FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4008296

Alvin L Menie

PLAINTIFF(S)

State Accident Fund

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant



**DISPOSITION TYPE (CHECK ONE)**

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

**ORDER INFORMATION**



This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled |
|---|---|---|
| | | $ |
| | | $ |
| | | $ |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**Circuit Court Judge** _____ **Judge Code** _____ **Date** _____

**For Clerk of Court Office Use Only**

This judgment was entered on the _____ **day of** _____, **20** ___ and a copy mailed first class or placed in the appropriate attorney's box on this 4 November 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Preston F. McDaniel

Andrew Elliott Haselden

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter** _____

**Clerk of Court** Jeanette W. McBride

SCRCP Form 4C (10/2011)



EXHIBIT
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|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF RICHLAND | ) | IN THE COURT OF COMMON PLEAS<br>FIFTH JUDICIAL CIRCUIT |
| Alvin L. Menie,<br><br>Appellant,<br><br>vs.<br><br>State Accident Fund,<br><br>Respondent. | ) | CASE NO. 2012-CP-40-08296<br><br>**ORDER** |

This matter came before the Court on June 20, 2014, for a hearing on Appellant Alvin L. Menie's ("Menie") appeal from an Order by the South Carolina Workers' Compensation Commission ("Commission") dated November 29, 2012. Present at the hearing were Preston F. McDaniel, Esquire, counsel for Appellant, and Andrew E. Haselden, Esquire, counsel for Respondent. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, the decision of the Commission is **AFFIRMED.**

## FACTUAL BACKGROUND

Menie worked in the Auditing Department of the State Accident Fund ("SAF") from 1984 to 2009. SAF is responsible for providing insurance for local, county, state and other governmental agencies within South Carolina that provide Workers' Compensation coverage. In the Fall of 2002, SAF had 3 auditors in the auditing department: Menie, Ms. Carla Johnson ("Johnson"), and Ms. Shaun Holmon ("Holmon"). In December of 2002, SAF advised all of its premium accounts that they would incur a rate increase of an average 24.7% effective January 1, 2003. The rate increase generated many calls from different agencies seeking to determine whether and why their respective rates would be increasing.

SAF, moreover, was in the process of implementing a new computer system using its own unique classification codes instead of utilizing the National Council of Compensation Insurers (NCCI) classification codes to classify jobs into categories. The system had a lot of issues, and it took some time for the system to become fully functional. Specifically, the system failures caused the auditors to have to resubmit items numerous times.

By the last week in December 2002, Johnson was absent on medical leave and Holmon no longer was employed with SAF. Menie, thus, was left by himself to complete all of the

auditing work for SAF from January 1, 2003, to February 10, 2003. During this 25 business day period, Menie worked by himself and answered questions from all agencies and reviewed/addressed all the correspondence concerning the rate increase. Moreover, instead of having to perform 33 audits in January, Menie had to perform 99 audits. On March 3, 2003, while at work, Menie suffered a cardiac event, atrial fibrillation, and was transported to Lexington Medical Center.

## PROCEDURAL BACKGROUND

A hearing was conducted before Commissioner G. Bryan Lyndon on January 30, 2012. During the hearing, Menie contended that he sustained a work-induced onset of atrial fibrillation on March 3, 2003, and that the condition was compensable under S.C. Code Ann. § 42-1-160 of the South Carolina Workers' Compensation Act and the common law concerning cardiac conditions induced by unusual and extraordinary work conditions. Menie sought payment of all past and future causally-related medical expenses.

SAF argued that Menie did not experience unusual and extraordinary work conditions from January 1, 2003, to March 3, 2003. Thus, SAF argued that Menie's claim was not compensable. SAF explained that Menie's personnel records reflected that Menie never worked more than 40 hours in a workweek during the subject period. SAF, moreover, argued that Menie previously claimed his cardiac condition was related to his military service during the Vietnam War in his application seeking Veterans Disability Benefits from the United States Department of Veteran Affairs ("VA").

After considering the testimony of all the witnesses, observing the witnesses during their testimony, reviewing the APA Submissions, and considering the applicable law, Commissioner Lyndon issued a Decision and Order, dated April 11, 2012, ruling that Menie failed to prove that his heart condition was the result of unusual and extraordinary conditions of employment. Accordingly, Commissioner Lyndon determined that Menie was not entitled to any Workers' Compensation benefits.

Menie appealed Commissioner Lyndon's Order to the Full Commission, and the Commission heard oral arguments on August 28, 2012. On November 29, 2012, the Commission issued its Order unanimously affirming Commissioner Lyndon's determination that Menie's claim was not compensable. Menie appealed the Commission's Order to the Court.

## LEGAL STANDARD

The South Carolina Administrative Procedures Act "establishes the standard for judicial review of decisions of the Commission." *Bone v. U.S. Food Service,* 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013). "A reviewing court may reverse or modify a decision of [the Commission] if the findings, inferences, conclusions or decisions of [the Commission] are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." *Id.* The Court "may not substitute its judgment for that of the [Commission] as to the weight of the evidence on questions of fact," and may only reverse the Commission if its decision is controlled by an error of law. *Frame v. Resort Services, Inc.*, 357 S.C. 520, 527, 593 S.E.2d 491, 495 (Ct. App. 2004). Thus, the Court's review is limited to determining whether the Commission's decision "is unsupported by substantial evidence or is controlled by some error of law." *Gibson v. Spartanburg Sch. Dist. No. 3*, 338 S.C. 510, 517, 526 S.E.2d 725, 728–729 (Ct. App. 2000). "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 289, 599 S.E.2d 604, 611 (Ct. App. 2004). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence." *Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999). Determinations concerning "witness credibility and the weight to be accorded evidence [are] reserved to the [Commission]." *Shealy v. Aiken Cnty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000).

## DISCUSSION

On appeal, Menie contends that because of his increased workload during the subject period, he suffered an acute onset of atrial fibrillation and should receive workers' compensation benefits. Menie contends that: (a) the Commission's decision was based on surmise, speculation and innuendo; (b) the Commission erred in allowing and relying on Kirk Adair's testimony; and (c) the Commission erred by making a general finding that "labor turnover, illness of co-workers and computer problems are common to almost all work environments and are not unusual." The Court will address each of these arguments in turn.

## I. Surmise, Speculation and Innuendo

Menie argues that there is no substantial evidence in the record to support the Commission's decision, and thus, its decision is based on surmise, speculation and innuendo. "A claimant may recover workers' compensation benefits if he sustains an 'injury by accident arising out of and in the course of [his] employment.'" *Jordan v. Kelly Co., Inc.*, 381 S.C. 483, 486, 674 S.E.2d 166, 168 (2009) (quoting S.C. Code Ann. § 42-1-160 (2006)). "A heart attack suffered by an employee constitutes a compensable accident within the meaning of the Workers' Compensation Act if it is induced by unexpected strain or overexertion in the performance of the duties of [a claimant's] employment or by unusual and extraordinary conditions in employment." *Hoxit v. Michelin Tire Corp.*, 304 S.C. 461, 464, 405 S.E.2d 407, 409 (1991); *Brown v. La France Industries, a Div. of Riegel Textile Corp.*, 286 S.C. 319, 330, 333 S.E.2d 348, 355 (Ct. App. 1985). The Commission found that Menie failed to prove his working conditions were unusual and extraordinary. South Carolina courts have, for many years, grappled with what constitutes unusual and extraordinary working conditions.

In *Kearse v. S.C. Wildlife Res. Dep't*, 236 S.C. 540, 542, 115 S.E.2d 183, 184 (1960), the claimant, Kearse, suffered a cerebral thrombosis arising out of his employment. Kearse was employed as a game warden with the South Carolina Wildlife Resources Department. *Id.* For a period of two or three weeks prior to his stroke, Kearse, along with other game wardens, met each other each morning before daylight and did not leave until dark. *Id.* at 542, 115 S.E.2d at 184–85. Kearse worked between sixteen and eighteen hours a day within this period. *Id.* at 542, 115 S.E.2d at 185. Several days before his stroke, Kearse along with other game wardens, "dragged [a] boat over cypress knees, logs, mud and water to the main stream, a distance of about 50 yards." *Id.* Kearse paddled the boat up the stream about 300 yards while another game warden held a flashlight. *Id.* at 542–43, 115 S.E.2d at 185. Both game wardens then dragged the boat for about 25 or 30 feet. *Id.* at 543, 115 S.E.2d at 185. A few days after dragging the boat, Kearse had to push an automobile a "considerable distance over rough terrain to get it started." *Id.* The Workers' Commission awarded Kearse permanent and total disability. The Supreme Court affirmed the Commission finding that:

> [W]hile the evidence shows that the type of activity in which [Kearse] was engaged was common to his position as game warden, it further abundantly shows that the hours in which he was so employed were unusually long, the work environment was unusually difficult, and that there were several

> incidents in which [Kearse], because of unusual circumstances, greatly over-exerted himself in the performance of his duties.

*Id.* at 546–47, 115 S.E.2d at 187.

In *McWhorter v. S.C. Dep't of Ins.*, 252 S.C. 90, 92, 165 S.E.2d 365, 365 (1969), the claimant, McWhorter, suffered a heart attack and died while working with the South Carolina Department of Insurance. McWhorter's job duties typically required him to be at work from 9 am to 5 pm, with an hour lunch break and a morning and afternoon coffee break. *Id.* at 92, 165 S.E.2d at 365–66. In the ten days preceding his heart attack, however, McWhorter worked more than 121 hours and drove over 1500 miles in preparation for an upcoming trial. *Id.* at 92, 165 S.E.2d at 366. McWhorter, moreover, worked 23 hours in the weekend (time he usually had off) immediately before the trial. *Id.* at 93, 165 S.E.2d at 366. On the Monday trial commenced, McWhorter awoke about 3:30 that morning and picked up a witness. *Id.* After arriving in Greenville, McWhorter participated in a conference with other people involved in the case from about 7 a.m. to 9 a.m. *Id.* McWhorter then assisted during the trial until about 12:35 p.m. *Id.* He then "carr[ied] voluminous files and records to the [prosecutor's office] in the [c]ourt [h]ouse, then walked down three flight of stairs in the [c]ourt [h]ouse, and shortly after emerging from the building he suffered a heart attack and died." *Id.* The Workers' Commission deemed McWhorter's claim compensable. *Id.* at 98, 165 S.E.2d at 368. The Supreme Court affirmed finding that:

> [McWhorter] was engaged in an unusual investigation, under extraordinary conditions of employment, with unusually long hours, great mental stress and strain, emotional involvement, lack of sleep, time pressure, physical exertion, and other extraordinary conditions of employment at the time of his attack.

*Id.* at 97, 165 S.E.2d at 368.

In *Cline v. Nosredna Corp., Inc.*, 291 S.C. 75, 78, 352 S.E.2d 291, 293 (Ct. App. 1986), the claimant, Mr. Cline, suffered a heart attack arising out of his employment and was diagnosed with atrial fibrillation. In 1977, Cline worked as a food service manager for a restaurant. *Id.* at 77, 352 S.E.2d at 292. In 1982, Cline was made food service manager of an additional store. *Id.* at 77, 352 S.E.2d at 293. Cline had to manage the day-time operations of both stores and "supervised the cooks, ordered, inspected and inventoried food, and shopped competitively for food and utensils." *Id.* at 77, 352 S.E.2d at 292. Additionally, "[t]he restaurants were one hundred fifty feet apart, requiring Cline to continuously traverse the distance between them each

day." *Id.* at 77–78, 352 S.E.2d at 293. Three months after opening the second store, Cline suffered a heart attack. *Id.* at 78, 352 S.E.2d at 293. The Supreme Court affirmed the Commission's finding that Cline's preexisting condition of congestive heart failure was "aggravated and accelerated by [Cline's] unusual and extraordinary employment conditions." *Id.* at 78, 352 S.E.2d at 293.

In *Watt v. Piedmont Automotive*, 384 S.C. 203, 206, 681 S.E.2d 615, 617 (Ct. App. 2009), the claimant, Roger Watt ("Watt"), suffered congestive heart failure and unstable angina pectoris allegedly because of unusual and extraordinary work conditions. In 1991, Watt began working for a car dealership as a technician and team leader. *Id.* at 205, 681 S.E.2d at 616. In 1995, Watt was promoted to service director of both the car dealership and an additional dealership. *Id.* Thereafter, he was removed as service director of the additional dealership but retained his position as service manager of the original dealership. *Id.* Watt contended that the dealership's "implementation of a 'Net Profit' program [the year before he was terminated] produced an extraordinary working condition causing him stress that aggravated his cardiovascular disease and caused the blockage of his coronary arteries." *Id.* at 206, 681 S.E.2d at 617. The new system, according to Watt, angered customers and generated a lot of complaints. *Id.* at 210, 681 S.E.2d at 619. One of Watt's co-employees explained that the implementation of the new system doubled Watt's work, and that Watt "always appeared tired and worked late every night." *Id.* The Commission denied Watt's workers' compensation claim finding that Watt "failed to establish the stressful employment conditions causing the injury were extraordinary and unusual in comparison to the normal conditions of employment." *Id.* at 206, 681 S.E.2d at 616. The circuit court reversed the Commission. *Id.* at 207, 681 S.E.2d at 617.

On appeal, the Court of Appeals reversed the circuit court's determination that Watt's claim was not compensable. *Id.* at 212, 681 S.E.2d at 620. The Court of Appeals acknowledged that there was conflicting evidence concerning whether Watt was working under unusual and extraordinary working conditions; however, "'it [was] not the task of an appellate court to weigh the evidence as found by [the Commission].'" *Id.* at 211, 681 S.E.2d at 619 (quoting *Jordan v. Kelly Co.*, 381 S.C. 483, 487, 674 S.E.2d 166, 169 (2009)). The Court of Appeals found substantial evidence existed in the record to show that Watt "was accustomed to working 55 and 60 hour weeks . . . [and] that the implementation of [the new system] did not result in unusual or

extraordinary conditions of employment." *Id.* at 211, 681 S.E.2d at 619. Therefore, "the circuit court erred in reversing the order of the [Commission]." *Id.*

Of all the cases discussed above, the facts of *Watt* most closely parallel the facts in the instant matter. Just as in *Watt*, where Watt alleged that his employer's implementation of a new program, in part, produced an extraordinary working condition, here, Menie claims that SAF's use of its own identification codes, in part, produced an unusual and extraordinary condition. Moreover, just as in *Watt*, where Watt alleged that he had to work longer hours in response to the new system, here, Menie contends that he had to work longer hours. Furthermore, Watt claimed that his employer's new system generated a lot of complaints that he had to respond to; Menie has claimed the same. Lastly, Watt argued that his work was doubled; Menie argues his work tripled.

Accordingly, just as in *Watt*, the Commission was in a better position to weigh the evidence presented in the instant matter. The Commission acknowledged that Menie worked as the lone premium auditor for SAF from January 3, 2003, to February 10, 2003. The Commission, moreover, acknowledged that SAF informed its insureds of the average 24.7% increase in premiums immediately before that time period. Lastly, it was undisputed that Menie suffered atrial fibrillation on March 3, 2003. The Commission, however, after reviewing all of the evidence, found that Menie failed to prove that he suffered atrial fibrillation because of unusual and extraordinary work conditions.

Menie did not work excessive overtime and never worked more than 40 hours a week. SAF presented testimony from two witnesses: Gerald Murphy ("Murphy") and Kirk Adair ("Adair"). Murphy has been employed by SAF since March 1995 and was, at the time of the hearing, SAF's Manager of Administrative Services. Murphy testified that SAF utilized a program known as "Locator" to track, monitor and compile employee attendance. Murphy testified he used the program to compare and contrast Menie's work hours in January and February of 2002 with Menie's work hours in January and February of 2003. The program's data indicated that Menie worked an average of 16 extra minutes per day in January and February of 2003 than he had during those same months in 2002. Murphy also testified that there had been other instances when auditors worked in a similar position as Menie for as long as eight months.

Adair, who was employed by SAF as a premium auditor at the time of the hearing, testified that he came to SAF after working in the private sector as a premium auditor. Adair testified that he worked along with one additional premium auditor, and they were able to perform all of SAF's premium audits. Menie worked as the sole auditor from on, or about, January 1, 2003, to February 10, 2003. On February 10, 2003, Johnson returned from medical leave. Moreover, on March 3, 2003, SAF hired another premium auditor, Warren Farray. Menie took about two weeks off from work because of his cardiac event. Thus, within a few weeks of Menie's event, SAF was again operating with three premium auditors. Menie continued to perform his job without issues for over six years until his retirement in 2009. SAF never returned to three premium auditors following Menie's retirement in 2009.

Furthermore, Menie, via his APA submissions, submitted an opinion from Dr. Hendricks, his treating physician, explaining that the conditions Menie experienced at work caused his atrial fibrillation. Dr. Hendricks' opinion was based upon a presentation of what Menie allegedly was experiencing during the subject time. Menie provided Dr. Hendricks the conditions he was facing at work during the subject time, and based upon Menie's recitation of his working conditions, Dr. Hendricks' determined that Menie's working conditions caused him to suffer from atrial fibrillation. Specifically, Menie asked Dr. Hendricks to respond to about 10 pages of questions. Dr. Hendricks was asked to "provide answers and opinions to the . . . questions concerning Mr. Menie and his heart condition." Menie's APA Submissions at 3. There were several questions including whether Menie had a history of cardiac problems, the effect on Menie's health by him having to answer all correspondence concerning specific issues, the effect on Menie by him having to work longer hours, working through breaks and lunch, and ultimately, whether Menie's atrial fibrillation was caused by the physical and emotional stress arising out of his work duties. Following the event, however, Menie saw Dr. Hendricks six times in 2003 and 2004 for heart problems and never mentioned stress. Nonetheless, Dr. Hendricks concluded that "Menie's cardiological problems of atrial fibrillation and high blood pressure were caused by the physical and emotional stress arising out of and from [Menie's] job duties, responsibilities and work load." Menie's APA Submissions 6.

Menie's medical records and Dr. Hendricks' deposition testimony were reviewed by Dr. Michael Zile, a cardiology professor at MUSC. Dr. Zile's professional opinion was that Menie's working conditions did not contribute to Menie's development of atrial fibrillation. Dr. Zile

noted, specifically, that "to a reasonable degree of medical certainty . . . [Menie's] atrial fibrillation was caused by pre-existing and underlying cardiovascular disease processes including but not limited to morbid obesity, sleep apnea, hypertension, sick sinus node syndrome, and diabetes." SAF's APA Submissions 20. Menie, thus, had numerous health problems some of which were being treated by the VA due to exposure to Agent Orange while serving in Vietnam. The Court recognizes that there was conflicting medical evidence; "[w]hen conflicting medical evidence is presented, [the Court] must not substitute its judgment for that of the fact finder, which in this case is the [Commission]." *Brunson v. American Koyo Bearings*, 395 S.C. 450, 458, 718 S.E.2d 755, 759–690 (Ct. App. 2011).

In light of the substantial evidence in the record, the Commission's decision was not based upon surmise, speculation, and innuendo. Accordingly, the Commission properly determined that Menie's atrial fibrillation was not compensable by Workers' Compensation.

**II. Adair Testimony**

Menie argues that the Commission erred as a matter of law by admitting and relying on Adair's testimony. Adair started working with SAF in 2010. Adair provided testimony concerning his prior experience as a premium auditor, working conditions of his prior places of employment compared to SAF working conditions, and his working conditions at SAF during a two-month time period when he worked by himself. Menie claims that there was a stark temporal distinction between when Adair worked at SAF and when Menie worked at SAF. Menie suffered from his atrial fibrillation when he was working at SAF in 2003; Adair, however, provided testimony regarding the position of an auditor between 2010 and 2012. According to Menie, "there is no question that [Commissioner Lyndon] relied on [Adair's] testimony . . . that he[:] 'had handled the job by himself and it was not as difficult as his previous jobs.'" Appellant's Mem. Law 32.

Menie contends such evidence was irrelevant and immaterial. According to Menie, the conditions of employment between 2010 and 2012 were not relevant or material to the conditions of employment Menie experienced between January 1, 2003 and March 3, 2003. Thus, Menie claims the Commission erred as a matter of law by relying on it to make its decision.

Determinations regarding the relevancy and materiality of evidence are left within the sound discretion of the trial court, here the Commission. *See Bankers Trust of S.C. v. Bruce*, 283 S.C. 408, 416–17, 323 S.E.2d 523, 529 (Ct. App. 1984) ("The determination of the relevancy of

evidence is largely within the discretion of the trial judge."). Such determination will not be disturbed absent an abuse of discretion. *Kennedy v. Griffin*, 358 S.C. 122, 127–28, 595 S.E.2d 248, 250 (Ct. App. 2004); *see also Gadson v. Mikasa Corp.*, 368 S.C. 214, 228, 628 S.E.2d 262, 269–70 (Ct. App. 2006) (where the Court of Appeals applied the abuse of discretion standard to the Commission's admission of expert testimony). Moreover, "[t]he admission or exclusion of evidence of prior or subsequent existence as inferring existence at a particular time is within the trial court's discretion." *Henderson v. St. Francis Community Hosp.*, 295 S.C. 441, 447, 369 S.E.2d 652, 656 (Ct. App. 1988), *rev'd on other grounds*, *Henderson v. St. Francis Community Hosp.*, 303 S.C. 177, 399 S.E.2d 767 (1990). The Commission possessed the discretion to determine whether Adair's testimony concerning SAF working conditions between 2010 and 2012 were relevant to SAF working conditions in 2003. Even if Adair's testimony was not relevant and it was excluded, there is substantial evidence in the record to support the decision of the Commission. Accordingly, the Commission did not commit an error of law in admitting Adair's testimony.

**III. Labor Turnover, Co-worker Illness, and Computer Problems**

Menie argues that the Commission erred in finding that labor turnover, illness of co-workers, and computer problems are common and not unusual. More specifically, Menie alleges that "[t]his Finding of Fact is totally and absolutely contrary to law and requires reversal as it indicates that the Commission failed" to apply South Carolina law to the case. Appellant's Mem. Law 34. Menie cites *Stokes v. First Nat'l Bank*, 306 S.C. 46, 410 S.E.2d 248 (1991), in support of his assertion that labor turnover, co-worker illness, and computer problems constitutes unusual and extraordinary conditions.

In *Stokes*, "[a]s a result of merger activity and the resignation on one of [Stokes'] managers . . . Stokes' work hours increased from approximately 45 hours per week to 60 hours per week" and then ultimately workdays of 16 to 18 hours. *Id.* at 47, 410 S.E.2d at 249. Since Stokes' work hours were increased due to the resignation of one of his managers, *Stokes* arguably involved labor turnover. The *Stokes* case, however, did not involve co-worker illness and computer problems. The Court may reverse the Commission's decision when it is affected by an error of law. *Corbin v. Kohler Co.*, 351 S.C. 613, 617, 571 S.E.2d 92, 95 (Ct. App. 2002). Labor turnover, co-worker illness, and computer problems, however, are common in almost all sectors of employer, and thus, do not in and of themselves, constitute unusual or extraordinary

working conditions. *See, e.g., Hoxit v. Michelin Tire Corp.*, 304 S.C. 461, 464, 405 S.E.2d 407, 409 (1991) (where the Supreme Court affirmed the Commission's denial of a claimant's workers' compensation claim after he suffered cardiac arrhythmia that was, in part, allegedly caused by stress related to computer problems). Accordingly, the Commission did not commit an error of law.

**ORDER**

For the reasons stated above, it is therefore **ORDERED** that the decision of the South Carolina Workers' Commission is **AFFIRMED**.

**AND IT IS SO ORDERED.**

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
November 3, 2015

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