RECEIVED

FEB 23 2016

SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from the South Carolina Workers' Compensation Commission

---

Opinion No. 5370 (S.C. Ct. App. filed Dec. 9, 2015)

Ricky Rhame,

Respondent,

v.

Charleston County School District,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

YOUNG CLEMENT RIVERS LLP

Stephen L. Brown
Catherine H. Chase
Leslie M. Whitten
25 Calhoun Street, Suite 400
P. O. Box 993 (29402)
Charleston, SC 29401
(843) 720-5488
(843) 579-2983 (facsimile)
SBrown@ycrlaw.com
CChase@ycrlaw.com
LWhitten@ycrlaw.com

Attorneys for the Petitioner
Charleston County School District

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Rules

CERTIFCATE OF COUNSEL

The Court of Appeals issued its decision on December 9, 2015. (App. p. 1.) Counsel for petitioner certifies that the petition for rehearing was made on December 22, 2015, (App. pp. 22-36), and denied on January 21, 2016. (App. p. 37.)

QUESTIONS PRESENTED

1. Did the Court of Appeals err in requiring the Claimant's repetitive trauma injury to be permanent before allowing the statute of limitations clock to begin?

2. Did the Court of Appeals err in concluding that there was not substantial evidence to affirm the South Carolina Workers' Compensation Commission's finding that the Claimant's repetitive trauma injury was barred by the statute of limitations?

INTRODUCTION

This petition for certiorari presents that it is patently absurd to have a claimant be eligible to receive treatment under the Act for a repetitive trauma injury yet the same injury not begin the statute of limitations clock.

STATEMENT OF CASE

The Claimant/Respondent Ricky Rhame ("Claimant") filed a Form 50 with the South Carolina Workers' Compensation Commission ("Commission") on September 29, 2009 alleging that he sustained a compensable injury by accident to his back and neck on May 4, 2009. (App. p. 157.) The Claimant alleged that "[he] sustained a back injury from repetitively picking up heavy AC units" and gave notice of the injury to the Employer on May 4, 2009. (App. p. 157.) The Employer/Petitioner, Charleston County School District ("School District"), filed a Form 51 denying the injury alleged and asserted notice and statute of limitations defenses. (App. p. 158.) On November 18,

2009, in the Claimant's pre-hearing brief, he amended his Form 50 "[t]o reflect repetitive trauma for the nature of the injury." (App. p. 160.)

This case was heard before Commissioner Avery Wilkerson ("Single Commissioner") on December 3, 2009. (App. p. 131.) At the hearing before the Single Commissioner, the Claimant argued that he was entitled to compensation for a repetitive trauma injury pursuant S.C. Code Ann. § 42-1-172 (Supp. 2009). (App. p. 230, line 15 – p. 231, line 18.) The School District argued, among other defenses, that the Claimant failed to provide proper notice and failed to timely bring his repetitive trauma injury claim within two years of when he knew or should have known that his injury was compensable. (App. p. 231, line 19 – p. 232, line 16.)

The Single Commissioner found that "the Claimant suffered a compensable repetitive trauma injury on or about May 5, 2009, to his back, right hip, and right lower extremity arising out of and in the course and scope of his employment with Charleston County Schools." (App. pp. 137-138, ¶ 4.) The Single Commissioner also found that the Claimant "provided timely notice to his employer of the repetitive trauma work injuries" and "filed his workers' compensation claim within the applicable statute of limitations." (App. p. 138, ¶¶ 8, 10.) The Single Commissioner concluded that the Claimant suffered a compensable repetitive trauma injury under § 42-1-172. (App. p. 139, ¶ 4.)

The School District timely filed a Form 30 Request for Commission Review of the Single Commissioner's Decision and Order and asserted, among other errors, that the Single Commissioner erred in finding that the Claimant filed his claim within the appropriate statute of limitations. (App. pp. 166-167.) The Claimant did not file a Form 30 Request for Commission Review of the Single Commissioner's decision. The parties

submitted briefs to the Commission, and an Appellate Panel of the Commission heard the matter. (App. pp. 168-177; App. pp. 178-187; App. p. 141.)

By unanimous vote, the Appellate Panel reversed the Single Commissioner's Decision and Order and made its own findings of fact and conclusions of law. (App. pp. 141, 153-155.) The Appellate Panel found that the Claimant "was aware that he had a back injury related to his job with the Charleston County School District since 1994 or 1995" and "was aware of the existence of a Workers' Compensation system by no later than 2006." (App. p. 153, ¶¶ 2, 8.) The Appellate Panel found that the Claimant "was not coerced into waiting to file a claim and was never told he would be laid off if he brought a claim or that his claim would be taken care of." (App. p. 154, ¶ 9.) After finding that the Claimant "did not file a Workers' Compensation claim within two years of when he knew or should have known that his claim was compensable," the Appellate Panel denied the Claimant's claim for a repetitive trauma injury to his back because of his "failure to timely file a claim." (App. pp. 154-155.)

The Claimant filed a Petition for Rehearing with the Commission. (App. pp. 188-194.) The School District filed its reply to the petition. (App. pp. 195-203.) Among its arguments, the School District asserted that the Commission did not have the authority to rehear a matter which had already been reheard by the Commission at the Appellate Panel hearing. (App. pp. 197-199.) The Commission dismissed the petition. (App. p. 156.)

More than 30 days after his receipt of the Appellate Panel's decision, the Claimant served and filed his notice of appeal to the Court of Appeals. (App. p. 3.) The Court of Appeals dismissed the Claimant's appeal as untimely, holding that petitions for

rehearing are not applicable in matters before the Appellate Panel; thus, the Claimant's petition for rehearing did not stay the time for the Claimant to appeal to the Court of Appeals, and the Claimant's notice of appeal on October 21, 2010 was well after the applicable deadline. (App. pp. 8-13.) The Supreme Court reversed the Court of Appeals on the issue of whether the Claimant's appeal was untimely and remanded the case to the Court of Appeals. (App. p. 14-21.)

After oral argument, the Court of Appeals issued an opinion reversing the Commission's finding that the Claimant's claim for a repetitive trauma injury to his back was barred by the statute of limitations. (App. pp. 1-7.) The Court of Appeals disagreed with the Appellate Panel's factual findings that the Claimant suffered a back injury in 1994 or 1995. The Court of Appeals also found that there was not substantial evidence to support that the Claimant failed to file his claim within two years of when he knew or should have known that his claim was compensable. The court reversed the Appellate Panel's decision and reinstated the Single Commissioner's award of benefits.

ARGUMENT

The Court of Appeals erred in concluding that the Claimant's injury was required to be permanent in order to begin the statute of limitations clock. The South Carolina Workers' Compensation Act ("the Act") does not require that an injury be permanent in order for an employee to receive medical treatment or compensation. As such, requiring a "permanent injury" or "permanent restriction" in order to apply the statute of limitations is erroneous and contrary to the strict construction required on workers' compensation statutes. See Wigfall v. Tidelands Utilities, Inc., 354 S.C. 100, 110, 580

S.E.2d 100, 105 (2003).

The Court of Appeals erred in reweighing the evidence and concluding that there was not substantial evidence of the Claimant's back injury more than two years before the filing of the claim. The South Carolina Administrative Procedures Act governs judicial review of the Commission's decisions and establishes the "substantial evidence rule" as the standard for reviewing the Commission's factual findings. S.C. Code Ann. § 1-23-380 (Supp. 2015); Lark v. Bi-Lo, Inc., 276 S.C. 130, 133, 276 S.E.2d 304, 305 (1981). An appellate court can reverse or modify the Commission's decision *only if* the Claimant's "substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Shealy v. Aiken County, 341 S.C. 448, 454, 535 S.E.2d 438, 442 (2000); see § 1-23-380(5)(d),(e).

> Where there is a conflict in the evidence, either by different witnesses or in the testimony of the same witness, the findings of fact of the Commission are conclusive. Glover v. Columbia Hospital of Richland County, 236 S.C. 410, 114 S.E.2d 565 (1960). Indeed, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Moore v. City of Easley, 322 S.C. 455, 472 S.E.2d 626 (1996). An appellate court may not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agency's findings are clearly erroneous in view of the reliable, probative, and substantial evidence on the record. Rodney v. Michelin Tire Corp., 320 S.C. 515, 466 S.E.2d 357 (1996). Workers' compensation awards must not be based on surmise, conjecture or speculation. Kennedy v. Williamsburg County, 242 S.C. 477, 131 S.E.2d 512 (1963).

Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 338-39, 513 S.E.2d 843, 845 (1999). "The substantial evidence test 'need not and must not be either judicial fact-

finding or a substitution of judicial judgment for agency judgment;' and a judgment upon which reasonable men might differ will not be set aside." Holmes v. Nat'l Serv. Indus., Inc., 395 S.C. 305, 308-09, 717 S.E.2d 751, 752 (2011) (*quoting* Lark, 276 S.C. at 136, 276 S.E.2d at 307). "Whether [the claimant] knew or should have known that her sarcoidosis was related to her employment with National over two years before filing her claim in 2005 is a question of fact for the commission." Id. at 309, 717 S.E.2d at 753; see also Murphy v. Owens Corning, 393 S.C. 77, 83, 710 S.E.2d 454, 457 (Ct. App. 2011) (deferring to the Commission as the fact finder regarding when the claimant knew or should have known her repetitive trauma injury was work related). Similarly, here the question of whether the Claimant knew that his back injury was related to his employment more than two years before filing his claim in 2009 was a question of fact for the Commission.

I. The Act does not require permanency for the statute of limitations to begin on a claim.

The Court of Appeals erred in concluding that the Act required a "permanent injury" or a "permanent restriction" to trigger the statute of limitations for a repetitive trauma injury.

In 2007, the legislature greatly revised the Act. These revisions included adding § 42-1-172 to establish when a repetitive trauma injury may be compensable and revising S.C. Code Ann. § 42-15-40 (Supp. 2015) to specifically set forth when the right to compensation for a repetitive trauma injury is barred. 2007 Act No. 111, Part I, §§ 7 & 26. These revisions apply "to injuries that occur on or after" July 1, 2007. Id., Part IV, § 2.

Prior to the 2007 revisions, compensability for repetitive trauma injuries was determined under S.C. Code Ann. § 42-1-160 (Supp. 2001), "'Injury' and 'personal injury' defined." See Pee v. AVM, Inc., 352 S.C. 167, 174, 573 S.E.2d 785, 789 (2002) (finding a repetitive trauma injury meets the definition of injury by accident). On the same day that Pee was decided, the Supreme Court also addressed how to apply the statute of limitations of the Act, S.C. Code Ann. § 42-15-40 (Supp. 2001), to a repetitive trauma injury in Schurlknight v. City of N. Charleston, 352 S.C. 175, 179, 574 S.E.2d 194, 196 (2002).

Prior to Schurlknight, the Supreme Court held the discovery rule as it relates to the statute of limitations also applied to Workers' Compensation actions. Mauldin v. Dyna-Color/Jack Rabbit, 308 S.C. 18, 21-22, 416 S.E.2d 639, 641 (1992) (concluding that the Claimant's discovery of a compensable knee injury was the date when it was discovered that her knee problem resulted from a previous work accident). The Schurlknight court, however, rejected the application of the discovery rule—that the two-year time period of the § 42-15-40 began to run when the claimant knew or should have known he had a compensable injury—for repetitive trauma injuries and instead looked to how other jurisdictions addressed the statute of limitations for repetitive trauma injuries. Id. at 177-78, 574 S.E.2d at 195. After concluding that using the "last day of exposure" as the date from when the statute of limitations begins to run was consistent with the Supreme Court's liberal construction of the Act and provided "the added advantage of fixing an outside date for filing that avoids the need to litigate the date of injury," the Schurlknight court held that the "last day of exposure" rule applied to repetitive trauma injury claims. Id. at 178-79, 574 S.E.2d at 195-96.

In 2007 Act No. 111, the legislature specifically rejected the "last day of exposure" rule established by the Schurlknight court for repetitive trauma injury claims and added the following language to § 42-15-40:

> For a "repetitive trauma injury" as defined in Section 42-1-172, the right to compensation is barred unless a claim is filed with the commission **within two years after the employee knew or should have known that his injury is compensable** but no more than seven years after the last date of injurious exposure. **This section applies regardless of whether the employee was aware that his repetitive trauma injury was the result of his employment**. . . .

§ 42-15-40 (emphasis added).[1] "The legislature is presumed to be aware of [the] Court's interpretation of its statutes." State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 188, 525 S.E.2d 872, 879 (2000) (*citing* Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 778 (1997) ("[T]here is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.")).

"The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature." Wigfall, 354 S.C. at 110, 580 S.E.2d at 105 (noting "when reading a workers' compensation statute we strictly construe its terms, leaving it to the Legislature to amend and define its ambiguities"). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Kiriakides v. United Artists Commc'ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

The legislature's 2007 revision to § 42-15-40 to include the plain language of the discovery rule—that a repetitive trauma injury claim is barred unless filed "within two years after the employee **knew or should have known** that his injury is compensable"—is clear and manifestly reflects the legislature's intent to expressly apply the discovery rule to repetitive trauma injury claims. See Henry-Davenport v. School Dist. of Fairfield County, 391 S.C. 85, 86-89, 705 S.E.2d 26, 27-28 (2011) (holding the legislature, in enacting S.C. Code Ann. § 59-54-15 in 1998, overruled the Court's prior decision on the same issue).

The plain and unambiguous language of § 42-15-40 must be applied. "If a statute's language is plain, unambiguous, and conveys a clear meaning, 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" Id. at 88, 705 S.E.2d at 28 (*quoting* Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 582 (2000)). "For a 'repetitive trauma injury' . . ., the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable . . . ." § 42-15-40.

The Act does not require that an injury be "permanent" in order for an employee to receive medical treatment (S.C. Code Ann. § 42-15-60 (Supp. 2015)) or compensation (S.C. Code Ann. §§ 42-9-10 to -30 (Supp. 2015)). In fact, medical treatment is to be provided "for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the commission will tend to lessen the period of disability . . . ." § 42-15-60. There is no language limiting the

---

[1] Bass v. Isochem, 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005) was decided under the "last day of injurious exposure" rule and relates to the notice statute, S.C. Code Ann. § 42-15-20 (Supp. 2005), and not the statute of limitations, § 42-15-40.

provision of medical treatment to permanent injuries, but instead the treatment is provided to effect a cure or lessen the period of disability, that is, to eliminate or prevent any permanent injury or any permanent restrictions. To apply the statute of limitations clock as not beginning to run until the Claimant knew or should have known that he had a "permanent injury" or a "permanent restriction" adds the requirement of permanency to § 42-15-40 which is not in the plain and unambiguous language of the statute and is inconsistent with other provisions of the Act. This is also inconsistent with the application of the discovery rule to the statute of limitations in all cases. See Dean v. Ruscon Corp., 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996) ("[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial [for the application of the discovery rule]."); see also Young v. S.C. Dep't of Corrections, 333 S.C. 714, 719-20, 511 S.E.2d 413, 416 (Ct. App. 1999) (finding that the statute of limitations is not tolled during the period of time when the plaintiff was merely unaware of the extent of an actionable injury) ("[W]hether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.") Clearly, the legislature did not intend to have a permanency requirement in § 42-15-40.

One can only imagine the abuses, chaos, and lack of certainty which the Court of Appeals' opinion may bring from employees who admit they had on-the-job injuries yet file untimely claims as they never realized the injuries was "permanent." How long will or should the Commission allow someone to have an admittedly work-related back injury before it reaches the judicially mandated "permanent" mark to commence the running of

the statute of limitations?[2] This case presents a novel issue of how to apply § 42-15-40, including the language which specifically incorporates the discovery rule for repetitive trauma injuries, and is at conflict with this Court's application of the discovery rule in Dean, 321 S.C. at 364, 468 S.E.2d at 647. Rule 242(b), SCACR.

Even if the Court of Appeals' application of a requirement of "evidence of the possibility of a permanent injury" was proper, then the March 19, 2007 notation in the Claimant's medical records that "[h]e may be at risk because of his job to get lumbar problems"[3] in combination with the Claimant's own testimony, which is discussed below, that he knew he had an injury to his back for more than two years is more than substantial evidence to support the Commission's findings.[4]

II. The Claimant knew or should have known his injury was compensable for more than two years before filing his claim.

The Court of Appeals erroneously substituted its judicial judgment and reweighed the evidence in the record which clearly supported the Commission's finding that the Claimant knew or should have known that his injury was compensable more than two years before his claim was brought in September 2009. While the term "compensable" is not defined under the Act, the court in King v. International Knife and Saw-Florence noted that it must determine when a repetitive trauma injury became compensable for the purpose of determining whether notice was timely. 395 S.C. 437, 444, 718 S.E.2d 227,

---

[2] Likewise, the "permanency" requirement may impact many claimants who seek benefits but are not permanently injured.

[3] (App. p. 315). The Claimant filed his claim on September 29, 2009, more than two years after March 19, 2007. (App. p. 157).

[4] Even the Claimant's own counsel admitted in his Petition for Rehearing to the Commission, that the Claimant's allegations of a repetitive trauma injury occurred "both

230 (Ct. App. 2011). The King court noted:

> Our supreme court has long recognized that the Act entitles employees injured at work to compensation on only two bases, lost earning capacity and specific, scheduled injuries. Wigfall, 354 S.C. at 104, 580 S.E.2d at 102 (citing Jewell v. R.B. Pond Co., 198 S.C. 86, 90–91, 15 S.E.2d 684, 686 (1941)); *see also* §§ 42–1–100, 42–9–10 to –30, & 42–15–60 (establishing and describing compensation for (1) medical care or treatment for a work-related injury and/or (2) disability). Accordingly, a work-related repetitive trauma injury does not become compensable, and the ninety-day reporting clock does not start, until the injured employee discovers or should discover he qualifies to receive benefits for medical care, treatment, or disability due to his condition.

Id., 718 S.E.2d at 230-31. The King court concluded that the claimant's "condition was not compensable until it either required medical care or interfered with his ability to perform his job, whichever occurred first." Id. at 445, 718 S.E.2d at 231. Similarly, the statute of limitations clock should not start until the injured employee discovers or should discover the injury either requires medical care or interferes with his ability to perform his job, whichever occurred first, i.e., when his claim becomes compensable.

The Court of Appeals' requirement that the Claimant receive a diagnosis of a permanent injury for his repetitive trauma injury to be compensable is inconsistent with the King court's conclusion that an injury is compensable when "it either required medical care or interfered with his ability to perform his job, whichever occurred first." Id. Further, the standard is not whether the Claimant was aware or knew that his claim was compensable, much less permanent. The statute of limitations clock begins to run when the Claimant "knew *or should have known*" that his injury was compensable. § 42-

---

before and after July 1, 2007." (App. pp. 190-191.) As such, the Claimant's own counsel admits that the Claimant's claim is barred by the current statute of limitations.

15-40.[5] Actual knowledge is not a requirement of the statute. It was improper of the Court of Appeals to require such knowledge. Additionally, temporary injuries are compensable under the Act, see § 42-15-60, even those injuries brought on by repetitive trauma injuries, see § 42-1-172. It is patently absurd to have a claimant be eligible to receive treatment under the Act for a repetitive trauma injury yet the same injury not begin the statute of limitations clock.

The Commission's findings are supported by substantial evidence in the record. The Commission found:

> 2. That the claimant **was aware that he had a back injury related to his job with Charleston County School District since 1994 or 1995**.
>
> 3. That the claimant **continued to receive pain medications, injections, and physical therapy** from various physicians related to his work injury **since 1994 or 1995.**
>
> 4. That the claimant **missed days from work on and off from 1994 and 1995** due to ongoing pain in his back.
>
> . . .
>
> 10. That the claimant did not file a Workers' Compensation claim within two years of when he **knew or should have known** that his claim was compensable.

(App. pp. 153-154, ¶¶ 2-4, 10 (emphasis added).) These factual findings of the Appellate Panel are supported by the Claimant's own testimony at his deposition and at the hearing before the Single Commissioner and by his medical records. The Claimant's condition

[5] See also Dean, 321 S.C. at 364, 468 S.E.2d at 647 ("[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial [for the application of the discovery rule]."); see Young, 333 S.C. at 719-20, 511 S.E.2d at 416 ("[W]hether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge

was compensable prior to June 2006 when he required medical treatment and would miss time from work. See King, 395 S.C. at 445, 718 S.E.2d at 231. **The Claimant testified that since the mid-1990s he knew that his back was hurting and that his job was causing it.** (App. p. 207; p. 215, line 3 – p. 216, line 13; p. 218, lines 5-16; p. 246, lines 3-24; p. 255, lines 17-20; p. 260, lines 5-8.)

> Q: . . . [A]t what point did you know, [m]y back is hurting and my job is causing it.
> A: Probably back when I was working for Buddy [in the mid-'90s[6]].
> Q: Okay.
> A: Because I was out at one time when I was with Buddy because my back had given me so much problems, I had to seek medical attention.
> Q: Okay. And who did you go to back then?
> A: Dr. Pappas.

(App. p. 217, lines 6-14.)

> Q: What accidents have you had?
> A: About – about 1994, '95, somewhere along then, I'm not sure exactly of the date, but I was working for Buddy Parson and we were doing a lot of pulling out units and cleaning them throughout the schools. And, well, after so long of doing that my back begin to burn like fire. And I told him I couldn't continue to doing this by myself because of the pain that it was causing me. He said, well, the job has got to get done. And at that time nobody wanted to get laid off or worried about their job. So, I continued doing the best I can for another day or so and I couldn't do it no more after that.
> Q: Okay.
> A: Then I had to go and – to my doctor to seek medical attention –
>
> . . .
>
> Q: . . . . This time period you're talking about was around '94 or '95?
> A: Yes, sir.

---

and experience on notice that some right of his has been invaded, or that some claim against another party might exist.").

[6] (App. p. 211, line 25 – p. 212, line 4.)

(App. p. 235, line 23 – p. 236, line 20.) By the mid-1990s, the Claimant knew that he had a back injury which required medical treatment and was related to his employment. His failure to take action in a timely manner should not be rewarded or encouraged. Such a ruling opens the door for time barred claims and undermines the general principles of the Act that injuries should be reported promptly and compensation dealt with in a timely and efficient manner.

The Claimant testified that he went out of work for his back in the mid-1990s and saw his own doctor, Dr. T. Pappas, over the years for this problem. (App. p. 260, line 5 – p. 261, line 5; App. p. 224, lines 19-22; p. 225, line 20 – p. 226, line 4; *see* App. pp. 309-310, 315.) He testified that he knew his back pain required medical treatment, time away from work, and was related to his work.

> Q: As we're sitting here now, are you – well, can you tell me that you had – you've had low back pain for several years and that you've known all along it was related to work?
>
> . . .
>
> A: I went – when I started having back troubles with my back I went to doctors and they started giving me muscle relaxers and giving me time off so my back could heal. So, yes, ma'am, I did go back to work.
> Q: Yes. **But you knew – you – whether you were out of work or not out of work that your back pain was related to work, right?**
> A: **I would have to say yeah.**

(App. p. 267, line 17 – p. 268, line 19 (emphasis added).)

The Claimant testified that he went to a chiropractor in 2001 and to a physical therapist in 2002 for problems with back pain. (App. p. 261, line 6 – p. 262, line 1; *see* App. pp. 299-310, 317-322.)

> Q: Okay. And you went to a chiropractor in 2001, for your lower back?
> A: Yes, ma'am.
> Q: And did you tell him that you were hurting because you had been lifting AC units at work?
> A: Yes, ma'am.

(App. p. 261, lines 6-11.) Records from his physical therapist, Trident Medical Center, indicate that in 2002 the Claimant attributed his back injury to his job. (App. p. 317 (Claim form indicating **condition related to employment, accident date of January 1, 1999, "hurt back on job," signed by the Claimant on September 19, 2002**); App. p. 321 (record dated September 19, 2002 noting "Date of onset 4-5 yrs"); *see* App. pp. 318-322.) The Claimant testified that he received shots in his back in 2006.

> Q: Okay. So you've had surgery to your neck, what have you had for your low back[?]
> A: A bunch of shots from the hospital at Trident. I had to go two times one day.
> Q: Okay. And when were the shots?
> A: Where?
> Q: When. I'm sorry. About – I know more than once, but –
> A: I think it was in June of '06.
> Q: Okay. Is that the first time you'd ever had injections in your back?
> A: Yes, ma'am. Let's see. I want to say Dr. Pappas give me some injections in my back. I know he did, but I don't know if it was before or after.

(App. p. 220, lines 6-20.)

In January 2009, the Claimant went to Dr. John Johnson with the Southeastern Spine Institute because he "couldn't put it off no longer." (App. p. 225, line 1 – p. 226, line 4; *see* App. pp. 283-284 (indicating back pain since at least 2006 when he injured his neck); *see also* App. p. 215, line 3 – p. 216 line 13; p. 219, lines 2-8.) In April and May

2009, the Claimant reported to Dr. Jeffrey Buncher that he had pain in his lower back which had lasted for years. (App. pp. 290-291, 298.)

The Claimant admitted to the Single Commissioner that Tracy Kessler, the School District's representative, probably wrote down what he told her regarding his repetitive trauma back injury. (App. p. 228; p. 265, line 2 – p. 266, line 6; *see* App. pp. 329-332 (School District's records of the Claimant's report of accident) (noting **"[h]e stated that he was told two years ago that he had a work related issue with his lower back and felt that it wasn't that bad so *he chose not to pursue it* at that time**" and noting the Claimant alleged that lifting equipment over the years at work caused his low back pain) (bold and italic emphasis added).) The Claimant also admitted in his deposition to telling the claims specialist that he had low back pain since 1994 or 1995. (App. p. 215, line 23 – p. 216, line 13; *see* App. p. 297.)

Substantial evidence in the record supports the Commission's findings that the Claimant was aware of a job-related repetitive trauma back injury since 1994 or 1995, that he received treatment for this repetitive trauma injury, that he missed work off and on for this repetitive trauma injury, and that he did not file his claim within two years of when he knew or should have known that his claim was compensable. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492, 541 S.E.2d 526, 528 (2001); Shealy, 341 S.C. at 455, 535 S.E.2d at 442 ("The final determination of witness credibility and the weight to be accorded evidence is reserved to the [Appellate Panel].") (internal citation omitted); see Murphy, 393 S.C. at 83, 710 S.E.2d at 457 (deferring to the Commission as the fact finder regarding when the claimant knew or should have known her repetitive trauma injury was work related). This injury was compensable once medical treatment was

required. See King, 395 S.C. at 445, 718 S.E.2d at 231. The statute of limitations began to run when the Claimant "knew or should have known his injury [was] compensable." § 42-15-40. Clearly, there is substantial evidence that the Claimant "knew or should have known that his claim was compensable" for more than two years prior to filing his claim in September 2009. The Court of Appeals erred in reversing the Appellate Panel, rewriting the statute of limitations, ignoring the factual findings of the Appellate Panel, and conveniently not addressing the law establishing an injury need not be permanent to commence the running of the statute of limitations.

CONCLUSION

For the foregoing reasons, the School District respectfully requests this Court to grant its petition for writ of certiorari, to reverse the Court of Appeals' order, and to affirm the Commission's decision.

[Signature block on following page.]

Respectfully submitted,

YOUNG CLEMENT RIVERS LLP

By: _____

Stephen L. Brown
Catherine H. Chase
Leslie M. Whitten
25 Calhoun Street, Suite 400
P. O. Box 993 (29402)
Charleston, SC 29401
(843) 720-5488
(843) 579-2983 (facsimile)
SBrown@ycrlaw.com
CChase@ycrlaw.com
LWhitten@ycrlaw.com

Attorneys for the Petitioner
Charleston County School District

Charleston, South Carolina

Dated: February 19, 2016

RECEIVED
FEB 23 2016
SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from the South Carolina Workers' Compensation Commission

---

Opinion No. 5370 (S.C. Ct. App. filed Dec. 9, 2015)

Ricky Rhame,

Respondent,

v.

Charleston County School District,

Petitioner.

PROOF OF SERVICE

YOUNG CLEMENT RIVERS LLP

Stephen L. Brown
Catherine H. Chase
Leslie M. Whitten
25 Calhoun Street, Suite 400
P. O. Box 993 (29402)
Charleston, SC 29401
(843) 720-5488
(843) 579-2983 (facsimile)
SBrown@ycrlaw.com
CChase@ycrlaw.com
LWhitten@ycrlaw.com

Attorneys for the Petitioner
Charleston County School District

I, Catherine H. Chase, do hereby certify that a copy of the *Petition for Writ of Certiorari* submitted by the Petitioner and *Appendix* was sent to counsel for the Respondent on February 19, 2016 via email and United States Mail, postage pre–paid and addressed as follows:

Bluestein Nichols Thompson Delgado, LLC
John S. Nichols, Esquire
Blake A. Hewitt, Esquire
P. O. Box 7965
Columbia, SC 29202

Joye Law Firm, LLP
Kenneth W. Harrell, Esquire
Patrick L. Jennings, Esquire
5861 Rivers Avenue
North Charleston, SC 29406

And that a copy of the *Petition for Writ of Certiorari* submitted by the Petitioner was sent to the Clerk of Court for the Court of Appeals on the same day via United States Mail, postage pre--paid and addressed as follows:

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

By: Catherine H. Chase
Catherine H. Chase

Charleston, South Carolina
Dated: February 19, 2016