

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001788

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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.

RESPONDENT'S INITIAL BRIEF

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TABLE OF CONTENTS

Table of Authoritiesiii

Statement of Issues of Appealiv

Statement of the Case1

Statement of Facts4

Standard of Review.....14

Arguments

I. THE FULL COMMISSION DID NOT ERR BY AFFIRMING THE HEARING COMMISSIONER'S DECISION TO HOLD THE HEARING AND RULING ON THE ISSUES BEFORE HER FOR DECISION AND BY SO DOING SHE DID NOT ACT IN AN APPELLATE CAPACITY.....16

II. THE COMMISSION DID NOT ERR BY FAILING TO MAKE A FINDING ON THE NON-ESSENTIAL ISSUE AS TO THE DATE THAT THE CLAIMANT SUFFERED A PLAQUE RUPTURE.....22

III. THE COMMISSION DID NOT ERR BY FAILING TO MAKE A FINDING ON THE NON-ESSENTIAL ISSUE OF WHAT CAUSED THE PLAQUE RUPTURE IN THE CLAIMANT'S HEART.....24

IV. THE COMMISSION DID NOT ERR BY FAILING TO MAKE A FINDING ON THE NON-ESSENTIAL ISSUE AS TO A DATE ON WHICH THE CLAIMANT SUFFERED A MYOCARDIAL INFARCTION.....24

V. THE COMMISSION DID NOT ERR BY RELYING ON DR. TRAVIS' MEDICAL OPINIONS AS EXPRESSED BOTH IN WRITTEN DOCUMENTS AND IN HIS DEPOSITION TESTIMONY.....24

VI. THE COMMISSION DID NOT ERR IN RELYING ON THE WRITTEN MEDICAL OPINION AND THE TESTIMONY OF DR. LIDE IN MAKING ITS FINDINGS AND RULING.....26

VII.	THE COMMISSION DID NOT ERR BY RELYING ON THE WRITTEN AND TESTIMONIAL OPINIONS EXPRESSED BY DR. GREENFIELD IN MAKING HER FINDINGS OF FACT THAT THE CLAIMANT HAD SUSTAINED COMPENSABLE INJURY.....	26
XIII.	THE COMMISSION DID NOT ERR IN FINDING OF FACT #7 BY FINDING THAT THE CLAIMANT BEGAN SWEATING THE NIGHT OF THE ELECTRICAL SHOCK.....	27
IX.	THE COMMISSION DID NOT ERR IN MAKING FINDING OF FACT #9 THAT ALL THREE (3) TREATING PHYSICIANS HAD OPINED THE ELECTRICAL SHOCK RESULTED IN CLAIMANT'S HEART ATTACK (ACTUALLY HEART RELATED INJURIES) AND NOT INCLUDING A DATE ON WHICH THE, "HEART ATTACK" OCCURRED.....	29
	Conclusion	30

TABLE OF AUTHORITIES

Cases

Cross v. Concrete Materials,
236 S.C. 440, 114 S.E.2d 828 (1960)22,23,30

Drake v. Raybestos-Manhattan, Inc.,
241 S.C. 116, 127 S.E.2d 288 (1962)17,20

Fox v. Newberry County,
319 S.C. 278, 461 S.E.2d 392 (1995)20

Grice v. Dickerson, Inc.,
241 S.C. 225, 127 S.E.2d 722 (1962)19

Hall v. Desert Aire, Inc.,
376 S.C. 338, 656 S.E.2d, 753 (SC App. 2007)14

Hall v. United Rentals, Inc.,
371 S.C. 69, 636 S.E.2d 876 (SC App. 2006)15

Mullinax v. Winn Dixie, Inc.,
318 S.C. 431, 458 S.E.2d (SC App. 1995)15

Randolph v. Fiske-Carter Construction Co.,
240 S.C. 182, 125 S.E.2d 267 (1962)21,30

Ricker v. Village Management Corp.,
231 S.C. 47, 97 S.E.2d 83 (1957)21

Rollins v. Wunda Weve Carpet Co.,
255 S.C. 1, 177 S.E.2d 5 (1970)19

Solar v. Sunny Slope Farms,
244 S.C. 6, 135 S.E.2d 321 (1964)19

Tiller v. National Home Healthcare,
334 S.C. 333, 513 S.E.2d 843 (1999)19

Walsh v. US Rubber Co.,
238 S.C. 411, 120 S.E.2d 685 (1961)18

Statutes, Rules and Regulations

SC Code Ann. §42-1-1606

SC Code Ann. §42-9-106

SC Code Ann. §42-9-206

SC Code Ann. §42-9-306

SC Code Ann. §42-9-2606

SC Code Ann. §42-15-607

STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE FULL COMMISSION ERRED BY AFFIRMING THE HEARING COMMISSIONER'S DECISION TO HOLD THE HEARING AND RULE ON THE ISSUES BEFORE HER FOR DECISION AND BY SO DOING SHE DID NOT ACT IN AN APPELLATE CAPACITY.
- II. WHETHER THE COMMISSION ERRED BY FAILING TO MAKE A FINDING ON THE NON-ESSENTIAL ISSUE AS TO THE DATE THAT THE CLAIMANT SUFFERED A PLAQUE RUPTURE.
- III. WHETHER THE COMMISSION ERRED BY FAILING TO MAKE A FINDING ON THE NON-ESSENTIAL ISSUE OF WHAT CAUSED THE PLAQUE RUPTURE IN THE CLAIMANT'S HEART.
- IV. WHETHER THE COMMISSION ERRED BY FAILING TO MAKE A FINDING ON THE NON-ESSENTIAL ISSUE AS TO A DATE ON WHICH THE CLAIMANT SUFFERED A MYOCARDIAL INFARCTION.
- V. WHETHER THE COMMISSION ERRED BY RELYING ON DR. TRAVIS' MEDICAL OPINIONS AS EXPRESSED BOTH IN WRITTEN DOCUMENTS AND IN HIS DEPOSITION TESTIMONY.
- VI. WHETHER THE COMMISSION ERRED IN RELYING ON THE WRITTEN MEDICAL OPINION AND THE TESTIMONY OF DR. LIDE IN MAKING ITS FINDINGS AND RULING.
- VII. WHETHER THE COMMISSION ERRED BY RELYING ON THE WRITTEN AND TESTIMONIAL OPINIONS EXPRESSED BY DR. GREENFIELD IN MAKING HER FINDINGS OF FACT THAT THE CLAIMANT HAD SUSTAINED COMPENSABLE INJURY.
- VIII. WHETHER THE COMMISSION ERRED IN FINDING OF FACT #7 BY FINDING THAT THE CLAIMANT BEGAN SWEATING THE NIGHT OF THE ELECTRICAL SHOCK.
- IX. WHETHER THE COMMISSION ERRED IN MAKING FINDING OF FACT #9 THAT ALL THREE (3) TREATING PHYSICIANS HAD OPINED THE ELECTRICAL SHOCK RESULTED IN CLAIMANT'S HEART ATTACK (ACTUALLY HEART RELATED INJURIES) AND NOT INCLUDING A DATE ON WHICH THE, "HEART ATTACK" OCCURRED.

STATEMENT OF THE CASE

[The Appellants' Statement of the Case and the section captioned "Argument" contain references to parts of the Record below not contained in the Appellants' Designation of Matter. Therefore, a proper Statement of the Case is set forth hereinafter.]

After the Claimant's (Respondent to this appeal) electrical shock accident which occurred on May 22, 2013, it was immediately reported and the case was accepted by the insurance carrier and compensation benefits were started and paid and medical care was authorized and provided. Subsequently on September 12, 2013, the Claimant received a SCWCC Form 15(II) in the mail notifying him that the case was being denied based on an alleged, "good faith investigation" which Form further stated the basis was that the Claimant had failed to prove a compensable injury. (WCC Form 15II and 19, 9/12/13). The Claimant immediately filed a Form 15(III) Request for Hearing to reinstate benefits for improper stop payment. (WCC Form 15III, 9/18/13). In addition, due to the basis of the denial being that based on a good faith investigation the Appellants (Defendants below) were denying the claim because the Claimant had not sustained compensable injury under the Act, a separate WCC Form 50 Request for Hearing was filed requesting a

determination that the Claimant had sustained injury by accident with reinstatement of medical care and temporary total disability benefits from the date that those benefits had been stopped. (Form 50, 10/21/13). A responsive Form 51 was filed denying the Claimant had sustained compensable injury and having failed to establish compensable injury, denied entitlement to medical care and to temporary total disability benefits. (Form 51, 11/19/13). A hearing was set on January 13, 2014 on the Form 50 and Form 51 (Hearing Notice, 12/16/13). The Claimant's Pre-Hearing Brief and APA Submissions were filed on December 23, 2013 and the Appellants' Pre-Hearing Brief and APA Submissions were filed on January 2, 2014. (Claimant's Pre-Hearing Brief/APAs, 12/23/13; Defendants' Pre-Hearing Brief/APAs, 1/2/14). A hearing was held on January 13th before Commissioner Susan S. Barden. (Tr., 1/13/14). At the hearing, the Appellants admitted Claimant had sustained compensable injury due to the electrical shock but denied injury to the heart and other body parts. (Tr., 1/13/14, p. 9, ll. 9-13).

On February 27, 2014 the Commissioner issued her Order finding that although the Appellants (Defendants) initially in their Form 51 had denied that Mr. Winfrey (Claimant/Respondent herein) had sustained compensable

injury that based on their position at the hearing the Appellants admitted that the Claimant had sustained compensable injury and they agreed that it included injury to the neck and left shoulder but denied that it resulted in the need for medical care to the Appellant's heart and certain other body parts as listed in the Form 50 as being affected by the injury. By Award filed February 27, 2014, the Commissioner found that Mr. Winfrey had sustained injury and had established a need for medical care specifically as to the heart and all related problems as being related to the injury. She awarded the reinstatement of temporary total disability benefits and ongoing medical treatment until the Claimant reached maximum medical improvement. (Order and Award, 2/27/14). She also found that the Claimant was not at maximum medical improvement and placed the Claimant under his previously authorized treating physicians, Dr. Jeffrey Travis, M.D. and Dr. Lanneau Lide, M.D. for treatment of the Claimant's heart and all causally related problems. (Order and Award, 2/27/14, Findings #14, #15).

The Appellants filed a Form 30 Request for Review. (Form 30, 3/6/14). The Appellants filed their Appellants' Brief to the Full Commission on April 23, 2014 and the Claimant filed his Claimant/Respondent's Brief to the Full

Commission on May 8, 2014. (Defendants'/Appellants' Brief Claimant's Brief, 4/23/14; 5/8/14). A hearing was held on the appeal on May 19, 2014 (Tr. of Full Commission, 5/19/14). A request for proposed Order was emailed on June 6, 2014 requesting Appellants' Counsel draft the proposed Order (WCC Proposed Order Request). The Order of the Full Commission Panel was filed on July 25, 2014 wherein the Commission as to the subject of this appeal affirmed the findings and Decision of the Hearing Commissioner finding compensable injury, finding that the Claimant was not at maximum medical improvement and awarding medical care and temporary total disability benefits until further Order of the Commission. From the Decision of the Full Commission affirming the Hearing Commissioner's Decision except as to the head and/or brain, this appeal followed. (Notice of Appeal, August 20, 2014). Note: the Claimant has filed a cross-appeal as to the Full Commission's denial of any treatment for the head and/or brain.

STATEMENT OF FACTS

As is set out in the Form 50 filed October 21, 2013, the Form 50 was filed due to the fact that the Appellants after having accepted the claim and having provided temporary total disability benefits and medical care had filed a Form 15(II) stopping benefits based on an alleged

good faith investigation and stating as the basis that the Appellant had failed to establish compensable injury by accident. A Form 15III Reinstatement Request was filed and due to the alleged basis in the Form 15II, a Form 50 was filed and in the attachment to the Form 50, under #11 further grounds or unusual aspects of claim:

"The Form 50 was being filed due to this denial and the denial of the claim for failure to prove a compensable injury by accident."

The Form 50 requested three things: 1) a finding that the Claimant had sustained compensable injury under the Act and based on that Finding 2) that he was entitled to; the reinstatement of medical care that had previously been, "authorized and provided"; and 3) the reinstatement of temporary total disability benefits from the date that those had been stopped. (Form 50, specifically #7, #8 and #11, 10/21/13). As required by the Act under #1 on WCC Form 50, Claimant listed as, "body parts affected: heart, left hand/arm/ shoulder, neck, head (brain), chest. The (sic, systemic) system is electrical shock (all organs, members and bodily parts) determined to be related."

In their responsive Form 51, which is the Appellants' pleading placing the parties on notice of the issues for decision, the Appellants stated:

"Denied the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are: claimant has failed to meet his burden of proving that he sustained a compensable injury or illness pursuant to the Act."

In reference to the request for medical care, the Appellants checked that it was denied that the employee needed, "medical care as a result of injury or illness. The reasons for denial are:

Claimant has failed to meet his burden of proving a compensable injury by accident within the course and scope of his employment.

Defendants do not deny that if this claim is found compensable, claimant is in need of additional medical care." (Emphasis added).

Appellants also denied that the Claimant was entitled to temporary total disability benefits. In their responsive Form 58 Pre-Hearing Brief, under #4 "Facts in controversy", the Appellants listed the following:

"Defendants have denied this claim pursuant to SC Code §42-9-260. The issue for this hearing is whether or not claimant can meet his burden of proving a compensable claim pursuant to the Act."

Under #5. "Legal issues involved", the Appellants listed the following legal issues:

"§42-9-10, §42-9-20, §42-9-30, and §42-9-260."

(Note: there is no reference to the denial of compensable injury under §42-1-160, definition of injury by accident,

and there is no issue raised under §42-15-60, the medical provision section of the Act).

Additionally, under #3 "Type of injury and body part(s)", the Appellants in their Pre-Hearing Brief listed:

"Claimant alleges injury to his neck, left shoulder and heart. Defendants have denied this claim as failing to meet the standards for being a compensable claim."

At the hearing on January 13, 2014, after a Pre-Hearing conference off the Record, the Hearing Commissioner recited the positions of the parties and the purpose of the hearing and stated:

"The purpose of today's hearing is to determine issues raised in Forms 50 and 51." (Tr., p. 4, ll. 17-19).

While in the Form 51, the Appellants denied injury by accident and compensable injury; at the Hearing they admitted both. [Barden Tr. p. 9, l. 1 and l. 9: "his left shoulder and arm, which are admitted body parts . . . (and) - so he seeks a finding of compensability of not only the neck and the left shoulder, which the Defendants admit"]

As to the accident that occurred on May 22nd and the body parts affected, from the Hearing Transcript:

By the witness: (the Claimant Clarence Winfrey)

"And when I was moving the wires, that wire moved, and I mean it blew up. I mean not no

pow, it went kaboom. And that is when I snatched back real hard, but I would feel it from here (indicated) my neck.

By Commissioner: (Commissioner Barden)

So you're use - - you are indicating your left arm all the way up?

Witness:

Yeah, I got a scar right there."
(Tr. p. 26, ll. 8-17).

"And it went up my arm and from my ears down through my shoulder.

Commissioner:

Is that your middle finger the scar was on?

Witness:

Yes, ma'am.

Commissioner:

Ok. So it went up your arm into your neck?

Witness:

Right through here and run down through here.

Commissioner:

Ok. And you are indicating your chest and up into your head a little bit?

Witness:

Yeah.

Commissioner:

All right.

Witness:

And that's how - - when I called Bobby Ruppe and explained to him they got more problems than a - -

* * *

- - well, first I had to go outside and get my composure back. Then I called Bobby Ruppe."

(Tr. p. 27, l. 9 - p. 28, l. 1 and ll. 5-6).

"By Mr. McDaniel: (hereinafter McDaniel)

- - - Both the Defendants and we have put in Mr. Ruppe's statement confirming Mr. Winfrey's testimony about that - - that he called Mr. Ruppe.

Commissioner:

OK.

McDaniel:

Page 78.

Commissioner:

And that's R-U-P-P-E. "
(Tr. p. 28, ll. 15-24).

"Q: Did you tell him about the shock?

A: Oh yeah. I told him I was hurt.

Q: Ok.

A: I told him I was hurt. I said, 'I've never been hit this hard before in my life.'

(Tr. p. 29, ll. 8-12). (Emph. added).

After leaving the Publix, Mr. Winfrey tried to continue working but had to leave work after several

hours at which time he called Bobby Ruppe and told
him,

Witness:

"and told Bobby 'I can't - - I'm done' I couldn't do
nothing else, and it was getting worse and worse."
(Tr. p. 49, ll. 13-15).

Witness:

Yeah. And the next morning when I got up I was just
dripping sweat and I tried to work. I went to the
Walmart on - - -

Commissioner:

When did the sweating occur, the next morning?

Witness:

I mean, I was dripping."
(Tr. p. 31, ll.10-17).

Commissioner:

That's ok.

Witness:

And I was laying on my back because that is the - -
you know what I mean? It hurt if I stood up and
then on my head so I laid down. I had to go to
Whaley's to get some fuses. I drove to Whaley's.
It's down the road, came back, put the fuses in.
That's when I called Bobby Ruppe, and said, 'man, I
can't do it. I am sorry.' I even apologized to the
people in the Deli, but I was in too much pain and
when I left that Walmart, Bobby had Peggy Duncan
call me. She works for the company and said that
they just called - - Walmart just called and said
all the fryers are down. And I said, 'well, Peggy,
I am severely hurt but I will go back because I just
left there.' So I went back and they lost power to
all the fryers. That's when I called Bobby back and
said 'they lost power, and they need an electrician'

and I told him 'I can't do nothing else. I have got to go home.' And that is what I did.

McDaniel:

Q: And then what did you do between then and - - we're going to talk about the 27th in just a minute, but between that - - the day that you called Bobby and said 'I can't do it anymore; I am going home' did you - - what did you do between then and when you finally went to I believe we are going to talk about the Minute Clinic in the second?

A: Yeah, that was a Monday. 'That was a holiday.'

Q: So what did you do - - over the weekend?

A: Oh, I had - - I went by Walgreen's and bought Motrin and Tylenol, you know, anything to what I thought would help."

(Tr. p. 31, l. 25 - p. 33, l. 8).

"McDaniel:

Q: And it was - - it - - it was in the same place as it was from the - - from the minute of the shock?

A: Yes.

Q: Is that correct?

A: Yes, it was in my arm. It went up to my ear and it dropped like that (indicating). But I just ate Motrin and Tylenol and things like that. Ibuprofen. I was trying to get the pain to go away."

(Tr. p. 33, ll. 18-25).

Finally, in reference to the voltage, the Claimant testified repeatedly that the voltage was at least 240 and as much as 480 volts. (Tr. p. 24, ll. 1-25; p. 54, ll. 14-24). Mr. Wesley Mark Warren who testified on behalf of the

Defendants confirmed the Claimant's testimony about the voltage and stated that, "without checking with a meter, I couldn't tell you the actual voltage, but the machine is rated for 480 volt, - - -". (Tr. p. 58, ll. 23-25).

In a report dated September 30th, Dr. Jeffrey A. Travis, M.D., Board Certified Cardiovascular Surgeon (not just a cardiologist and as he testified, the only doctor in this case that actually held the Claimant's heart in his hands), stated:

"Mr. Winfrey is a patient who presented with a very unusual cardiac lesion after suffering a large electrical shock. The lesion, a ventricle septal defect, and normally only seen very rarely in a setting of an acute myocardial infarction. I believe that Mr. Winfrey's electrical shock caused his heart attack and his ventral septal defect.

* * *

Operative photographs confirm a large white patch on both sides of his heart that were almost certainly entrance and exit wounds of the electricity. I have never seen anything like these patches in my 15 years of surgery. I have a photo of the anterior surface of the heart that demonstrates either the entrance or exit site.

* * *

I find it quite unbelievable that his surgery and postoperative course have been considered separate from his electrical injury at work. I see almost no plausible explanation other than a direct cause and effect." (Claimant's APA Submissions, Section 1, p. 1).

In his deposition, Dr. Travis reaffirmed this opinion and also how the electrical shock in his opinion caused a plaque rupture that caused the myocardial infarction that lead to the ventral septal defect. (Dépo. Tr., pp. 12-14; pp. 16-17; and pp. 23-25). Dr. Lanneau Lide, the Claimant's Board Certified treating cardiologist stated his opinion to a reasonable degree of medical certainty that the symptoms and injuries to his heart stemmed from the electrical shock that he sustained to his left hand and arm on May 22, 2013. He unequivocally reaffirmed that opinion at p. 39 of his deposition (Depo. Tr., p. 39, ll. 6-20),

Dr. Karen Greenfield, Board Certified in family medicine and the initial treating physician at Doctor's Care, after referral from the Minute Clinic Nurse at Walgreen's, stated that it was her opinion to a reasonable degree of medical certainty that the injuries and problems for which she treated him specifically in reference to the heart were caused by the electrical shock. She reaffirmed that opinion at p. 21 of her deposition.

The Hearing Commissioner as affirmed by the Full Commission made detailed Findings of Fact with specific detailed citations to the evidence relied on in making those Findings. (Order and Award, 2/27/14, pp. 11-22).

STANDARD OF REVIEW

The Administrative Procedures Act provides the standard for judicial review of decisions of the SC Workers' Compensation Commission and this Court may reverse or modify the Commission's decision only if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, substantial evidence in the whole Record. Under the Administrative Procedures Act, this Court's review is limited to deciding whether the Commission Decision is unsupported by substantial evidence or is controlled by some other error of law and if the Commission's Decision is supported by substantial evidence in the Record, the Decision of the Commission must be affirmed. Substantial evidence is a not a mere scintilla of the evidence, nor is it evidence viewed blindly from one side or the other of the case but it is evidence which after considering the Record as a whole would allow reasonable minds to reach the conclusion that the Commission reached in order to make its Decision. The possibility of drawing two different conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d, 753 (SC App. 2007).

It is for the Commission to decide the factual issues and where there are conflicts in the evidence, over a factual issue, the findings of the Commission are conclusive if there is substantial evidence in the Record to support those. The decision on the conflicts in the evidence and on the weight and credibility to be given evidence from various witnesses, is a factual determination to be made by the Commission and its final determination on those issues is final and conclusive. Hall v. United Rentals, Inc., 371 S.C. 69, 636 S.E.2d 876 (SC App. 2006). The conclusiveness of the Commission's Findings of Fact if supported by the evidence extends to any conflicts in the evidence, and to all witness credibility and the weight to be given all evidence and the Commission's determination specifically includes the resolution of conflicts in medical evidence and the Commission's decision on those and the weight to be given medical evidence is conclusive as the ultimate fact finder. Mullinax v. Winn Dixie, Inc., 318 S.C. 431, 458 S.E.2d (SC App. 1995).

ARGUMENTS

I. THE FULL COMMISSION DID NOT ERR BY AFFIRMING THE HEARING COMMISSIONER'S DECISION TO HOLD THE HEARING AND RULE ON THE ISSUES BEFORE HER FOR DECISION AND IN SO DOING SHE DID NOT ACT IN AN APPELLATE CAPACITY.

The Appellants arguments under Argument I are very confusing and are contradictory. The Appellants on the one hand argue that Commissioner Beck's prior Order concerning a Form 15 Hearing, wherein the sole issue before him was reinstatement of benefits for improper stop payment, and although it was on appeal and while admitting any findings in that Order were not the law of the case, that it in some way precluded a Hearing and decision on a Form 50 claim for a determination of compensability and proof of the essential factual issues necessary to such an Award (i.e., injury by accident, compensable and entitlement to benefits) with which Commissioner Barden was charged with deciding. On the other hand or in some way connected, they argue she should have addressed certain issues that they wanted addressed (ex., when the myocardial infarction occurred) as part of her Decision which were not part of the essential factual and legal issues before her for decision. Commissioner Barden properly heard the evidence before her and ruled on those "essential factual issues" making detailed Findings of Fact and Conclusions of Law on

those "essential factual issues" in reaching her Decision to support her factual and legal conclusions on the essential issues that the Respondent had proved by a preponderance of the evidence that under the provisions of the Act and under the law as defined by our Appellate Court decisions, that he had sustained injury by accident; that his injury/problems with his heart stemmed from the accident; and that he was entitled to medical care and temporary total disability compensation. Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962).

After the Appellants denied injury by accident and compensability in the Form 15 dated September 12, 2013, the Respondent filed a Form 50 Claim and Request for Hearing requesting that the claim be determined to be compensable and awarding him temporary compensation benefits and medical benefits for the injuries which needed treatment at the time of the hearing as stemming from the accident. The Appellants filed a Form 51 and the issues were joined and those were the issues before Commissioner Barden for decision. It was the Claimant's position that the severe injuries to the Claimant's heart for which he was being treated were caused by the electrocution injury that he sustained. Specifically in his Pre-Hearing Brief he

delineated the factual issues and his request for benefits under the Act as follows:

- "b. The Claimant would submit that the evidence establishes that he sustained a compensable injury and is entitled to reinstatement of temporary compensation benefits . . . ;
- c. Medical care from the date that medical care was stopped being authorized and continuing until the Claimant reaches maximum medical improvement"

Therefore the issues before the Commissioner were whether the Respondent had sustained compensable injury; whether in reference to this appeal his heart related problems were causally related to the injury; whether he was entitled to temporary total disability benefits; and whether he was entitled to medical care for all injuries resulting from the accident. Appropriately the Commissioner entered a decision on those essential factual issues. (See footnote 2).

When a claimant files a request for benefits which is denied and is the moving party before the Commission, the claimant has the burden of proof and must establish by a preponderance of the evidence (facts) that he is entitled to an Award under the Workers' Compensation Act. Walsh v. US Rubber Co., 238 S.C. 411, 120 S.S.E.2d 685 (1961). Further the Decision of the Commissioner must be based on the facts and cannot be based upon surmise, conjecture or speculation.

Solar v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964). In making its decision, the Commission may rely on lay/witness evidence, circumstantial evidence and/or medical opinion evidence. Rollins v. Wunda Weve Carpet Co., 255 S.C. 1, 177 S.E.2d 5 (1970) (lay testimony sufficient to establish compensable injury and disability); Grice v. Dickerson, Inc., 241 S.C. 225, 127 S.E.2d 722 (1962) (circumstantial evidence sufficient to support award); Tiller v. National Home Healthcare, 334 S.C. 333, 513 S.E.2d 843 (1999) (expert opinion alone sufficient to support award).

In this case it was the Claimant's burden of proof to prove by a preponderance of the evidence that the injuries to the Claimant's heart stemmed from the electrocution injury thus entitling him to compensation. The Claimant testified to the facts of the electrocution injury and that from the very minute of that electrocution, he had severe pain in his neck, arm and shoulder that ran as far up as into his head and ear and into the front part of his chest over his collarbone area. (Tr., p. 33, ll. 18-25). His three (3) treating physicians (all treating physicians in fact) testified that in their opinions the injuries to his heart stemmed from the electrocution injury. (Dr. Travis Depo. Tr., pp. 12-14; 16-17; 23-25, Claimant's APA, p. 1;

Dr. Lide Depo Tr., p. 39, ll. 6-20; Dr. Greenfield Depo. Tr., p. 21). Clearly there is a preponderance of the evidence to support the Commissioner's Decision finding that the Claimant has sustained compensable injury.

Further, the Hearing Commissioner's Decision had to be based on the evidence before her, and emphasis is placed on "before her", and based on the evidence before her, the Hearing Commissioner found that the Claimant had established a compensable injury stemming from the May 22nd electrocution injury.

In reference to the argument that the Commissioner in some way was acting in an appellate capacity, that is simply wrong. She was charged with the responsibility of hearing the "essential issues" and making a decision on the issues raised by the Forms 50 and 51 which she did; she based that decision on the evidence before her and her analysis of the evidence and made detailed Findings of Fact as required. See Drake v. Raybestos-Manhattan, Inc., supra, and also Fox v. Newberry County, 319 S.C. 278, 461 S.E.2d 392 (1995).

Finally, there is no requirement that the Commissioner make a decision as to when the myocardial infarction occurred. The essential factual issue upon which she had to make a decision and which was submitted to her for decision was whether the Claimant's heart related problems stemmed

from the accident; i.e., the electrocution injury that occurred on May 22nd. She appropriately made her Findings of Fact based on the law addressed to that issue. See for example: Ricker v. Village Management Corp., 231 S.C. 47, 97 S.E.2d 83 (1957) (Claimant felt sharp pain and continued to work with recurring pain for three days and on third day, pain so intense hospitalized); Randolph v. Fiske-Carter Construction Co., 240 S.C. 182, 125 S.E.2d 267 (1962); (accident 5/20/60; heart attack 11/6/60 - 6 months later).

Finally besides the fact that as to when the myocardial infarction specifically occurred was not paramount to the decision of the issues before the Commissioner, while trying to bootstrap Commissioner Beck's dicta decision, which they admit was is not the law of the case, into establishing a fact as to when the myocardial infarction occurred, the Defendants did not ask any one of the treating doctors as to when in their opinion the myocardial infarction occurred and also did not specifically ask the question "Doctor, in your opinion did the myocardial infarction occur on the 28th?" There was simply no evidence before Commissioner Barden on that specific issue and for her to make a decision in that regard, specifically as to the position of the Defendants,

would make her decision the subject of and based on surmise, conjecture or speculation.¹ The issue is without merit.

II. THE COMMISSION DID NOT ERR BY FAILING TO MAKE A FINDING ON THE NON-ESSENTIAL ISSUE AS TO THE DATE THAT THE CLAIMANT SUFFERED A PLAQUE RUPTURE.

As is set out in Argument I, there is simply no requirement that the Commissioner make a Finding of Fact as to the time of the plaque rupture. The Commissioner was charged with making Findings of Fact as to whether or not the Claimant's injuries to his heart stemmed from the work-related accident and as to whether he had sustained compensable injury by accident.

Quoting from Commissioner's Finding of Fact No. 9:

"three physicians have all opined to a reasonable degree of medical certainty that the electric shock ultimately resulted in Claimant's heart attack, regardless of the date on which the infarction occurred"

She goes on to quote explicitly from all the doctors' depositions supporting that Finding.

It is somewhat ironic that the Defendants would cite the case of Cross v. Concrete Materials, 236 S.C. 440, 114 S.E.2d 828 (1960) in support of this argument in that in the Cross case benefits were denied because there was simply a lack of medical opinion evidence stated to a reasonable

¹ Without citation, the Appellants state that the plaque rupture was "contemporaneous" with the myocardial infarction which is simply not accurate. See Dr. Lide Depo. Tr., pp. 17-19.

degree of certainty that the Claimant's condition stemmed from the accident. The Cross case simply stated black letter law which is that, "when testimony of medical experts is relied upon to establish causal connection between an accident and subsequent disability or death, in order to establish such, the opinion of the experts must be at least that the disability or death 'most probably' resulted from accidental injury." (Emp. add.) In this case, not only one (1) but three (3) different doctors all testified that in their opinion to a reasonable degree of medical certainty the Claimant's injuries to his heart stemmed from the work-related electrocution injury. There is simply no requirement that the Commissioner make a Finding as to the time when the plaque rupture occurred. The Claimant would also point out that the Commission's review of the evidence before Commissioner Barden will establish that plaque rupturing resulting in a blockage and myocardial infarction which led to the septal defect is only one of the scenarios that the doctors opined could have resulted from the electrical shock. (See footnote 1). However there is no question or difference of opinion in any of the three (3) doctors who treated the Claimant (and particularly Dr. Travis who did the heart surgery, held the Claimant's heart in his hand, and who witnessed the entrance and exit wounds

in his heart), that the electrical shock caused the injuries to his heart. The issue is without merit.

III. THE COMMISSION DID NOT ERR BY FAILING TO MAKE A FINDING ON THE NON-ESSENTIAL ISSUE OF WHAT CAUSED THE PLAQUE RUPTURE IN THE CLAIMANT'S HEART.

As set out in Argument I and II, the essential factual issue before the Commission for decision was whether or not the Claimant proved by a preponderance of the evidence that he had sustained compensable injury by accident and that that injury resulted in the injuries to his heart. The issue is without merit.

IV. THE COMMISSION DID NOT ERR BY FAILING TO FIND A DATE ON WHICH THE CLAIMANT SUFFERED A MYOCARDIAL INFARCTION.

For all the reasons as set forth in Argument I, II, and III and without again quoting Finding of Fact #9 quoted in Argument II, the same legal arguments and factual arguments apply and the issue is without merit.

V. THE COMMISSION DID NOT ERR BY RELYING ON DR. TRAVIS' MEDICAL OPINIONS AS EXPRESSED BOTH IN WRITTEN DOCUMENTS AND IN HIS DEPOSITION TESTIMONY.

This argument made by the Defendants by pulling "piece-mill" out of Dr. Travis' deposition does not reflect his opinions as expressed in the deposition and as previously expressed in his written report. On p. 22, ll. 20-25, the doctor specifically reiterated that his opinions as expressed in his letter of September 30th represented his

opinions concerning the causation of the Claimant's problems. Then on p. 23, l. 1 - p. 25, l. 9, the doctor went through and specifically detailed the sequence of events that occurred and the problems that resulted from the electrical shock leading to all of the injuries to the heart and to his need for treatment, at the end of which on p. 25, l. 6 through l. 9, the doctor again stated his opinion specifically:

"But that electrical shock was the thing that pushed the first domino over and everything that we saw after that followed it. That's just my opinion."

Then again on p. 26, the doctor reiterated again:

"Q: Doctor, this is a report that was issued on September 30th. I believe you dictated that, does that represent your opinions in reference to the causation issue and your opinions about what caused Mr. Winfrey's condition?

A: That is correct.

Q: Is that your opinion to a reasonable degree of medical certainty?

A: It is."

Travis Depo. Tr., p. 26, ll. 6-11, marking of exhibit 9/30 report and quotation, ll. 12-20.)

The issue is without merit and is a total misstatement of the doctor's testimony.

VI. THE COMMISSION DID NOT ERR IN RELYING ON THE WRITTEN MEDICAL OPINION AND THE TESTIMONY OF DR. LIDE IN MAKING ITS FINDINGS AND RULING.

Quoting from Dr. Lide's deposition, p. 39, ll. 6-14:

Q: "But in your opinion, based on this history and everything you observed and your conversations with Mr. Winfrey and this history and development of his problems, is it your opinion that - - that this electrical shock, is it still your opinion that this electrical shock caused all the problems that lead to him coming to see you?

A: That is my opinion.

Q: Ok.

A: - - that - - that the electrical shock was the approximate cause of -
- of all this illness.

Q: Ok and that is stated to a reasonable degree of medical certainty?

A: As certain as I can be."

The issue is without merit.

VII. THE COMMISSION DID NOT ERR BY RELYING ON THE WRITTEN AND TESTIMONIAL OPINIONS EXPRESSED BY DR. GREENFIELD IN MAKING HER FINDINGS OF FACT THAT THE CLAIMANT HAD SUSTAINED COMPENSABLE INJURY.

Quoting from p. 21, ll. 2-6, Dr. Greenfield testified:

"Q: Ok. Alright. And the opinion that you were kind enough to write to us, you -
- that still remains your opinion to a reasonable degree of medical certainty?

A: Right."

The Hearing Commissioner did not err by relying on the opinions of Dr. Greenfield. The issue is without merit.

VIII. THE COMMISSION DID NOT ERR IN FINDING OF FACT #7 BY FINDING THAT THE CLAIMANT BEGAN SWEATING THE NIGHT OF THE ELECTRICAL SHOCK.

While as set forth below the evidence supports the Commissioner's Finding, before addressing this issue by setting out the evidence that supports the Finding, according to the medical expert testimony whether or not and when the Respondent sweated is totally irrelevant and is absolutely unimportant in reference to the issues before the Commissioner for decision or in reference to a myocardial infarction. Therefore, this issue was nothing but the Appellants trying to get the Commission to chase rabbits, which is an old saying that comes from fox hunting. When your dogs are on the scent of the fox and you are on the, "hunt", you don't want your dogs to start chasing rabbits and want them to keep their eye on the prize, the fox.

Dr. Lanneau Lide testified:

"Q: And that is a symptom of suffering from a myocardial infarction; is that right?

A: That is a symptom of suffering from illness. Period.

Q: Okay.

A: That is so non-specific a symptom that it doesn't tell you. It doesn't lead you in any - - any specific direction."

* * *

"Q: His sweating didn't start until 24 hours after the electrical shock, would that be indicative of when the myocardial infarction occurred?

A: I don't think that - - I don't think you can time anything by the onset of sweating."

(Tr. p. 20, l. 25 - p. 21, l. 7; p. 21, ll. 19-24).

With that point made, in reference to the Commissioner's Finding, Dr. Karen Greenfield in her deposition at p. 8, ll. 15-18, gave the following answer:

"A: The only thing that I wrote down there was - - I guess it was on Thursday when he was shocked. And he said he had some sweating issues that evening - - ."

In her report found at Claimant's APA Submissions, Tab 3, p. 66, she recorded:

"Rotisserie shock on Thursday, sweated Thursday PM."

The testimony of the Claimant on sweating was to being drenching wet sweating on Friday morning. (Tr., p. 31; ll. 10-17). The issue is without merit.

IX. THE COMMISSION DID NOT ERR IN MAKING FINDING OF FACT #9 THAT ALL THREE (3) TREATING PHYSICIANS HAD OPINED THE ELECTRICAL SHOCK RESULTED IN CLAIMANT'S HEART ATTACK (ACTUALLY HEART RELATED INJURIES) AND NOT INCLUDING A DATE ON WHICH THE, "HEART ATTACK" OCCURRED.

In this argument, the Appellants make another attempt to change the issue that was before Commissioner Barden and the Full Commission. The issue was and is did the Respondent sustain compensable injury to his heart as a result of the admitted electrocution injury by accident. The Commission properly addressed that in Finding of Fact #9. The Hearing Commissioner made very copious and detailed reference to the testimony and evidence upon which she relied in making her Findings. The issues before her and her Finding are best summed up from the Commissioner's Order:

"After due and proper consideration of the testimony and evidence presented, I find that Mr. Winfrey has sustained his burden of proof by proving by a preponderance of the evidence that he sustained compensable injury to include specifically injury to his heart as a result of the electrical shock that occurred on May 22, 2013, and specifically including that the electrical shock resulted in the Claimant's heart attack, myocardial infarction, and ventricular septal defect (VSD), and including the specific entrance and exit wounds and damage to the heart as described by Dr. Travis all being physical injuries to the heart stemming from this accident."

The Appellants again are simply trying to have this

Court force the Commission into making a decision and a Finding that is not necessary or required by law and in fact ignoring much of the damage done to the Claimant's heart as a result of the electrocution. Further, Finding of Fact #9 must be read in conjunction with all the other Findings and particularly Finding of Fact #10 where the Commissioner gave great weight to the opinions of Dr. Travis and Dr. Lide who, "both opined that the heart condition is causally related." The issue is patently without merit.

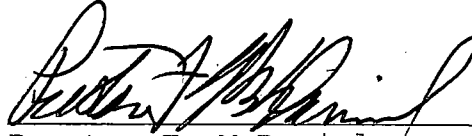
CONCLUSION

For all the foregoing reasons, the Decision of the Commission should be affirmed by this Court. Further, based on a review of this appeal under the substantial evidence standard and the Appellants' failure to submit legal authority for any proposition of law to support any statements or argument made², the Respondent would request

² The Appellants make nine (9) arguments encompassing twenty-one (21) pages of argument and cite and quote one case, Cross v. Concrete Materials, supra, quoted identically three (3) different times. The Appellants then distort and misapply the Cross quote which in pertinent part is that there must be "proof of any essential element of the claim." The Appellants after the quote (again identically/repeatedly quoted at pages 10, 12 and 14) state that, "A finding of compensability for the ventricular septal defect . . ." is required. The Appellants then cite no authority for this proposition that this is an "essential element of the claim". Cross, supra, simply applied the time honored "most probable" standard to medical opinion evidence and its actual holding establishes the frivolous nature of the Appellants' quotation. Quoting the holding in Cross, supra, "Our rule is different and has been many times applied. It is that the Court will affirm a factual finding of the Commission if there is any competent evidence in the Record to sustain it, and reverse only if there is not." The essential element is simply causal relationship between the accident and injury to the heart. The Commission has spoken. Any question about the lack of merit of this date/time argument is taken away by the Supreme Court decision in Randolph v. Fiske-Carter Construction Co., supra, especially as to time.

a decision as to each argument made as to whether it has any merit or a general statement by the Court as to whether the appeal has any merit.

Respectfully submitted,



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Attorneys for Respondent

December 14, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RECEIVED

DEC 15 2015

Appellate Case No. 2014-001788 SC Court of Appeals

Clarence Winfrey, Employee, Claimant, Respondent,

v.

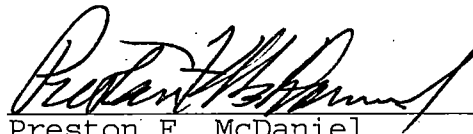
Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group, Carrier, Appellants.

PROOF OF SERVICE

I certify that I have served the RESPONDENT'S INITIAL BRIEF
and RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL by depositing a copy of it in the United States
Mail, postage prepaid, on December 14, 2015 addressed to:

Brett H. Bayne, Esquire
McAngus, Goudelock & Courie
Post Office Box 12519
Columbia, SC 29211

Dated: December 14, 2015



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for over 30 years.

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December 14, 2015

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DEC 15 2015

SC Court of Appeals

Honorable Jenny Abbott Kitchings
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. Kitchings:

Please find attached the original and one (1) copy of the **RESPONDENT'S INITIAL BRIEF** and **RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** in the above-referenced matter. I would appreciate your returning the clocked-in copies to me in the enclosed self-addressed, stamped envelope.

By copy of this letter I am hereby serving Counsel of Record with a copy of this document.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Brett H. Bayne, Esquire



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