THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Full Commission Appellate Panel Order

WCC File No.: 1222136

Appellate Case No.: 2015 - 001277

Otis Nero.....Appellant,

v.

South Carolina Department of Transportation, Employer,

AND

State Accident Fund, Carrier.....Respondents.

RESPONDENTS' FINAL BRIEF

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STATEMENT OF THE CASE

This appeal involves a workers' compensation matter. Appellant alleges to have been involved in a work related accident on June 20, 2012. On January 6, 2014, Appellant filed an Amended Form 50 Request for Hearing, alleging injuries to the neck and shoulders that occurred "while pulling cement on the road crew using a squeegee board, Claimant [Appellant] suffered a sudden onset of pain in his neck and shoulders followed by an episode on syncope." Appellant requested additional medical treatment to his neck and shoulders, payment for past medical treatment, and Temporary Total Disability ("TTD") benefits for "various dates and times" from 06/20/12 to the present.

On January 9, 2014, Respondents timely filed a Form 51 Answer to Appellant's Request for Hearing, denying that Appellant sustained a compensable injury by accident arising out of and in the course of his employment on the date alleged. In addition, Respondents argued that Appellant failed to provide the Employer with proper notice in accordance with S.C. Code Ann. §42-15-20 and supporting case law.

A hearing was held before the Single Commissioner on March 28, 2014. At the hearing, Appellant took the position that while working with a road crew on June 20, 2014, he was using a squeegee to pull cement, and Appellant felt an immediate onset of pain in his back and shoulders that he described as a "snap." (R. p. 64, lines 18-23, p. 78, lines 11-13.) Appellant testified that he did not report the incident to his supervisors, and he continued to work the rest of the day. (R. pp. 79, line 18-, p. 80, -line 2). Appellant testified that at the end of his shift, he was standing around, talking, and joking with his supervisors at the shed, when Appellant had a sudden syncope episode, causing him to pass out and fall to the ground. (R. p. 81, lines 9-14). After Appellant was able to get back up, he walked around the property for a short time and

informed his supervisors that he was fine to drive home. (R. p.82, lines 8-15). When he reached his house, Appellant suffered a second syncope episode in his driveway, and he was taken to the emergency room by his wife. (R. p. 82, lines 14-20).

Upon arrival at the Emergency Room, Appellant filled out a "History and Physical Report" stating that he was being seen because "I passed out talking to my boss." (R. p. 315). At the emergency room, Appellant was seen by his primary care physician, Dr. Robert Richey. In an effort to explain the syncope episode described by Appellant, Appellant was sent a number of tests, including Head CT, x-ray of the right foot, chest x-ray, cardiac work up, gastrointestinal work up, and a cervical MRI, which revealed cervical stenosis. (R. pp. 315-323). As a result of his cervical MRI findings, Dr. Richey referred Appellant to a neurosurgeon, Dr. William Naso, who performed a fusion surgery on August 28, 2012. (R. pp. 327-328). Appellant alleges that the as a result of his accident pulling the squeegee, he suffered an aggravation of his pre-existing stenosis that caused the syncope episode and aggravation of his cervical spine. (R. pp.67, line 21-p.11, line 3).

Respondents took the position that Appellant lacked sufficient evidence of causation to satisfy their burden of proving Appellant sustained an injury by accident while pulling the squeegee board, or that the alleged accident pulling the squeegee board caused either the syncope episode or an aggravation of his Appellant's pre-existing condition. (R. p. 72, lines 3-7). As a result, Respondents argued they were not responsible for his subsequent medical treatment, or any future treatment or benefits under the Act. Respondents also took the positon that Appellant failed to provide his employer with proper notice in accordance with S.C. Code Ann. §42-15-20 and supporting case law, and therefore his claim for benefits should be denied. (R. p.68, lines 11-14).

The Single Commissioner issued a Decision and Order on August 5, 2014, wherein she found that Appellant sustained a compensable injury by accident while pulling a squeegee board leveling concrete, aggravating a pre-existing disease in the Appellant's cervical spine that was asymptomatic prior to the accident. (R. pp. 20-21, Finding of Fact #3). The Single Commissioner further found that Appellant's injury affected both arms and shoulders in the form of radiculopathy, and Appellant was not currently at a point of MMI. (R. pp. 23-24, Findings of Fact #4 and #5). The Commissioner found that Appellant had a reasonable excuse for not reporting his work injury due to the facts that (1) his lead man and supervisor were present and had knowledge pertinent facts surrounding the accident sufficient to indicate the possibility of a compensable injury and followed up with the Appellant, and (2) the Employer was aware that Claimant had not returned to work after his syncope accident on June 20, 2012 and they were further notified that he had been hospitalized and ultimately treated by a neurosurgeon and undergone neck surgery. (R. p. 24, Finding of Fact #6). The Single Commissioner found that the Respondents were not prejudiced by the late formal reporting of the injury. (R. p. 29, Finding of Fact #7). The Single Commissioner ordered that Appellant was entitled to TTD from June 20, 2012 and continuing, and Respondents are responsible for all causally related medical treatment, including past, present, and future treatment. (R. pp. 31, Findings of Fact # 8 and #9).

On August 28, 2014, Respondents filed a Form 30 Request for Review. On their Form 30, Respondents listed seventeen (17) grounds for appeal, including whether the Single Commissioner erred in finding that Appellant sustained a compensable injury by accident to his neck arising out of and in the course of his employment while pulling a squeegee, and whether the alleged accident aggravated a pre-existing cervical condition that was present in Appellant's neck. (R. p. 48, No.1). Respondents further listed as grounds for appeal whether the Single

Commissioner erred in finding that Appellant had reasonable excuse for not formally reporting his work injury to his supervisors within the statutory timeframe, and whether the Single Commissioner erred in finding Respondents were not prejudiced by the late formal reporting of the accident. (R. pp. 48-49, Nos. 4 and 5).

Both Parties submitted briefs to the Workers' Compensation Appellate Panel, and oral arguments were held on February 23, 2015. On May 29, 2015, the Workers' Compensation Commission Appellate Panel issued a Decision and Order, wherein they reversed the August 5, 2014 Order of the Single Commissioner. (R. pp. 36-56). In the Order, the Appellate Panel found that although the Appellant's supervisors witnessed the Appellant's syncope episode, Appellant never reported his alleged accident that he described as a "snap" in his shoulders and neck while pulling the squeegee board, which was the basis for his claim and the Single Commissioner's finding of compensability. (R. p. 51, Finding of Fact #4). The Appellate Panel further found that Respondents were prejudiced by Appellant's failure to provide timely notice, since they were deprived of the opportunity to investigate whether the alleged accident pulling the squeegee board caused the syncope episode, or whether the alleged squeegee board accident or subsequent syncope episode aggravated Appellant's pre-existing cervical stenosis. (R. p. 53, Finding of Fact #16).

Based on Appellant's failure to provide notice as required by S.C. Code Ann. §42-15-20, Appellant's failure to provide a reasonable excuse made to the satisfaction of the commission for not giving timely notice, and the resulting prejudice suffered by Respondents, the Appellate Panel found that Appellant's request for benefits as a result of his alleged June 20, 2012 accident was denied. (R. p. 53, Finding of Fact #16).

On June 10, 2015, Appellant filed his Notice of Intent to Appeal with the South Carolina Court of Appeals. This appeal follows.

STATEMENT OF THE FACTS/EVIDENCE

Appellant alleges to have sustained an injury to his upper back and shoulders as a result of pulling a squeegee over a concrete pad. Specifically, Appellant testified:

Q: Okay. And tell me what happened during that process of you pulling the squeegee board?

A: I got a pain in between pulling the squeegee board when they take someone off it that put more stress in there, due to whoever is left on the squeegee has got less to help pull it.

Q: Yes Sir.

A: But you also still got to keep going 'cause if you don't keep going – you're going to blotch up. So I was doing that, I felt like a pressing like a , you now, snap of back there between my shoulder and my neck."

- -

Q: Okay. Now did you tell him, "Hey Mr. Bostick, I – I think I've hurt my neck just now"?

A: No, I didn't tell him that.

Q: Okay, when he took you off, what did you do?

A: I just step out of the way, got off to see – out of the cement, took a little break, and then I went right back.

(R. p. 79, lines 2-24).

In addition, Appellant testified at his deposition that while pulling he squeegee, he felt "like a bone snapped or something snapped – or popped." (R. p. 258, lines 1-7). Again, Appellant never reported this alleged accident where he describes the "snap" or "pop" of his bones to the Respondent Employer.

At the end of the shift, after cleaning his equipment, Appellant returned to the shed with his supervisors and co-workers. According to Appellant, "I just walked up over there and was standing and just talking to him you know. And we were talking, just like jiving a laugh, you know, cutting a fool laughing. Then, all the sudden – I went out." (R. p. 81, lines 1-7). According to the Appellant's supervisor, Mr. Bostic, when he asked Appellant if he was ok, "because we asked him, and his words was – to me was, I get dizzy sometimes." (R. p. 209, lines 9-11). Mr. Bostic further indicated that Appellant suffered from previous dizzy spells, and testified, "I mean, the – the time I witnessed it, we could be laughing or joking, cutting the crazy on the job – to me it seemed like he laughs so loud, like he, he'll get dizzy, and he – I have seen him grab his head and say 'Whew, I'm Dizzy.' (R. p. 216, lines 23-, p. 217, lines -2).

After returning home following his syncope episode at the shed, Appellant had a second syncope episode in his driveway. (R. p. 82, lines 10-20). Appellant presented to Carolinas Hospital System, where he was seen by his primary care physician, Dr. Robert Richey. On his "history and physical," Appellant did not describe the squeegee accident, but instead stated "passed out talking to my boss." (R. p. 315). Dr. Richey discussed the possibility of a GI bleed, and he was given a CT scan of the head, a GI work up, a cardiac workup, and a cervical MRI. (R. pp. 318, 321, and 322).

Appellant's cervical MRI revealed cervical stenosis, and Dr. Richey referred Appellant to a neurosurgeon, Dr. William Naso. (R. p. 324). On Appellant's June 28, 2012 Florence Neurosurgery and Spine "Patient Health History Questionnaire" filled out and signed by Appellant, he states that his condition was not related to an injury and not a worker's compensation accident. (R. p. 331). Following his examination of Appellant, Dr. Naso stated "I do not think his syncope is related to his cervical spine pathology." (R. p. 325). Like his other

medical records, Appellant again failed to make any mention of an alleged accident sustained while pulling a squeegee board.

Appellant went on to undergo surgery with Dr. Naso and remain out of work. (R. pp. 327-328). Appellant spoke with both Mr. Bostick and Mr. Durant while he was in the hospital, and again he declined to report the alleged accident pulling the squeegee board. (R. p. 93, lines 14-23). Specifically, Appellant testified that he told Mr. Bostic, "I think he asked me what – what was the – what was wrong. I said I am in the hospital. I said ever since I fell out, I said, I've been here ever since." (R. p. 273, lines 17-21).

Finally, prior to undergoing surgical treatment, Appellant provided Respondent Employer's Human Resources Department with a "SCDOT Certification of Heath Care Provider for Employee's Serious Health Condition (Family Medical Leave Act)" paperwork that he signed on July 9, 2012. (R. pp. 362-365). While there remains no single mention of any accident pulling a squeegee, under the section designated "approximate date condition commenced," Appellant's paperwork states "several years – neck and syncope." (R. p. 363). This directly contradicts Appellant's testimony that he never had any neck pain or problems prior to June 20, 2012. (R. p. 83, lines 11-13).

STANDARD OF REVIEW

In his brief, Appellant erroneously states that since the pertinent facts of this claim are undisputed, the question of compensability becomes a question of law. In this case, the facts are not undisputed with regards to compensability, since there are contradicting medical opinions regarding causation and which, if any, of Appellant's activities on the date of the alleged accident aggravated his pre-existing cervical stenosis and caused the need for medical treatment.

Therefore, the standard of review for this case is the same as it would be for other workers' compensation appeals.

In workers' compensation cases, the South Carolina Workers' Compensation Commission is the trier of fact. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The South Carolina Administrative Procedures Act, S.C. Code Ann. §1-23-380(A)(6)(1976), establishes the "substantial evidence rule" as the standard for judicial review of a decision of the Commission:

> 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 administrative 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 decisions are:
> (d) affected by other error of law; [or]
> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

An appellate court, in workers' compensation appeals, may overturn a conclusion of the Workers' Compensation Commission if that conclusion is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).

> The test is whether the decision of the Commission is supported by substantial evidence. Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action.

Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995).

Therefore, an appellate court may only overturn findings of fact of the Commission if there is no reasonable probability that the facts could be as related by the witnesses upon whose

testimony the finding was based. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). Further, an award cannot be based on surmise, conjecture, or speculation. Tiller v. National Health Care Center of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999); *see also*, McDowell v. Stilley Plywood Co., 210 S.C. 173, 41 S.E.2d 872 (1947) (holding testimony that is based on surmise, conjecture, and speculation has no probative value). While a finding of fact of the Commission will normally be upheld, such a finding may not be based upon surmise, conjecture, or speculation; instead, it must be founded on evidence of sufficient substance to afford a reasonable basis for it. Edwards v. Pettit Constr. Co., 273 S.C. 576, 257 S.E.2d 754 (1979).

ARGUMENT

I. THE WORKERS COMPENSATION COMMISSION APPELLATE PANEL CORRECTLY FOUND THAT APPELLANT FAILED TO PROVIDE RESPONDENTS WITH TIMELY NOTICE AS REQUIRED BY S.C. CODE ANN. §42-15-20

The South Carolina Workers' Compensation Act sets forth the requirements for notice of an accident to an employer in S.C. Code Ann. §42-15-20. That sections states:

> (A) Every injured employee or his representative immediately shall on the occurrence of an accident, or as soon thereafter, give or cause to be given to the employer a notice of the accident and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this title prior to such giving notice, unless it can be shown that the employer, his agent, or representative, had knowledge of the accident or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person.
>
> (B) Except as provided in subsection (C), no compensation shall be payable unless such notice is given within ninety days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been unduly prejudiced thereby.

In this case, the Single Commissioner found that Appellant "sustained a compensable injury by accident to his neck out of and in the course of his employment on June 20, 2012 while pulling a squeegee board leveling concrete; and, I further find, pursuant to S.C. Code Ann. §42-9-35 by a preponderance of the evidence, including medical evidence, that the accident aggravated the pre-existing cervical disc disease that was present is Claimant's [Appellant's] neck, albeit asymptomatic until the accident." (R. pp. 20-21, Finding of Fact #3).

It is imperative to note that one undisputed fact in the claim is that Appellant never reported to his employer any accident or injury that he sustained while pulling the squeegee board at work. (R. p. 64, lines 18-23). The question then turns to whether the Respondents "had knowledge of the accident or that the party required to give such notice had been prevented from doing so by reason of physical or mental capacity or by fraud or deceit of some third person." S.C. Code Ann. §42-15-20(A). In this case, Appellant was able to communicate with representatives from the employer and submit FMLA paperwork for benefits, so there is no issue regarding his mental or physical capacity. In addition there has been no allegation of any fraud or deceit.

The final step in the inquiry then becomes whether Respondents had knowledge of the accident despite Appellant's failure to report the accident. In support of his argument on this point, Appellant relies heavily on the language of Etheredge v. Monsanto Co. to support his definition of "adequate notice to an employer." 349 S.C. 451 (Ct. App. 2002). In Etheridge, the Court of Appeals stated the following:

> For adequate notice, there must be some knowledge of accompanying facts connecting the injury or illness with the employment, and indicating to a reasonable conscientious manager that the case might involve a potential compensation claim. (*Id.* at 457).

Appellant argues that based on the following facts, Respondents should have been aware of a potential compensation claim: (1) Appellant was working all day in the sun; (2) Appellant's supervisor pulled him from the squeegee board for a brief period to rest based on his age and the heat; (3) at the end of the day, while laughing with his supervisors at the shed, Appellant passed out; (4) Appellant was admitted to the hospital and diagnosed with cervical stenosis by a neurosurgeon, and (5) Appellant never returned to work.

Appellant leaves out several crucial facts that counter his argument that a reasonable conscientious manager in this case should have known that the case might involve a potential compensation claim. First, and most importantly, Respondents point the "SCDOT Certification of Health Care Provider for Employee's Serious Health Condition (Family Medical Leave Act)." (R. pp. 362-365). This form was signed by Appellant and delivered to Respondent Employer's Human Resource's Department. On the form, Appellant states that the approximate date his condition commenced was "several years – neck and syncope."(R. p. 363). This directly contradicts Appellant's hearing testimony that he never suffered from any previous issues with his back prior to the incident pulling the squeegee board. (R. p. 83, lines 11-13).

Next, Respondents point the Court's attention to Appellant's post-accident communication with the employer. Despite going through the process of a previous workers compensation claim with the same employer, Appellant testified repeatedly that at no point did he ever report the incident pulling the squeegee board to any of his supervisors. (R. p. 79, lines 18-20, p. 89, lines 13-18, pp. 93, lines 18-, p. 94, - line 4, p. 258, lines 1-9). Second, when he spoke with both Danny Bostick and Steven Durant, his supervisors, at the hospital, he informed them that he was receiving treatment for his neck, but again he never reported any work accident or requested any information regarding workers compensation. (R. p. 93, lines 18-23). As stated

in the evidence section above, Appellant even told Mr. Bostick he was in the hospital, "ever since I fell out, I said, I 've been here ever since." (R. p. 273, lines 17-21).

Finally, Respondents point the Court's attention to the medical evidence in the record. Respondents would first note that of the 47 pages of medical evidence submitted by Appellant at the Single Commissioner Hearing, the records are completely absent of any mention of description of an injury sustained while pulling a squeegee board. Instead, Dr. Richey's original "History and Physical" report from Carolinas Hospital System states "I passed out talking to my boss." (R. p. 315). Dr. Richey stated that he would "try to figure out what happened to him," and he ordered a series of test including a Head CT, X-Ray of the right foot, a chest x-ray, a cardiac work up, a gastrointestinal work up, and a cervical MRI. (R. pp. 315-325).

Based on the cervical stenosis identified on the cervical MRI, Appellant was referred for a consult with Dr. William Naso, a neurosurgeon. (R. pp. 324-325). Dr. Naso's June 24, 2014 report listed diagnoses of C6-C7 and C7-T1 stenosis, cervical radiculopathy, and chronic back pain. (R. p. 325). Dr. Naso noted at that time, *I do not think his syncope is related to cervical spine pathology.*" (R. p. 325)(emphasis added). Appellant saw Dr. Richey again on the same day for a discharge, at which time Dr. Richey stated that he felt "the cause of the syncope I think has something to do with his spinal stenosis and a reflex mechanism. We really cannot prove this, but from a monitoring standpoint, we found no problems." (R. p. 326).

On June 28, 2014, Appellant followed up again with Dr. Naso for further treatment. The "Patient Heath History Questionnaire," prepared and signed by Appellant states that his problems were not related to a job and this was not a worker's compensation injury. (R. p. 331). Dr. Naso continued to provide Claimant with conservative care until August 28, 2012, when he ultimately performed surgery. (R. pp. 327-328).

In this case, Appellant is asking the Court to take a leap forward in the requirements of the burden placed on an employer, and require a heightened level of investigation, despite the facts that Appellant never reported the alleged accident, Appellant submitted paperwork to their Human Resources Department indicating that this was an issues that existed for years, and Appellant denied a workers' compensation injury in his doctor intake sheets. This heightened burden is not consistent with the Workers Compensation Act, and it is in direct contradiction with the Supreme Court holding in Sanders v. Richardson, wherein the Court stated "the employer's knowledge of the fact that an employee becomes ill while at work does not necessarily, of itself, serve the employer with notice that such illness constituted or resulted on a compensable injury." 251 S.C. 325 (1968). If an employee refuses to report his alleged accident, submits paperwork his medical provider denying a work injury, and submits FMLA paperwork to his employer indicating that he has suffered from a neck condition for years with no mention of his alleged work accident, it is impossible to expect a reasonably conscientious manager to go even further to investigate additional facts that might support a potential compensable claim.

II. ASSUMING APPELLANT FAILED TO PROVIDE RESPONDENTS WITH NOTICE AS REQUIRED BY THE ACT, WHETHER THE WORKERS' COMPENSATION COMMISSION APPELLATE PANEL CORRECTLY FOUND THAT APPELLANT FAILED TO DEMONSTRATE REASONABLE EXCUSE AND THAT THE RESPONDENTS HAVE BEEN UNDULY PREJUDICED THEREBY.

The Appellate Panel correctly found that Appellant did not have a reasonable excuse for not timely reporting his work injury due to the fact that his lead man, Mr. Durant, and his crew supervisor, Mr. Bostick, were present at the end of the day when Appellant suffered his first syncope episode, and the employer was aware that Appellant remained in the hospital and received treatment from a neurosurgeon. (R. p. 53, Finding of Fact #15). Again, the question for the Court turns on whether the "accident" was the syncope episode witnessed by the Respondent

Employer, or the alleged "snap" described by Appellant while pulling the squeegee, which was never reported to his employer or his doctors, or even his second syncope episode in his driveway at home.

The Courts have consistently held that the purpose of the notice provision, S.C. Code §42-15-20 and its predecessors, is twofold: First, it affords protection of the employer in order that he may investigate the facts and question witnesses while their memories are unfaded; and second, it affords the employer the opportunity to furnish medical care to the employee in order to minimize the disability and consequent liability to the employer. (See, e.g., Mintz vs. Fiske-Carter Construction Company, 218 S.C. 409 (1951)).

The South Carolina Supreme Court has also made it clear that "an employer's knowledge of the fact that that an employee becomes ill while at work does not necessarily, of itself, serve the employer with notice that such illness constituted or resulted in a compensable injury." Sanders. Richardson, 162 S.E.2d 257, 251 S.C. 325 (1968).

In this case, the only knowledge the Respondent Employer had on the date of the alleged accident was that at the end of the shift, Appellant passed out while they were laughing at the shed. This was something the Respondent Employer had witnessed the Appellant do in the past. (R. p. 216, lines 11-12, pp.216 lines 23-, p. 217, -line 2). Appellant's syncope episode itself was not alleged to be the Appellant's accident, and Appellant did not provide evidence the syncope episode was caused by heat prostration or any other condition related to his employment that day. The Respondent Employer was never given notice of the reason Appellant was receiving treatment, or that the possible cause of his spinal injury was due to pulling the squeegee on June 20, 2014. As such, no reasonable notice was provided to the Respondent Employer to investigate the pertinent facts of the claim. As a result, Respondents were prejudiced by the lack

of sufficient notice since they were unable to investigate promptly the cause of the Appellant's stenosis aggravation, and whether the Appellant's problems were the result of pulling a squeegee, passing out and falling while laughing with supervisors, or passing out in his driveway at home.

CONCLUSION

The substantial evidence in the record leads to the conclusion that the Appellate Panel appropriately found that Appellant failed to provide Respondents the required ninety (90) day notice of an alleged work accident as required by S.C. Code Ann. §42-15-20, and Appellant failed to provide a reasonable excuse for failure to timely report his accident to the satisfaction of the Commission. As a result, the Workers' Compensation Commission Appellate Panel correctly found that Respondents were prejudiced thereby, and the Appellate Panel correctly denied Appellant's entitlement to any benefits under the Workers' Compensation Act.

Respectfully Submitted,

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CERTIFICATE OF COUNSEL

Respondents, by and through their undersigned cousnel, certifiy that Respondents' Final Brief complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I certify that I, Leigh Ball, legal assistant to J. Gabriel Coggiola, have properly served **Respondents' Final Brief and Certificate of Compliance**, by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses on October 2, 2015

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