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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION **RECEIVED**

AUG 31 2015

Appellate Case No. 2014-00178 **SC Court of Appeals**

Clarence Winfrey, Employee, Claimant, Respondent,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group, Carrier, Appellants.

MOTION TO DISMISS FOR FAILURE TO COMPLY
WITH APPELLATE COURT RULES CONCERNING THE
CONTENTS OF THE INITIAL BRIEF AND
THE DESIGNATION OF MATTER BY THE APPELLANT

Pursuant to SCACP Rule 240, Rule 260, Rule 208, Rule
209 and Rule 210 and such other Rules as the Court deems
applicable, the Respondent hereby moves for an Order of the
Court dismissing the appeal for non-compliance with the
Appellate Court Rules as to Appellants' Initial Brief and
Designation of Matter. Said Motion is based upon the

Memorandum attached hereto and incorporated herein by
reference.

I SO MOVE.



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Attorney for Respondent

August 27, 2015

THE STATE OF SOUTH CAROLINA
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APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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Company c/o Liberty Mutual Group, Carrier, Appellants.

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS FOR FAILURE TO COMPLY
WITH APPELLATE COURT RULES CONCERNING THE
CONTENTS OF THE INITIAL BRIEF AND
THE DESIGNATION OF MATTER BY THE APPELLANT

The Respondent would respectfully show unto the Court:

1. That the Appellants properly and timely served their Initial Brief and Designation of Matter on Counsel for the Respondent; which was also properly and timely filed with this Court. A copy of the Appellant's Initial Brief and Designation of Matter of the Appellant is attached hereto and incorporated herein by reference as Exhibit "A".

2. That SCACR Rule 208(b)(4) requires that the briefs of the parties, "shall contain references to the transcript pleadings, orders, exhibits or other materials which may be properly included in the Record on Appeal to support the salient facts alleged." The Appellants in their Initial Brief, specifically in their Statement of the Case, refer to numerous Commission Forms such as a Form 15 III, a Summons and Complaint filed in Richland County Circuit Court and the Motions and previous Order of the Commission issued by Commissioner Beck. However, there are no references to these documents being made a part of or where they can be found in the Record. Based on a review of the Designation of Matter, the Court will find that such documents are not included in the proposed Record on Appeal and specifically the Motions and the pleadings referred to are not listed as part of the Designation of Matter but again there are no Record references as to these documents. Note: As for one Order of Commissioner Beck based on the knowledge of Counsel, it is part of Defendants' APA Submissions but there is no reference to that part of the Record. Another is not included.

3. That in addition to the Statement of the Case containing statements about medical records without Record references, there is also reference to a Restraining Order

without Record reference as part of the Designation of Matter and reference to another Circuit Court Order rescinding a Temporary Restraining Order without a Record reference or either being listed as a part of the Designation of Matter. There is a reference to decisions by Commissioner Beck at a previous Motions Hearing but yet there is no Record reference to nor are these contained in the Designation of Matter. There is also a reference to an Appeal without any inclusion of any documentation concerning another Appeal in reference to the Order of Commissioner Beck as being filed in this Court without Record reference to it or it being included as part of the Designation of Matter. There is reference to a WCC Form 50 and WCC Form 51 without Record reference to those being part of the Designation of Matter nor are they included in the Designation of Matter. A reference to a Form 30 filing an Appeal to the Full Commission is referred to without Record reference or it being a part of the Designation of Matter. In fact, neither Commissioner Barden's Order nor the Full Commission's Order are part of the Record. A review of the Statement of the Case will clearly establish that there is no reference from nor to any part of or documents listed in the Designation of Matter as to these documents and statements which is in noncompliance with the

Rule.

4. That SCACR Rule 209(b) specifically provides that, "a party shall not include any matter in his designation which is not relevant to the Appeal and Rule 210(c) provides that the Record shall not include matter which was, "not presented to the lower Court or tribunal." A review of the Order which is on Appeal will clearly establish that this is an Appeal from the decision of Commissioner Susan Barden as affirmed by the Full Commission. In addition to there being no Record reference to any document contained in the Designation of Matter wherein any of these items referred to in the Statement of the Case were submitted and were part of the Record before Commissioner Barden, specifically included in the Appellant's Designation of Matter is, "Commissioner Beck's single Commissioner Hearing Transcript". There is absolutely no evidence nor any statement or document that set forth that the Hearing Transcript from a previous hearing held by Commissioner Beck was part of the Record before Commissioner Barden. In addition to this specific inclusion of items not before Commissioner Barden, there is absolutely no indication from any of the documentation without Record references contained in the Statement of the Case that any Circuit Court pleadings, any Circuit Court


decisions, any motions or otherwise, were part of the Record before Commissioner Barden. This is a blatant violation of the requirement of the Appellate Rules that the Record shall only contain matters which were properly presented and were before Commissioner Barden from whose Order as affirmed by the Full Commission Order this Appeal in this matter was taken and is pending. Based on a review of the Appellants' Brief, the Respondent cannot properly respond and this Court cannot properly make a decision as to whether or not the Appeal and the arguments made in this matter were issues, were evidence, and/or were part of the Record before Commissioner Barden in rendering her decision.

5. That SCACR Rule 208(b)(1)(C) and 208(b)(2) provide that the parties are bound by the statements and allegations in the Statement of the Case. In addition to all of the above errors without Record reference, in the Statement of the Case the Appellants make factual allegations about the Claimant working and being off for days, etc., that are not supposed to be part of the Statement. SCACR Rule 208(b)(1)(C). It shall not contain contested matters. The entire Statement is filled with the contested factual allegations, procedural allegations, and actually even containing Findings of Commissioner Beck. The

Statement is totally inappropriate and in violation of the Court's Rules.

WHEREFORE for all of the foregoing reasons, the Respondent would respectfully submit that the Appellants have violated numerous Rules of Appellate Procedure and have failed to provide a Designation of Matter and a Brief which contains matters outside of the Record below; to which the Respondent can properly reply and which fails to make Record references from the Record to insure that the matters alleged and the Arguments made were part of the Record before Commissioner Barden. For these reasons, this Appeal should be dismissed.

Respectfully submitted,



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August 27, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

Appellant Case No. 2014-001788

Clarence Winfrey Respondent,

v.

Archway Services Inc, Employer, and
American Fire & Casualty Insurance Company, and
Liberty Mutual Group, Carrier, Appellants,

APPELLANT'S INITIAL BRIEF

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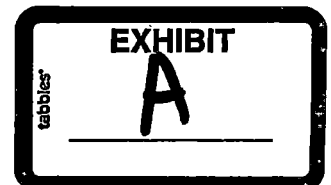


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STATEMENT OF ISSUES ON APPEAL

- I. Did the Full Commission err by failing to vacate the Single Commissioner Decision and Order because the Single Commissioner erred in holding the original hearing over Defendants-Appellants' objections because, by conducting the hearing and ruling on material compensability issues, the Single Commissioner operated in an appellate capacity without proper jurisdiction?
- II. Did the Full Commission err in failing to find a date on which Claimant suffered a plaque rupture in Claimant's heart?
- III. Did the Full Commission err in failing to find what caused the plaque rupture in Claimant's heart?
- IV. Did the Full Commission err in failing to find a date on which Claimant suffered a myocardial infarction?
- V. Did the Full Commission err in relying on Dr. Travis' written medical opinion when the evidence presented at the hearing and his own subsequent deposition testimony directly contradicts his written medical opinion?
- VI. Did the Full Commission err in relying on Dr. Lide's written medical opinion when the evidence presented at the hearing and his own subsequent deposition testimony directly contradicts his written medical opinion?
- VII. Did the Full Commission err in relying on Dr. Greenfield's written medical opinion when the evidence presented at the hearing and her own subsequent deposition testimony directly contradicts her written medical opinion?
- VIII. Did the Full Commission err in Finding of Fact #7 by finding that Claimant began

sweating the night of the electrical shock when Claimant's own testimony refutes that finding?

- IX. Did the Full Commission err in Finding of Fact #9 that three physicians have opined the electrical shock resulted in Claimant's heart attack regardless of the date on which the heart attack occurred?

STATEMENT OF THE CASE

This claim arises out of an alleged accident on May 22, 2013. On that date, Claimant contends he was momentarily shocked by a rotisserie oven he was working on. Following the accident, Claimant continued to work for the remainder of the day and the following day. Claimant had scheduled time off after May 23, 2013. On May 28, 2013—six days after the accident—Claimant presented to Doctor's Care and Lexington Medical Center with severe three vessel coronary disease, an occluded coronary artery, and an acute myocardial infarction caused by a plaque rupture which caused an acute ventricular septal defect. At Doctor's Care, Claimant reported he was having no chest pressure and had started sweating that morning (on May 28th). At Lexington Medical Center, Claimant indicated he was not having chest pain but had been sweating. Following the diagnosis, Claimant underwent surgery to repair the ventricular septal defect caused by the plaque rupture and subsequent myocardial infarction. The medical records in the case revealed that Claimant has a distinct family history of coronary disease with his father passing away at a similar age from coronary disease and a myocardial infarction. Further, the medical records indicated that Claimant was a 35 year pack-a-day smoker and drank a case of beer per week. Based on all of the medical records available to Carrier, this claim was ultimately denied by verbal communication to Claimant on September 13, 2013.

Immediately following the denial of benefits, Claimant filed a Form 15, Section III requesting a hearing as well as a Summons and Complaint in Richland County Circuit Court alleging a bad faith denial of benefits, alleging that S.C. Code Ann. § 42-9-260 is unconstitutional, seeking a temporary restraining order to stop Defendants from denying the claim, and seeking an Order from Judge Lee finding the claim compensable and awarding benefits. Judge Lee issued and then rescinded the temporary restraining order sought by

Claimant. A hearing on the merits of Claimant's Complaint has not been set by the Court. After the temporary restraining order was rescinded, the Commission set Claimant's Form 15, Section III for a hearing before Commissioner Beck. In addition, Defendants filed several motions with the Commission including a Motion to Quash the deposition of the adjuster, a Motion to Quash discovery of the adjuster's claim file, and a Motion to Postpone the Hearing.

A hearing on all of the motions and on Claimant's Form 15, Section III was set on September 30, 2013 for November 11, 2013. Prior to the hearing, Commissioner Beck conducted a standard pre-hearing conference as well as a Motions Hearing wherein Commissioner Beck ruled on all outstanding issues raised by the motions including Defendants' Motion to Postpone. Each of these motions affected the ability to conduct the Form 15 hearing and were necessary to have prior to the hearing. Commissioner Beck gave Claimant the opportunity to postpone the Form 15 hearing in order to spend time preparing for each of the motions that were timely served. Claimant turned down that opportunity. At the hearing, all parties agreed that the only issue for Commissioner Beck was to determine whether or not Defendants had conducted a good faith investigation. In order to make that determination, Commissioner Beck limited the review of evidence to only those documents produced prior to the date of denial – September 13, 2013. Following the hearing, Commissioner Beck issued a Decision and Order on December 5, 2013 finding that Defendants had conducted a good faith investigation. The subject of that hearing is currently on appeal before this Court in a separate appeal filed by Plaintiff.

On October 22, 2013, after the Form 15 hearing was set by the Commission but before that hearing was held, Claimant filed a Form 50 requesting a hearing on compensability for alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other organs, members, and bodily parts. A hearing notice for the Form 50 hearing was sent by the Commission on

December 6, 2013 with explicit instructions that the hearing would be to determine compensability of Claimant's alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other organs, members, and bodily parts. The Form 50 hearing was held before the Single Commissioner on January 13, 2014. Following the hearing, the Single Commissioner issued a Decision and Order on February 27, 2014. Defendants-Appellants timely filed a Form 30 based on legal errors contained in the Single Commissioner's Decision and Order. The Full Commission conducted a review hearing on May 19, 2014. The Full Commission issued its Decision and Order on July 25, 2014. Defendant-Appellants filed a Notice of Appeal on August 20, 2014. Thereafter, the parties entered into the voluntary pilot mediation program in an attempt to resolve this matter. Due to certain issues with obtaining records and opinions, as well as scheduling issues, this mediation did not occur until May 1, 2015. Unfortunately, the parties reached an impasse and this matter is now back before this Court on the original appeals.

ARGUMENT

Claimant notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (Def. APA p. 8). Employment records of Claimant indicate that he continued working the remainder of the day and the entire following day. (Def. APA p. 10-11). An email from Claimant to Employer indicates that he was experiencing only neck pain on May 27, 2013 (5 days post-accident). (Def. APA p. 9). Claimant first presented to Doctor's Care on May 28, 2013 (6 days post-accident) complaining that he woke up sweating that morning (6 days post-accident) (Def. APA p. 1). Claimant was treated by Dr. Greenfield at Doctors' Care. Dr. Greenfield noted that Claimant had some tenderness in his shoulder and neck area. Id. Further, Dr. Greenfield noted that Claimant did not complain of any chest pressure. Id.

Dr. Greenfield testified in her deposition that the testing she conducted could not give

any indication as to when Claimant suffered the myocardial infarction. Specifically, Dr. Greenfield stated that the myocardial infarction "...could have been 5 days ago..." and further admitted that the acute myocardial infarction could have occurred the evening of May 27 or the morning of May 28. (Dr. Greenfield Depo Tr. 12:10 – 13:8). Further, Dr. Greenfield indicated that she based portions of her opinion on articles that she read relating to electrocution from lightning strikes. When asked about these articles, Dr. Greenfield admitted the voltage involved in those articles was 10,000,000 volts—an amount that is 20,000-40,000 times higher than the voltage involved in this claim. (Dr. Greenfield Depo. Tr. 28:19 – 29:4). Additionally, Dr. Greenfield stated that Claimant presented without any chest pain. (Dr. Greenfield Depo. Tr. 16:5-9, 24:3-8). Dr. Greenfield also noted the pain in Claimant's arm and shoulder was not indicative of having sustained a myocardial infarction. (Dr. Greenfield Depo. Tr. 16:13-25). Dr. Greenfield issued a written opinion stating Claimant's heart condition was caused by the electrical shock.

Claimant was then referred to and saw Dr. Dasgupta at the South Carolina Heart Center on May 28. Dr. Dasgupta also noted sweating and noted that Claimant denied chest pain but did have minimal left shoulder pain. (Def. APA p. 2). Dr. Dasgupta diagnosed Claimant with an acute myocardial infarction. Id. Dr. Dasgupta indicated that Claimant had a prior history of hypertension, tobacco abuse (one pack a day smoker), as well as a significant family history for heart disease (Claimant's father passed away from coronary disease and myocardial infarction). (Def. APA p. 2-3). Dr. Dasgupta also noted that Claimant appeared to have a ventricular septal defect as a possible completion of his acute myocardial infarction. (Def. APA p. 2). Dr. Dasgupta referred Claimant to Lexington Medical Center where Dr. Travis performed surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (Def. APA p. 5-

7).

Dr. Travis described the mechanism of Claimant's injury as being a plaque rupture that caused a myocardial infarction that caused the ventricular septal defect. (Dr. Travis Depo. Tr. 13:24 – 14:2). Dr. Travis indicated that plaque ruptures can be caused by many things including getting up the wrong way from a couch, strenuous activity, stressful events in your personal life, emotional stresses, and many other things. (Dr. Travis Depo. Tr. 14:3-11). Further, Dr. Travis was asked "...other than the timing of the heart attack...there's no way to know for certain the plaque rupture was caused by the electrical shock, is that correct?" (Dr. Travis Depo. Tr. 14:12-15). Dr. Travis response was that "[i]s there a definitive way to—collate one to another absolutely not." (Dr. Travis Depo. Tr. 14:16-18) (emphasis added). Dr. Travis also stated that "the [electrical shock] *could* of started the whole domino effect." (Dr. Travis Depo. Tr. 29:23-24) (emphasis added). Finally, Dr. Travis indicated that the neck pain Claimant experienced "could be just neck pain." (Dr. Travis Depo. Tr. 30:12-16).

Dr. Travis indicated that part of his opinion formed because of the presence of a plaque on Claimant's heart. However, Dr. Travis stated that this was his first open heart surgery on a patient who had received an electrical shock. (Dr. Travis Depo. Tr. 29:2-5). Further, Dr. Travis stated that he had never "read about or seen anything" related to whether or not the plaque he observed is related to electrical shock or whether or not the plaque he observed is common in electrical shock. (Dr. Travis Depo. Tr. 29:6-12). Following the care provided to Claimant, Dr. Travis issued a written opinion stating Claimant's heart condition was caused by the electrical shock.

After the surgery, Claimant began treating with Dr. Lide on an outpatient basis for his heart condition. In his deposition, Dr. Lide stated that no one knows what causes a plaque

rupture in the heart. (Dr. Lide Depo. Tr. 17:13-15). Dr. Lide agreed with the statement that "...we don't really know what causes plaque rupture." (Dr. Lide Depo. Tr. 17:22). Dr. Lide also testified that "I don't know whether the electrical shock caused the plaque rupture... ." (Dr. Lide Depo. Tr. 18:14-15). Further, Dr. Lide testified that he is not familiar with any research and he has not conducted any research on whether an electrical shock can cause a myocardial infarction or a ventricular septal defect. (Dr. Lide Depo. Tr. 22:13 – 23:1). Dr. Lide also indicated that the longer in time the heart condition develops from the precipitating event (in this case an electrical shock), the less likely it is the heart condition is related to the electrical shock. (Dr. Lide Depo. Tr. 23:2-6). Finally, Dr. Lide stated his overwhelming evidence that the electrical shock caused Claimant's condition was "proximity in time." (Dr. Lide Depo. Tr. 24:20-21). Dr. Lide issued a written opinion stating Claimant's heart condition was caused by the electrical shock.

I. THE FULL COMMISSION ERRED BY FAILING TO VACATE THE SINGLE COMMISSIONER'S DECISION AND ORDER BECAUSE THE SINGLE COMMISSIONER ERRED BY HOLDING THE HEARING OVER DEFENDANT-APPELLANTS' OBJECTIONS BECAUSE, BY CONDUCTING THE HEARING AND RULING ON MATERIAL COMPENSABILITY ISSUES, THE SINGLE COMMISSIONER OPERATED IN AN APPELLATE CAPACITY WITHOUT PROPER JURISDICTION.

Claimant has alleged an injury arising out of an electrical shock accident on May 22, 2013. Prior to the hearing held by the Single Commissioner, Commissioner Beck issued a Decision and Order on December 5, 2013 finding that Defendants had conducted a good faith investigation. In addition, in that Decision and Order, Commissioner Beck made a factually correct finding based on the medical evidence submitted that Claimant suffered a myocardial infarction on May 28, 2013 (6 days post-accident). That finding, along with many others from that order, was appealed by Claimant in a properly filed Form 30. At the time of this underlying

hearing before the Single Commissioner, the Full Commission had not yet conducted a hearing on Commissioner Beck's Decision and Order and, therefore, each of the exceptions to his order were on appeal—including the May 28, 2013 date of the myocardial infarction.

A review of the medical evidence and deposition testimony reveals that Claimant's ventricular septal defect was caused by his acute myocardial infarction/plaque rupture¹. In other words, the medical evidence is clear that the electrical shock did not directly cause the ventricular septal defect. Rather, the acute myocardial infarction caused the ventricular septal defect. Further, there is no dispute between the parties that the cause of the ventricular septal defect is the acute myocardial infarction. The question of compensability before the Single Commissioner for Claimant's chest and/or heart condition therefore was simply "what caused Claimant's acute myocardial infarction?"

In order to make that determination and answer that question, the Single Commissioner was required to make findings related to when (i.e. the date) the acute myocardial infarction occurred. The Single Commissioner expressly refused to make that finding². It was Defendant-Appellants' position that an acute myocardial infarction occurring 6 days post-accident cannot be causally related to the work-accident itself because it is too attenuated in time. Defendant-Appellants' position is that Claimant's pre-existing conditions, family history, lifestyle choices, and mere coincidence in time, as affirmed by each authorized treating physician, are the causative factors of the acute myocardial infarction occurring 6 days post-accident. When all of Claimant's conditions are viewed together, the evidence clearly supports a finding that the acute

¹ The medical records and testimony indicate the plaque rupture was contemporaneous with the acute myocardial infarction and that it was either caused by the acute myocardial infarction or the acute myocardial infarction was caused by the plaque rupture. The doctors' testimony indicates that it is not possible to know which occurred first. For continuity and clarity throughout, acute myocardial infarction will be used in this brief.

² See both Single Commissioner Decision and Order and Single Commissioner Hearing Transcript 5:23-8:9 wherein the Single Commissioner sets out her "procedural wiggle room" to go forward despite the prior Commission findings.

myocardial infarction in relation to the work-accident is nothing more than an unfortunately timed coincidence.

However, Defendants' position as to compensability aside, the Single Commissioner was required to make a finding indicating when Claimant suffered an acute myocardial infarction in order for there to be legal support for a finding of a causal connection between the acute ventricular septal defect and the electrical shock³. Absent a requirement to make a finding of when the causative injury occurred (in this case the acute myocardial infarction), the door would be opened to find compensability for injuries that occur 1 month, 6 months, 1 year or more from the date of an alleged accident.

In the Decision and Order, the Single Commissioner, by choosing to expressly refuse to find the date on which the acute myocardial infarction occurred, implicitly made findings that result in one of two things: (1) an affirmation of Commissioner Beck's finding of the May 28, 2013 date of acute myocardial infarction or (2) a reversal of Commissioner Beck's finding of the May 28, 2013 date of acute myocardial infarction⁴. Either way, the Single Commissioner sat in an unlawful appellate capacity when she both heard this claim and rendered her Decision and Order by either implicitly affirming or reversing Commissioner Beck's findings as compensability of the acute ventricular septal defect cannot be determined absent a finding of when the acute myocardial infarction occurred.

For the foregoing reasons, the Full Commission's Decision and Order should be vacated in its entirety as the underlying Single Commissioner Hearing could not have been held because

³ As noted throughout, the causative chain at issue is whether the (1) Electrical Shock caused the (2) Acute Myocardial Infarction/Plaque Rupture which then caused the (3) Ventricular Septal Defect. If the acute myocardial infarction was not caused by the electrical shock then the ventricular septal defect is not compensable.

⁴ In other words, the Single Commissioner, by not ruling on the timing of the acute myocardial infarction, either acknowledges the acute myocardial infarction occurred May 28 (6 days post-accident) and finds that it is still causally related to the electrical shock (which is addressed below) OR the Single Commissioner determined the acute myocardial infarction occurred earlier in time and simply refused to enumerate that finding of fact so as to

the Single Commissioner sat in an unlawful appellate capacity. Further, this claim should be remanded for a new hearing at the Single Commissioner level with instructions that the hearing cannot be conducted until the first appeal of Commissioner Beck's Decision and Order has been allowed to run its course and the issues related to the date of the acute myocardial infarction are resolved.

II. THE FULL COMMISSION ERRED BY FAILING TO FIND A DATE ON WHICH CLAIMANT SUFFERED A PLAQUE RUPTURE IN CLAIMANT'S HEART.

As discussed above, there has been no finding of *when* Claimant actually suffered any injury⁵. The sequence of medical events in this claim is not disputed. Claimant suffered an electrical shock at work on May 22, 2013. Sometime between May 23, 2013 and May 28, 2013 Claimant suffered an acute myocardial infarction/plaque rupture⁶. The acute myocardial infarction/plaque rupture led to Claimant developing an acute ventricular septal defect. The ventricular septal defect developed as a result of the acute myocardial infarction/plaque rupture required surgical intervention on May 29, 2013.

As previously noted, the key to determining whether or not Claimant's ventricular septal defect is compensable is determining whether or not the plaque rupture was caused by the electrical shock. If the electrical shock did not cause the plaque rupture then the ventricular septal defect cannot be found to be compensable as it was directly caused by the plaque rupture. In order to find that the plaque rupture was caused by the electrical shock, the Full Commission must find the date on which the plaque rupture occurred. Absent a finding of when Claimant suffered the injury (the plaque rupture) that led to his ventricular septal defect, the Full

avoid inherent conflict with Commissioner Beck's prior Decision and Order that is on appeal.

³ With the exception of Commissioner Beck's original order which is also on appeal.

⁶ Defendant-Appellants' position, consistent with the medical records and Commissioner Beck's original Decision and Order is that the acute myocardial infarction/plaque rupture occurred on May 28, 2013.

Commission's Decision and Order is speculative, conjecture, and without any support in the evidence.

In Cross v. Concrete Materials, 236 S.C. 440, 114 S.E.2d 828 (1960), the Supreme Court stated that "Under other authority, the rule of liberal construction of the compensation acts in favor of the employee...does not dispense with the necessity of evidence to support the award, or of making proof prerequisite to recovery, **does not permit a court to award compensation where the requisite proof is lacking**, and...does not to apply to the evidence offered, or required, to establish the claim, or to the function of the commission in hearing evidence or in resolving conflicts in the testimony, and does not operate to distort the proofs or to make the facts other than as they are. A liberal construction of the evidence cannot be substituted for failure of proof of any essential element of the claim..." (emphasis added). The Supreme Court went on to state "It has been mistakenly said in one or more of our decisions...that doubt of causal connection between injury and death or disability should be resolved in favor of compensability. That is error because it would found a conclusion of fact upon doubt whereas **such finding must be upon evidence, not doubt**...There is no sound reason for the translation of the rule of liberal construction of the law to the finding of the facts to the end that doubt with respect to the latter shall be resolved in favor of the claimant. Doubt, as the foundation of a factual finding, can hardly be distinguished from surmise, speculation and conjecture which countless cases have condemned as a substitute for facts and legitimate inferences. **Conviction, not doubt, is the proper basis of a conclusion of fact.**" (emphasis added).

A finding of compensability for the ventricular septal defect without first finding when the plaque rupture occurred in relation to the electrical shock constitutes a finding that is based on surmise, conjecture, and speculation. Pursuant to Cross, the Full Commission is required to

make findings based upon "evidence, not doubt." The Full Commission was required to make findings of fact based on the medical evidence of (1) when the plaque rupture occurred and (2) that the plaque rupture was caused by the electrical shock. Absent these findings, the Full Commission cannot make a finding that the ventricular septal defect is a compensable injury.

Therefore, the Full Commission's Decision and Order should be reversed. This Court should either enter a finding that the ventricular septal defect is not compensable based on the evidence presented or this claim should be remanded for a new hearing with instructions that the Single Commissioner shall enter findings not inconsistent with a finding that the ventricular septal defect is not compensable. Alternatively, this claim should be remanded for a new hearing on the merits of compensability related to the alleged heart injury.

III. THE FULL COMMISSION ERRED BY FAILING TO MAKE A FINDING OF FACT AS TO WHAT CAUSED THE PLAQUE RUPTURE IN CLAIMANT'S HEART.

As noted above, the sequence of medical events in this claim is not disputed. Claimant suffered an electrical shock at work on May 22, 2013. Sometime between May 23, 2013 and May 28, 2013 Claimant suffered an acute myocardial infarction/plaque rupture⁷. The acute myocardial infarction/plaque rupture led to Claimant developing a ventricular septal defect. The ventricular septal defect developed as a result of the acute myocardial infarction/ plaque rupture required surgical intervention on May 29, 2013.

As previously stated, the key to determining whether or not Claimant's ventricular septal defect is compensable is determining whether or not the plaque rupture was caused by the electrical shock. If the electrical shock did not cause the plaque rupture then the ventricular septal defect cannot be found to be compensable as it was directly caused by the acute

⁷ Defendants position, consistent with the medical records and Commissioner Beck's Decision and Order is that the acute myocardial infarction occurred on May 28, 2013.

myocardial infarction and plaque rupture. The Full Commission failed to make a finding related to what caused the plaque rupture in Claimant's heart. Absent a finding of what caused Claimant's plaque rupture that led to his ventricular septal defect, the Full Commission's Decision and Order is speculative, conjecture, and without any support in the evidence.

In Cross v. Concrete Materials, 236 S.C. 440, 114 S.E.2d 828 (1960), the Supreme Court stated that "Under other authority, the rule of liberal construction of the compensation acts in favor of the employee...does not dispense with the necessity of evidence to support the award, or of making proof prerequisite to recovery, **does not permit a court to award compensation where the requisite proof is lacking, and...does not to apply to the evidence offered, or required, to establish the claim, or to the function of the commission in hearing evidence or in resolving conflicts in the testimony, and does not operate to distort the proofs or to make the facts other than as they are. A liberal construction of the evidence cannot be substituted for failure of proof of any essential element of the claim...**" (emphasis added). The Supreme Court went on to state "It has been mistakenly said in one or more of our decisions...that doubt of causal connection between injury and death or disability should be resolved in favor of compensability. That is error because it would found a conclusion of fact upon doubt whereas **such finding must be upon evidence, not doubt...** There is no sound reason for the translation of the rule of liberal construction of the law to the finding of the facts to the end that doubt with respect to the latter shall be resolved in favor of the claimant. Doubt, as the foundation of a factual finding, can hardly be distinguished from surmise, speculation and conjecture which countless cases have condemned as a substitute for facts and legitimate inferences. **Conviction, not doubt, is the proper basis of a conclusion of fact.**" (emphasis added).

A finding of compensability for the ventricular septal defect without first finding what caused the plaque rupture in relation to the electrical shock constitutes a finding that is based on surmise, conjecture, and speculation. Pursuant to Cross, the Full Commission must make findings based upon "evidence, not doubt." The Full Commission was required to make findings of fact based on the evidence of what caused the plaque rupture and that the plaque rupture was caused by the electrical shock. Absent these findings, the Full Commission cannot make a finding that the ventricular septal defect is a compensable injury.

Therefore, the Full Commission's Decision and Order should be reversed. This Court should either enter a finding that the ventricular septal defect is not compensable based on the evidence presented or this claim should be remanded for a new hearing with instructions that the Single Commissioner shall enter findings not inconsistent with a finding that the ventricular septal defect is not compensable. Alternatively, this claim should be remanded for a new hearing on the merits of compensability.

IV. THE FULL COMMISSION ERRED BY FAILING TO FIND A DATE ON WHICH CLAIMANT SUFFERED A MYOCARDIAL INFARCTION.

As noted throughout, the sequence of medical events in this claim is not disputed. Claimant suffered an electrical shock at work on May 22, 2013. Sometime between May 23, 2013 and May 28, 2013 Claimant suffered an acute myocardial infarction/ plaque rupture⁸. The acute myocardial infarction/plaque rupture led to Claimant developing a ventricular septal defect. The ventricular septal defect developed as a result of the acute myocardial infarction required surgical intervention on May 29, 2013.

As previously noted, the key to determining whether or not Claimant's ventricular septal defect is compensable is determining whether or not the acute myocardial infarction was caused

⁸ Defendants position, consistent with the medical records and Commissioner Beck's Decision and Order is that the

by the electrical shock. If the electrical shock did not cause the acute myocardial infarction then the ventricular septal defect cannot be found to be compensable as it was directly caused by the acute myocardial infarction and resulting plaque rupture. The Full Commission failed to make a finding related to Claimant actually suffered the myocardial infarction. Absent a finding of when Claimant's acute myocardial infarction that led to his ventricular septal defect occurred, the Full Commission's Decision and Order is speculative, conjecture, and without any support in the evidence.

In Cross v. Concrete Materials, 236 S.C. 440, 114 S.E.2d 828 (1960), the Supreme Court stated that "Under other authority, the rule of liberal construction of the compensation acts in favor of the employee...does not dispense with the necessity of evidence to support the award, or of making proof prerequisite to recovery, **does not permit a court to award compensation where the requisite proof is lacking**, and...does not to apply to the evidence offered, or required, to establish the claim, or to the function of the commission in hearing evidence or in resolving conflicts in the testimony, and does not operate to distort the proofs or to make the facts other than as they are. A liberal construction of the evidence cannot be substituted for failure of proof of any essential element of the claim..." (emphasis added). The Supreme Court went on to state "It has been mistakenly said in one or more of our decisions...that doubt of causal connection between injury and death or disability should be resolved in favor of compensability. That is error because it would found a conclusion of fact upon doubt whereas **such finding must be upon evidence, not doubt**...There is no sound reason for the translation of the rule of liberal construction of the law to the finding of the facts to the end that doubt with respect to the latter shall be resolved in favor of the claimant. Doubt, as the foundation of a factual finding, can hardly be distinguished from surmise, speculation and conjecture which

countless cases have condemned as a substitute for facts and legitimate inferences. **Conviction, not doubt, is the proper basis of a conclusion of fact.**" (emphasis added).

A finding of compensability for the ventricular septal defect without first finding when the acute myocardial infarction occurred in relation to the electrical shock constitutes a finding that is based on surmise, conjecture, and speculation. Pursuant to Cross, the Full Commission must make findings based upon "evidence, not doubt." The Full Commission was required to make findings of fact based on the evidence of when the acute myocardial infarction occurred and that the acute myocardial infarction was caused by the electrical shock. Absent these findings, the Full Commission cannot make a finding that the ventricular septal defect is a compensable injury. Put simply, if the Full Commission cannot determine when an injury occurred based on the medical evidence presented—as is the case here—then the injury, by default, cannot be compensable.

Therefore, the Full Commission's Decision and Order should be reversed. This Court should either enter a finding that the ventricular septal defect is not compensable based on the evidence presented or this claim should be remanded for a new hearing with instructions that the Single Commissioner shall enter findings not inconsistent with a finding that the ventricular septal defect is not compensable. Alternatively, this claim should be remanded for a new hearing on the merits of compensability.

V. THE FULL COMMISSION ERRED BY RELYING SOLELY ON DR. TRAVIS' WRITTEN MEDICAL OPINION WHEN THE EVIDENCE PRESENTED AT THE HEARING AND HIS OWN SUBSEQUENT DEPOSITION TESTIMONY DIRECTLY CONTRADICTS HIS WRITTEN MEDICAL OPINION.

The Full Commission erred in relying on Dr. Travis' written medical opinion for two reasons: (1) Dr. Travis' opinion that the electrical shock caused Claimant's heart condition is based solely on the sequence of events between the shock and the acute myocardial infarction as

well as the presence of a plaque on Claimant's heart; and (2) Dr. Travis' opinion is based on the fact that Claimant was shocked by 480 volts of electricity which is clearly contradicted by the evidence.

First, the extent of Dr. Travis opinion is grounded solely in the relationship in time between the electrical shock and the heart condition as well as a plaque on Claimant's heart. Dr. Travis described the mechanism of Claimant's injury as being a plaque rupture that caused a myocardial infarction that caused the ventricular septal defect. (Dr. Travis Depo. Tr. 13:24 – 14:2). However, Dr. Travis indicated that plaque ruptures can be caused by many things including getting up the wrong way from a couch, strenuous activity, stressful events in your personal life, emotional stresses, and many other things. (Dr. Travis Depo. Tr. 14:3-11). Further, Dr. Travis was asked "...other than the timing of the heart attack...there's no way to know for certain the plaque rupture was caused by the electrical shock, is that correct?" (Dr. Travis Depo. Tr. 14:12-15). Dr. Travis response was that "[i]s there a definitive way to—collate one to another absolutely not." (Dr. Travis Depo. Tr. 14:16-18) (emphasis added). Dr. Travis also stated that "the [electrical shock] could⁹ of started the whole domino effect." (Dr. Travis Depo. Tr. 29:23-24). Finally, Dr. Travis indicated that the neck pain Claimant experienced—and that Claimant's deposition testimony reveals was the only pain he experienced through at least two days post-accident—"could be just neck pain [unrelated to a heart condition]. (Dr. Travis Depo. Tr. 30:12-16).

Dr. Travis also indicated that part of his opinion formed because of the presence of a plaque on Claimant's heart. However, Dr. Travis stated in his deposition that this was his first open heart surgery on a patient who had received an electrical shock. (Dr. Travis Depo. Tr. 29:2-5). Further, Dr. Travis stated that he had never "read about or seen anything" related to

whether or not the plaque he observed is related to electrical shock or whether or not the plaque he observed is common in electrical shock. (Dr. Travis Depo. Tr. 29:6-12). The testimony indicates that Dr. Travis essentially guessed that the plaque he observed was related to an electrical shock based solely on the fact that Claimant allegedly suffered an electrical shock a week prior. This is clearly an insufficient basis on which to ground a medical opinion as it related to causation under the Act.

Second, Dr. Travis' written medical opinion should not be given weight because the specific underlying causation (e.g. 480 volts of electricity) in his written medical statement is clearly contradicted by the evidence. Dr. Travis' written statement indicates that Claimant's condition was caused by 480 volts of electricity. In his deposition, Dr. Travis was asked to confirm his written opinion about whether he believed that Claimant's "...condition was brought about by electrical shock of 480 volts... ." (Dr. Travis Depo. Tr. 8:20-22). Dr. Travis answered "I believe it, absolutely, had cause (sic) the defect on presentation." (Dr. Travis Depo. Tr. 8:23-24). However, Dr. Travis admitted that he does not have any idea what amount of voltage actually shocked Claimant. (Dr. Travis Depo. Tr. 9:3-4). Further, Dr. Travis admitted that the entire basis of his opinion related to voltage of the shock causing Claimant's condition came from Claimant himself. (Dr. Travis Depo. Tr. 9:5-8).

At the Hearing, Claimant could not testify to the exact voltage of the machine. Claimant stated that the voltage into the machine "...was at 240. I mean, it's 240 or above..." (Hr'g Tr. 24:25). Further, Claimant could only state the machine was "at least 240 volts." (Hr'g Tr. p. 54:16-24). Mark Warren also testified at the hearing. His testimony revealed that the machine Claimant was using was rated for a maximum 480 volts but that it could run on 208 volt. (Hr'g Tr. 58:24-25). Further, Mr. Warren testified that the machine should be running at 208 volts per

⁹ "Could" is insufficient to support a finding of medical causation under the Act.

leg. (Hr'g Tr. 59:2-4).

The evidence in the record clearly establishes that there is no basis for a finding by Dr. Travis, any other doctor, or the Commission that Claimant suffered a shock of 480 volts. Because Dr. Travis' written opinion is based upon a shock of 480 volts, which is clearly contradicted by the evidence, weight cannot be given to his written medical opinion.

Defendant-Appellants assert they do not ask this Court necessarily to weigh conflicting evidence from this witness. Rather, Defendant-Appellants' contend the Full Commission erred by not properly considering all evidence and by reaching an incorrect conclusion in light of the full evidence—specifically Dr. Travis' deposition. Dr. Travis' deposition serves to clarify the rationale behind his written opinions. His written opinions, on their face, state that this is a compensable injury. However, when one reviews his subsequent deposition testimony, it becomes clear that his opinions are anything but clear. And in fact, it becomes clear that the only causal connection Dr. Travis can actually make between the alleged electrical shock and the myocardial infarction is that the myocardial infarction happened *sometime* after the alleged electrical shock. The Commission erred by simply reading and relying only on Dr. Travis' written opinion but discarding or otherwise discounting his subsequent deposition testimony wherein he clarifies his prior written opinion.

For the foregoing reasons, the Full Commission erred in giving any weight to Dr. Travis' written medical opinions. It is clear from the evidence that Dr. Travis' opinion is based on speculation, conjecture, surmise, and incorrect information. Dr. Travis' opinion is based solely on a time relationship inasmuch as Claimant suffered an electrical shock and 6 days later presented with an acute myocardial infarction. Put another way, Dr. Travis's opinion is that because B occurred after A, then B was caused by A. This is wholly insufficient to support a

finding of causation. Additionally, Dr. Travis' opinion related to plaque on Claimant's heart amount to, at best, a guess and Dr. Travis readily indicated he had no idea whether or not the plaque he observed was caused by electrical shock.

Because the Full Commission clearly relied on Dr. Travis' pre-deposition written report in finding this claim to be compensable and ignored the subsequent clarifying information contained in his deposition, this Court must remand this claim to the Single Commissioner with instructions that Dr. Travis' written opinion is to be given no weight and to enter findings of fact consistent with the testimony and medical evidence—namely that Claimant did not suffer a compensable injury to his chest and/or heart.

VI. THE FULL COMMISSION ERRED BY RELYING ON DR. LIDE'S WRITTEN MEDICAL OPINION WHEN THE EVIDENCE PRESENTED AT THE HEARING AND HIS OWN SUBSEQUENT DEPOSITION TESTIMONY DIRECTLY CONTRADICTS HIS WRITTEN MEDICAL OPINION.

The Full Commission erred in relying on Dr. Lide's written medical opinion for two reasons: (1) Dr. Lide's opinion that the electrical shock caused Claimant's heart condition is based solely on the sequence of events between the shock and the acute myocardial infarction as well as the presence of a plaque on Claimant's heart; and (2) Dr. Lide's opinion is based on the fact that Claimant was shocked by 480 volts of electricity which is clearly contradicted by the evidence.

First Dr. Lide bases his opinion on the relationship in time inasmuch as Claimant suffered an electrical shock and 6 days later presented with an acute myocardial infarction. In his deposition, Dr. Lide stated that no one knows what causes a plaque rupture in the heart. (Dr. Lide Depo. Tr. 17:13-15). Dr. Lide agreed with the statement that "...we don't really know what causes plaque rupture." (Dr. Lide Depo. Tr. 17:22). Dr. Lide also testified that "I don't know

whether the electrical shock caused the plaque rupture¹⁰... ." (Dr. Lide Depo. Tr. 18:14-15). Further, Dr. Lide testified that he is not familiar with any research and he has not conducted any research on whether an electrical shock can cause a myocardial infarction or a ventricular septal defect. (Dr. Lide Depo. Tr. 22:13 – 23:1). Dr. Lide also indicated that the longer in time the heart condition develops from the precipitating event (in this case an electrical shock), the less likely it is the heart condition is related to the electrical shock. (Dr. Lide Depo. Tr. 23:2-6). Finally, Dr. Lide stated his overwhelming evidence that the electrical shock caused Claimant's condition was "proximity in time." (Dr. Lide Depo. Tr. 24:20-21). Essentially, Dr. Lide readily admits (1) he has no idea what started the causal chain for the ventricular septal defect, (2) he has no idea if an electrical shock can even cause a VSD, and (3) his only basis for his opinion is the sequence of events (e.g. A then B, therefore A caused B).

Second, Dr. Lide bases his opinion on the fact that Claimant was shocked by 480 volts of electricity. However, at his deposition, Dr. Lide stated "[t]he details of the shock are beyond me..." and "...I did not investigate the scene. I do not know what equipment he was working on...and I certainly have no data to indicate to me whether 480 volts would be strong enough to cause the problem that 120 volts wouldn't cause...I have done no research on this."

At the Hearing, Claimant could not testify to the exact voltage of the machine. Claimant stated that the voltage into the machine "...was at 240. I mean, it's 240 or above..." (Hr'g Tr. 24:25). Further, Claimant could only state the machine was "high voltage" and "at least 240 volts." (Hr'g Tr. p. 54:16-24). Mark Warren also testified at the hearing. His testimony revealed that the machine Claimant was using was rated for a maximum 480 volts but that it could run on

¹⁰ Note that Dr. Travis' statements, and the uncontested medicals, indicate the sequence of events is a plaque rupture/myocardial infarction which resulted in the ventricular septal defect. Dr. Lide therefore readily admits he has

208 volt. (Hr'g Tr. 58:24-25). Further, Mr. Warren testified that the machine should be running at 208 volts per leg. (Hr'g Tr. 59:2-4). The evidence in the record clearly establishes that there is no basis for a finding by Dr. Lide, any other doctor, or the Commission that Claimant suffered a shock of 480 volts. Because Dr. Lide's written opinion is based upon a shock of 480 volts, which is clearly contradicted by the evidence, weight cannot be given to his written medical opinion.

Defendant-Appellants assert they do not ask this Court necessarily to weigh conflicting evidence from this witness. Rather, Defendant-Appellants' contend the Full Commission erred by not properly considering all evidence and by reaching an incorrect conclusion in light of the full evidence—specifically Dr. Lide's deposition. Dr. Lide's deposition serves to clarify his rationale behind his written opinions. His written opinions, on their face, state that this is a compensable injury. However, when one reviews his subsequent deposition testimony, it becomes clear that his opinions are anything but clear. And in fact, it becomes clear that the only causal connection Dr. Lide can actually make between the alleged electrical shock and the myocardial infarction is that the myocardial infarction happened *sometime* after the alleged electrical shock. Dr. Lide even goes so far as to say, in his deposition, that he has no idea whether the alleged shock caused the heart condition. The Commission erred by simply reading and relying only on Dr. Lide's written opinion but discarding or otherwise discounting his subsequent deposition testimony wherein he clarifies his prior written opinion.

For the foregoing reasons, the Full Commission erred in giving any weight to Dr. Lide's written medical opinions. It is clear from the evidence that Dr. Lide's opinion is based on speculation, conjecture, surmise, and incorrect information. Dr. Lide indicated in his testimony that there is no known way to determine what causes a plaque rupture. Further, Dr. Lide indicated that he knows of no research connecting an electrical shock to a myocardial infarction

no idea if the chain of events alleged by Claimant was caused by the alleged electrical shock.

or a ventricular septal defect. Finally, Dr. Lide admitted that he based his opinion on proximity in time. Because the Full Commission clearly relied on this report in finding this claim to be compensable, this Court must remand this claim to the Single Commissioner with instructions that Dr. Lide's written opinion is to be given no weight and to enter findings of fact consistent with the testimony and medical evidence—namely that Claimant did not suffer a compensable injury to his chest and/or heart.

VII. THE FULL COMMISSION ERRED BY RELYING ON DR. GREENFIELD'S WRITTEN MEDICAL OPINION WHEN THE EVIDENCE PRESENTED AT THE HEARING AND HER OWN SUBSEQUENT DEPOSITION TESTIMONY DIRECTLY CONTRADICTS HER WRITTEN MEDICAL OPINION.

The Full Commissioner erred in relying on Dr. Greenfield's written medical opinion for two reasons: (1) Dr. Greenfield's opinion that the electrical shock caused Claimant's heart condition is based solely on the relationship in time between the shock and the myocardial infarction; and (2) Dr. Greenfield's opinion is based on the fact that Claimant was shocked by 480 volts of electricity which is clearly contradicted by the evidence.

Dr. Greenfield testified in her deposition that the testing she conducted could not give any indication as to when Claimant suffered the myocardial infarction. Specifically, Dr. Greenfield stated that the myocardial infarction "...could have been 5 days ago..." and further admitted that the acute myocardial infarction could have occurred the evening of May 27 or the morning of May 28. (Dr. Greenfield Depo Tr. 12:10 – 13:8). Further, Dr. Greenfield indicated that she based portions of her opinion on articles that she read relating to electrocution from lightning strikes. When asked about these articles, Dr. Greenfield admitted the voltage involved in those articles was 10,000,000 volts—an amount that is 20,000-40,000 times higher than the voltage involved in this claim. (Dr. Greenfield Depo. Tr. 28:19 – 29:4). Additionally, Dr. Greenfield stated that Claimant presented without any chest pain. (Dr. Greenfield Depo. Tr.

16:5-9, 24:3-8). Dr. Greenfield also noted the pain in Claimant's arm and shoulder was not indicative of having sustained a myocardial infarction. (Dr. Greenfield Depo. Tr. 16:13-25).

Second, Dr. Greenfield bases her written opinion on the fact that Claimant was shocked by 480 volts of electricity. However, in her deposition, Dr. Greenfield was asked about this opinion and she stated "[Claimant] told me it was 480." (Dr. Greenfield Depo. Tr. 7:11). Dr. Greenfield admitted that she did not run any tests to determine voltage and when asked if she had any personal knowledge of the actual voltage of the machine, she responded "I would not have the foggiest [idea]." (Dr. Greenfield Depo. Tr. 7:12-23).

At the Hearing, Claimant could not testify to the exact voltage of the machine. Claimant stated that the voltage into the machine "...was at 240. I mean, it's 240 or above..." (Hr'g Tr. 24:25). Further, Claimant could only state the machine was "high voltage" and "at least 240 volts." (Hr'g Tr. p. 54:16-24). Mark Warren also testified at the hearing. His testimony revealed that the machine Claimant was using was rated for a maximum 480 volts but that it could run on 208 volt. (Hr'g Tr. 58:24-25). Further, Mr. Warren testified that the machine should be running at 208 volts per leg. (Hr'g Tr. 59:2-4).

The evidence in the record clearly establishes that there is no basis for a finding by Dr. Greenfield, any other doctor, or the Commission that Claimant suffered a shock of 480 volts. Because Dr. Greenfield's opinion is based upon a shock of 480 volts, which is clearly contradicted by the evidence, weight cannot be given to her written medical opinion.

Defendant-Appellants assert they do not ask this Court necessarily to weigh conflicting evidence from this witness. Rather, Defendant-Appellants' contend the Full Commission erred by not properly considering all evidence and reaching an incorrect conclusion in light of the full evidence—specifically Dr. Greenfield's deposition. Dr. Greenfield's deposition serves to clarify

the rationale behind her written opinions. Her written opinions, on their face, state that this is a compensable injury. However, when one reviews her subsequent deposition testimony, it becomes clear that her opinions are anything but clear. And in fact, it becomes clear that the only causal connection Dr. Greenfield can actually make between the alleged electrical shock and the myocardial infarction is that the myocardial infarction happened *sometime* after the alleged electrical shock. The Commission erred by simply reading and relying only on Dr. Greenfield's written opinion but discarding or otherwise discounting her subsequent deposition testimony wherein she clarifies her prior written opinion.

For the foregoing reasons, the Full Commission erred in giving any weight to Dr. Greenfield's written medical opinions. It is clear from the evidence that Dr. Greenfield's opinion is based on speculation, conjecture, surmise, and incorrect information. She stated in her deposition that there was no way for her determine when the myocardial infarction occurred and that it was possible it occurred on the night of May 27—5 days post-accident—or the morning of May 28—6 days post-accident. Further, Dr. Greenfield based her opinion on articles that have no relevance to the claim at hand (namely an article about lightning strikes containing voltage over 20,000-40,000 times higher than the voltage in this claim). In addition, Dr. Greenfield's written opinion related to the electrical shock is invalid based on the clear evidence presented by Claimant and Mr. Warren that the voltage of the machine was less than 480 volts. Because the Full Commission clearly relied on this report in finding this claim to be compensable, this Court must remand this claim to the Single Commissioner with instructions that Dr. Greenfield's written opinion is to be given no weight and to enter findings of fact consistent with the testimony and medical evidence—namely that Claimant did not suffer a compensable injury to his chest and/or heart.

VIII. THE FULL COMMISSION ERRED IN FINDING OF FACT #7 BY FINDING THAT CLAIMANT BEGAN SWEATING THE NIGHT OF THE ELECTRICAL SHOCK WHEN CLAIMANT'S OWN TESTIMONY AND THE MEDICAL EVIDENCE REFUTES THAT FINDING.

The medical and testimonial evidence clearly do not support a finding that Claimant began sweating the night of the electrical shock.

Claimant notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (Def. APA p. 8). Employment records of Claimant indicate that he continued working the remainder of the day and the entire following day. (Def. APA p. 10-11). An email from Claimant to Employer indicates that he was experiencing only neck pain on May 27, 2013 (5 days post-accident). (Def. APA p. 9). Claimant first presented to Doctor's Care on May 28, 2013 (6 days post-accident) complaining that he woke up sweating that morning (6 days post-accident). (Def. APA p. 1). Doctor's Care noted that Claimant had some tenderness in his shoulder and neck area. *Id.* Further, Doctor's Care noted that Claimant did not complain of any chest pressure. *Id.* Claimant was referred to and saw Dr. Dasgupta at the South Carolina Heart Center. Dr. Dasgupta also noted sweating and noted that Claimant denied chest pain but did have minimal left shoulder pain. (Def. APA p. 2). Dr. Dasgupta diagnosed Claimant with an acute myocardial infarction. *Id.* Dr. Dasgupta indicated that Claimant had a prior history of hypertension, tobacco abuse, as well as a significant family history for heart disease (Claimant's father passed away from coronary disease and myocardial infarction). (Def. APA p. 2-3). Dr. Dasgupta also noted that Claimant appeared to have a ventricular septal defect as a possible completion of his myocardial infarction. (Def. APA p. 2). Dr. Dasgupta referred Claimant to Lexington Medical Center where he underwent surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (Def. APA p. 5-7). Further, even in light of the medical records, Claimant testified at the hearing that he actually began sweating the

morning after the electrical shock. (Hr'g Tr. 49:21-24).

The testimony and medical records are clear that Claimant did not begin sweating the night of the electrical shock. The Full Commission clearly relied on this fact in forming its Decision and Order related to compensability of the chest and/or heart condition. Because this basis of its Decision and Order is clearly erroneous in light of the evidence and testimony, this Court should remand this claim to the Single Commissioner for findings not inconsistent with this evidence and entry of a denial of compensability for the chest and/or heart condition.

IX. THE FULL COMMISSION ERRED IN FINDING OF FACT #9 THAT THREE PHYSICIANS HAVE OPINED THE ELECTRICAL SHOCK RESULTED IN CLAIMANT'S HEART ATTACK REGARDLESS OF THE DATE ON WHICH THE HEART ATTACK OCCURRED.

The Full Commission erred by ignoring the issue of when the acute myocardial infarction occurred and, instead, relied solely on a portion of the written opinions in finding this claim to be compensable. The date and/or timing of the acute myocardial infarction is paramount to the compensability of the acute myocardial infarction. If the timing of an injury can be ignored and otherwise considered not relevant to the inquiry of compensability, then the door is open to allow any injury from any time following a work-related accident to be found compensable simply because the injury happened after the work-related accident. Each of the doctors' opinions as set out previously in this brief—and the Full Commission's Finding of Fact—can be boiled down as follows: B happened after A, therefore A caused B. The Workers' Compensation Act requires more than just a sequence of events or coincidence in time for a claim to be found compensable. The Act specifically requires a distinct causal relationship between events. Absent that causal relationship, there can be no compensable claim. The doctors' written opinions all follow the formula laid out above. Each of their deposition transcripts reveal that their main basis for determining compensability is that an electrical shock (A) happened and, sometime after the

electrical shock happened, an acute myocardial infarction (B) happened, therefore the electrical shock (A) caused the acute myocardial infarction (B)—that is simply insufficient to support a finding of compensability under the Act. It is particularly insufficient when there is no evidence to determine, and no medical testimony to support, when the acute myocardial infarction even occurred¹¹.

To make a finding that the alleged injuries are compensable regardless of when the alleged injuries occurred in relation to the alleged causative event is improper and grounds for reversal. Therefore, this Court should remand this claim to the Single Commissioner for additional findings not inconsistent with this evidence and an order to deny compensability for the chest and/or heart conditions.

CONCLUSION


For all the foregoing reasons, the Full Commissioner's Decision and Order should be reversed and remanded for a new hearing with instructions for the Commission to issue a new Decision and Order not inconsistent with the medical evidence.

Additionally, the Decision and Order should be vacated in its entirety because the Single Commissioner lacked jurisdiction to sit and hear the claim while key compensability issues were on appeal to the Full Commission.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, L.L.C.

June 29, 2015


Brett H. Bayne
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¹¹ With the exception of the hospital admittance records on May 28 showing Claimant was admitted with an acute myocardial infarction. In other words, the most likely date of the myocardial infarction is the May 28 date of admittance.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

Case No. 2014-001788

Clarence Winfrey..... Respondent,

v.

Archway Services Inc, Employer, and
American Fire & Casualty Insurance Company, and
Liberty Mutual Group, Carrier,..... Appellants,

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

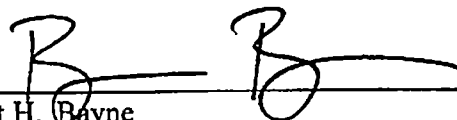
Appellant proposes the following be included in the Record on Appeal:

1. Defendants' APA Submissions;
2. Dr. Greenfield's Deposition Transcript;
3. Dr. Lide's Deposition Transcript;
4. Dr. Travis' Deposition Transcript;
5. Commissioner Beck's Single Commissioner Hearing Transcript;
6. Commissioner Barden's Single Commissioner Hearing Transcript;
7. Full Commissioner Hearing Transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

June __, 2015

McANGUS GOUDELICK & COURIE, LLC

A handwritten signature in black ink, appearing to read 'Brett H. Bayne', written over a horizontal line.

Brett H. Bayne

McAngus, Goudelock & Courie LLC

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American Fire & Casualty Insurance Company, and
Liberty Mutual Group

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS COMPENSATION COMMISSION

Case No. 2014-001788

Clarence Winfrey.....

RECEIVED

Respondent,

AUG 31 2015

SC Court of Appeals

v.

Archway Services Inc, Employer, and
American Fire & Casualty Insurance Company, and
Liberty Mutual Group, Carrier,.....

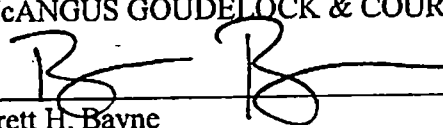
Appellants,

PROOF OF SERVICE

I certify that I have served the Appellant's Initial Brief in this action on counsel of record by mailing it to him, at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows: Preston F. McDaniel, McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina 29201.

McANGUS GOUDELCK & COURIE, L.L.C.

June 29, 2015


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ATTORNEYS FOR APPELLANTS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001788

Clarence Winfrey, Employee, Claimant, Respondent,

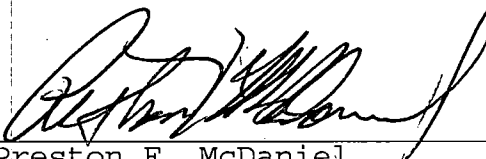
v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group, Carrier, Appellants.

PROOF OF SERVICE

I certify that I have served the MOTION TO DISMISS FOR FAILURE TO COMPLY WITH APPELLATE COURT RULES CONCERNING THE CONTENTS OF THE INITIAL BRIEF AND THE DESIGNATION OF MATTER BY THE APPELLANT with MEMORANDUM IN SUPPORT of same by depositing a copy of it in the United States Mail, postage prepaid, on August 27, 2015 addressed to: Brett H. Bayne, Esquire, McAngus, Goudelock & Courie, Post Office Box 12519, Columbia, SC 29211.

Dated: August 27, 2015



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Respondent

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

August 27, 2015

RECEIVED

AUG 31 2015

SC Court of Appeals

VIA EMAIL - callen@sccourts.org

AND VIA FACSIMILE - 734-1839

AND US MAIL

V. Claire Allen

Deputy Clerk of Court, SC Court of Appeals

Post Office Box 11629

Columbia, South Carolina 29211

RE: Clarence Winfrey, Employee, Respondent, v. Archway
Services, Inc., Employer, and American Fire &
Casualty Insurance Co., Carrier, Appellants.
Appellate Case No. 2014-001788

Dear Ms. Allen:

Please find attached, which I am hereby filing with the Court, a Motion to Dismiss the Appeal filed in the above-reference matter which I am also serving on Counsel for the Appellants by copy of this letter. In addition to the Proof of Service the required \$25.00 filing fee is attached. Pursuant to SCACP Rule 240(b), this Motion stays the time limits for perfecting the Appeal until the Motion is decided. I will await the Court's decision either dismissing the Appeal and/or the Court's direction on the contents of the Record, the filing of my Respondent's Brief, and perfecting the appeal.

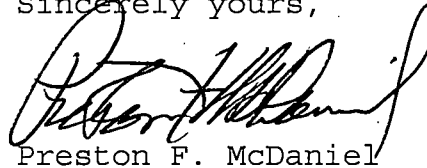
On a side note, the Appellants had moved to relieve George Gallagher as Counsel of Record on July 8, 2015 and a decision was rendered on that Motion on July 31, 2015. The Order granting the Motion to Relieve Counsel was issued on July 31, 2015 as was the Order granting an Extension of Time to file my Respondent's Brief. The Order relieving Counsel did not address the filing of my Respondent's Brief and as you know, under SCACR Rule 240 when a Motion to be relieved as Counsel is filed, there is also an automatic stay in the time limits. It would not have made much difference but I was just wondering should the stay and due date change have been addressed in the Order? Just wondering and a simple phone call would do to let me know.

As always I appreciate all the courtesies and kindnesses shown

V. Claire Allen
Deputy Clerk of Court, SC Court of Appeals
August 27, 2015
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to me by the Court, and in particular, in reference to extensions and working with me on any appeals in which I am involved. It is becoming extremely difficult as a sole practitioner to keep up with the time limits/requirements, practice law, make a living, have a life and properly represent my other clients. Again, please tell everyone thank you for the courtesies.

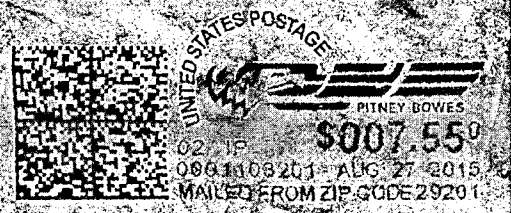
Sincerely yours,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel", written in a cursive style.

Preston F. McDaniel

PFM/abh/kth
Enclosures

cc: Brett H. Bayne, Esquire (via email brett.bayne@mgclaw.com and US Mail)



cdaniel Law Firm
15 Elmwood Avenue
Columbia, SC 29201

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