injury by accident his skin no longer functions correctly. 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 and a finding making continued related medical treatment compensable.

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

In response to Rogers' argument III, Lindstrom argues in part that Rogers' argument should fail because diabetes is "not 'a body part or system.'" Such argument is disingenuous. Diabetes is a disorder of the endocrine system brought on by the body's inability to make or use insulin properly. See e.g. "Understanding Diabetes – the Basics," <http://www.webmd.com/diabetes/understanding-diabetes-basics>. Aggravation of preexisting diabetes as a result of an injury by accident or preexisting diabetes causing aggravation of a subsequent injury, as provided in S.C. Code Ann. § 42-9-35(A), clearly involves part or system of the body.

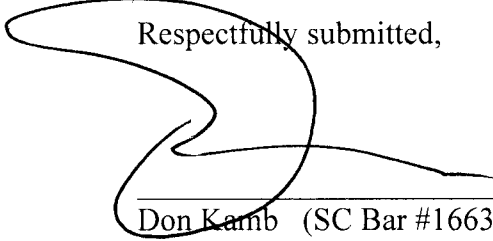
Lindstrom's further argument that proving that a preexisting condition aggravates a subsequent injury under § 42-9-35(A)(2) does not allow him to argue beyond the single-member statute because of the provisions of § 42-9-35(B) cannot be correct, as such interpretation would render § 42-9-35(A)(2) meaningless. A statute cannot be construed in a way which leads to an absurd result or renders it meaningless. Doe v. S. Carolina Dep't of Soc. Servs., 407 S.C. 623, 634, 757 S.E.2d 712, 717 (2014).

## 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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