IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

Jose Juan Jimenez, Employee, ... Appellant

v.

Kohler Company, Self-Insured Employer, ...Respondent.

FINAL BRIEF OF THE RESPONDENT KOHLER COMPANY

Grady L. Beard
Nicolas L. Haigler
Robert E. Horner
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Respondent Kohler

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

Jose Juan Jimenez, Employee, ... Appellant

v.

Kohler Company, Self-Insured Employer, ...Respondent.

FINAL BRIEF OF THE RESPONDENT KOHLER COMPANY

Grady L. Beard
Nicolas L. Haigler
Robert E. Horner
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Respondent Kohler

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF THE ISSUES

I. Did the South Carolina Workers' Compensation Commission Appellate Panel correctly conclude that the claimant failed to establish that his current injuries to his low back/left leg are causally related to injuries by accident arising out of and in the course of employment on July 14, 2011, or March 13, 2012, pursuant to South Carolina Code section 42-1-160?

A. Is the Decision and Order of the Appellate Panel affected by an error of law?

B. Is the Decision and Order of the Appellate Panel supported by substantial evidence?

II. Does the South Carolina Workers' Compensation Commission Appellate Panel's Decision and Order state sufficient Findings of Fact and Conclusions of Law to afford the claimant judicial review?

STATEMENT OF THE CASE

This is the appeal of a workers' compensation case by the Appellant/Claimant Jose Jimenez ("claimant") in an action filed against the Respondent/Defendant Kohler Company ("defendant Kohler"). The claimant had two claims which were consolidated for a hearing before Commissioner T. Scott Beck ("the Hearing Commissioner") by way of the claimant's Form 50s. On W.C.C. claim #1122474, the claimant alleged an injury by accident on July 14, 2011, to his back and his right shoulder (the "July 14, 2011 claim"). (R. p. 39). On W.C.C. claim #1219561, the claimant alleged an injury by accident on March 13, 2012, to his back and legs (the "March 13, 2012 claim"). (R. p. 42). As to both claims, the claimant sought a determination of compensability, the payment of temporary benefits, and authorized medical treatment. (R. pp. 39, 42).

The defendant Kohler denied the claims. (R. pp. 45, 46, 49, 50, 179-92). The issues raised by the Defendant were (1) whether the claimant's current alleged injuries or complaints were, in fact, injuries by accident under South Carolina Code section 42-1-160 that arose out of and in the course of employment on the dates alleged, (2) whether the claimant gave proper notice of an injury by accident; (3) whether the claimant had any pre-existing disabilities, (4) whether Kohler suffered any prejudice due to the claimant's delay in prosecuting his claims, (5) the claimant's credibility, (6) causation of the alleged injuries to the alleged claims being pursued, and (7) laches. (Id.).

The Hearing was held over three days: in Columbia, South Carolina, on May 23, 2014, in Greenville, South Carolina, on June 3, 2014, and in Columbia, South Carolina, on June 4, 2014, before Commissioner Beck. (R. p. 1). By way of Decision and Order filed on October 24, 2014, the Hearing Commissioner determined that the claimant did not sustain a compensable injury by

accident to his low back/legs on July 14, 2011, or on March 13, 2012. (Id.). Specifically, the Hearing Commissioner determined the Claimant failed to meet his burden of proof as to causation under Section 42-1-160 and, therefore, denied the Claimant's claim for benefits. (Id.)

The claimant appealed the Hearing Commissioner's Decision and Order to the Appellate Panel. A hearing was held before the Appellate Panel on March 16, 2015. (R. p. 30). By way of Decision and Order filed April 3, 2015, the Appellate Panel unanimously affirmed the Decision and Order of the Hearing Commissioner, while amending Finding of Fact #9, Finding of Fact #13, and Conclusion of Law #3. (Id.).

The claimant has now appealed the Appellate Panel's Decision and Order to the South Carolina Court of Appeals, arguing that the Commission erred as a matter of law in determining that the claimant did not establish that his alleged current injuries or complaints were causally related to injuries by accident on July 14, 2011, or March 13, 2012, and therefore not compensable under South Carolina Code section 42-1-160. The claimant also argues that the Appellate Panel's decision is not supported by substantial evidence. Finally, the claimant argues that the Commission failed to provide sufficient Findings of Fact and Conclusions of Law to allow sufficient appellate review.[1]

STANDARD OF REVIEW

The Administrative Procedures Act ("APA") governs review of decisions of the South Carolina Workers' Compensation Commission by the Court of Appeals. S.C. Code Ann. § 1-23-380 (2015); Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981). The judicial

[1] The defendant Kohler contemporaneously filed a Motion to Strike portions of the Claimant's Designation of the Record on Appeal as it was not relevant to the issues before the Commission, no evidence on these issues were presented to the Commission at the Hearing to decide compensability, and actually dealt with issues that resolved prior to the Hearing. Additionally, the Defendant is requesting that facts set forth in the Claimant's Statement of Facts relating to the issues, as set forth on pages 4 and 5 of claimant's brief, be stricken from Appellant's Final Brief to this Court, in the event the Motion to Strike the Designation is granted. (This motion was denied).

review of the appellate panel's factual findings is governed by the substantial evidence standard. Gadson v. Mikasa Corp., 368 S.C. 214, 221, 628 S.E.2d 262, 266 (Ct. App. 2006); Frame v. Resort Servs., Inc., 357 S.C. 520, 527, 593 S.E.2d 491, 494 (Ct. App. 2004).

"The claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture or speculation." Nicholson v. S.C. Dep't of Soc. Servs., 411 S.C. 381, 384, 769 S.E.2d 1, 2-3 (2015) (quoting Crisp v. SouthCo., 401 S.C. 627, 641, 738 S.E.2d 835, 842 (2013)).

The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 541 S.E.2d 526 (2001). The Appellate Panel's decision must be affirmed if supported by substantial evidence in the record. Shuler v. Gregory Elec., 366 S.C. 435, 440, 622 S.E.2d 569, 571 (Ct. App. 2005) (citing Sharpe v. Case Produce, Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999)). A reviewing court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. Houston v. Deloach & Deloach, 378 S.C. 543, 550, 663 S.E.2d 85, 88 (Ct. App. 2008). As the South Carolina Supreme Court observed,

> a decision of the Workers' Compensation Commission will not be overturned by a reviewing court unless it is clearly unsupported by substantial evidence in the record. Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached to justify its action. *Quantitatively, substantial evidence is something less than the weight of the evidence.*

Howell v. Pac. Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987) (internal citations omitted) (emphasis added).

The Appellate Panel is the ultimate fact finder in Workers' Compensation cases. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). The final determination of witness

credibility and the weight to be accorded evidence is reserved to the Appellate Panel. See Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000); Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E.2d 366 (1995). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Sharpe, 336 S.C. 154, 519 S.E.2d 102; Muir, 336 S.C. at 282, 519 S.E.2d at 591. Where there are conflicts in the evidence over a factual issue, *the findings of the Appellate Panel are conclusive.* Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002) (emphasis added).

STATEMENT OF FACTS

The claimant originated from Mexico and at the time of the hearing, was 35-years old. (R. pp. 6722-73).[2] The claimant worked for Kohler initially from 2001 through January 2004, and again from February 2004 until his termination in February 2013. (R. p. 674).

The claimant worked in the casting department at Kohler. The claimant testified at the Hearing that on or about July 14, 2011, he felt pain down his leg while lifting a drain pan. (R. p. 676). The claimant continued working that day, but alleged that the next day, he felt more pain. (Id.). On July 15, 2011, an incident report was completed regarding the claimant's complaints and reflects that the claimant denied having any pain but rather only was having a little tightness. (R. p. 476). The claimant was sent to see Kohler's plant nurse, Pat Zimmerman. (R. p. 678). Nurse Zimmerman was the Occupational Health Nurse at Kohler Company for forty-six years until her retirement on February 1, 2014. (R. pp. 481-82). Nurse Zimmerman's notes reflect that the claimant pulled his back the previous day and that he was still sore. (R. p. 532). Nurse Zimmerman

[2] Though the claimant alleged that he did not speak English very well, and he had a translator at the hearing, the overwhelming evidence established that the claimant communicated with his doctors, his coworkers, and other Kohler employees all in English and did not require a translator. This issue went not only to the issue of the claimant's credibility but also whether claimant could blame his various stories on a language barrier. (R. p. 413). The claimant and his witnesses, Jesus Lugo and Yuri Valderamma, were all found not to be credible, as further addressed in the argument below. Moreover, the Hearing Commissioner found Jesus Lugo and Yuri Valderamma's testimony was not relevant to any of the issues before him, which was affirmed by the Full Commission.

provided the claimant with BioFreeze and Back Quell tablets and was advised to use warm soaks over the weekend. (R. p. 174). Nurse Zimmerman's testimony confirmed that the claimant reported to her office on July 15, 2011, and reported he "was draining molds, picked up a slip pan and felt low back pull." (R. p. 485). She advised him to follow-up Monday (the 18th), but the claimant never returned. (R. p. 486).

Despite the fact the claimant complained of soreness that day, he continued to work for the remainder of the day. (R. p. 355). Mike Tolleson, the Safety Specialist at Kohler, testified that at no point between July 15, 2011, and March 12, 2012, did the claimant ever request of him to see a doctor and at no point did claimant report that he had made an appointment with a doctor. (R. pp. 330, 369, 374, 376)[3]. Had he requested an appointment with a doctor, he would have been sent to one and a meeting would have been held regarding his injury and any restrictions an employee may need. (R. pp. 3). Rather, as testified to by the claimant himself, he continued to work full-duty, with no restrictions, from July 14, 2011, until January 2013, or approximately 18 months.[4] (R. p. 697). The claimant admitted he had medical insurance throughout this period of time which would have covered him had he felt the need to see a doctor, but outside of a single Doctor's Care visit in April 2012, the claimant waited until October 2012 to see a doctor for any issues related to his back. (R. p. 698).

With respect to the July 14, 2011, incident, Sam Barnwell, foreman of the casting department and claimant's foreman for approximately four (4) years also testified at the hearing. (R. p. 398; p. 412). He confirmed that the claimant came to him on July 15, 2011, and reported that the claimant felt something in the lower middle part of his back the day before and that

[3] The claimant, in his Statement of Facts, represents that Kohler called its employees as witnesses. This is false, as the claimant called every witness in this case.

[4] The claimant was apparently given a note for light duty work for three (3) days from Doctor's Care in April 2012.

currently his back was tight. (R. p. 399). He further testified that he was the person who completed the Incident Report regarding the July 14, 2011, back tightness. (Id.). Mr. Barnwell confirmed that the claimant reported feeling tightness in his back while emptying a drain pan but there were no allegations of true back pain. (Id.). In fact, the incident report reflects that the claimant could continue to work as he had the day before and that he "felt fine." Mr. Barnwell stated that the claimant was required to go see Nurse Zimmerman due to the report of back tightness. (R. p. 400). Mr. Barnwell further testified that the claimant never came to him after July 15, 2011, but before March 13, 2012, asking to see the nurse or a doctor. (R. pp. 405, 420). The claimant likewise never once complained of back pain to Mr. Barnwell between July 15, 2011, and March 13, 2012.[5] (Id.)

Between July 15, 2011 and March 13, 2012, the claimant never returned to see Nurse Zimmerman for any complaints related to back pain or anything he alleged was associated to the complaints he made on or about July 14, 2011. (R. p. 172-174). Records reveal that the claimant returned to see Nurse Zimmerman once on September 8, 2011, for a shoulder examination that showed a protrusion of bone on his right shoulder. (R. p. 487; p. 174). It was reported that he could "move his arm and shoulder without any pain." (R. p. 173). There was no follow up to this visit. Nurse Zimmerman saw the claimant again on October 2011 for a flu shot. (R. p. 172-174).

Records and testimony reflect that the claimant saw Nurse Zimmerman on March 14, 2012, for a complaint related to his back. (R. p. 488). Regarding this complaint, the claimant testified that felt pain in his back after "rolling over wares" the day before. (R. p. 678). Because of his complaint of pain, an incident report was generated. (R. p. 475). The incident report reflects that on March 13, 2012, the claimant mentioned to Mr. Barnwell in passing that his back was sore and

[5] Both of the incidents were considered to be "near miss" incidents, which was explained as being a minor incident that does not progress to any further injury requiring medical attention. (R. p. 417).

asked if he could have some pain pills from the nurse. (Id.) When asked if he was okay, the claimant stated that he was. The next day the claimant reported that his left leg felt like it was asleep. (Id.). The claimant, however, did not report this complaint on March 13, 2012. (Id.) The claimant was sent to Nurse Zimmerman on March 14, 2012, regarding his complaints. (R. p. 679). The day of the March 13, 2102, incident, Mike Tolleson checked on the claimant because the claimant was casting the whole floor rather than taking it easy or lightening up, and that claimant responded that he was casting the whole floor because he felt fine. (R. pp. 330, 369).

As noted, the claimant stated on both March 13, 2012, and March 14, 2012, that he could continue to work without problems. (R. pp. 349-351; p. 475). Nurse Zimmerman treated the claimant with BioFreeze. (R. p. 173).

Though the claimant was instructed to return to see Nurse Zimmerman on March 15, 2012, for follow-up, Mr. Tolleson and Nurse Zimmerman both confirmed that the claimant failed to return to see her. (R. p. 370; p. 489). In fact, the next time the claimant ever returned to see the nurse was over three months later on June 28, 2012, when he presented with a headache. (R. p. 489; p. 172-74). Nurse Zimmerman testified that she did follow-up with the claimant's foreman, Mr. Barnwell, regarding the claimant's back on March 19, 2012, and was advised claimant was "fine and doing his regular job." (R. p. 489; R. p. 372). Additionally, Mr. Tolleson testified that the claimant reported no further complaints or problems until November 1, 2012, when a meeting was held with the claimant about what the claimant believed were work-related injuries. (R. pp. 375, 431; R. p. 491).

On April 30, 2012, forty-seven (47) days after the alleged March 13, 2012, incident, the claimant went to Doctor's Care. (R. p. 711; R. p. 175). This visit was not with the knowledge of anyone from Kohler. He reported that he had been experiencing back pain for "several days." (R.

p. 711). He reported that his pain was aggravated by lifting. (R. p. 175). The Doctor's Care note states that the claimant had had two other periods of low back pain in the last eleven months. (R. p. 175). He was placed on light-duty for three days and prescribed Ibuprofen. (R. p. 175). Mr. Barnwell testified that to his knowledge, the claimant never asked to be placed on light duty, never worked light duty, and did not tell him about Doctor's Care placing him on light duty. (R. pp. 418, 421). Had the claimant reported a need to be on light duty, he would have been put on light duty. (R. pp. 418, 421). Moreover, the light duty form itself did not indicate that the claimant's light duty was the result of an alleged work-related injury. (R. p. 393).

At the hearing, the claimant was asked what caused him to go to Doctor's Care, to which he testified "I really don't remember, I think it was just during my regular, normal daily routine." (R. p. 712). He did not report any alleged injury by accident related to his April 30, 2012, Doctor's Care visit to Nurse Zimmerman, Mike Tolleson, Sam Barnwell, or Joe Brown, the supervisor of the casting department. (R. pp. 418, 447, 448). Had the claimant reported an incident in April 2012, even as a minor incident or near-miss, it would have been investigated by Mr. Brown. (R. p. 448). The claimant admitted that between July 2011 and March 2012 he worked full duty and never requested any medical treatment. (R. p. 449). Mr. Brown also testified that he was not aware of the claimant asking for medical care from anyone at Kohler between March 14, 2012 and November 1, 2012, when the claimant met with several people at Kohler to discuss his alleged work-related issues. (R. pp. 451-52). Mr. Brown further testified he was never aware of claimant even requesting light duty until January 2013, when claimant had apparently taken a vacation day to go see his doctor. (R. p. 433).

On October 15, 2012, more than 168 days after the claimant last complained of "several day of back pain" to Doctor's Care, the claimant presented to Dr. Savage-Jeter with pain in his

shoulders and back. (R. p. 139). An x-ray of his shoulder was unremarkable, while an x-ray of his back revealed an old coccyx fracture. (R. p. 141). The claimant was referred for physical therapy. Despite the fact the claimant alleged that he injured his back at work on July 14, 2011, when the claimant presented to Dr. Jeter in October 2012, he did not inform the doctor that his problems were work-related. (R. p. 702).

On October 23, 2012, the claimant was seen back and complained of pain in his right shoulder which he stated began six months earlier. (R. p. 168). There is no record of claimant complaining of shoulder injuries to Kohler six months prior to this date. The claimant reported he was unable to relate the pain to any "fall" at work. (R. p. 168). In a separate note on the same date, the claimant presented for an evaluation of his low back pain. (R. p. 165). On October 25, 2012, the claimant complained of low back pain that he reported as ongoing for one year. (R. p. 163). The claimant also noted he had several "falls" at work. (R. p. 163).

On November 1, 2012, the claimant met with Nurse Zimmerman, Joe Brown, Mike Tolleson, Sam Barnwell, and Sid DeVaul. (R. p. 680). The claimant testified that during this meeting he asked Mr. Barnwell to be referred to a doctor. The claimant testified that he had asked Mr. Barnwell to go to the nurse before this date, but Mr. Barnwell denied such a request was ever made. (R. pp. 418-420). Based upon the notes of this meeting from Nurse Zimmerman, the claimant reported that he had seen Dr. Savage-Jeter for right shoulder pain and alleged an accident on September 8, 2011. The claimant also reported that he had seen a doctor for his low back pain. (R. p. 172). Nurse Zimmerman noted that the claimant had complained of low back pain on March 14, 2012, and was scheduled to follow-up with her on March 15, 2012, but he never returned. (R. p. 172; R. p. 680).

At the November 1, 2012, meeting, the claimant alleged that he told everyone in attendance that he injured his low back at work and requested light-duty. (R. p. 681). The claimant testified that Mr. Tolleson told him "the doors are open" if he could not perform his regular duty job. (R. p. 681). The claimant also testified he told his supervisor he was continuing to treat after the meeting and that an MRI had been recommended. (R. p. 682). The claimant alleged he asked the nurse and Mr. Barnwell for a form to provide to his doctor regarding possible light duty, as he was instructed to do by Dr. Jeter. (R. p. 683). When Mr. Brown offered the claimant a lighter-duty job, the claimant testified Mr. Tolleson denied him the job and told him he would have to leave if he could not perform regular duty. (R. p. 687).

On November 9, 2012, the claimant reported to physical therapy with continued complaints of back pain with new left leg pain "after feeling a big pop on my left side of my back." (R. p. 157). On November 12, 2012, the claimant complained of right sided back and right lower extremity pain which "started Wednesday." (R. p. 156). The therapist noted that he did not complain of any right shoulder pain until after his physical therapy appointment. The therapist also noted that "all details of injury/symptoms continue to be unclear. Very little progress at this time." (R. p. 156).

On November 28, 2012, the claimant completed and signed a Casting Process or Plate # Change Questionnaire, to change jobs to a different sized toilet bowl in the casting department. (R. pp. 414-416; R. p. 189). On this form, the claimant denied having any physical limitations or problems that prevented him from doing the job and certified that he was able to perform the job without further assistance. (R. p. 189). This different position was applied for only four weeks after he alleged that he was told to leave if he could not work. This job, was, in

fact, a lighter job due to the type of bowl, thus contradicting the claimant's testimony that he was told he could leave and that he could not do any lighter duty jobs at Kohler. (R. pp. 455-56, 461).

That same day, November 28, 2012, the claimant presented to Dr. Savage-Jeter with complaints of pain radiating to the bilateral buttocks and his left leg, made worse by bending. (R. p. 138). On January 16, 2013, the claimant presented to Dr. Savage-Jeter with complaints of back and shoulder pain. (R. p. 127). An MRI of his lumbar spine was ordered. On January 29, 2013, the claimant presented to Dr. Savage-Jeter with complaints of shoulder and lower back pain with pain radiating into his right leg. (R. p. 127). The claimant was subsequently referred for an orthopedic evaluation and physical therapy. (R. pp. 129-30).

On February 25, 2013, the claimant presented to Marco Rodriguez, M.D., of Orthopedic Specialists of Spartanburg, with complaints of back and left leg pain. (R. p. 107). The claimant reported the pain had been ongoing for one year. (Id.) According to Dr. Rodriguez, "[the claimant] cannot remember a distinct injury at work, but believes it happened with lifting continuously." (R. p. 107). Dr. Rodriguez diagnosed him with L5-S1 stenosis with a superimposed disc herniation causing low back and left leg radiculopathy. (R. p. 109). He was referred to Dr. Matthew Terzella for an epidural steroid injection. Regarding causation, Dr. Rodriguez reported, "given the fact he does not have a specific injury causing these symptoms, it is more difficult to make this relationship." (R. p. 109). His note states that "given the type of work he does, this could be associated with it. *He also has had a coccyx injury with a fall at work years ago that could have got things going.*" (R. p. 109) (emphasis added).

On April 23, 2013, the claimant presented to Dr. Terzella with low back and left leg pain. The claimant acknowledged having a prior coccyx injury which continues to cause pain in his buttock. (R. p. 102). Dr. Terzella provided the claimant with a trigger point injection into his

paraspinal muscle. (R. p. 104). On May 14, 2013, the claimant underwent an epidural steroid injection at L5-S1. (R. p. 100). On June 18, 2013, the claimant returned to Dr. Terzella and reported the steroid injection did not help. (R. pp. 96-99). The claimant also complained of pain in his neck radiating into his right shoulder. (Id.). Dr. Terzella reported a recent MRI of the lumbar spine revealed L5-S1 stenosis with a superimposed disc herniation causing low back and left leg radiculopathy. (R. p. 97). The claimant was referred to physical therapy. (R. p. 98).

On July 23, 2013, the claimant reported he was "having difficulty doing his job" and had also developed new right-sided buttock pain. (R. p. 89). On July 31, 2013, the claimant returned to Dr. Rodriguez and, for the first time reported a back injury that occurred on or about July 14, 2011. (R. p. 86). Dr. Rodriguez recommended an L5-S1 laminectomy and discectomy and possible fusion, and commented in his notes that "as far as causation, I think it is pretty clear at this point." (R. p. 88). Dr. Rodriguez also reviewed an MRI of the claimant's neck, which did not reveal any nerve root compromise sufficient to explain his right shoulder symptoms. (R. pp. 88, 119).

On August 20, 2013, the claimant returned to Dr. Terzella with complaints of neck pain and underwent an epidural steroid injection at C7-T1. (R. p. 81). On August 27, 2013, Dr. Terzella completed a fill in the blanks medical questionnaire wherein he stated that the claimant's low back pain was causally-related to an injury on July 14, 2011. (R. p. 79). On October 14, 2013, the claimant reported the neck injection only helped for two weeks. The claimant was diagnosed with cervicalgia and referred for physical therapy. (R. p. 78). On November 20, 2013, the claimant was released from further neck treatment and provided home exercises. No further medications were provided. (R. p. 75).

Dr. Marco Rodriguez's testimony was submitted via deposition. Dr. Rodriguez testified the claimant's lumbar spine MRI revealed spinal stenosis and herniation at L4-5 and L5-S1, which he noted can be acute pathology as well as degenerative. (R. pp. 262-63). On this point, Dr. Rodriguez testified that he usually tries to specifically ask about work injuries but that the claimant could not recall a distinct injury at that time, but the claimant felt that his lifting at work was causing him pain. (R. p. 264). Dr. Rodriguez further testified that although the claimant failed to identify a distinct injury at that time, the claimant later remembered an episode in July 2011 where he felt a pop in the back, an increase in pain, and began receiving medical care. (Id.) The claimant further stated that this pain waxed and waned since that time due to the pain medications that he was prescribed. (Id).

Dr. Rodriguez further testified the claimant could not remember a work injury when being questioned by the intake nurse. (R. p. 267). Dr. Rodriguez was then asked to explain how, if the claimant had already filed a workers' compensation claim prior to the visit on February 25, 2013, he could not identify a specific injury to the doctor after the filing of a claim that identified a specific date of injury. Dr. Rodriguez confirmed again that the claimant had no recollection of a specific work-related injury that caused him the injury from which he was suffering. (R. pp. 269-70). Dr. Rodriguez also confirmed that as of the February 25, 2013, visit, he had difficultly determining the cause of claimant's back problems. (R. p. 271). Dr. Rodriguez further confirmed that he had no evidence to relate the claimant's back problems to an incident on July 14, 2011, other than claimant's own statement. (R. p. 278). While Dr. Rodriguez did not feel that the claimant necessarily fabricated his story, *Dr. Rodriguez believed the claimant had been coached into clarifying the cause of his problems during the July 2013 visit.* (R. p. 281). In fact, Dr.

Rodriguez testified that "[i]t seems that someone clarified the story with him and he was more clear about his story, but in no way did he ask me to change the records." (R. p. 288).

The claimant confirmed when testifying that when he initially presented to Dr. Rodriguez for treatment, he told Dr. Rodriguez he could not remember any distinct injury to his back. (R. p. 763). The claimant then testified that he was unaware Dr. Rodriguez reported that it was difficult to determine causality because the claimant could not identify a distinct injury to his back. (R. p. 765). He also admitted he did not know Dr. Rodriguez reported his prior coccyx injury could have been the beginning of the claimant's problems. (R. p. 765).

Dr. Savage-Jeter's testimony was also presented by way of deposition. She was the family medicine physician who saw the claimant from October 15, 2012, through January 29, 2013. (R. p. 296).

Dr. Jeter testified the claimant presented on October 15, 2012, with complaints of back pain. She further noted the claimant was able to speak English. (R. p. 302). She also noted that though she wasn't sure if the claimant always understood what she was trying to tell him, Dr. Jeter always understood what he was saying. (Id.)

Dr. Jeter testified that on the claimant's initial visit, the claimant did not mention anything about an acute injury, but just referenced having back pain which began after he did lifting at work. (R. p. 303). She further denied that the claimant ever mentioned a work accident in July of 2011 or March of 2012. (R. p. 303). Dr. Jeter testified she would have included such statements by the claimant in her report had they been made. (R. p. 303).

Dr. Jeter testified that initial x-rays of the claimant's lumbar spine were normal. (R. p. 307). She referred the claimant out for conservative treatment. After physical therapy and medication management failed, Dr. Jeter testified she referred the claimant for an MRI and then to

Dr. Rodriguez for an orthopedic evaluation. (R. pp. 311-13 20-22). In January 2013, Dr. Jeter testified she asked the claimant to obtain his job duties from his employer so she could consider work restrictions. (R. p. 314). Dr. Jeter testified the claimant never returned to her office. (R. p. 314). Finally, Dr. Jeter testified she could not testify to a reasonable degree of medical certainty that the claimant sustained a work-related back injury in either July 2011 or March 2012, which was the cause of his current problems. (R. p. 315).

With respect to his medical treatment with Dr. Jeter, the claimant admitted that during his treatment with Dr. Jeter, she never gave him any restrictions. (R. p. 718). As such, he never provided any of his supervisors with a light-duty note. (Id.). He also admitted that, while undergoing physical therapy for his shoulder in October 2012, he never had restrictions regarding his abilities at work. (R. p. 718).

The claimant was questioned regarding a report from physical therapy at Mary Black Hospital dated November 1, 2012, the same day as the aforementioned meeting at Kohler, when he reported "I heard a big, pop, sound on my back, my leg's still tingling." When asked whether he injured his back on November 1, 2012, the claimant testified, "I don't want to lie, because I don't remember. I just don't. I don't remember." (R. p. 759). When further reminded the report stated he felt the pain while trying to stretch his body before the start of work, the claimant testified "Yes, I think I did mention that to my bossman." (R. p. 760). The claimant also testified he also reported on November 9, 2012, to the physical therapist that he felt a big pop in the left side of his back "early in the week." (R. p. 760). The claimant admitted he did not pursue workers' compensation claims for these alleged incidents. (R. p. 762).

ARGUMENT

I. The Full Commission correctly concluded that the claimant failed to establish that his current injuries to his low back/left leg are in any way causally related to injuries by accident arising out of and in the course of employment on July 14, 2011, or March 13, 2012, pursuant to South Carolina Code section 42-1-160.

The claimant alleges that the Appellate Panel was operating under a misapprehension of the law when it found that the claimant did not suffer an injury by accident and that its findings on this issue are not supported by substantial evidence. This position is untenable, as it is based upon claimant's own misunderstanding of South Carolina law, the evidence adduced at the hearing, the arguments made by the Defendant Kohler with respect to compensability, the Decision and Order of the Hearing Commissioner, and the Decision and Order of the Appellate Panel.

It is undisputed that the claimant twice reported that he had back tightness or soreness on two different days at work, separated by approximately eight months of time. Each of these incidents resulted in a single visit to Nurse Zimmerman. The Defendant Kohler created an incident report for each of the two complaints. Thus, the Defendant Kohler has never argued that they did not have notice of incidents on the two days in question; rather, the Defendant Kohler has maintained from the outset that the body parts for which the claimant sought compensation—the back and leg(s)—were not causally related to any injury by accident under South Carolina Code section 42-1-160 because the claimant failed to prove that his complaints on July 14, 2011, or March 13, 2012, were the cause of his back complaints.[6] The Defendant Kohler has always maintained that with respect to claimant's back condition, there is no evidence that the events on

[6] To the extent claimant sought to establish a back injury that occurred on any other day, including in April 2012 when he went to Doctor's Care, there is no evidence that the claimant gave his employer notice of such an incident or visit until November 1, 2012, which was beyond the 90 days' notice requirement and would, in fact, have been barred by South Carolina Code section 42-15-20 or could have constituted an intervening incident. (R. p. 390). Thus, there were notice defenses raised based upon any allegation that an injury occurred any other day for which the claimant did not give notice. As is seen from the claimant's testimony and medical records, the claimant mentioned a multitude of alleged "new" injuries at various points of time.

July 14, 2011, or March 13, 2012, proximately caused the disc injury for which he ultimately sought compensation, as alleged by the claimant.

The claimant bases his "error of law" argument regarding a notice defense around Finding of Fact #9 of the Hearing Commissioner's Decision and Order, which claimant read in isolation in an effort to create an error of law that does not exist. This Finding of Fact states:

> I find that claimant reported "incidents" following each alleged date of injury, however, I find these do not rise to the level of defining an injury to the employer. This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for months following each alleged date of injury. This Finding is based upon the greater weight of the evidence in the record.

(R. p. 28).

The claimant argues that Finding of Fact #9 shows that the Hearing Commissioner accepted the Defendant Kohler's "notice defense" when the uncontradicted evidence shows that the Defendant was on notice of two complaints of soreness in the claimant's back. While Finding of Fact #9 by the Hearing Commissioner could have been more articulate, a review of the Decision and Order as a whole, as well as the evidence and arguments presented, reveals that the central issue in this case whether the claimant's back injury, as diagnosed by Dr. Rodriquez, arose out of and in the course of his employment as required by South Carolina Code section 42-1-160. In other words, did the claimant establish that either one of these incidents that occurred on July 14, 2011, or March 13, 2012, resulted in the condition for which the claimant sought treatment and compensation.[7] The Defendant Kohler submits that the claimant is merely attempting to obscure

[7] This Court should reject the claimant's argument that reading of this one Finding of Fact in isolation creates an error of law. Our courts have always held we do not elevate form over substance by allowing lawyers to isolate statements or sentences in an effort to create reversible error. This is true whether it is a court order, a contract, jury instructions, or provisions of a statute. See Bursey v. South Carolina Dep't of Health and Envtl. Control, 360 S.C. 135, 141, 600 S.E.2d 80, 84 (Ct. App. 2004) ("A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence *on the whole record.*") (emphasis added); Keaton ex rel. Foster v. Greenville Hosp. Sys., 334

the facts and the issues that were presented in an effort to create an error of law to avoid the appropriate standard of review of substantial evidence.

Moreover, any argument before this Court with respect to the Hearing Commissioner's Finding of Fact #9 are inappropriate because the Hearing Commissioner's Finding of Fact #9 is not on appeal before this Court. In South Carolina, it is well established that the Appellate Panel is the ultimate fact finder in Workers' Compensation cases. Muir, 336 S.C. 266, 519 S.E.2d 583. The Appellate Panel is not bound by the single commissioner's findings of fact. Bass v. Isochem, 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005). It is the Appellate Panel's decision, which affirmed but amended the Hearing Commissioner's Order, that is on appeal. The Appellate Panel's Order is unambiguous in denying the claim because of the claimant's failure to establish causation. Given that the Appellate Panel is the ultimate fact finder in appeals, the issue of the Hearing Commissioner's Finding of Fact #9 is legally irrelevant to this appeal. Moreover, given that the Appellate Panel wrote or amended findings of fact and conclusions of law, the issues before this Court are whether the Appellate Panel was operating under an error of law or whether the Appellate Panel's decision is supported by substantial evidence.

A. The Decision and Order of the Appellate Panel is not affected by an error of law.

All of the evidence in this case, including the live testimony, medical records, deposition testimony, and argument before the Commission establishes that to the extent the claimant sought to establish an injury by accident on July 14, 2011, or March 13, 2012, that led to his current back

---

S.C. 488, 514 S.E.2d 570 (1999) (jury instructions read as a whole); Yarborough v. Phoenix Mut. Life Ins. Co., 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976) (contract read as a whole document so that "one may not, by pointing out a single sentence or clause, create an ambiguity" and "a particular word or phrase is not determined by considering the word or phrase by itself, but by reading the policy as a whole and considering the context and subject matter of the insurance contract"); State v. Gordon, 356 S.C. 143, 152, 588 S.E.2d 105, 110 (2003) ("[T]he court should not consider the particular clause being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law.").

injury, the Defendant maintained there was no evidence establishing that the claimant's two complaints of minor soreness for which he did report were causally related to the claimant's herniated disc/degenerative disc disease. The Form 51s filed by the Defendant Kohler establishes that causation was contested. Additionally, the Defendant argued throughout the proceedings that there was no evidence that the claimant's problems "arose out of the course and scope of employment" as required under South Carolina section 42-1-160. The Defendant's defense was apparent to both the claimant and the Commission and it is disingenuous to otherwise argue that the Commission thought the Defendant was raising solely a notice defense.

At oral argument, it was explicitly brought to the attention of the Appellate Panel that nowhere in the Hearing Commissioner's Order was there a finding of fact that the claimant's injury was barred by the notice provisions of South Carolina Code section 42-15-20. The Appellate Panel further recognized at the Hearing that it was within its authority to draft a Decision and Order that specified that the issue was one of causation and eliminate any alleged ambiguity in the Finding of Fact #9 in the Hearing Commissioner's Decision and Order. (R. p. 877). In amending the decision of the Hearing Commissioner, the Appellate Panel found that under South Carolina Code section 42-1-160, the claimant failed to meet his burden that he sustained an injury by accident on July 14, 2011 or March 13, 2012, that was the proximate cause of his current complaints, thus eliminating any possibility of an error of law on the part of the Appellate Panel. (R. p. 36).

The Appellate Panel correctly applied the law to the facts of this case. An injury under the South Carolina Workers' Compensation Act ("Act") is defined by South Carolina Code section 42-1-160, which states that an injury means "only injury by accident arising out of and in the course of employment." S.C. Code § 42-1-160 (2015). The two parts of the phrase "arising out of and in the course of employment" are not synonymous and both parts must exist simultaneously

before any court will allow recovery. Howell, 291 S.C. at 472, 354 S.E.2d at 385. Moreover, it is axiomatic that in order to receive benefits under the Act, an employee must actually suffer "an injury."

South Carolina case law is well settled that the phrase "arising out of" refers to the *injury's origin and cause*. Houston v. Deloach & Deloach, 378 S.C. at 553-54, 663 S.E.2d at 90; Baggott v. Southern Music, Inc., 330 S.C. 1, 5, 496 S.E.2d 852, 854 (1998). For an injury to "arise out of" employment, the injury must be proximately caused by the employment. Id. See also Fowler v. Abbott Motor Co., 236 S.C. 226, 230, 113 S.E.2d 737, 739 (1960) (accident "arises out of" employment when it arises because of it, as when the employment is a contributing proximate cause). The injury does not have to be foreseen or expected but the injury must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence. Douglas v. Spartan Mills, Startex Div., 245 S.C. 265, 269, 140 S.E.2d 173, 175 (1965).

The phrase "in the course of the employment" refers to the time, place, and circumstances under which the accident occurred. Owings v. Anderson County Sheriff's Dep't, 315 S.C. 297, 433 S.E.2d 869 (1993); Loges v. Mack Trucks, Inc., 308 S.C. 134, 417 S.E.2d 538 (1992); Gray v. Club Group, Ltd., 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000). An injury occurs "in the course of" employment within the meaning of the Act when it occurs within the period of employment at a place "where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto." Houston, 378 at 554-55, 663 S.E.2d at 91; Baggott, 330 S.C. 1, 496 S.E.2d 852.

The patent flaw in the claimant's argument in this case is that the claimant equates his complaint of a sore back to the injury for which he seeks compensation—a disc herniation—

without establishing that the disc injury was causally related to the two minor incidents as alleged that are at issue in this appeal. While there are workers' compensation cases where both the injury and causation are established simultaneously, there are likewise a number of cases where causation is not established by virtue of a complaint of injury, and in those cases, *causation must be proved.* This case is one such case because the documented "injury" of soreness is not automatically equivalent to an injury involving a herniated disc or degenerative disc disease.

The Appellate Panel found that the claimant continued working after each of these two incidents without complaint, without restrictions, without missing time from work, and that a significant amount of time passed without follow up or additional requests for medical care. Moreover, the claimant did not initially identify his pain as being associated with work, and two of the physicians in this case either failed to state causation or equivocated or vacillated on the issue. Accepting the claimant's theory of workers' compensation, an employee would no longer be required to show causation, as the registering of a complaint to any body part would be sufficient to establish compensability at all times in the future regardless of any other facts or circumstances. This is not the law of South Carolina, and accordingly, the Appellate Panel did not err as a matter of law in requiring the claimant to prove causation.

This case is not unlike the case of Clade v. Champion Labs., 330 S.C. 8, 10, 496 S.E.2d 856, 856-57 (1998). In Clade, the employee drove a forklift in Champion's shipping department. On July 20, 1994, she was working the second shift. According to her testimony, her back felt tired at the start of her shift, but she felt no pain. Between 5:00 and 5:30 p.m., she began to feel pain running down her back. The pain worsened, but she finished her shift that night. At work the next day, the pain returned, so the employee reported her injury to her supervisor, who sent her to the company doctor. The doctor eventually sent the employee to therapy and recommended she

be put on light duty. After a week or two of therapy, she was referred to Dr. Scott James who diagnosed her as having lumbar strain with thoracic and lumbar trigger points. The Appellate Panel denied the claim because the employee "failed to prove by the necessary burden of proof that she sustained a specific injury by an accident on July 20, 1994, or that her back problems arose out of and in the course of her employment." Id. at 11, 496 S.E.2d at 857 (1998).

In affirming the decision of the Full Commission, the Supreme Court stated:

> *Petitioner had the burden of proving the conditions under which she worked caused the injury to her back.* Although she attempted to tie her injury to one of several events that occurred at work, she told her supervisor, a co-worker, and the person in charge of filing accident reports she did not know the cause of her pain. She also told an insurance adjustor she could not pinpoint the cause of her back problems. While her treating physician did state her injury was aggravated by driving a forklift, he never specifically determined her injury was caused by driving a forklift. A memorandum concerning petitioner's injury from her supervisor noted he could not say whether her injury was work related or not. Although the symptoms of her injury appeared while petitioner was performing her job, *it was reasonable in light of the evidence presented for the commission to conclude petitioner failed to establish a causal relationship between her work and her injury.*

Id. at 11-12, 496 S.E.2d at 857 (emphasis added).

This case is an even more compelling case for requiring a claimant to establish causation. Here, the claimant did not continue to complain of pain beyond the dates in question. Rather, the claimant went months and months without any complaint, performing manual labor, without missing work or seeking medical care on his own, making causation even more speculative than in Clade.

Oddly, the claimant admits that there must be a causal connection, citing Douglas v. Spartan Mills, 45 S.C. 265, 140 S.E.2d 173, but then states that "finding an accident arises out of and in the course of employment does not require a determination that a claimant's current physical

problems are causally related to the work injury." This proposition is not only refuted by the very definition of an "injury by accident" and a wealth of South Carolina case law, but also by the very cases the claimant cites for this proposition.

In Anderson v. Campbell Tile Co., 202 S.C. 54, 24 S.E.2d 104 (1943), cited by the claimant, the issue before the Court was *solely* one of causation and whether the employee's current physical problem (death) was causally related to his employment where the employee suffered a back strain. In that case, the back strain was admitted. However, the employee died approximately four weeks after suffering the back strain. Competing experts opined as to whether the employee's death could have been caused by the back strain based upon the fact that the employee was suffering from a gonorrheal infection that could have caused a genito-urinary rupture that resulted in death. The Court noted the issue very succinctly: "the sole question to be determined by this Court is whether there was any relevant, competent evidence to support the finding that there was *a causal connection between the strain to which the decedent was subjected, and his death less than four weeks later*." Id. at 54, 24 S.E.2d at 106 (1943). As there was competing evidence, the Supreme Court found that substantial evidence required deference to the fact finder—the Appellate Panel.

Likewise, in Lawson v. Hanson Brick Am., Inc., 393 S.C. 87, 91, 710 S.E.2d 711, 713 (Ct. App. 2011), cited by the claimant, the issue before the Commission was whether the employee's knee problems for which he was seeking benefits were causally related to his admitted work-related back accident. In that case, the employee was injured while moving a bag of mortar and was diagnosed with "degenerative disk disease L5/S1; spondylothesis, L5/S1 with persistent low back pain refractory to conservative care." The employee underwent a lumbar fusion. Following surgery, however, he did not improve, and six or seven months later, began complaining of left

and right knee pain that he contended was causally related to his back injury. The Commission subsequently found the employee's knee problems were not causally related to his work-related accident and denied him benefits under the Act for his knees. This decision was affirmed on appeal. Id. at 91, 710 S.E.2d at 713. The claimant's assertion that his case stands for the proposition that causation is not required when proving an injury by accident is refuted by the fact the Lawson case was entirely about a failure to establish causation. See also Herndon v. Morgan Mills, Inc., 246 S.C. 201, 143 S.E.2d 376 (1965) (holding burden was on the claimant to establish causal connection between work injury and death by cancer); Jeffers v. Manetta Mills, 190 S.C. 435, 3 S.E.2d 489 (1939) (holding the burden was on claimant to establish cancer was causally related to burn on the hand); Hughes v. Easley Cotton Mill, 210 S.C. 193, 42 S.E.2d 64 (1947) (holding the burden was on claimant to establish cancer of the neck was causally related to a serious fall); Ashley v. South Carolina Highway Department, 213 S.C. 354, 49 S.E.2d 505 (1948) (holding burden was on the claimant to establish headaches were causally related to car accident).

The claimant further argues that the fact that an "injury by accident" occurs cannot be "undone" by anything that occurs after the fact—arguing that nothing can undo the claimant's reported injuries on July 14, 2011 and March 13, 2012. While this may be a correct statement of the space-time continuum notwithstanding Einstein's Theory of Special Relativity,[8] the converse of claimant's proposition is not true despite his wishing it were—once an injury by accident occurs, not every future complaint or symptom alleged by the claimant is automatically compensable, even if it is to the same body part. The claimant erroneously argues that merely because he previously complained of a backache that was documented by his employer, any and all future back problems

[8] According to Einstein's theory, approaching the speed of light would theoretically slow time, traveling at the speed of light would make it stand still and traveling faster than the speed of light would reverse time. But Einstein also showed that traveling at or faster than the speed of light is impossible because mass at these speeds becomes infinite.

must, as a matter of fact and law, be compensable, as nothing can erase the fact that he once complained of a backache. Under claimant's theory of workers' compensation, all future aches, pains, injuries, or disabilities are compensable based solely upon the existence of a prior documented complaint to the same body part. The claimant's flawed theory of workers' compensation eviscerates the very definition of "injury by accident" by removing any requirement that the injury arise out of the employment.

The second fallacy of the claimant's argument is that not every work-related incident or injury is compensable under the Act unless or until that incident/injury requires medical care, results in a wage loss, or produces a disability for which a claimant can be compensated by our statutes. See S.C. Code Ann. § 42-15-60 (requiring employer to provide medical care); S.C.Code Ann. §§ 42-9-10 to -30 (2015) (setting forth disability benefit schemes under the Act). The conclusion that every work-related incident is not a compensable condition is further supported by the Court of Appeals decision in King v. Int'l Knife & Saw-Florence, 395 S.C. 437, 444-45, 718 S.E.2d 227, 231 (Ct. App. 2011), wherein the Court held that not every ache is compensable, and therefore the notice provisions and statute of limitations periods do not begin to run, merely because an employee suffers an ache. Rather, in order for the notice provisions or the statute of limitations to apply to a claim, an employee must have a compensable injury—either missed time or the need for medical care.

The following scenario demonstrates the flaw in the claimant's logic: an employee suffers a papercut at work. If he does not require a Band-Aid and the papercut heals, the employee has an injury by accident that arises out of and in the course of his employment but he does not have a compensable claim under the Act, as there are no benefits owed. If the employee required and was given a Band-Aid and an aspirin as a result of the papercut, the employee again has an injury by

accident that arises out of and in the course of his employment, but again he does not have a compensable claim—there is no medical care needed and no resulting disability owed. Finally, if the employee suffers a papercut that required a Band-Aid and an aspirin, and six months later he alleges that he suffered a work-related injury in the form of osteoarthritis caused by his papercut, he is not relieved of his burden to establish causation merely because six months earlier he suffered a papercut to the same finger. While it is true nothing can "undo" the papercut, the papercut is not a compensable injury in and of itself without more, and to the extent the employee sought compensability of a finger injury arising out of the papercut, it would be the employee's burden to establish causation. As noted by the Supreme Court, "[t]he difficulty in proving a fact in a compensation case does not relieve the party on whom the burden rests of proving it, and does not shift the burden to the other party. Herndon, 246 S.C. at 209, 143 S.E.2d at 380-81. In this case, the claimant is attempting to relieve himself of the burden of proving causation based upon the fact he had two prior complaints of soreness or tightness to his back.

The Appellate Panel saw through the claimant's specious arguments regarding "notice" and "injury by accident" and drafted its Decision and Order to reflect its rejection of the claimant's attempts to create a legal error where none existed. Finding of Fact #9 of the Appellate Panel Order (the Order on appeal) states:

> We find that claimant reported "incidents" following each alleged date of injury, however, **we specifically find the claimant has failed to carry his burden of proving his current problems are causally-related to these reported "incidents". This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for numerous months following each alleged date of injury**. This Finding is based upon the greater weight of the evidence in the record.

(R. p. 36, Finding of Fact #9) (emphasis added).

Finding of Fact #9 should be the end of any inquiry by this Court as to whether the Appellate Panel committed an error of law, as its Decision and Order reflects its opinion that the claimant failed to show that his injury is causally-related to the July 14, 2011, or March 13, 2012, aches. The claimant's argument that he has to prove nothing more to recover benefits is simply without any basis.

The claimant's argument that Findings of Fact 13 and Conclusion of Law 3 create new and different errors is likewise misleading. Finding of Fact 13 states:

> We find the claimant has failed to carry his burden of proving a compensable injury by accident to either his back or left leg on either alleged dates of injury. This Finding is based upon the greater weight of the evidence in the record and, moreover, Finding of Fact #9 above.

(R. p. 36). Finding of Fact #13 merely references the fact that the claimant failed to carry his burden of establishing a current compensable injury by accident to his back, which by definition requires causation, on either alleged date of injury because the claimant failed to establish causation (hence the reference to Finding of Fact 9). There is no error in this Finding of Fact because an "injury by accident" necessarily requires causation to the employment by its very definition. See S.C. Code § 42-1-160 (2015) (requiring that an injury arise out of employment); Douglas v. Spartan Mills, 245 S.C. 265, 140 S.E.2d 173.

Conclusion of Law #3 likewise does not create any error of law. This Conclusion states:

> Pursuant to § 42-1-160, claimant did not sustain a compensable injury by accident to his low back and/or left leg on July 14, 2011, or March 13, 2012, for the reasons specifically stated in Finding of Fact #9, and based upon the greater weight of evidence in the record. The claimant is therefore not entitled to any benefits under the Act.

(R. p. 37). There is no error because it is well established that if the claimant fails to meet his burden of showing causation, as he did in this case, he fails to meet the definition of an "injury by

accident" and thus cannot establish compensability under the Act, notwithstanding the claimant's semantic arguments. Moreover, the reference to Finding of Fact #9 establishes that the Appellate Panel did not believe that the claimant's current medical condition or complaint was causally related to his employment or the complaints made by the claimant on July 14, 2011, or March 13, 2012.

The claimant's argument that when or how he requested further treatment has no bearing on the issue of compensability under the facts of this case is likewise without merit. This evidence goes to whether the claimant's injury for which he seeks compensability (disc herniation) is causally related to his employment as alleged to have occurred on July 14, 2011, or March 13, 2012. The evidence established that the claimant reported tightness in his back on July 14, 2011. The claimant did not complain of continuing back problems and did not seek further medical attention for this back tightness that occurred on July 14, 2011. The claimant's failure to seek medical attention for his alleged July 14, 2011, back problems goes directly to whether his disc herniation is causally related to his employment. The claimant later testified that he heard a "pop" in his back on this day, a fact that is inconsistent with an employee who continues to work for no less than 8 months full duty, full time, with no complaints of pain and no further medical care received. Moreover, the lack of medical attention in follow-up when contrasted with the medical care he did receive—BioFreeze and an over-the-counter pain pill—weighs against the claimant suffering a disc herniation injury and yet continuing to do manual labor for sixteen or so months with only two additional complaints. Likewise, the claimant's report of a back soreness on March 13, 2012, with again no follow-up or a request for additional medical care goes to whether a reasonable person could find that the claimant suffered the injury for which he now seeks benefits.

The claimant's example given on Page 30 of his Brief merely confirms that the claimant fails to understand the law of workers' compensation as it relates to causation. In his example, a clerk gets an ibuprofen for falling on her knee but then waits six months later to tell anyone that her knee is hurting. Contrary to the claimant's argument, it is not indisputable that the clerk's current complaints constitute a "compensable injury by accident" because the employer is free to contest whether the clerk's current complaints arose out of and in the course of the clerk's employment after she waited six months without any complaints of knee pain. That is not to say that the Commission cannot find a causal connection, but that determination is a factual one made by the Commission, whose decision must be upheld if there is substantial evidence to support that conclusion. The claimant's additional facts of running marathons and car wrecks in the interim are only additional pieces of evidence that may tend to cast doubt on the causal relationship but such intervening acts are not required to sever causation—the burden always remains on the clerk. The passage of time, the lack of complaints by the clerk, and the lack of medical care by the clerk, along with the credibility of the clerk and the medical findings, are all factors the Commission can take into account in reaching its determination as to whether the clerk's current knee problems were compensable as "arising out of and in the course of" the clerk's employment.

The claimant wants to allege that he suffered a compensable injury because he complained of an ache or a pain on two separate dates. When his symptoms resolved the next day and he continued to work, the "compensability" of his back claim either failed to materialize or resolved with his aches unless or until the claimant suffered some additional complaint requiring medical care or producing a disability, *provided that* the claimant could causally relate it to his employment. The claimant's "injury by accident" that he suffered on the two days in question simply is not compensable beyond that unless or until the claimant seeks more medical care or

misses work, at which time an employer is free to examine the facts of the case to determine whether the current alleged problems are causally related to the prior injury. In this case, the Defendant Kohler determined that it did not believe the claimant's disc herniation arose out of the "injury" that the claimant alleges he suffered on July 14, 2011, or March 13, 2012, which thereby required the claimant to prove the same.

The claimant actually concedes that the "issue that should have been addressed was whether his 'compensable injuries by accident' were causally-related to his current physical problems." (Brief, p. 33). Aside from the fact that this contradicts the claimant's earlier argument that causation to the current complaints is not required, the Appellate Panel's Order plainly states "[w]e find that claimant reported "incidents" following each alleged date of injury, however, **we specifically find the claimant has failed to carry his burden of proving his current problems are causally-related to these reported 'incidents[.]'**" The claimant is fully aware of the fact that the issue before the Commission was whether the claimant's current injuries—the disc herniation/leg injury for which he sought compensation and medical treatment—were injuries that arose out of his complaints July 14, 2011, or March 13, 2012, as alleged by him. The Commission found that the claimant failed to meet his burden on this issue. This is not an error of law but rather a factual determination made by the Commission which must be upheld on appeal in supported by substantial evidence.

B. The Appellate Panel's Decision and Order is supported by substantial evidence.

Because the Appellate Panel's decision that the claimant failed to establish causation is supported by substantial evidence, it must be affirmed by this Court.

As this Court is well aware, the Appellate Panel is the ultimate fact finder in Workers' Compensation cases. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583. The final

determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. See Shealy, 341 S.C. 448, 535 S.E.2d 438; Parsons, 318 S.C. 63, 456 S.E.2d 366. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Sharpe, 336 S.C. 154, 519 S.E.2d 102; Muir, 336 S.C. at 282, 519 S.E.2d at 591. Where there are conflicts in the evidence over a factual issue, *the findings of the Appellate Panel are conclusive.* Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (emphasis added). The appellate court is prohibited from overturning findings of fact of the appellate panel, *unless there is no reasonable probability the facts could be as related by the witness upon whose testimony the finding was based.* Etheredge, 349 S.C. at 455–56, 562 S.E.2d at 681

Though the claimant alleges that the Commission never reached the issue of whether the claimant's current back and leg problems were causally related to his July 14, 2011, and March 13, 2012, incidents, this argument is without merit, as Finding of Fact #9 of the Appellate Panel's Order refutes any such notion. Rather, this is a straightforward application of the "substantial evidence" standard of review. In the case at bar, substantial evidence exists to support the decision of the Commission. The possibility of reaching an opposite conclusion is not a basis to reverse but rather, the question is, when considering the record as a whole, would the record allow reasonable minds to reach the conclusion that the Appellate Panel reached so as to justify its action. It is not the task of this Court to weigh the evidence. Ellis v. Spartan Mills, 276 S.C. 216, 277 S.E.2d 590 (1981).

First, the facts in this case must be viewed in conjunction with the finding regarding the claimant's lack of credibility. Credibility, of course, is reserved to the Commission, and the Commission's finding on credibility must be the lens through which the evidence is evaluated.

See Ford v. Allied Chem. Co., 252 S.C. 561, 167 S.E.2d 564 (1969) (credibility is for the Commission). In addressing the claimant's witnesses, the Commission found neither Jesus Lugo nor Yuri Valderamma credible and found their testimony not relevant to the issues before the Commission.

With respect to the claimant himself, the Commission found that he, too, lacked credibility. The Commission noted that he was evasive, elusive, and generally unreliable. It was specifically noted that he had the inability to look at anyone during his testimony and he repeatedly attempted to quarrel with defense counsel on questions that required little contemplation. Moreover, his lack of credibility is readily apparent in the evidence adduced at the Hearing. The claimant repeatedly alleged that he requested additional medical care and treatment from various Kohler witnesses, but none of the witnesses testified that such a request was made until November 1, 2012. This was despite the fact that the claimant's supervisor required the claimant to see the nurse, wrote up an incident report for each of the incidents, followed up with the claimant regarding how he was feeling, and the fact that the claimant himself failed to keep an already-scheduled follow-up appointment with the nurse.[9]

Additionally, the claimant's lack of credibility is reflected by the inconsistent stories told by the claimant as reflected in his medical records. For example, on April 30, 2012, the claimant went to Doctor's Care and stated that he had back pain only for several days. At the Hearing, the claimant could not even testify what precipitated his visit to Doctor's Care. This was the first doctor the claimant had seen for alleged back pain and yet the claimant did not report it to the Defendant Kohler, despite alleging that two other incidents in the prior 11 months were work related. Additionally, on October 23, 2012, the claimant reported to Dr. Savage-Jeter that the pain

[9] The claimant's lack of credibility is further demonstrated through his contention that his language posed a barrier when everyone testified they communicated with the claimant in English.

in his back had started only six months prior and that he could not relate it to a fall a work. On October 25, 2012, the claimant then reported that his back pain had been going on for one year—since October 2011. There are no reported incidents that align with this date. Moreover, only two days earlier, the claimant reported that the pain had only been going on for six months, not twelve.

The credibility problems continue for the claimant. The claimant testified that when he asked for light duty on November 1, 2012, he was told he could leave out the door. However, on November 28, 2012, four weeks after this alleged ultimatum, the claimant completed a Casting Process or Plate # Change form that ultimately resulted in performing a different, lighter job, contrary to his testimony that Mike Tolleson told him he would have to leave. (R. pp. 455-56, 461). Moreover, this Casting Process or Plate # Change Questionnaire, completed and signed by the claimant, stated that the claimant had no physical limitations that prevented him from doing the new job and that he did not need assistance to perform the new job. (R. p. 189). This is despite the fact that the claimant testified that he was requesting light duty work and had repeatedly asked to see a doctor for complaints referable to a July 2011 strain and/or a March 2012 strain. The record further reflects that the claimant repeatedly refused to admit during the Hearing that this job actually paid him more money than he was making, though ultimately he did confess to this.

Physical therapy notes also revealed credibility problems for the claimant. On November 9, 2012, the claimant reported new leg pain with a "big pop" in his left back. However, claimant testified that he had a pop in his back in July 2011, though this is not reflected in either the nurses' notes or the incident report. On November 12, 2012, the claimant alleged new pains in his back that started "on Wednesday." The physical therapist further noted that he did not complain of any shoulder pain until after his physical therapy appointment, though he allegedly suffered a shoulder

injury in September 2011. The physical therapist noted that the claimant's details of his injury and his symptoms continued to be "unclear."

Credibility problems continued for the claimant based upon the records of Dr. Rodriguez. On February 25, 2013, the claimant told Dr. Rodriguez that he could not recall a distinct injury at work, and yet the claimant reported two distinct incidents at work that he now alleges were the cause of his disc herniation, and had filed workers' compensation claims prior to that conversation wherein the claimant alleged specific dates of injury. The claimant's lack of a specific incident at work led Dr. Rodriguez to conclude that "given the fact he does not have a specific injury causing these symptoms, it is more difficult to make this relationship." (R. p. 109). Additionally, Dr. Rodriguez notes that the claimant had a coccyx fall at work years earlier that could have been the cause, but again the claimant reports no discernable injury at work as the cause of his problems. Finally, on July 31, 2013, the claimant returned to Dr. Rodriguez and reported for the first time that his back injury was related to an incident that occurred on July 14, 2011. On this point, Dr. Rodriguez testified that the claimant stated that he felt a pop in the back, had an increase in pain, and that the pain waxed and waned because of the "pain medicine they prescribed." (R. p. 264, ll. 4-21). The records and testimony reflect that the claimant never reported a "pop" in his back on July 14, 2011. In fact, the claimant did not even report actual pain on that day. Moreover, the claimant told the doctor that his pain waxed and waned with prescription medications but he was, in fact, not on any pain medications from July 2011 through October 2012 but for receiving Back Quell (not a prescription) and a couple of days of ibuprofen from Doctor's Care. (R. p. 701). Finally, Dr. Rodriguez testified that he believed that the claimant had been coached on his July 23, 2013, visit to specifically allege an incident on July 14, 2011.

In viewing the evidence in light of the claimant's lack of credibility, the Commission's decision that the claimant failed to establish a causal relationship between his disc herniation and his July 14, 2011 incident or his March 13, 2012, incident is easily supported by substantial evidence. The claimant reported one day of back tightness on July 14, 2011. He was given essentially a cold compress and some Tylenol, never to be heard from again for his back until March 13, 2012. During this period of time, the claimant made no complaints of back pain to anyone. The claimant did not see the plant nurse, who was available to him at all times, and did not see a doctor outside of work, though he had health insurance readily available to him. He did not request light duty due to any backaches or pains. With the July 2011 incident, he did not actually even report pain, but only tightness or soreness.

The evidence further established that the claimant again complained of some minor soreness when he was rolling wares on March 13, 2012. He reported to the nurse and was given BioFreeze and Back Quell (Tylenol with Magnesium Salicylate). Again, these are merely over-the-counter medications given to the claimant. Despite having a follow-up appointment with the nurse, the claimant did not return to the nurse but instead reported that he was fine and continuing to work without difficulty. Forty-seven (47) days later, rather than return to the nurse where he could be seen for any complaints, the claimant went to Doctor's Care, unbeknownst to his employer, and complained of back pain of a few days duration. He was given a light duty note for three days. He worked full duty and did not return to Doctor's Care again. Six months later, in October 2012, he saw Dr. Jeter for back pain, had an x-ray which revealed a prior coccyx fracture, could not recall any incident at work that caused his back pain, but reported several falls at work, none of which resulted in a reported workers' compensation claim. He reported to Dr. Savage-Jeter that his back had been bothering him for six months, though later he would tell her that it had

been bothering him for a year. In late November 2012, the claimant changed jobs within the casting department but did not reveal any physical limitations preventing him from doing the new job, but rather affirmatively denied any physical problems. The claimant also began complaining in November 2012 of new aches, new pains, and new pops in his back, causing his physical therapist to state that the details of his injuries and symptoms were unclear. Dr. Savage-Jeter testified that she could not state to a reasonable degree of medical certainty that the claimant's back injury was causally related to his work.

Likewise, Dr. Rodriguez's records reveal that the claimant did not identify a specific injury to his back initially, though the claimant later "clarified" his story in a way that Dr. Rodriquez believed had been coached, stating that he had felt a pop in his back and that was the start of all of his problems, though the prescription medications helped with his pain. The claimant, however, was not on prescription medications and never reported a "pop" in his back on July 14, 2011. Dr. Rodriquez also opined that the claimant's injury could have been related to a coccyx injury from a fall years earlier. Dr. Rodriquez's testimony also established that he thought the claimant could have continued working since July 2011 with his back injury if he was taking medications during the time as represented by the claimant. Again, though, there is no evidence the claimant was taking prescription medications between July 2011 and when the claimant began seeing Dr. Jeter in October 2012, as he never saw a physician who could prescribe such medications. Dr. Rodriguez admitted that it was a concern from a causation standpoint that the claimant was able to identify a mechanism of injury to the Commission in February 2013 but was unable to identify one to Dr. Rodriguez until after his claim was denied in July 2013. While Dr. Rodriguez stated that he still believed that the claimant needed back surgery as a result of his alleged work-related accident which occurred on or about July 14, 2011, Dr. Rodriquez testified that in support of this

conclusion was the fact that the claimant continued to have symptoms throughout that time—an assertion that is not supported by the evidence in this case, as the claimant went from July 2011 until October 2012 with complaints of back pain but for a few days out of this entire 16 month period.

Though the claimant alleges that the expert medical evidence in this case establishes causation, expert testimony is not dispositive of the issue. The Appellate Panel is given discretion to weigh and consider all the evidence, both lay and expert, when deciding whether causation has been established. Ballenger v. S. Worsted Corp., 209 S.C. 463, 467, 40 S.E.2d 681, 682–83 (1946). Thus, while medical testimony is entitled to great respect, the fact finder may disregard it if other competent evidence is presented. Id. Indeed, "medical testimony should not be held conclusive irrespective of other evidence." Id. at 467, 40 S.E.2d at 682-83.

Once admitted, expert testimony is to be considered just like any other testimony. Smith v. Southern Builders, 202 S.C. 88, 24 S.E.2d 109 (1943). Expert medical testimony is intended to aid the Appellate Panel in coming to the correct conclusion. Corbin v. Kohler Co., 351 S.C. 613, 624, 571 S.E.2d 92, 98 (Ct. App. 2002) (citation omitted). The weight to be accorded all evidence is reserved to the Appellate Panel and not an appellate court. Shealy, 341 S.C. at 455, 535 S.E.2d at 442; Roper v. Kimbrell's of Greenville, 231 S.C. 453, 461, 99 S.E.2d 52, 57 (1957) (noting it is not for the appellate court to balance objective against subjective findings of medical witnesses, or to weigh the testimony of one witness against that of another, as that function belongs to the Appellate Panel alone).

Moreover, the Appellate Panel is not bound by the opinion of medical experts. Sanders v. MeadWestvaco Corp., 371 S.C. 284, 292, 638 S.E.2d 66, 71 (Ct. App. 2006). "[I]n compensation proceedings, where uncontroverted medical opinions are merely deductions drawn from certain

symptoms, the final conclusion remains with the triers of fact." Sharpe, 336 S.C. at 161, 519 S.E.2d at 106.

The Appellate Panel addressed the medical opinions in this case and found them not dispositive on the issue of causation. It found the testimony of Dr. Savage-Jeter to not be dispositive on the issue of causation. As to Dr. Rodriguez, the Appellate Panel found the testimony to not be compelling. It was noted that his opinion vacillated and when specifically addressing the issue of causation, Dr. Rodriquez admitted that his opinion of causation was based upon the claimant's subjective statements. As noted, the claimant was found to lack credibility by the Commission and much of his history given to Dr. Rodriquez is inaccurate or suspect given that the claimant appeared even to Dr. Rodriguez to have been coached, a point noted by the Appellate Panel.

Because the Appellate Panel's decision is one that is supported by substantial evidence, it should be affirmed by this Court.

II. The Appellate Panel's Decision and Order states Findings of Fact and Conclusions of Law satisfactory to afford the claimant judicial review.

The claimant argues that the Appellate Panel's Decision and Order are conclusory and lack specificity to allow a proper appellate review. More specifically, the claimant focuses on Finding of Fact #9, Finding of Fact #13, and Conclusion of Law #3. The claimant's position that the Decision and Order is conclusory and lacks specificity is without merit.

Initially, this argument is not preserved for review. The claimant did not raise the insufficiency of the Hearing Commissioner's Findings of Fact and Conclusions of law to the Appellate Panel. As such, this issue is not preserved for review. Pratt v. Morris Roofing, Inc., 353 S.C. 339, 577 S.E.2d 475 (Ct. App. 2003) (noting that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the single commissioner or in a

request for commission review of the single commissioner's order to be preserved for appellate review). Although the claimant is appealing the Appellate Panel's Order, this Order was adopted from the Hearing Commissioner's, as is allowed by statute and case law. It was affirmed in its entirety but for three amendments to the Findings of Fact and Conclusions of Law. If the claimant believed that the Hearing Commissioner's Order was conclusory and lacked specificity which would have prevented the Appellate Panel from reviewing the case and adopting it as its own with its amendments, he was obligated to appeal that to the Appellate Panel so that it could address the issue both with respect to the Hearing Commissioner's Order and remand it to the Hearing Commissioner or make additional findings that would support its decision. As such, this Court should find that the issue is not preserved for review.

Even if this Court does address the claimant's argument with respect to the issue of the sufficiency of the Appellate Panel's Order, it is an argument without merit.[10]

The claimant's argument that the Decision and Order is conclusory and does not state sufficient findings of fact or conclusions of law is without merit. South Carolina Code section 1-23-350 requires that findings of fact be accompanied by a concise and explicit statement of the underlying facts supporting the findings. S.C. Code Ann. § 1-23-350 (2005). In the present case, the Hearing Commissioner's Order set forth twenty-one (21) pages of underlying facts presented at the Hearing that support the Commission's Findings of Fact and Conclusions of Law. These

[10] The claimant rehashes its arguments with respect to Findings of Fact #9, #13, and Conclusion of Law #3. Without rearguing the issue in its entirety, the issue decided by the Appellate Panel was whether the claimant has proved that his disc herniation was causally related to incidents on July 14, 2011, and March 13, 2012. The Appellate Panel was aware that the claimant was arguing that the Hearing Commissioner ruled on notice not causation, using Finding of Fact #9 as support for his argument. The Appellate Panel correctly saw through this "red herring" and correctly noted that it had the authority to amend the Hearing Commissioner's Order if the Appellate Panel agreed with the Hearing Commissioner. After review of the evidence, the Defendant's Brief to the Appellate Panel, and arguments of counsel, the Appellate Panel issued its own Order amending the Findings of Fact and Conclusions of Law to state its position that the claimant failed to establish causation. This is reiterated in Finding of Fact #13 and Conclusion of Law #3 which, again, makes clear that the issues upon which the Commission held the claim not compensable was causation under South Carolina Code section 42-1-160.

twenty-one (21) pages of facts were adopted by, and affirmed by, the Appellate Panel in its Decision and Order. When the enumerated Findings of Fact and Conclusions of Law are read in conjunction with the twenty-one (21) pages of facts set forth by the Hearing Commissioner and affirmed by the Appellate Panel save three amendments, they are more than sufficient to establish the basis of the Commission's decision. Finding of Fact #9 is not conclusory but rather establishes that based upon the greater weight of the evidence, as set forth in the twenty-one (21) pages preceding it, the Commission found that the claimant failed to meet his burden of establishing causation. Contrary to the claimant's argument, the underlying facts "which support the findings" are laid out in great detail and make it easily discernable why and how the Commission ruled. "No particular format for setting forth such findings is required nor is it necessary that findings of fact and conclusions of law be stated or enumerated under separate headings." Seabrook Island Prop. Owners Ass'n v. S. Carolina Pub. Serv. Comm'n, 303 S.C. 493, 497, 401 S.E.2d 672, 674 (1991) (citing Airco, Inc. v. Hollington, 269 S.C. 152, 236 S.E.2d 804 (1977)).

In cases where an appellate court has remanded a case to the Appellate Panel, it has been where the Appellate Panel failed to detail any of the evidence presented to it. Rather, in those cases the Appellate Panel either accepted or rejected the argument with no discussion regarding the basis of the decision. See e.g. Canteen v. McLeod Reg'l Med. Ctr., 400 S.C. 551, 559, 735 S.E.2d 246, 250 (Ct. App. 2012); Able Communications, Inc. v. South Carolina Pub. Serv. Comm'n, 290 S.C. 409, 351 S.E.2d 151 (1986) (holding that an order that merely stated that a telephone carrier's services were "fair and reasonable," with no other findings of fact, violated § 1-23-350).

In the present case, the Appellate Panel properly affirmed and adopted the Hearing Commissioner's recitation of the facts, and then identified its own Findings of Fact and

conclusions of law which addressed the issues necessary for this Court to conduct an appellate review. The orders in this care are more than sufficient for this Court to conduct a review to determine if the decision is supported by substantial evidence. Any argument to the contrary should be rejected.

CONCLUSION

For the reasons stated herein, the Decision and Order of the Appellate Panel should be affirmed, as there is no basis to conclude that it committed an error of law in reaching its decision, and its decision that the claimant failed to establish that his current complaints back/leg complaints were causally related to his July 14, 2011, and March 13, 2012, work-place complaints, as he alleged. Moreover, the Appellate Panel's Decision and Order affirming, as modified, the Hearing Commissioner's Order is sufficient to afford the claimant appellate review.

SOWELL GRAY STEPP & LAFFITTE, LLC

By: _____

Grady L. Beard
Nicolas L. Haigler
Robert E. Horner
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Respondent Kohler

Columbia, South Carolina
April 15, 2016

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

Jose Juan Jimenez, Employee, ... Appellant

v.

Kohler Company, Self-Insured Employer, ...Respondent.

RESPONDENT KOHLER COMPANY'S CERTIFICATION OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

Grady L. Beard
Nicolas L. Haigler
Robert E. Horner
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Respondent Kohler

Columbia, South Carolina
April 15, 2016

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

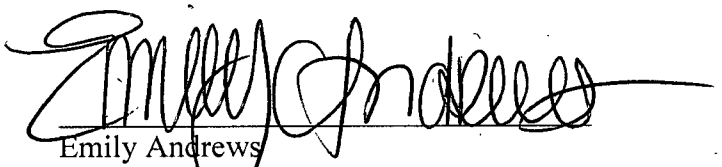
Jose Juan Jimenez, Employee, ... Appellant

v.

Kohler Company, Self-Insured Employer, ...Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the Respondent Kohler Company's Final Brief and Certificate of Counsel, on the following: Alton L. Martin, Jr., Esquire, Martin & Martin, P.A., Post Office Box 8220, Greenville, SC 29604 (via U.S. Mail) on April 15, 2016.



Emily Andrews
Legal Assistant
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Respondent Kohler

Columbia, South Carolina
April 15, 2016