

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED

MAY 31 2016

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2015-CP-42-1015

Raquel Martínez, Employee, Claimant,

Respondent,

v.

Spartanburg County Sheriff's Office, Employer,
and South Carolina Association of Counties Self
Insurance Fund, Carrier,

Appellants.

RETURN TO MOTION TO DISMISS
APPEAL AS INTERLOCUTORY

Appellants, Spartanburg County Sheriff's Office and South Carolina Association of Counties Self Insurance Fund, request that Respondent's Motion to Dismiss Appeal as Interlocutory be denied because (1) the application of Section 1-23-390 to Appellants as shown in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), violates Appellants' equal protection and due process rights and (2) the issues raised on appeal in the present matter are distinguishable from the issues in Bone. In support, Appellants state as follows:

PROCEDURAL HISTORY

Respondent Raquel Martinez ("Martinez") was employed as a Master Deputy Forensic Investigator by the Spartanburg County Sheriff's Department. On April 21, 2006, Martinez filed a Form 50 alleging that she had suffered a mental injury as a result of investigating an accident in which a Greenville County Deputy Sheriff had accidentally backed over and killed his two year old daughter. On May 12, 2006, Spartanburg County and its carrier, the South Carolina Association of Counties Self-Insurance Fund (collectively "Defendants") filed their Form 51 denying, inter alia, that Martinez suffered a compensable mental injury as a result of any unusual or extraordinary condition of employment.

A hearing was held before Commissioner G. Bryan Lyndon on September 6, 2006, in Spartanburg, South Carolina. At the hearing, Martinez contended that while performing an investigation on April 4, 2005, as part of her duties with the Spartanburg County Sheriff's Department, she encountered an unusual and extraordinary condition of employment, which subsequently led to her mental breakdown and hospitalization. Martinez alleged she was permanently and totally disabled and requested a lump sum payment of the award. Defendants contended that Martinez did not suffer a compensable psychiatric injury as a result of an unusual or extraordinary condition of her employment. Defendants asserted that Martinez was employed as a forensic investigator, that it was her job to investigate homicide and death cases, and that she was performing her regular job when she investigated the child's accidental death on April 4, 2005. On November 20, 2006, Commissioner Lyndon issued his Decision and Order finding, inter alia, that the investigation of the accident on April 4, 2005 was not an unusual or extraordinary condition of employment and not the proximate cause of Martinez's mental condition.

Within the statutory period, counsel for Martinez filed a Form 30, Request for Commission Review, setting forth grounds for review. Oral arguments were presented before an Appellate Panel on April 23, 2007. On May 22, 2007, the Appellate Panel issued its Order unanimously affirming the Single Commissioner's Order in its entirety.

Thereafter, Martinez filed an appeal with the Spartanburg County Circuit Court. On February 25, 2009, Judge J. Mark Hayes, II, issued an Order holding that the Appellate Panel's Order lacked sufficient detail to enable the Court to determine whether those findings were supported by substantial evidence. In its Order, the Circuit Court specifically stated that "this Court is left to speculate if the proper analysis was applied by the Commission and whether the factual conclusions upon which the law was applied had a substantial basis in the record." As such, the Circuit Court reversed the Appellate Panel's Order and remanded the case back to the South Carolina Workers' Compensation Commission ("the Commission") for additional findings of fact.

Defendants timely filed their Notice of Appeal with the South Carolina Court of Appeals on March 16, 2009. On June 15, 2011, the Court of Appeals filed its Order reversing the decision of the Court of Common Pleas. Judge Williams, writing for the majority, concluded that the Appellate Panel's Order was sufficiently detailed to enable appellate review and that the record contained substantial evidence to support the Commission's decision that Martinez did not suffer an unusual or extraordinary condition of her particular employment on April 4, 2005. Because the Court of Appeals concluded that there was substantial evidence that Martinez did not suffer an unusual or extraordinary condition in her particular employment, the majority did not address the issue of "proximate cause."

Martinez timely filed a Petition for Rehearing, which was denied by the Court of Appeals on October 6, 2011. Thereafter, on November 2, 2011, Martinez filed a Petition for Writ of Certiorari to the South Carolina Supreme Court. The Petition was granted on February 7, 2013. The Supreme Court heard oral arguments on October 15, 2013. On January 8, 2014, the Supreme Court filed its decision and held that pursuant to Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), the circuit court's order was not a final judgment and therefore was not appealable. As such, the Supreme Court vacated the Court of Appeals' Order and remanded the case to the Commission for further proceedings.

Pursuant to the Commission's Administrative Order, filed August 15, 2014, the case was remanded to the Appellate Panel to take such action and enter an Order consistent with the Court's directive. On February 24, 2015, the Appellate Panel issued an Order with 99 findings of fact and concluded that Martinez failed to prove that her mental health condition was proximately caused by the work incident on April 4, 2005 or that the work conditions of April 4, 2005 were unusual or extraordinary in comparison to her normal conditions of employment. (See Attachment A).

Subsequently, on March 11, 2015, Martinez filed an appeal to the Circuit Court. On December 3, 2015, Judge J. Mark Hayes, II, entered an Order reversing the Appellate Panel and remanding the matter to the Commission. The Circuit Court ruled that it had established causation of the mental health condition as a matter of law in his previous Order, and directed the Commission to find the same. (See Attachment B). Defendants filed their Motion to Alter or Amend a Judgment pursuant to Rule 59(e), S.C.R.C.P. on December 11, 2015. (See Attachment C). Defendants also filed a Memorandum in Support of their Rule 59(e) Motion raising multiple exceptions, including that the Circuit Court exceeded its scope of review under Section 1-23-

380, S.C. Code Ann. (1976). (See Attachment D). On May 2, 2016, the Circuit Court issued an Order denying Appellants' Motion. (See Attachment E).

Defendants/Appellants filed their Notice of Appeal with this Court on May 18, 2016.

ARGUMENTS

I. The application of Section 1-23-390 to Appellants as shown in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013) violates Appellants' equal protection and due process rights?

A. The Court of Appeals Has Appellate Jurisdiction

The constitutionality of S.C. Code Ann. Section 1-23-390 as applied to Appellants is properly before the Court for review. Both Sections 1-23-380 and 1-23-390 confer appellate jurisdiction. The question of jurisdiction is always before the appellate court. Cf. Weatherford v. Price, 340 S.C. 572, 532 S.E.2d 310 (Ct. App. 2000). Logically, Appellants cannot litigate the appealability of a circuit court order until that order is issued, and, therefore, appealability of the circuit court order is properly before the Court of Appeals.

B. Bone's Application of Section 1-23-390 to Appellants Violates Appellants' Equal Protection Right Under the Law

Based on the Circuit Court's disposition of the issues, Bone's application of Section 1-23-390 creates an impermissible distinction between claimants and defendants, which violates Equal Protection. First, Equal Protection is applicable in workers' compensation appellate proceedings. See Howard v. Owen Steel Co., 303 S.C. 304, 400 S.E.2d 149 (1991) (analyzing appeals to the Full Commission under Equal Protection). Therefore, Appellants' Equal Protection rights extend to the current proceeding.

The Equal Protection analysis has been set forth in multiple cases:

The equal protection clauses of our federal and state constitutions declare that no person shall be denied the equal protection of the laws. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. Equal protection "requires that all persons be treated alike under like

circumstances and conditions, both in the privileges conferred and in the liabilities imposed.”

McLeod v. Starnes, 396 S.C. 647, 723 S.E.2d 198 (S.C., 2012) (Beatty, J., dissenting). “The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment.” Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E.2d 161 (2013).

In this claim, Bone requires that opposing litigants in the *same* litigation receive disparate treatment in a workers’ compensation appeal. Specifically, in cases in which compensability is disputed, such as the instant case, Bone would *allow* a claimant’s appeal when compensability is denied by the Court, but would *deny* defendants an appeal when compensability is decided in the claimant’s favor. This inequity is the logical progression of Bone’s requirement that the “final judgment” required by Section 1-23-390 be a “final judgment disposing of the *entirety of the action*.” Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013)(emphasis added).

As contemplated by Bone, workers’ compensation claims often require multiple hearings to determine issues and entitlement to certain benefits: compensability, temporary disability, permanent disability, and medical treatment. The Supreme Court has recognized that “workers’ compensation benefits accrue along a time continuum.” Curiel v. Env. Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007). Because of the nature of the benefits available, defining a final judgment as requiring the disposal of the whole action *impermissibly requires* the government to treat a defendant in the claim differently than a claimant. To illustrate, consider the following table in which the defendants to a workers’ compensation claim dispute

compensability, but the claimant asserts entitlement to benefits.¹ Assume that there is an injury, but the defendants assert a legal defense such as in the instant case²:

Deciding Body	Standard of Review	Prevailing Party	All issues Decided	Can Aggrieved Party Appeal/ Petition for Review?
Single Commissioner	Fact Finder	Defendants	Yes	Yes
Full Commission	De Novo	Defendants	Yes	Yes
Circuit Court	Substantial Evidence/ Error of Law	Defendants	Yes	Yes
Court of Appeals	Substantial Evidence/ Error of Law	Defendants	Yes	Yes

In the above example, where the defendants prevail at every level, the claimant has every chance to prove the claim, and then to have the claim reviewed by the next reviewing body for errors of law. No one would dispute that the fairness of the judicial review as set forth in the table above. However, consider the following table, in which the Defendants initially prevail on their legal argument that the claim is not compensable, but the Circuit Court remands, and, in doing so, makes an error of law:

Deciding Body	Standard of Review	Prevailing Party	All issues Decided	Can Aggrieved Party Appeal/ Petition for Review?
Single Commissioner	Fact Finder	Defendants	Yes	Yes
Full Commission	De Novo	Defendants	Yes	Yes
Circuit Court	Substantial Evidence/ Error of Law	Claimant	No	No
Court of Appeals	Substantial Evidence/ Error of Law			

¹ The Tables illustrate the prior law, which applies in this case, that required an appeal from the Commission to be made first to the circuit court. Such appeals are now directed to the Court of Appeals for all injuries occurring on or after July 1, 2007. S.C. Code Ann. § 42-17-60 (Supp. 2012).

² Appellants (1) deny Martinez's mental/mental injury arose out of unusual or extraordinary conditions of her employment and (2) deny the investigation in question was the proximate cause of her mental injury.

Indeed, the second chart represents what happened in this particular case. Appellants now assert that the Circuit Court, sitting as an appellate court, has made several errors of law. However, even if the Circuit Court has in fact made a clear error of law in the Claimant's favor, because of the nature of the proceeding, Bone deprives Appellants of a *reasonably timely* appeal. Timeliness of an appeal notwithstanding, when Appellants are required to provide medical treatment and disability payments until all issues are finally decided by the fact finder, significant deprivation of property arguments arise. (See Due Process Argument, *infra*.) Therefore, Bone's interpretation of Section 1-23-390 essentially requires disparate treatment of litigants to the same workers' compensation claim.

This disparate treatment impermissibly infringes on a fundamental right guaranteed by the South Carolina Constitution: the right to access to the Courts. Article I, Section 9 of the South Carolina Constitution provides that "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." In Rylee v. Marett, 121 S.C. 366, 113 S.E. 483 (1922), the Supreme Court recognized that the right to a speedy remedy includes the right of a speedy appeal.³

The inequity of appealability in this case offends the constitutional guarantee in two ways. First, Section 9 guarantees the right to "every person." Therefore, if the right to court access is guaranteed to every person, it is guaranteed to every person equally. The inequity of the availability of the appeal cannot stand. Second, because the speedy remedy requires a speedy appeal, the equity of the parties should require an appeal of equal speed for both parties. A claimant has access to an immediate appeal; however, should the current construction of Bone

³ "A lax observance of the very reasonable regulations prescribed by statute and the rules of court for perfecting appeals can but lead to unnecessary delay in the final disposition of causes in our courts, and thus work infringement of the constitutional guaranty (section 15, art 1, Const. 1895) that 'every person shall have speedy remedy therein for wrongs sustained.'" Rylee v. Marett, 121 S.C. 366, 113 S.E. 483 (1922).

stand, then there is absolutely no speedy remedy or appeal for Appellants in the instant case. Appellants would be subject to provide disability benefits and medical treatment until the time of maximum medical improvement and a hearing before the Commission to determine all issues. Only at that time are Appellants able to argue that the claim is not compensable for legal reasons that were readily available and able to be litigated prior to the Appellant's provision of benefits.

Given that disparate treatment required by Bone implicates a constitutional right of access to the Courts, the appropriate equal protection analysis is strict scrutiny, and the Bone construction of Section 1-23-390 cannot stand. Legislation restricting or impairing a fundamental right "is subject to 'strict scrutiny' in determining its constitutionality." In re Treatment and Care of Luckabaugh, 568 S.E.2d 338, 351 S.C. 122 (2002) (citing Hamilton v. Board of Trustees, 282 S.C. 519, 319 S.E.2d 717 (Ct.App.1984)). "To survive strict scrutiny the Act must meet a compelling state interest and be narrowly tailored to effectuate that interest." Id. In the instant case, there is no *compelling* state interest. Indeed the primary, discernable policy interest identified in Bone is "undue delay and waste of judicial resources caused by interlocutory appeals." Conserving judicial resources cannot be compared to a *compelling* interest such as national security, protecting the lives of citizens from threats of harm, etc. This matter of preference is not "compelling" when balanced with Appellants' right to have the same appeal right as a claimant. Furthermore, a one-sided bar to appeal is insufficiently tailored to accomplish the stated goal of preventing "undue delay and waste of judicial resources" when there is no data or legislative history indicating that a contemporaneous appeal actually wastes judicial resources. Accordingly, Section 1-23-390 impermissibly burdens the constitutional right of Appellants to a speedy appeal.

Furthermore, even absent the protection in the South Carolina Constitution for access to the courts, any order denying the right to appeal and subjecting Appellants to an undetermined period of benefit payment burdens a fundamental property right:

[I]t is arguable that this case should be analyzed under the strict scrutiny test as the reduction of a parent's income clearly impinges upon a **fundamental property right**. See Wingfield v. S.C. Tax Comm'n, 147 S.C. 116, 152, 144 S.E. 846, 858 (1928) ("The court appreciates the earnest plea that every person is entitled to the enjoyment of life, liberty, and property, and to the equal protection of the laws guaranteed by the federal and state Constitutions, and will protect and safeguard these fundamental rights to the extent, if necessary, of declaring invalid any legislative enactment clearly shown to be in violation of them.").

McLeod v. Starnes, 396 S.C. 647, 723 S.E.2d 198 (S.C., 2012) (Beatty, J., dissenting) (emphasis added).

The application of Bone in the present case, will clearly deprive Appellants of a fundamental property right. Consider the following:

- Appellants prevailed on compensability before the Commission, but the Commission's decision was reversed by the Circuit Court;
- Under Bone, Appellants are without recourse for immediate appeal, and the case is remanded to the Commission, which will have little choice but to adopt the Circuit Court's improper findings of fact and award benefits to Martinez;
- Appellants begin paying temporary total disability benefits at a compensation rate of \$462.92, and provide Martinez with psychiatric treatment.
- It takes 2.5 years and \$60,000 in medical care and prescription drugs costs to attain maximum medical improvement.
- Permanency is determined, and future medical is ordered.
- The case works its way to the Supreme Court, and shortly before oral argument, Appellants pay the 500th week of disability, totaling \$231,460.00 (with medical treatment Appellants have now spent close to \$300,000.00).
- The Supreme Court then decides that Appellant's legal case against compensability has merit and rule that the case is not compensable as a matter of law.

Assuming this case unfolds as above, Martinez will have received a benefit of nearly \$300,000, to which she was never entitled. That certainly implicates a significant property right, and, practically, there is no way for Appellants to recover this money through the workers' compensation claim that gave rise to the requirement to pay it. Bone would reason that the Defendants' \$300,000 loss is merely the price of using judicial resources wisely; however, that outcome is untenable.

Fundamental rights aside, Bone cannot pass a rational basis test. "To prevail under the rational basis standard, a movant must show similarly situated persons received disparate treatment, and that the disparate treatment did not bear a rational relationship to a legitimate government purpose." Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E.2d 161 (2013). Appellants assert that there is *no legitimate* purpose in providing vastly different appeal rights to claimants and defendants in the *same* litigation. Other cases discussing rational basis review discuss issues such as insurance required to drive on public roadways,⁴ regulating relationships between physicians and physical therapists,⁵ and regulation of on-site alcohol sales and consumption on a commercial premises.⁶ As a generalization, the legitimate purpose test broadly relates to the state's police power in protecting its citizens and promoting public order. Appellants assert there is *no legitimate* interest in parties to the same litigation having different appeal rights, as the appeal rights between two parties have no discernable impact on the public as a whole.

Bone states that depriving Defendants of an immediate right to appeal may improve judicial economy by reducing appeals in individual cases. However, this evidentiary basis for

⁴ Marley v. Kirby, 271 S.C. 122, 245 S.E.2d 604 (1978) (finding contributory negligence statute failed rational basis review and impermissibly classified injured parties).

⁵ Sloan v. S.C. Bd. of Physical Therapy Examiner, 636 S.E.2d 598, 370 S.C. 452 (S.C., 2006).

⁶ Denene, Inc. v. City of Charleston, 359 S.C. 85, 596 S.E.2d 917 (S.C., 2004)

this assertion is far from clear. The defendants shoulder the *entire* burden of this scheme, and, in this case, the state would essentially facilitate a transfer of assets from Appellants to Martinez, without qualification of whether and how much this scheme truly impacts judicial economy. Furthermore, the Courts should not be in a position to limit appeal based on an *outcome* as they decide, as this necessarily brings into question the neutrality of the Court in a manner that is not proper. Therefore, there is no legitimate state interest, and this statutory interpretation fails a rational basis analysis. Bone's interpretation of Section 1-23-390 offends equal protection and cannot be saved.

C. Bone's Application of Section 1-23-390 to Appellants Violates Appellants' Due Process Right Under the Law

In effect, the Circuit Court has ordered Appellants to pay benefits, its Order is not appealable, and this scheme offends due process. Article I, Section 22 of the South Carolina Constitution provides certain rights regarding procedures before administrative bodies:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he **shall have in all such instances the right to judicial review**.

(emphasis added). Judicial review of a workers' compensation proceeding is a constitutional right in South Carolina. The rights provided under Article I, Section 22 extend to the limits of due process:

[W]hen discussing Article I, Section 22, we have consistently indicated that the protections provided under this section are the equivalent of those afforded by the Due Process Clause of our state and federal Constitutions.

S.C. Coastal Conservation League v. S.C. Dep't. of Health and Environmental Control, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008). Due process necessarily includes the right to *meaningful* judicial review:

The procedural component of the state and federal due process clauses requires the individual whose property or liberty interests are affected to have received adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review.

Dangerfield v. State, 376 S.C. 176, 656 S.E.2d 352 (2008) (emphasis added). No South Carolina case has clearly defined what particular process is required for “meaningful” judicial review, but other cases discussing “meaningful” point to the *temporal* nature of due process. “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc., 345 S.E.2d 485, 289 S.C. 309 (S.C., 1985) (citing Armstrong v. Manzo, 380 U.S. 545 (1965)). In Armstrong, a father’s parental rights were terminated without any notice to him, although his whereabouts were easily ascertainable. When the subsequent adoption was finalized, and the natural father sought to set aside the proceedings, he had multiple burdens of proof placed on him at that point that would not have been placed on him had proper notice been given. The Supreme Court of the United States noted that “A fundamental requirement of due process is ‘the opportunity to be heard.’ It is an opportunity which must be granted at a meaningful time and in a meaningful manner.” Armstrong, 380 U.S. at 552 (internal citations omitted). The Supreme Court held that the father’s due process rights were violated because he was not provided timely notice and as a result, additional burdens were placed on him. Id. at 551. In DSS v. Wilson, 352 S.C. 445, 574 S.E.2d 730 (2002), there was litigated allegation of child abuse against the minor’s father. The minor requested to testify outside of the presence of the father, over the objection of

the father. The father was excluded from the courtroom but could still hear the testimony and had the opportunity to briefly conference with his lawyer prior to cross-examination. However, our Supreme Court found that this process did not comport with due process:

[I]f the child testifies at an intervention proceeding, the due process right to confrontation requires the child testify in the presence of her parent/defendant unless special circumstances are established. Wilson's ability to hear the minor's testimony, discuss her testimony with counsel, and cross-examine her were insufficient to satisfy due process without the determination the minor would be traumatized by testifying in her father's presence. As conceded by DSS at oral argument, the minor was the key witness against Wilson and she may have been less credible if she had testified in his presence. Because Wilson did not have the opportunity to be heard in a meaningful manner, his due process right was violated.

SCDSS v. Wilson, 352 S.C. 445, 574 S.E.2d 730 (S.C., 2002). Armstrong illustrates meaningful (temporal) notice, and Wilson illustrates meaningful (temporal) opportunity to be heard. Therefore, the right to meaningful judicial review must include contemporaneity. This temporal requirement is reflected in Section 1-23-380, the companion statute of Section 1-23-390: "A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy." S.C. Code Ann. 1-23-380. Looking at the plain language of 1-23-380, the provision for immediate appeal is provided when an appeal after the passage of time is not adequate. The policy embedded in Section 1-23-380 is what Appellants' seek here.

In this claim, the Circuit Court has made clear that, in its opinion, this case is compensable. Therefore, if the Circuit Court Order stands, Appellants are responsible for benefits. Since there is potential for Appellants having to pay benefits over the course of several years, totaling several hundred thousand dollars, meaningful judicial review requires a *temporal* component of appeal. Similar to Armstrong, if the appeal in this claim is deferred, Appellants

have additional burdens imposed on them that would not otherwise be imposed. First, there is *no* mechanism under the Workers' Compensation Act to compel repayment of disability, and, therefore, Appellants would ultimately have to institute separate legal proceedings in an attempt to recover the value of the disability benefits paid.

Appellants are further burdened because the application of the standard of review changes. In workers' compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). The Appellate Court's review of these findings of fact is limited to determining whether the findings are supported by substantial evidence in the record. See Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). In the present case, the Commission issued its final order concluding that Martinez did not sustain a compensable mental injury under the Act and that the proximate cause of her mental condition was not the investigation in question, but rather the subsequent death of a relative. In support of its decision, the Commission made 99 detailed findings of fact. Since the Commission's Order finally decided compensability, the issue on appeal should be whether substantial evidence supports the Commission's findings that Martinez did not sustain a compensable injury. However, if the appeal in this claim is deferred and the Commission is forced to adopt the "findings" of the Circuit Court and issue an Order finding the claim compensable, then the issue on appeal in the future becomes whether substantial evidence supports the Commission's findings that Martinez sustained a compensable injury. This clearly places an additional burden on Appellants. See Tiller v. National Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999)(the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence).

II. The issues for appellate review in the current matter are distinguishable from the issues in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013).

Appellants contend (1) that the Circuit Court did not perform a proper appellate review because the Circuit Court failed to examine the Appellate Panel's findings of fact to determine if those findings of fact were supported by substantial evidence and (2) that the Circuit Court erred as a matter of law, and violated Section 1-23-380(5), by substituting its judgment for the judgement of the Appellate Panel as to the weight of the evidence on questions of fact.

The majority opinion in Bone states that "we have consistently held that an order of the circuit court for additional proceedings before an administrative agency is not directly appealable." 404 S.C. at 77, 744 S.E.2d at 558. However, if Bone is applied to the current case, Appellants lose any and all rights to challenge the validity of the appellate review performed by the Circuit Court. Since the issue of a lower appellate court's abuse of authority was not raised in Bone, the present case is clearly distinguishable from Bone.

In workers' compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). Whether a causal connection exists between employment and an alleged injury is a question of fact for the South Carolina Workers' Compensation Commission. Sharpe v. Case Produce, Inc., 336 S.C. 154, 159, 519 S.E.2d 102, 105 (1999). The Appellate Court's review of these findings of fact is limited to determining whether the findings are supported by substantial evidence in the record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). "Substantial evidence" necessary to support a decision of the Commission is:

'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . . It must be enough to justify, if the trial were [sic] to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. . . .

This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.'

Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981); *see also*, O'Banner v. Westinghouse Electric Corp., 319 S.C. 24, 30, 459 S.E.2d 324, 327 (Ct. App. 1995) (The determination of witness credibility and the weight to be accorded evidence is reserved to the Commission.)

The findings of the Commission are presumed correct and will be set aside only if unsupported by substantial evidence. Etheredge v. Monsanto Company, 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002); Medlin v. Upstate Plaster Serv., 329 S.C. 92, 495 S.E.2d 447 (1998). This Court may not weigh the evidence in its review of a factual finding by the Commission. *See* Walker v. City of Columbia, 247 S.C. 241, 146 S.E.2d 856 (1966). An Appellate Court's review of the Commission's findings of fact is limited to determining whether the findings are clearly unsupported by substantial evidence in the record, rather than reweighing the evidence presented to the Commission. *See generally*, Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306-7 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987); Brown v. Jordan Oil Co., 291 S.C. 272, 275, 353 S.E.2d 280, 282 (1987); O'Banner, 319 S.C. at 30, 459 S.E.2d at 327. Thus, if reasonable minds could reach the conclusion reached by the Commission, the Commission's findings must be affirmed. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162, 163 (1992). Of special note is that where the evidence is conflicting, "the Commission's findings of fact are conclusive." Sharp, 336 S.C. at 160, 519 S.E.2d at 105; *See also*, Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 407 (1991) ("Where there is a conflict in the evidence, either of different witnesses or of the same witnesses, the findings of fact of the Commission as triers of fact are conclusive.") Indeed, the possibility of drawing two inconsistent

conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Tiller v. National Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999); Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998).

In the present case, the Circuit Court assumed the role of finder of fact by making findings of fact contrary to the Appellate Panel's. This is clearly beyond the scope of the Circuit Court's appellate review under § 1-23-380 S.C. Code Ann. (1976). Moreover, the Circuit Court again failed to examine the Appellate Panel's 99 findings of fact to determine if those findings of fact were supported by substantial evidence.

The Court did not find fault with the Appellate Panel's finding that Officer Johnson had not worked for Spartanburg County for approximately 2-3 years prior to the toddler's death, that Officer Johnson and Appellant had never worked as partners, that Appellant did not witness the accident, that Appellant had never socialized with Officer Johnson, that Appellant had never been to Officer Johnson's home, had never met Officer Johnson's wife or the child or even seen a photograph of the toddler. Instead, the Court found that evidence that Appellant and Officer Johnson knew each other, served together, and for the one year backed each other up, outweighed the Commission's findings of fact. In so holding, the Court in fact reweighed the evidence contrary to its scope of review under Section 1-23-380, S.C. Code Ann. (1976).

In reality, the Circuit Court has attempted to finally decide the issues of compensability. However, by substituting its judgement for that of the Appellate Panel's as to the weight of the evidence, the Circuit Court clearly violated the Administrative Procedures Act and abused its appellate authority. The only adequate remedy Appellants have to challenge the Circuit Court's improper appellate review is to appeal the case to the Court of Appeals. Failure to allow such appeal would be a clear violation of Appellant's due process rights.

CONCLUSION

For the reasons stated above, the Circuit Court, in concert with the application of Bone, deprived Appellants of equal protection and due process. Accordingly, Appellants respectfully request this Court issue an Order denying Respondent's Motion to Dismiss the Appeal.

BY: Richard B. Kale Jr.
Richard B. Kale, Jr.
Zachary M. Smith
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3272
Attorneys for Appellants

Date: May 31, 2016

ATTACHMENT A

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

WCC FILE NO. 0515098

RAQUEL MARTINEZ,

**EMPLOYEE,
CLAIMANT/APPELLANT,**

-V-

SPARTANBURG COUNTY,

EMPLOYER,

AND

**S.C. ASSOCIATION OF COUNTIES
SELF-INSURANCE FUND,**

**CARRIER,
DEFENDANTS/RESPONDENTS**

Appellate Panel Decision and Order filed

February 24, 2015

Claimant represented by James K. Holmes and David T. Pearlman, of The Steinberg Law Firm, LLP, Charleston, South Carolina and Chadwick D. Pye, of Chadwick D. Pye, L.L.C., Spartanburg, South Carolina.

Defendants represented by Richard B. Kale, Jr. of Willson Jones Carter & Baxley, P.A., Greenville, South Carolina.

STATEMENT OF THE CASE

Raquel Martinez (hereinafter "Claimant") was employed as a Master Deputy Forensic Investigator by the Spartanburg County Sheriff's Department. On April 21, 2006, Claimant filed a Form 50 alleging that she had suffered a mental injury as a result of investigating an accident in which a Greenville County Deputy Sheriff had accidentally backed over and killed his two year old daughter. On May 12, 2006, Spartanburg County and its carrier, the South Carolina Association of Counties Self-Insurance Fund (collectively "Defendants") filed their Form 51 denying, inter alia, that Claimant suffered a compensable mental injury as a result of any unusual or extraordinary condition of employment.

A hearing was held before Commissioner G. Bryan Lyndon on September 6, 2006, in Spartanburg, South Carolina. At the hearing, Claimant contended that while performing an investigation on April 4, 2005, as part of her duties with the Spartanburg County Sheriff's Department, she encountered an unusual and extraordinary condition of employment, which subsequently led to her mental breakdown and hospitalization. Claimant alleged she was permanently and totally disabled and requested a lump sum payment of the award. Defendants contended that Claimant did not suffer a compensable psychiatric injury as a result of an unusual or extraordinary condition of her employment. Defendants asserted that Claimant was employed as a forensic investigator, that it was her job to investigate homicide and death cases, and that she was performing her regular job when she investigated the child's accidental death on April 4, 2005. Defendants further contended that if Claimant suffered mental stress as a result of the incident on April 4, 2005, it was just one factor and that there were other factors involved, including the death of her "cousin" from AIDS. Defendants argued that for a psychiatric claim to be compensable, the

job related stress must proximately cause the psychiatric injury, and not just be one of several factors.

On November 20, 2006, Commissioner Lyndon issued his Decision and Order finding, inter alia, that the investigation of the accident on April 4, 2005 was not an unusual or extraordinary condition of employment and that there were other factors involved in Claimant's mental condition. Commissioner Lyndon issued the following Order:

IT IS, THEREFORE, ORDERED that the claim of Raquel Martinez be, and hereby is, denied.

Within the statutory period, counsel for Claimant filed a Form 30, Request for Commission Review, setting forth grounds for review. Oral arguments were presented before an Appellate Panel on April 23, 2007. On May 22, 2007, the Appellate Panel issued its Order unanimously affirming the Single Commissioner's Order in its entirety.

Thereafter, Claimant filed an appeal with the Spartanburg County Circuit Court. On February 25, 2009, Judge J. Mark Hayes, II, issued an Order holding that the Appellate Panel's Order lacked sufficient detail to enable the Court to determine whether those findings were supported by substantial evidence. In its Order, the Circuit Court specifically stated that "this Court is left to speculate if the proper analysis was applied by the Commission and whether the factual conclusions upon which the law was applied had a substantial basis in the record." (Order, dated 2/25/09, pp. 9-10). As such, the Circuit Court reversed the Appellate Panel's Order and remanded the case back to the South Carolina Workers' Compensation Commission for additional findings of fact.

Defendants timely filed their Notice of Appeal with the South Carolina Court of Appeals on March 16, 2009. On June 15, 2011, the Court of Appeals filed its Order reversing the decision of the Court of Common Pleas. Judge Williams, writing for the majority, concluded that the Appellate

Panel's Order was sufficiently detailed to enable appellate review and that the record contained substantial evidence to support the Commission's decision that Claimant did not suffer an unusual or extraordinary condition of her particular employment on April 4, 2005. Because the Court of Appeals concluded that there was substantial evidence that Claimant did not suffer an unusual or extraordinary condition in her particular employment, the majority did not address the issue of "proximate cause."

Claimant timely filed a Petition for Rehearing, which was denied by the Court of Appeals on October 6, 2011. Thereafter, on November 2, 2010, Claimant filed a Petition for Writ of Certiorari to the South Carolina Supreme Court. The Petition was granted on February 7, 2013. The Supreme Court heard oral arguments on October 15, 2013. On January 8, 2014, the Supreme Court filed its decision and held that pursuant to Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), the circuit court's order was not a final judgment and therefore was not appealable. As such, the Supreme Court vacated the Court of Appeals' Order and remanded the case to the South Carolina Workers' Compensation Commission for further proceedings.

Pursuant to the Commission's Administrative Order, filed August 15, 2014, the case was remanded to the undersigned Appellate Panel to take such action and enter an Order consistent with the Court's directive.

DISCUSSION

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own findings of fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Single Commissioner. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (1987).

Mental injuries caused solely by emotional stress are compensable if the emotional stimuli or stressors are incident to or arise from unusual or extraordinary conditions of employment. Stokes v. First National Bank, 298 S.C. 13, 377 S.E.2d 922 (S.C. App. 1988); Powell v. Vulcan Materials Co., 299 S.C. 325, 384 S.E.2d 725. In order to recover workers' compensation benefits, a claimant must prove both:

(1) that he was exposed to unusual and extraordinary conditions in his employment; and (2) that these unusual and extraordinary conditions were the proximate cause of his mental breakdown.

Frame v. Resort Services, Inc., 357 S.C. 520, 529, 593 S.E.2d 491, 496 (S.C. App. 2004). Moreover, the requirement of "unusual or extraordinary conditions in employment" refers to the conditions of the particular job in which the injury occurs, not to the conditions of employment in general. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000). The statute and our case law speak of *conditions* of employment and not the frequency of an event occurring. Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 (2012). The standard to be applied is whether the work conditions at issue were unusual compared to the particular employee's normal conditions of employment. Id. at 427, 730 S.E.2d at 301; Doe v. S.C. Dep't. of Disabilities & Special Needs, 377 S.C. 346, 349-350, 660 S.E.2d 260, 262 (2008).

Because the Circuit Court found that the Commission's Order lacked an "explicit statement of facts...sufficiently detailed to enable the reviewing Court to determine whether the findings are supported by the evidence," the Commission withdraws its previous Findings of Fact and hereby substitutes the following Findings of Fact for the Court's consideration.

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. Claimant alleges that she sustained a mental-mental injury on April 4, 2005, when, through her job duties of processing an accident scene as Employer's Master Deputy Forensic Investigator, Claimant saw, took photographs of, and moved the body of a 2-year old female child who had been killed when the child's father accidentally ran over the child with his law enforcement vehicle (hereinafter "toddler" or "toddler's death"). Claimant does not plead repetitive trauma with the toddler's death on April 4, 2005, as a culminating event, or because of other forensic investigations Claimant performed after the date of the toddler's death: (a) Claimant testified at the hearing that she "never" had problems dealing with crime scenes prior to the toddler's death; (b) Claimant told Dr. Abess that "[i]t never bothered me" prior to the toddler's death ("I have always been able to take grizzly [sic] stuff"); and (c) Claimant's counsel's specific position at the hearing was that "as a result of performing an investigation on April the 4th, 2005...[Claimant] encountered an extreme and extraordinary condition in her employment, which subsequently led to a mental breakdown..." Claimant pleads a specific date of injury and a specific investigation as the cause of her alleged mental injury (Hearing Transcript, pages 9, 14, and 50-51; Form 50; Claimant's APA #7, pages 152-153).

2. Because Claimant pleads an acute, specific mental injury, the Commission is required to determine whether, pursuant to the second paragraph of the 2005 version of Section 42-1-160, (a) the circumstances surrounding the specific investigation of April 4, 2005, were "extraordinary and unusual in comparison to the normal conditions of the employment" as a Master Deputy Forensic Investigator; and (b) the extraordinary and unusual employment conditions "caus[ed]" the mental injury. This is not to say, however, that Claimant is required to prove that the

investigation of April 4, 2005, was the sole cause of her mental breakdown, and we do not hold her to such a standard.

3. The Commission fully acknowledges and finds that the toddler's death and its aftermath at the scene were tragic and horrific. As Claimant's supervisor testified, it was "hard" for "everybody" on the scene (Hearing Transcript, page 81).

4. Claimant contends that what made the particular forensic investigation regarding the toddler's death different from other investigations Claimant performed as a forensic investigator is that Claimant had "never had to deal with someone that I actually knew, that I considered a friend, not to mention a co-police officer" (Hearing Transcript, pages 28-30 and 52; *See also* Defendants' APA, page 249; Claimant's APA #7, page 153).

5. As of the date of the hearing before the hearing commissioner, Claimant was 47 years of age (Hearing Transcript, page 14).

6. Claimant has a Bachelor's Degree in Political Science and Sociology and/or International Studies. Claimant did "very well" in school (Hearing Transcript, page 14; Defendants' APA #8, page 193; Defendants' APA #9, page 288; Claimant's APA #6, page 128; Claimant's APA #7, page 151).

7. Claimant does not plead any physical injuries from her investigation of the toddler's death. Therefore, Claimant is required to prove that the stressful employment conditions causing a mental injury were extraordinary and unusual in comparison to the normal conditions of her employment as a Master Deputy Forensic Investigator (2005 version of Section 42-1-160, second paragraph).

8. Claimant does have significant physical problems predating the alleged injury in issue, and no claim was made for an aggravation of these physical problems. Claimant has had

"chronic migraine headaches" for "years," and for which Claimant has taken Imitrex, Demerol, and Phenergan (for accompanying nausea); Claimant sought treatment for headaches and hypertension 3 times prior to the toddler's death (in the month preceding and in the month of). Claimant has pre-existing hypertension, heart palpitations (for which she sees a cardiologist who prescribes medication), syncopal episodes, "severe" and "significant" TMJ dysfunction, chronic plantar fasciitis, chronic low back pain, GERD, left hip pain that "wakes her up at night," knee arthritis, radiculopathy of the upper extremities, and left foot drop "indicating deep nerve damage." Claimant is noted to take Lortab and Flexeril for her pre-existing migraines and TMJ dysfunction. The citations provided herein refer to Claimant's pre-existing conditions and medications (Claimant's APA, pages 1, 5—referring to Lortab and Flexeril, 6—referring to chronic plantar fasciitis, "severe" TMJ, chronic low back pain and reflux disease, 9-11—foot drop, neck pain, left hip pain, radiculopathy of the upper extremities, 13—numbness in left hand, history of vasopressor syncope, Imitrex/Lortab for migraines, and Flexeril for TMJ, 16—"usually gets Demerol/Phenergan for migraines," 17, 20-21—pain from knee/hand injuries, 57—"takes pain meds for TMJ, arthritis in knee, and migraines," 107—medical history, 113, 116, 127, and 155; Defendants' APA, pages 178—pain diagram, 189—onset of migraines "years ago," 200, 204—knee pain, hip pain, 210-211—including pain diagram, 290-291—tachycardia, and 298—taking Lortab since 2001).

9. On the date of the alleged injury in issue, Claimant's job title was "Master Deputy Forensic Investigator" or "I.D. Tech." For purposes of the inquiry before the Commission, Claimant's duties/experiences in prior law enforcement jobs (e.g., the field of pardon and parole) are irrelevant (Hearing Transcript, pages 14-15 and 31).

10. On the date of the toddler's death, Claimant had worked as a forensic investigator for Employer for 3½-4 years. She was not a new or recent employee (Hearing Transcript, pages 17 and 32-33).

11. Pursuant to (a) Claimant's and/or her supervisor's testimony at the hearing, and (b) Claimant's statement to Dr. Abess, a forensic investigator is ordinarily required to go to crime scenes (including homicide and other violent crime scenes); "come in contact with bodies, deceased bodies;" see "blood and guts" (Claimant admitted that this was not unusual); be present at autopsies where organs are removed; collect evidence; take approximately 100 photographs at a scene (including from inside a skull and from inside a body); take measurements, including those of bullet holes; look for/process any kind of fingerprints or other evidence such as DNA; move bodies for purposes of (a) determining whether there is a gunshot or stab wound and (b) photographing the bodies. A forensic investigator would be required to photograph the scene of a child mauled by a dog. Claimant herself described the "overall" job as a forensic investigator as "stressful" and "dangerous." We give great weight to this evidence (Hearing Transcript, pages 15-17, 24-25, 33-35, 37-39, 44-45, 55-56, 87-88, 90, 96-100, and 104; Claimant's APA #7, page 152; Defendants' APA #9, page 289).

12. According to Claimant's supervisor, a forensic investigator (the particular employment involved in this case) must investigate the deaths of children (Hearing Transcript, pages 97-98). We find that it is irrelevant as to whether Claimant herself ever did so prior to the date of the toddler's death, although the evidence is somewhat equivocal (Hearing Transcript, pages 17, 47, and 97-99).

13. Claimant's supervisor admits that it is not uncommon for a forensic investigator (the particular employment involved) to touch a dead body (Hearing Transcript, page 90).

14. On the date of the alleged mental injury, Claimant was one of 8-9 forensic investigators employed by Employer; Claimant's title was "Master Deputy Forensic Investigator" (Hearing Transcript, pages 14 and 99).

15. As a forensic investigator, Claimant was a participant of the homicide team (Hearing Transcript, page 37).

16. Claimant testified at her deposition that she had been on approximately 100 to 150 death calls in her 3-4 years as a forensic investigator. Prior to the toddler's death, Claimant admitted that she had seen (a) bodies with decapitated heads and missing arms, (b) burned bodies, and (c) a person whose leg was accidentally shot off by a shotgun (Hearing Transcript, pages 38-39 and 55-56; See also Claimant's APA #7, page 152).

17. According to her sworn deposition testimony, Claimant had participated in 24-26 autopsies as a forensic investigator prior to the date of the toddler's death. While present at autopsies, Claimant watched while doctors removed organs for examination (Hearing Transcript, pages 38-39).

18. Claimant admits that it not unusual for a forensic investigator to see "blood and guts" and burned bodies that are "pretty gruesome." Claimant's supervisor admits that working as a forensic investigator includes dealing with and photographing the bodies of people who were shot in the head, people who were badly burned, and children's deaths, including but not limited to children mauled by dogs. Claimant's supervisor admits that a forensic investigator is going to see "gruesome, unpleasant bodies" (Hearing Transcript, pages 39 and 103-104).

19. Claimant did not witness the accident in which the toddler's father accidentally backed over his child (Hearing Transcript, page 53).

20. After the toddler's death, Claimant was officially dispatched to the scene, where she was in charge of processing the dead body (Hearing Transcript, pages 81 and 84).

21. At the investigation scene of the toddler's death, Claimant was performing her ordinary job duties (Hearing Transcript, pages 96-99).

22. Claimant was not alone on the scene after the toddler's death. Also present on the scene were (a) ambulances and their drivers; (b) fire trucks (approximately 8-10 firefighters); (c) multiple police personnel from Spartanburg (approximately 6-7 officers), Greer (approximately 10 officers), and Greenville; and (d) the "S Team" from the Highway Patrol. Claimant was not alone when she arrived or while she worked (Hearing Transcript, pages 80, 85, and 101-102).

23. Claimant waited to perform a portion of her investigation until the Highway Patrol's "S Team" arrived. In fact, Claimant did not approach the toddler's body until after the "S Team" arrived and began their own investigation which included photographing the toddler's body. Claimant was not forced by any circumstances or by Employer to begin processing of the toddler's body; instead Claimant waited until the "S Team" arrived (Hearing Transcript, *e.g.*, pages 35-37 and 43).

24. Claimant processed the toddler's fingerprints at the scene, and also moved the toddler's body to take photographs. Claimant admits that these duties are the job of a forensic investigator (Hearing Transcript, pages 36-37 and 44-45).

25. Claimant admits that every one of her activities with regard to her investigation/processing of the toddler's death would have had to be performed by another forensic investigator had Claimant not been the forensic investigator dispatched to the scene (Hearing Transcript, pages 45-46).

26. Although the testimony referenced in the preceding Findings of Fact demonstrates that Claimant was performing her ordinary job duties in an ordinary manner as a forensic investigator at the scene of the toddler's death, Claimant contends that her relationship with the father of the toddler-victim (whether by virtue of the fact that the toddler's father is a fellow law enforcement officer or otherwise) transforms Claimant's employment condition on the day of the toddler's death into the extraordinary and unusual. We are not so persuaded:

(a) As to the toddler's father:

(i) the Commission finds very instructive and illuminating Claimant's initial testimony at the hearing as to the nature of Claimant's relationship with the toddler's father. When Claimant initially describes the father, she does not describe him as "my friend," but as a "former employee" and as a person "who used to work for the Spartanburg County Sheriff's office. We had adjoining zones that we worked" [emphasis added]. After Claimant's attorney asked "...would you consider A.J. a friend?", Claimant began to describe the father as a "friend" (Hearing Transcript, pages 18-20, 29, 40, and 57-61).

(ii) the toddler's father worked for Spartanburg County (Claimant's employer on the date of the alleged injury) for approximately one year prior to leaving to work for the City of Greer and then Greenville County; during the toddler's father's one-year employment with Spartanburg County, the toddler's father and Claimant worked on the same shift, but in different zones and not as partners (Hearing Transcript, pages 41, 57-59, 61, and 103);

(iii) the toddler's father had not worked for the same employer (i.e., Spartanburg County) in 2-3½ years prior to the date of the toddler's death. After the toddler's father left to work for another employer, Claimant and the toddler's father would see each

other in passing when the toddler's father dropped off a prisoner (Hearing Transcript, e.g., pages 40-42 and 79).

(iv) Claimant admits she had never socialized with the toddler's father prior to the toddler's death (Hearing Transcript, page 42);

(v) Claimant admits that she had never been to the toddler's father's home prior the date of the toddler's death (Hearing Transcript, page 42).

(vi) although by no means dispositive, we also note that the evidence shows that upon arriving at the scene, Claimant did not at any point talk to/console the toddler's father; nor did Claimant present any evidence that she attempted to. Such an action on Claimant's part might be indicative of a friendship outside the bounds of simply being a fellow law enforcement officer (Hearing Transcript, pages 19-20 and 23).

(vii) the greater weight of the evidence shows that Claimant's relationship with the toddler's father on the date of the toddler's death was, at most, as an acquaintance (or a loosely defined "friend") of a fellow law enforcement officer. Claimant in her testimony emphasized the "thin blue line" relationship, as evidence to establish extraordinary and unusual conditions of employment. However, as the toddler's father (a) had never worked alongside Claimant (they worked in different zones), (b) was working for another employer on the date of the toddler's death, (c) had never socialized with Claimant, and (d) was not the dead victim, we find this fellow law enforcement officer relationship insufficient. Although a friendship (something more abiding or meaningful than simply seeing/exchanging pleasantries with someone at work) or a present--or perhaps even former--law enforcement partnership might produce a different

outcome with regard to compensability, those circumstances are not applicable in the case before us (Hearing Transcript, pages 29-30, 42, and 61-62).

- (b) As to the toddler-victim, Claimant admits that she had never met the toddler. There is no testimony or other evidence to the effect that Claimant ever even saw the toddler's photo prior to her death, that Claimant ever went to a baby shower for the toddler (whether before or after the toddler's birth), or that Claimant ever gave a baby gift to the toddler or her parents. The Commission looked for any evidence that might have created a special relationship between Claimant and the toddler such that the processing of the crime scene might be extraordinary and unusual. However, there is no evidence in the record that the toddler's father (Claimant's "friend") ever even showed Claimant a photograph of the toddler at any point during her life (Hearing Transcript, page 41; record in its entirety);
- (c) As to the toddler's mother, there is no evidence in the record that Claimant ever met the toddler's mother; Claimant admits that she cannot recall ever having met the toddler's mother (Hearing Transcript, page 41; record in its entirety);

27. Claimant's supervisor admits that there is no rule or procedure whereby employees are prohibited from going to scenes where they know the victim or a relative of the victim. Claimant's supervisor admits that other forensic investigators could find themselves in the same or a similar situation of knowing the victim or person causing the accident (Hearing Transcript, pages 89-90, 94-95, and 100).

28. In the case before us, Claimant (a) did not witness the accident; (b) was not related to the toddler; Claimant had never even met the toddler; (c) was not a close friend of the toddler's father; Claimant had never socialized with or been to the home of the toddler's father; nor is there

evidence that he went to her home; (d) was not a friend of the toddler's mother; Claimant had never met the toddler's mother or does not remember meeting the mother if she ever did meet the toddler's mother; (e) had not worked closely as a partner with the toddler's father at any point; when Claimant and the toddler's father did both work for Employer, they saw each other in passing. Further, the toddler's father had not worked for Employer in approximately 2-3 years prior to the toddler's death; and (e) did not have to process a scene where the toddler's father (Claimant's fellow law enforcement officer whom she "knew") was the victim.

29. Supervisor Denton states that he has "probably" never investigated a crime scene where he personally knew the person who caused a crime or accident. Although not dispositive, it is instructive that Denton **specifically differentiates between knowing the perpetrator in a "law enforcement way" rather than in a "personal way."** Although Denton may himself have been friends with the toddler's father (in a "personal way" or through his supervision of the toddler's father), Claimant did not supervise the toddler's father or socialize with the father. Claimant only knew the toddler's father in a "law enforcement way" as a fellow officer who formerly worked for Employer. However, even assuming *arguendo* that the fact that Claimant simply "knew" the toddler's father through seeing him in passing at work, or because the toddler's father and Claimant are both fellow law enforcement officers (Claimant's "thin blue line" theory), or a combination of both factors, is sufficient to make a forensic investigator's processing of the scene unusual and extraordinary, there is other evidence which the Commission cannot ignore involving proximate cause as set forth *infra* (Hearing Transcript, pages 29-30, 52, 61, and 88-89; *See also* Defendants' APA, page 249).

30. Two weeks after the toddler's death on April 4, 2005, Claimant's male 34-year old "cousin" died of AIDS on April 18, 2005. This date is significant for reasons set forth in the

Commission's other findings. The "cousin" (actually Claimant's ex-husband's cousin) is described by Claimant herself in medical evidence as Claimant's "*cousin,*" "*brother,*" "*best friend,*" and "*very close friend and relative;*" this person and Claimant were "*very close ever since they were little kids*" (hereinafter "cousin") [emphasis added]. Claimant's family physician actually uses the phrase "very close" no fewer than three times in one record to describe the relationship between Claimant and the cousin; the family physician also describes Claimant the day after the cousin's death (a) as "very upset," (b) with swollen and irritated eyes, and (c) as grieving. At the hearing, Claimant described the cousin as someone she "half-raised," and someone who lived with Claimant every summer and during school breaks. Claimant's relationship with the cousin was also such that Claimant helped with the funeral arrangements. We give great weight to the evidence cited in this finding (Claimant's APA #1, page 2; Claimant's APA #2, pages 23 and 35; Hearing Transcript, pages 25-26 and 47-48).

31. With regard to the medical/psychological/psychiatric evidence, we give the greatest weight to the 2005 temporal, sequential treatment records from Claimant's own family physician—spanning more than 2½ months after the date of the toddler's death. Claimant sought treatment with her family physician's practice for various maladies/illnesses/bloodwork in sequential visits on:

- (a) April 7, 2005 (3 days after the date of the alleged injury/toddler's death): Claimant's physical complaints were hypertension and headaches. Claimant was also having stress at work, mentioning specifically having to work alternating shifts: there is no mention of the toddler's death, no mention of a child's death, no mention of a death generically, no mention of a child, no mention of a little girl, no mention of a fellow law enforcement officer, and no mention of a situation at

work about which Claimant was reluctant to elaborate. Nor is there any documentation that Claimant was crying or otherwise noted to be upset during this visit. Nor was she placed on any psychotropic medication (Claimant's APA #1, page 2);

- (b) April 19, 2005 (15 days after the date of the alleged injury/toddler's death)--the day after Claimant's cousin died on April 18, 2005: Claimant presented for blood pressure and grief, and is documented as *"very upset and crying" over the death of her "very close" friend/relative.* Claimant *"has been crying, and her eyes are swollen."* Claimant was placed on Xanax "to help her get through this very trying time." There is no mention in this record of the toddler's death, a child's death, or any other death other than the "cousin"/"brother"/"close friend" [emphasis added]. Nor is there any mention of any other stressor or reason for the Xanax prescription other than the cousin's death. Nor is there a mention of a child, a little girl, or a fellow law enforcement officer. We give this evidence great weight, and contrast it with the previous visit occurring 3 days after the date of the toddler's death, wherein Claimant did not cry, was not upset, and did not need a prescription for Xanax (Claimant's APA #1, pages 2 and 4);

- (c) April 25, 2005 (21 days after the date of the alleged injury/toddler's death), when Claimant's mother accompanied Claimant to this visit with Dr. Wieder: Claimant had sought treatment at the Emergency Room the day before (April 24, 2005) after she became dizzy and became fainted (syncope) at work for 25-30 minutes (Claimant has a prior "history of vasopressor syncope episodes, heart murmur, and atrial tachycardia"--Claimant's APA #2, page 13). At the April 24th

Emergency Room visit, Claimant reported *"increased stress this week due to death in family"* [emphasis added—See Claimant's APA #2, page 17]. At the family physician visit the following day (April 25, 2005) after the ER visit, neither Claimant's mother (with whom Claimant enjoys a close relationship) nor Claimant mentioned the toddler's death, a death at work, a child, a little girl, a fellow law enforcement officer, or work as a stressor. Claimant's family physician sent Claimant back to the hospital ("probable admission") for the purpose of getting her "stroke level" blood pressure under control (Claimant's APA #1, page 4; Claimant's APA #2, pages 12-18; Claimant's APA #3, page 83);

- (d) April 29, 2005 (25 days after the date of the alleged injury, and 11 days after Claimant's cousin died): Claimant had been released from the hospital (for blood pressure control); and her difficulty focusing during the visit was attributed to the Xanax (prescribed after the cousin died) and the fact that Claimant "has been through such a rough time the last few days" [emphasis added]; the "last few days" does not coincide with the date of the toddler's death or even a few weeks afterwards. There is no mention of the toddler's death, a death at work, a child's death, a child, little girl, a fellow law enforcement officer, or work (Claimant's APA #1, pages 5-6);
- (e) May 5, 2005: Claimant reported that "things are getting better" (not worse). Claimant's blood pressure was still uncontrolled, and Claimant was dizzy and unstable on her feet. There is no mention of the toddler's death, a death at work, a child, little girl, or fellow law enforcement officer. We give great weight to Claimant's physician's written treatment record—one month after the toddler's death-

- that the physician would have "no problems in [Claimant's] doing crime scene investigations;" he only restricted Claimant from patrolling where she might have to "jump out of the car and chase down perps and wrestle with people in making arrest[s]" because of her dizziness and instability on her feet [emphasis added] (Claimant's APA #1, pages 6-7);
- (f) May 12, 2005: Claimant's hypertension was still uncontrolled. Claimant's out-of-work restriction was therefore extended 2 more weeks, and the family physician wrote the sheriff to explain the extended leave. There is no mention of the **toddler's death, a death at work, a child, a little girl, or law enforcement officer** (Claimant's APA #1, page 7);
- (g) May 26, 2005: Claimant presented as *"very down, sad, and depressed as she is missing a lot of work and fearful of losing [sic] her job"* [emphasis added]. No other reason was attributed to Claimant's sadness or depression, and at this point, Claimant had missed a month's worth of work. Nor is there any mention in this record of the **toddler's death, a death at work, a child, a little girl, or fellow law enforcement officer** (Claimant's APA #1, unnumbered page placed between pages 7 and 8);
- (h) June 2, 2005: Claimant returned for a blood pressure check. This record states that Claimant's "emotional state is better." If Claimant's blood pressure continued to hold, *"[s/he] will be able to handle full activities" in the forensics department.* There was, according to Claimant's family physician, *"no reason why [Claimant] cannot do full duty"* [emphasis added]. There is no mention of the **toddler's death, a death at work, a child, a little girl, or fellow law enforcement officer;** nor is there

any reference to Claimant's emotional state as an impediment to working—only her blood pressure (Claimant's APA #1, page 9);

(i) June 7, 2005: Claimant returned for a blood pressure check. Because of the level, Claimant's family physician allowed Claimant to return to work "*full duty with no restrictions*," specifically including operating a vehicle and carrying a weapon [emphasis added]. This would be the first time Claimant had returned to work since April 25, 2005—at this point, Claimant had missed more than 5 weeks of work for syncopal/dizziness/blood pressure issues. **There is no mention of the toddler's death, a death at work, a child, a little girl, or a fellow law enforcement officer** (Claimant's APA #1, page 9); and

(j) June 24, 2005: Claimant was continuing to take the Xanax (prescribed after Claimant's cousin died) and Lortab for migraines. Claimant reported that she was "very stressed out due to the situation and her position with the Sheriff's office." This could be interpreted to mean the fact that Claimant had missed 5 weeks of work and/or had experienced a fainting episode at work (not her first), and/or that she was on Xanax, but this would require speculation. In any event, **there is no mention of the toddler's death, a death at work, a child, a little girl, or a fellow law enforcement officer** (Claimant's APA #1, page 10).

32. The Commission cannot ignore--and gives great weight to--the fact that Claimant did not mention the toddler's death, a death at work, a child's death, a child, a little girl, or any concern over any child or fellow law enforcement officer at a single one of the sequential visits with her family physician set forth *supra*, even though Claimant visited her family physician 3 days after the toddler's death. By contrast, on April 19, 2005, Claimant cried and grieved over the

death of her cousin, and was placed on Xanax to help her deal with the cousin's death. In May 2005, Claimant was depressed over the amount of work she had missed, such that she feared that she would lose her job.

33. The next time Claimant saw Dr. Wieder was almost one year later in May 2006-- after Claimant retained counsel to pursue a workers' compensation mental claim (the claim and/or Claimant's attorney are referenced twice in this particular medical note). At this 2006 visit, Claimant told Dr. Wieder--for the first time--all about the toddler's death and its effect on her, whereas in all of the prior visits with Dr. Wieder, Claimant had never mentioned the toddler, the toddler's death, a death at work, a child, a little girl, or a fellow law enforcement officer. By contrast, Claimant told Dr. Wieder at this 2006 visit that the toddler's death was the "*final straw*" even though inconsistently, (a) the toddler's death occurred prior to Claimant's cousin's death for which Xanax was prescribed, and (b) Claimant testified at the hearing that she had no emotional problems (from other work investigations) until after the toddler's death. Nowhere to be found in this 2006 record (as appears in the prior Wieder records) is a single mention of the death of Claimant's cousin, the close nature of Claimant's relationship with the cousin (Dr. Wieder previously described Claimant and her cousin as "very close"), or the fact that Claimant was prescribed Xanax only after the cousin's death. At least one reference to the cousin would lend a little more credence to this record (Claimant's APA #1, page 11; records of Dr. Wieder in their entirety as contained in Claimant's APA #1).

34. Because the May 2006 record of Dr. Wieder (a) does not "track" his prior treatment records, and (b) contains two **salient misstatements of fact**, we accord it *de minimis* weight. Although the record states that the toddler's death was the "final straw," the death of Claimant's cousin/brother/best friend/close friend was the "final straw," as the cousin's death occurred after the

toddler's death, and was the reason for which the Xanax was prescribed. Dr. Wieder's second misstatement (based upon Claimant's statement to Dr. Wieder) is that after the toddler died in early April 2005, Claimant was totally unable to work. This is erroneous. **In fact, Claimant admits that she worked until August 6, 2005** (when she experienced her Xanax withdrawal delirium, and/or manic episode, as referenced *infra*). Further, Claimant's inability to work in April/May/June 2005 was based primarily upon her hypertension; Dr. Wieder would not allow Claimant to return to work until **June 7, 2005**, when her blood pressure had stabilized. **Dr. Wieder himself released Claimant to full duty work in June 2005 as a forensic investigator.** Further, in the 2006 record, Dr. Wieder discusses Claimant's physical conditions as disabling factors as well, including lack of motor control of Claimant's hands due to numbness and pain: foot drop "indicating deep nerve damage;" and a 10-lb. lifting restriction, and a restriction on climbing ladders/stairs because of Claimant's hip, back, and neck, including "nerve root compression" (Claimant's APA, page 11; Hearing Transcript, page 14).

35. As far as other providers are concerned, Claimant sought treatment at the Emergency Room at Spartanburg Regional on **April 24, 2005** (referenced *supra* in Finding of Fact #31), to which Claimant was taken by ambulance after experiencing a 25-30 minute fainting episode at work. Claimant reported fatigue and "increased stress that week due to death in family" (i.e., the cousin—as correlating with the visit to Dr. Wieder for Xanax) [emphasis added]. **There is no mention of the toddler's death, a death at work, a child, a little girl, or a fellow law enforcement officer.** Nor did Claimant mention any other stressor at work. Claimant told hospital providers that she had a history of heart murmur, syncope, chronic daily migraines (Claimant had had migraines "for years"), and atrial tachycardia. The Emergency Room physician's discharge notes/clinical impression state that the episode was "*Grief reaction-poly pharmacy,*" as Claimant

was taking Imitrex (migraines), Xanax (prescribed after the cousin died), Lortab (pain medication for Claimant's physical problems referenced *supra*), and Flexeril (for Claimant's physical problems referenced *supra*) [emphasis added] (Hearing Transcript, page 49; Claimant's APA #2, pages 12-18; Defendants' APA #7, pages 168-171; Claimant's APA #3, page 83—history of migraines; Defendants' APA #8, page 189—onset of migraines “years ago”).

36. Because of Claimant's elevated blood pressure, she was sent by Dr. Wieder on April 25, 2005 (referenced *supra* in Finding of Fact #31), and hospitalized on an inpatient basis (Mary Black Hospital) from April 25-27, 2005 (Claimant's APA #3, page 82). Claimant's physical problems included severe headache, nausea, and vomiting (after taking a Xanax, according to Claimant), dizziness, diarrhea, dehydration, acute sinusitis, accelerated hypertension, episode of syncope the day before, and weakness. Claimant was anxious, but denied any suicide or depressive ideation. Claimant's discharge instructions referred her to “mental health therapy for grieving.” These records—and the April 24, 2005 ER record as well—refute Claimant's self-serving testimony that she had no problem or issue regarding her cousin's death after he was buried. Further, these records contain no reference to the toddler's death, no reference to a death at work, no reference to a child, no reference to a little girl, and no reference to a law enforcement officer. As this record cannot be read in a vacuum, the grieving refers to Claimant's cousin (Claimant's APA #3, pages 64-103; *See also* records relating to the ER visit of April 24, 2005, as contained in Claimant's APA #2, pages 12-18, and Defendants' APA #7, pages 168-171).

37. From April 24, 2005, until June 7, 2005, when she was released by her family physician to return to full duty with no restrictions, Claimant was out of work for more than 5 weeks. After she was released to return to work, Claimant worked for Employer as a forensic investigator through August 6, 2005 (Hearing Transcript, page 14; Claimant's APA #1, page 9).

38. Because more than 4 months of medical evidence from various providers (cited above) contain no mention, reference, or complaint by Claimant regarding the toddler's death (a child's death, a death at work, or a situation involving a fellow law enforcement officer), we cannot agree with Claimant's position that the medical records relate the onset of her mental problems to the investigation of April 4, 2005. The temporal medical records (and for 4 months afterwards) clearly relate the onset of mental problems to be to the cousin/brother/best friend, the abrupt cessation of Xanax prescribed after the cousin's death (referenced *infra*), physical concerns particularly regarding syncope and elevated blood pressure, and Claimant's concern over job security.

39. At some point in July or August 2005, Claimant "abruptly" and without tapering ("cold turkey, according to one record) stopped taking the Xanax prescribed for her after her cousin died (Hearing Transcript, page 49; medical evidence, e.g., Claimant's APA #2, pages 23 and 30; Defendants' APA #8, pages 189, 239, and 244; Claimant's APA #4, page 107; Claimant's APA #7, page 153).

40. Claimant was hospitalized on an inpatient basis on August 7, 2005 (Spartanburg Regional), for "acute withdrawal delirium" (Claimant is noted to be "grossly disoriented and confused" after abruptly stopping the Xanax). Claimant was found in the bushes on a golf course after having broken the windows of her house and patrol car (Claimant's APA #2, pages 19-21, 23-24, 30, 33-34, 39-40, 44-45, and 49; Defendants' APA #7, page 172).

41. During the August 7, 2005 hospitalization, Claimant is noted to have been "out of work x 5 weeks" because of hypertension and migraines (Claimant's APA #2, pages 19 and 21).

42. At the hospitalization of August 7, 2005, Claimant was not lucid upon admission, and was accompanied by her parents (who are noted in records to be the "informants" or

historians, and who are noted to be at bedside). EMS personnel were also historians. When Dr. Caston examined Claimant on August 7, 2005, Claimant was still in an "acute delirious state;" therefore, the "social history" (including but not limited to the facts that Claimant's parents are from Cuba originally, and that **"the patient's best friend recently died"**) did not come from Claimant, but from those who supplied the history to providers. No historian reported any mention of a problematic investigation at work, a toddler's death, or the death of a child (Claimant's APA #2, pages 19-20, 23-24, and 26-27).

43. Both EMS and hospital intake records (and other hospital records as well) document Claimant's hallucination on August 7, 2005, that she was on a riverboat trip in the 1800's. Hospital records are descriptive: Claimant also spoke about red horses running through the hospital, thought she was in the hospital to give birth, thought a picture on the wall was recording her actions, and asked "how to do a Jewish birth when changing from a girl into a boy." These records--regarding the specifics of Claimant's statements during her delirium--make no reference to the toddler's death or a *"little girl;"* nor did Claimant speak of the toddler's death. Nor do these records contain any documentation to the effect that either of Claimant's parents told providers that Claimant "saw" or talked about a toddler. In fact, Claimant's father admits that he told no one about Claimant's alleged "little girl" hallucination (Claimant's APA #2, pages 26, 30, and 60; Defendants' APA #7, page 167; evidence from the August 7, 2005 hospitalization as a whole; Defendants' APA #8, page 180; Hearing Transcript, pages 68, 70-72, and 74-77).

44. We accord great weight to--and respectfully point to--the record from the hospital's treating psychiatrist (Dr. Caston). On August 7, 2005 (the date of Claimant's in-patient admission), Dr. Caston writes that (a) Claimant had delirium thought to be related to Xanax withdrawal symptoms; and (b) *"[a]pparently, the patient's best friend recently died"* [emphasis added]. There

is no mention or documentation of the toddler's death, a death at work, a child, a little girl, or a fellow law enforcement officer. We find it instructive that the parents (the historians, per hospital records, until Claimant became lucid) reported the cousin's death as a stressor but did not mention anything about a "little girl" or the toddler's death (Claimant's APA #2, pages 23-25).

45. The in-patient hospitalization records from August 7, 2005 to August 9, 2005, are completely devoid of any mention of the toddler's death, a death at work, or a reference to "the little girl" that, according to Claimant's father and mother, Claimant repeatedly spoke of (Hearing Transcript containing the testimony of Claimant's mother and Claimant's father; Defendants' APA #8, page 193; Claimant's APA #2, page 40).

46. Medical evidence from the August 7, 2005, hospitalization states that Claimant's father told providers that Claimant was "too happy" (i.e., not crying) two days before Claimant "went out of her mind" (Defendants' APA #8, page 193; Claimant's APA #7, including but not limited to page 161).

47. Claimant is documented throughout the August 7, 2005, hospitalization records as having no suicidal intent or gestures. Claimant later told Dr. Abess that she had never considered suicide as "I was always very vain and too important to die" and "I never took myself for granted and knew I was somebody special." Instead of a suicidal personality, Dr. Abess states that Claimant has a narcissistic personality or tendencies (e.g., Claimant's APA #2, pages 20, 36-37, and unnumbered page placed between pages 58 and 59; Claimant's APA #7, page 159).

48. On August 8, 2005, after Claimant became lucid during her hospitalization ("alert and cooperative, oriented x 4"), Claimant admitted that she stopped taking Xanax 2 or 3 days before her withdrawal delirium. We give great weight to the multiple entries from this date which refer to the loss of Claimant's cousin to whom Claimant was "very close" ("Signif Loss: family

death"). These entries refute Claimant's father's testimony that Claimant's cousin's death upset Claimant "not really that much." Unfortunately, Claimant's father's attempt to negate or minimize the cousin's death as a causative factor calls into question the veracity of the remainder of his testimony. We also give great weight to the fact that Claimant herself made no mention of the toddler's death, a death at work, a "little girl," or a child during this 2-day hospitalization (Claimant's APA, pages 57 and 60-61; Hearing Transcript, e.g., page 66).

49. Hospitalization records from August 8, 2005, twice state that Claimant was worried about keeping her job as a law enforcement officer (Claimant "is concerned re: still having a job"); these records state that Claimant "believes that she'll be fired because of her [psych] admission." Claimant denied any problems other than "worry about her job" (Claimant's APA #2, pages 52 and 56).

50. On August 8, 2005, hospital personnel focused on the "reduction of Lortab" that Claimant takes for physical maladies (Claimant's APA #2, page 62).

51. Claimant was discharged from Spartanburg Regional on August 9, 2005. The principal diagnosis was benzodiazepine withdrawal, and the secondary diagnoses were opioid dependence, migraine headaches, TMJ disorder, arthropathy (left leg), PTSD (however, there is no reference to the toddler's death in the entirety of the records; Dr. Caston relates Claimant's psyche condition to the cousin), anxiety, depression, hypertension, and tobacco use. Dr. Caston in his discharge report states that Claimant had "problems with anxiety, insomnia, and depression related to the death of her best friend who apparently was a male cousin" [emphasis added]. We give this evidence great weight, as there is no mention of the toddler's death, a death at work, a "little girl," or a fellow law enforcement officer (Claimant's APA #2, pages 31-32 and 35-37; Defendants' APA #7, page 173).

52. On August 9, 2005, Claimant reported that she was "back to her old self," but agreed to a referral for outpatient mental health care (Claimant's APA #2, unnumbered page placed between pages 58 and 59).

53. We give greater weight to Claimant's statements made to providers prior to Claimant's realization that she would be unable to return to law enforcement after her psych admission.

54. Claimant was next treated at Carolina Center for Behavioral Health on an out-patient ("Partial Hospitalization Program") basis from August 10, 2005, through August 22, 2005 (Defendants' APA #8, page 262). The "reason for admission" (Claimant's APA #4, page 107) describes the previous hospitalization following the abrupt cessation of Xanax after an *"acute anxiety reaction to the death of a relative"* [emphasis added]. Claimant reported that she believed that she was in an emotionally vulnerable state (from work stressors) when the relative died. This statement demonstrates that Claimant herself believes that the "final straw" was the death of the cousin—not the toddler's death (Claimant's APA #4, pages 104-109; Defendants' APA #8, pages 174 and 262; See also pages 176-177 and 189-190).

55. The intake sheet/nursing assessment from August 10, 2005, states that Claimant is *"concerned about not having a job," and that she was "applying for disability—job concern"* [emphasis added]. We give this evidence great weight (Defendants' APA #8, page 177).

56. On August 10, 2005, the "CHIEF COMPLAINT in patient's own words" was "I became psychotic last Sunday. I tore my home up and tore my police car up...I stopped taking Xanax and became psychotic." Claimant described her hallucination as *"I [singular] was going on steam boat trip. I didn't know who I was"* [emphasis added]. We give this record great weight (Defendants' APA #8, pages 179-180).

57. On August 10, 2005, the "Precipitating events" Claimant reported are stated as follows: *"My cousin died mid-April 05 and I took Xanax for my nerves. I stopped taking Xanax 1-2 weeks ago and became psychotic"* [emphasis added] (Defendants' APA #8, page 179).

58. In the review of systems on August 10, 2005, Claimant answered her "brother" (i.e., Claimant's "cousin") to the question/issue of whether Claimant had "[I]ost something/someone you loved" (Defendants' APA #8, page 178).

59. For the very first time (from a chronological standpoint/review of all the evidence), Claimant mentioned (under the "lost something/someone" category) that she *"also saw 2 y/o child of friend & co-worker on case she worked in job as forensic police officer"* [emphasis added]. The "also" statement is written after—not before—the notation of the loss of the brother in the "lost something/someone" category. Because this notation is from August 10, 2005, we disagree with Defendants' contention at the hearing that the toddler's death was not mentioned to any provider until August 23, 2005. However, we agree with Defendants that the toddler's death (a) was not mentioned in any way, shape, or form to any of the various providers until more than 4 months after the date of the toddler's death as contrasted with all the other stressors that were mentioned; and (b) was not Claimant's predominant stressor spanning 4 months of records. Further, in this August 10, 2005 record, in addition to medication withdrawal/abuse issues, Claimant's other predominant stressors are her cousin's death and her fear of job security (Hearing Transcript, page 11; Defendants APA #8, page 178; all previous treatment records as cited herein *supra*).

60. On August 10, 2005, under "problems at work or school," Claimant answered that she "tore up" her police car (on August 7, 2005), and that she was "tired of seeing all the dead bodies." Claimant's diagnosis on this date was benzodiazepine withdrawal, and to rule out bipolar

disorder. Claimant's other issues were arthritis, severe headaches, and occupational issues (Defendants' APA #8, page 184).

61. As with her previous hospitalizations, Claimant denied any recent history of suicide attempt, denied any plan for self-harm, and denied any suicide ideation; Claimant's denial was based upon her statement that "I love myself." We give this evidence great weight, as it is consistent with the findings of Dr. Abess that instead of suicidal, Claimant has a narcissistic personality (Defendants' APA #8, pages 178, 184-187, 194-195, and 197-198; *See also* Defendants' APA #8, page 249--note from 8/19/05, in which Claimant "has a positive self-esteem").

62. By August 12, 2005, Employer had "*already secured*" Claimant's guns. [Claimant] is noted to be "*unable to return to work.*" Claimant (the "informant" of the information provided in this record) reported that she *would not be able to return to work, and will have to go on disability or early retirement* [emphasis added]. We give this evidence great weight (Defendants' APA, pages 193-194).

63. On August 12, 2005, Claimant reported as the precipitating events (a) the death of her cousin from AIDS at 34 years of age, and (b) "having responded to the toddler's death after [the toddler's] father (a fellow police officer) ran over her." This evidence, among other evidence, shows Claimant's stressors as multi-factorial (Defendants' APA #8, page 194).

64. During a session on August 19, 2005, Claimant was "freaked out" that she no longer had any weapons in her home ("feels vulnerable not having a weapon"), and "shared thinking about dead toddler that [Claimant] was involved in at work." Claimant's goal was "to stop thinking about the toddler, re-experiencing [the] event." Claimant reported that she was "**disturbed because she knew [the] officer involved**" (Defendants' APA #8, page 249).

65. At a session on August 22, 2005, Claimant complained of "severe heartburn," and of "stress" because her "car, air conditioner, and aquarium broke down over [the] weekend." Claimant's stressors are varied (Defendants' APA #8, page 250).

66. Later that day (August 22, 2005), Claimant was stepped up to inpatient care, "secondary to questionable opiate abuse vs. medication reaction," for which Claimant was hospitalized until August 26, 2005. Claimant's problems included poly-substance dependence (including but not limited to Lortab prescribed for pain), psychosis secondary to Lortab abuse, migraine headaches, depression, TMJ, pain issues (including her knees), and hypertension. Upon admission, Claimant had slurred speech, was dizzy, was unsteady on her feet, and was confused. Claimant was not admitted as a suicide risk, but rather assessed as "not safe to drive or self-administer medication." Claimant was not found to be a danger to herself or others (Defendants' APA #8, pages 188, 196, 199-200, 202-203, 209-211, 216-226, 228, 230-231, 235, 237-238, 240, 255-256, and 268; Claimant's APA #4, pages 105-106, 110, and unnumbered page placed between pages 111 and 112).

67. Claimant's parents accompanied her at the August 22, 2005 hospitalization. On August 23, 2005, medical evidence notes that Claimant's father reported that Claimant's **"biggest problem is patient taking too much medicine especially Lortab and Imitrex" for migraines "3-4 days at a time,"** that Claimant is **"hooked on prescription pain meds. Always tired, sleeps a lot. No motivation. Parents, clean, wash clothes, etc. Pt makes excuses not to help."** As this record documents, Claimant's father did not tell hospital providers that Claimant's "biggest problem" was the toddler's death (even though Claimant's father alleges that Claimant told him about the death 2-3 days after it occurred). Nor did Claimant's father tell anyone at the hospital about any alleged

hallucination regarding a "little girl;" nor did the father tell providers about the toddler's death (e.g., Defendants' APA #8, page 228; Hearing Transcript, page 72).

68. During this hospitalization beginning August 22, 2005, Claimant reported generically "many" and "severe" job stressors (plural), but also reported that her "brother" (i.e., her "cousin") was the someone she loved but lost (Defendants' APA #8, pages 200 and 210; Claimant's APA #4, unnumbered page placed between pages 111 and 112).

69. Per Claimant's statements during the August 22, 2005 hospitalization, PTSD was first directly linked to the toddler's death. In a "self-reported inventory" statement, Claimant listed her issues as medication withdrawal (first) and "death issues" (plural) second. Claimant also stated that she was overtaking her medications because of having to perform the forensic investigation of the toddler's death. In another self-inventory, Claimant's goals are listed as "removal of medication," and to "keep off medications" and deal with the issues (plural) that caused it. In another self-inventory, Claimant's issues were PTSD (first) and drug dependence second (Defendants' APA #8, pages 202, 254, 279, 281, 283, and 286; Claimant's APA #4, page 113).

70. When Claimant was asked to describe her problem to Dr. Diehl on his intake sheet in September 2005, Claimant stated that she handled the case of the toddler's death, and that a week later her cousin died of AIDS when Claimant "[t]hen began [increasing] Lortab [emphasis added]; it was after the cousin's death that Claimant "began excessive use of Lortab" (Defendants' APA, page 289; Claimant's APA #6, page 129).

71. At Claimant's first visit with Dr. Diehl (September 2005), she reported "increased anxiety and tension regarding her financial situation;" under "Mental Status Exam," "[c]urrently, she is quite concerned about financial matters" and has "very serious concerns about her vocational future" [emphasis added]. Claimant has had a tendency toward "impulsive buying," and

had to file for bankruptcy after her divorce. At a later visit, Claimant is *“particularly focused on negative aspects of her financial matters and income changes”* [emphasis added] (Claimant’s APA #6, pages 126, 128, 135, and 137-138).

72. By early September 2005, Claimant applied for disability retirement, as her “leave will run out” (Defendants’ APA #9, page 289; Claimant’s APA #6, page 128; *See also* Claimant’s APA #5, page 123).

73. Claimant filed a workers’ compensation claim on September 26, 2005 (Commission’s file).

74. On September 28, 2005, Claimant was hospitalized for “overtaking” trazodone, Xanax, and Lortab. During this hospitalization, Claimant made threats of suicide and engaged in “manipulative behavior;” “[w]henever she would go to the cafeteria she would sneak back a plastic knife and try to cut herself with it, although she never actually did” [emphasis added]. By contrast, Claimant told Dr. Diehl that she has no suicidal intent (Claimant’s APA #4, pages 116-117; Claimant’s APA #6, page 135; *See also* Claimant’s APA #7, page 159).

75. On September 29, 2005, Claimant told Dr. Sherbondy that she is “trying to get disability.” Dr. Sherbondy notes that “[Claimant] wanted to be put on long term disability the first time I saw her” in August 2005 [emphasis added]. Dr. Sherbondy also states that Claimant was a “guarded historian” and “felt I was calling her a liar when I was asking her questions” (Claimant’s APA #4, pages 119-120; Claimant’s APA #5, page 123; *See also* Claimant’s APA #5, unnumbered page placed between pages 123 and 124).

76. Claimant told Dr. Sherbondy that she “doesn’t want to find a new job because it won’t pay as well.” We give this evidence great weight (Claimant’s APA #5, page 123).

77. We are not persuaded by Dr. Sherbondy's opinion of June 16, 2006--that the forensic investigation of the toddler's death caused Claimant's alleged mental injury--as the opinion is inaccurately premised in part upon the "patient's *personal* involvement with the family" [emphasis added]. Dr. Sherbondy cites a combination of 3 factors as a basis for his opinion: (a) Claimant "knew" the father; (b) the "severity of the child's injuries," and (c) Claimant's "personal involvement with the family." As Claimant had never actually worked side by side with the father, had never worked in the same zone as the father, had never socialized with the father outside of work, had never been to the father's home, had never met the toddler's mother, and had never met the toddler, the opinion regarding "personal involvement" is too flawed to be persuasive. Claimant did not testify that she had ever even seen a photograph of the toddler, evidence that might demonstrate at least a somewhat closer relationship than just between two fellow law enforcement officers. We note that Dr. Sherbondy's opinion is not premised upon "the fact that the patient and the victim's father were fellow law enforcement officers," but rather that Claimant had "personal" involvement with the family. Regardless, Dr. Sherbondy's opinion does not (and cannot) address the "extraordinary/unusual" legal question that falls to the Commission (Claimant's APA #5, page 125).

78. Similar to Dr. Sherbondy, Dr. Diehl cites Claimant's "personal" involvement involving the father (rather than describing the father as a "fellow law enforcement officer that Claimant knew through work"). Dr. Diehl has either not read (or not carefully read) the 2005 family physician's records, the emergency room records of April 24, 2005, the April 25, 2005 hospitalization records, or the hospitalization records from August 7-9, 2005, as not one of these records includes any mention of the toddler's death, a death at work, or a death other than the

cousin's death. The focus in these temporal records is on the death of the cousin/brother/close friend (Claimant's APA #6, page 147).

79. Claimant told Dr. Diehl that Claimant's mother told Claimant that Claimant had said (in the hospital) "look at the baby, isn't she beautiful?" Claimant told hospital providers that she thought she was in the hospital to deliver a baby. The fact that Claimant thought she was in the hospital to have a baby is also referenced by Dr. Abess—as a quote from Claimant's father. From records from EMS providers, Claimant thought she was taking a boat trip with no mention of or reference to a "little girl" as testified to by Claimant's parents (Claimant's APA #2, pages 51 and 60; Claimant's APA #6, page 131; Cf. Defendants' APA #8, page 193; Claimant's APA #7, page 161).

80. In January 2006, Claimant reported to Dr. Diehl that she had *"sadness and distress but not much crying the last few months. The patient is very anxious and apprehensive about financial situation."* This seems to contribute to panic type episodes where she feels her life is 'out of control.'" Claimant's sleep disturbance was attributed to no longer having a gun to protect herself (Claimant's APA #6, page 141; See also Claimant's APA #7, page 154).

81. In February 2006, Claimant reported that she "continues to experience a *great deal of financial anxiety*." Claimant admitted that "a lot of the difficulty began when she stopped the Xanax [prescribed after the cousin died] which led to the 'psychotic episode' and hospitalization" (Claimant's APA #6, page 143).

82. We do agree with Dr. Diehl that given Claimant's issues with medication abuse and other emotional issues, Claimant would not be able to return to law enforcement. However, as Claimant told Dr. Sherbondy, Claimant is not interested in other work because of lower pay; additionally, Claimant told Dr. Abess, that "I can't make more than \$18,000 per year" (Claimant's

APA #5, page 123; Claimant's APA #6, unnumbered page placed between pages 147 and 148; Claimant's APA #7, page 154).

83. We give the report and conclusions of Dr. Abess the greatest weight, as (a) he is the only psychiatrist who administered any tests, including the MMPI; and (b) provides cogent reasons for his findings. Dr. Abess' discussion of the results as contained in Claimant's APA #7, pages 157-158 are persuasive, as he gives specific reasons for his concerns such as the fact that Claimant was "too well integrated and symptom free" when she took the tests; interacted freely with his office personnel; "did not demonstrate any difficulty talking about" the toddler's death; "nor did she manifest tears, faltering in her speech, or anger;" Dr. Abess specifically notes that Claimant "never cried during the entire interview," denied any auditory or visual hallucinations, and was able to manifest humor and enthusiasm during the interview. Dr. Abess attributes some of the test responses to the "medical-legal nature of the symptoms" (Claimant's APA #7, pages 155-158; Defendants' APA #11).

84. We give great weight to Dr. Abess' assessment that it is "*significant to realize that Claimant manifested no significant signs of depression or anxiety during our interview.*" that Claimant was animated, that she enjoyed talking, and elaborated freely on topics [emphasis added]. Dr. Abess found it "highly unusual" that Claimant did not cry or "tear up" once during the interview. "This lack of sentimentality can possibly be accounted for (1) narcissistic and rebellious personality traits, (2) Bipolar Affective Disorder; or (3) exaggerated description of symptom severity for medical-legal purposes while not genuinely experiencing that level of severity. We give this evidence great weight (Claimant's APA #7, pages 160-161).

85. Dr. Abess states that the abrupt cessation of Xanax coupled with taking Zoloft "could trigger a manic episode in an individual who has an underlying Bipolar Disorder which was

not yet clinically obvious;" Dr. Abess believes that Claimant's first psychotic break (August 7, 2005) was due to her pre-existing Bipolar Disorder that was exacerbated by stopping Xanax and starting Zoloft. We give this evidence great weight (Claimant's APA #7, pages 161-162).

86. The one salient deficiency in the report of Dr. Abess is a lack of exploration of the nature of the relationship between Claimant and her cousin/best friend, to whom Dr. Abess simply refers as Claimant's "ex-husband's cousin." It was the cousin's death which caused Claimant, crying and grieving, to seek treatment with her family physician on April 19, 2005—the day after the cousin died, on which date Claimant received a prescription of Xanax; by contrast, Claimant is not noted to have cried or to have appeared upset at the appointment occurring 3 days after the toddler's death (Claimant's APA #7 in its entirety; Claimant's APA #1, pages 2 and 4).

87. Dr. Abess states that both the cousin's death and the toddler's death were factors in the exacerbation of Claimant's pre-existing Bipolar illness, and that the discontinuation of the Xanax (prescribed for Claimant's grief over the cousin's death) and the initiation of Zoloft were the "actual precipitant" for the development of a manic manifestation of Claimant's Bipolar disorder (Claimant's APA #7, pages 163-164).

88. We considered the testimony of Claimant's parents (with whom Claimant enjoys a close relationship pursuant to Hearing Transcript, pages 29 and 65; Defendants' APA #8, pages 192 and 270; Claimant's APA #6, page 128; and Claimant's APA #7, page 150), but do not find it persuasive for the reasons set forth *supra* and as follows:

- (a) Claimant's father testified twice that Claimant's cousin's death affected Claimant "not really that much," testimony that is refuted by the fact that Claimant: (i) testified that she "half raised" the person, refers in medical evidence to the person as her "brother," "cousin," and "best friend" with whom Claimant was "very close;" (ii)

was put on Xanax after the cousin's death, and (iii) was hospitalized with grief issues relating to the cousin/brother/best friend. Claimant's father's attempt to minimize the effect of the cousin's death on Claimant discredits his testimony (e.g., "just like anytime that somebody dies, you're gonna be upset"). If Claimant's father had been forthright about the nature of Claimant's relationship with--and grief over--the death of cousin/brother/best friend, the Commission would lend more credence to Claimant's father's testimony. Given the fact that in 2005, Claimant's father spoke to Claimant 3-4 times a week, and saw Claimant 2-3 times a week, we find that the father would be well aware of Claimant's relationship with her cousin and Claimant's grief after the cousin's death (Hearing Transcript, pages 66 and 71);

- (b) Claimant's father's testimony regarding Claimant's August 7, 2005 nervous breakdown—that Claimant repeatedly told her father on the date of the breakdown that she wanted him to "meet this little girl," or "I want this little girl to be with me," or "I want her here" (i.e., Claimant was fixated on a "little girl") is not supported by the EMS records or any of the in-patient hospital records from August 2005. Claimant's parents accompanied Claimant to the hospital, are noted to be at Claimant's hospital bedside, and actually consulted with providers; however, there is no reference to "little girl" hallucinations at either August 2005 hospitalization. EMS providers on August 7, 2005, state that Claimant thought she was on a riverboat trip, and hospital providers also document the riverboat trip and Claimant's mistaken belief that she was in the hospital to have a baby (e.g., Claimant's APA #1, page 19);

- (c) Claimant's father alleges that he talked to Claimant ("crying" and "upset") about the toddler's death 2-3 days after it occurred; however, Claimant's father told hospital personnel that Claimant was "too happy" in the 2 days preceding the mental breakdown; further, EMS and the intake records state that Claimant thought she was on a riverboat—there is no mention of a female toddler or "little girl" hallucination in any of hospital records;
- (d) Claimant's father, who has assumed Claimant's finances since her breakdown, admitted on cross examination that he never told providers about Claimant's alleged fixation on a "little girl" (Hearing Transcript, pages 9, 28-29, and 72);
- (e) Claimant's mother testified that Claimant was (a) "brushing the little girl's hair" and saying "how beautiful" the "little girl" is during Claimant's hospitalization, as well as (b) referring to the "little girl" while Claimant was being transported by ambulance. However, not a single EMS or hospital provider recorded such behavior, including Claimant's alleged statement that the police were coming to hurt the "little girl;" further, hospital records are devoid of any report by Claimant's mother about Claimant's alleged statement and behavior (Hearing Transcript, pages 74-77);
- (f) As the hospital records mention Claimant's grieving over her cousin's death (and the prescription for Xanax because of the cousin's death), Claimant's mother's denial of any conversation regarding the cousin does not ring true (Hearing Transcript, page 77); and
- (g) Claimant's mother's testimony—that Claimant never talked about the cousin's death after Claimant's nervous breakdown--does not ring true. If Claimant's mother had admitted Claimant's ongoing grief after the cousin's death, we would lend more

credence to Claimant's mother's testimony regarding the alleged "little girl" hallucinations (Hearing Transcript, pages 76-77; Claimant's APA #1, page 4).

89. We considered the testimony of Denton (Claimant's supervisor), and have no reason to question his testimony that he never noticed any emotional/psychological problems with Claimant prior to the date of the toddler's death on April 4, 2005. However, Claimant's cousin died on April 18, 2005; and it was not until April 19, 2005—the day after the cousin's death—that Claimant sought treatment for grief (specifically, according to Claimant's statement to her family physician, because of the cousin). It was on the 19th that Claimant was prescribed Xanax; and it was during the time period of the 18th-19th that Claimant's co-workers/supervisors noticed Claimant's work deficiencies (Denton's testimony: *"within a couple three weeks [of the toddler's death], it showed in her work, in her habits;"* Denton later confirmed that the change in Claimant was "weeks afterward"—i.e., the toddler's death). The timeframe of the effect on Claimant's work—"weeks after" the toddler's death—directly coincides with the date of Claimant's cousin's death. This evidence is most compelling, and cannot be ignored. As to Denton's interest in the compensability of Claimant's workers' compensation case, we note that Denton has known Claimant outside of law enforcement specifically through his sister for years pre-dating Claimant's and Denton's law enforcement careers; it was Denton who helped Claimant obtain legal representation for her workers' compensation claim. As to the nature of Denton's relationship with Claimant, Claimant herself describes Denton (in medical evidence) as part of Claimant's social support system. In fact, at the hearing, Claimant referred to Captain Denton as "Steve" until Claimant was asked who "Steve" is. Claimant further testified at the hearing that law enforcement officers "stick together" (Hearing Transcript, pages 21, 29, 83-86, and 106; Defendants' APA #8, page 193).

90. The credibility of Claimant's testimony is diminished by the fact that she attempts to minimize or downplays the effect of her cousin's death ("I mean, I cried the day he died; I cried the day they buried him"). In fact, it was because of the cousin's death that Claimant was prescribed Xanax (which she continued to take for months). And it is Claimant's grief over the cousin's death—not the toddler's death—that is mentioned throughout 4 months of temporal records (Hearing Transcript, pages 26-27).

91. With regard to all the evidence, we give the most weight to the temporal treatment records from April, May, and June 2005. Claimant continued to work for Employer after she returned to work full duty as a forensic investigator in early June 2005 with no restrictions after her syncope/blood pressure issues were addressed. Once Claimant was cleared to work as a forensic investigator in early June 2005 after stabilization of her physical problems, Claimant worked for Employer as a forensic investigator until she abruptly stopped the Xanax prescribed after Claimant's cousin's death. These records are far more compelling than any other (later) records, reports, or conclusions.

92. Because there is no mention of the toddler's death in the temporal records, we considered the possibility that Claimant might have been hesitant to discuss the subject with providers. However, (a) supervisor Denton says there is no prohibition against discussing such a matter with a health care provider if the disclosure is for purposes of seeking treatment; (b) although Claimant was not at liberty to discuss the incident with 3rd parties outside the confines of seeking treatment (per Denton's testimony), Claimant's father testified that Claimant told him about the toddler's death 2-3 days afterwards; we therefore find that Claimant's disclosure of the incident to her parents against Employer's rules shows that Claimant was not "tight-lipped" about work; (c) Claimant is well educated such that she would reasonably be aware of doctor-patient relationship;

further, if she would discuss the matter with her parents, she reasonably would have no compunction against discussing it with her own family doctor; and (d) Claimant had no reluctance in telling providers about the toddler's death on August 10, 2005, and beyond. The Commission admits that the June 24, 2005 record is certainly cryptic, but as Claimant had recently missed 5 weeks of work because of elevated blood pressure, had experienced a 30-minute syncopal episode at work, and was working while on Xanax, Lortab, and other medications, we would be speculating to find that the June 24, 2005 record relates to the toddler's death. The only traumatic circumstances Claimant reported after the toddler's death were the loss of Claimant's cousin--and Claimant's worry over job security after missing more than 5 weeks of work (Claimant's APA #1, pages 1-10; Claimant's APA #2, page 19; Hearing Transcript, pages 66, 92, and 105-106).

93. Although the Commission has no doubt that Claimant was to some degree affected by the toddler's death (as supervisor Denton testified, "everybody" at the scene found the situation tragic and difficult), (a) the treatment records from Claimant's family physician throughout the entirety of 2005, (b) the temporal emergency room visit of April 2005, (c) the inpatient hospitalization of April 2005, and (d) the inpatient hospitalization from August 7-9 all demonstrate that the predominant stressors in this case was Claimant's cousin's death, the taking of Xanax followed by abrupt cessation, and Claimant's "overtaking" of Lortab. Further, Claimant's syncope of April 24, 2005 (she has a history of these episodes), hypertension, and migraines (along with pain from other physical maladies) which caused her stress regarding job security (Claimant missed almost 6 weeks of work) are significant factors as well. The circumstances leading to Claimant's mental breakdown are multifactorial. We cannot say that the toddler's death was the predominant cause/stressor or the "final straw," as temporal records do not support such a conclusion (e.g., Claimant's APA #6, page 126).

94. Even if the toddler's death played a role in Claimant's mental breakdown, we cannot conclude that the preponderance of the evidence shows it is more likely than not that the toddler's death was the proximate cause of her mental breakdown. Rather, the greater weight of the evidence, cited *supra.*, indicates that the proximate causes of Claimant's breakdown were multifactorial, including Claimant's cousin's death, the taking of Xanax followed by abrupt cessation, Claimant's "overtaking" of Lortab, and Claimant's myriad health issues.

95. As claimants with pre-existing conditions can sustain compensable aggravations, we find it irrelevant that Claimant suffered prior sexual abuse as a child, a rape at age 19, and depression (noted in 2001), and/or that she may be Bipolar (vs. OCD and/or borderline Personality Disorder per the various records). Further, supervisor Denton testified that Claimant was able to work without displaying any emotional problem prior to April 4, 2005. Nor do we disagree with Dr. Abess' statement that Claimant's "likely" prior PTSD "could have made her more vulnerable to future traumatic events." However, it is not enough to simply be "predisposed" to a mental breakdown. We find that the evidence clearly shows that Claimant's predominant "tipping points"--per her own temporal reports to providers--were the cousin's death, and the abrupt cessation of Xanax (prescribed after the cousin died), causing the withdrawal delirium (e.g., Defendants' APA #8, pages 180, 192, and 210; Defendants' APA #10, pages 290-291; Claimant's APA #4, page 116; Claimant's APA #6, pages 133 and 135; Claimant's APA #7, pages 150-151, 154, and 159-160).

96. Although by no means dispositive, we note for the record that Claimant previously saw the aftermath of a child whose head was run over by a dump truck. Not only did Claimant testify at the hearing that she had no nightmares after the dump truck accident, but Claimant also testified that seeing the decapitated child did not bother her "at all." Based upon the colloquy surrounding this testimony, it appears to us that it was not the condition of the toddler's body in the

instant case that Claimant contends is extraordinary and unusual, but rather the facts that the toddler's father (a) was a fellow police officer that Claimant "knew," and (b) caused the death scene Claimant was required to investigate (Hearing Transcript, pages 47 and 51-54).

97. Claimant cites "the imaginary little girl" as a delusion upon which (among others) Claimant was admitted to the hospital on August 7, 2005. Because the Commission is unable to locate a single medical/psychological/psychiatric/EMS record in which providers documented the "little girl," or "imaginary little girl" hallucination that both Claimant's parents specifically and repeatedly testified as having occurred (a) at the hospital and (b) in the ambulance on August 7, 2005 (e.g., "I want you to meet this little girl," and "she was saying that she—she was brushing her hair"), we requested the parties to provide us with such a citation or citations. Neither party was able to provide us with any. Providers did, however, specifically document Claimant's other hallucinations, such as the riverboat trip, running horses, the reference to Claimant's belief that she was being taken to the hospital to deliver a baby, and the delusion that the picture on the wall in Claimant's hospital room was recording her actions.

98. Nothing in this Order should be construed as a finding that Claimant was not an excellent law enforcement officer while she worked for Employer. There is no evidence in the record to the contrary.

99. Some confusion in this case (as to the timing of issues and verbalization of complaints) may stem from the illogical arrangement of the APA submissions submitted by the parties. For just a few examples, within Defendants' APA #7, page 167 relates to the EMS record dated 8/7/05, whereas sequential pages 168-171 are dated April 24, 2005; sequential page 172 then reverts to the 8/7/05 hospitalization. Defendants' APA #8, page 238, relates to the 8/22/05 in-patient admission (8/22/05-8/26/05), page 239 is dated 8/10/05, and page 240 (dated 8/26/05)

reverts to the 8/22/05 admission; page 242 is dated 8/11/05. Claimant's APA #4, page 106 is dated 8/22/05 (Center for Behavioral Health); but pages 107-109 are dated earlier--8/11/05; and page 110 is dated 8/26/05). These documents are not in chronological order within an APA #, and make it most difficult to track the treatment records after the date of the alleged injury.

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under Section 42-1-130, S.C. Code Ann. (1976), Raquel Martinez was a covered employee at the time in question, and under Section 42-1-140, S.C. Code Ann. (1976), Spartanburg County was a covered employer.

2. Under Section 42-1-160, S.C. Code Ann. (1976), as amended, and pursuant to Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 (2012), Frame v. Resort Services, Inc., 357 S.C. 520, 593 S.E.2d 491 (S.C. App. 2004), Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000), and Doe v. S.C. Dep't. of Disabilities & Special Needs, 377 S.C. 346, 660 S.E.2d 260 (2008), Claimant did not sustain a mental injury by accident arising out of and in the course of her employment with Spartanburg County. Claimant failed to prove that she encountered unusual or extraordinary work conditions in her employment on April 4, 2005, while employed by the Spartanburg County Sheriff's Department, as compared to her normal conditions of employment.

3. Under Section 42-1-160, S.C. Code Ann. (1976), as amended, Claimant failed to prove by the greater weight of the credible, reliable, and probative evidence that the accident investigation on April 4, 2005 was the proximate cause of her mental breakdown; rather, the proximate causes of Claimant's breakdown were multifactorial, including Claimant's cousin's death.

the taking of Xanax followed by abrupt cessation, Claimant's "overtaking" of Lortab, and Claimant's myriad health issues. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000).

ORDER

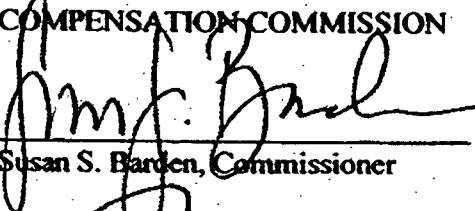
IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner filed in the above-captioned matter on November 20, 2006, is hereby affirmed with amendments by the Appellate Panel, and the above Findings of Fact and Conclusions of Law shall constitute the Decision and Order of the Appellate Panel.

IT IS FURTHER ORDERED that the claim of Raquel Martinez be, and hereby is, denied.

No hearing costs are assessed in this instance.

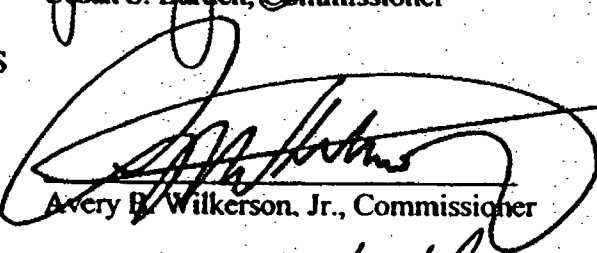
IT IS SO ORDERED.

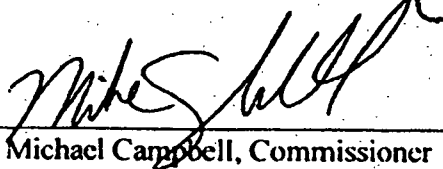
**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**


Susan S. Barden, Commissioner

AFFIRMATION WITH AMENDMENTS

CONCUR:


Avery B. Wilkerson, Jr., Commissioner


R. Michael Campbell, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on February 24, 2015

ATTACHMENT B

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-42-1015

Raquel Martinez

Spartanburg County Sheriff's Office

South Carolina Association of Counties Self
Insurance Fund

PLAINTIFF(S)

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. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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 JUDGMENT 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 (List amount(s) below)
		\$
		\$
		\$

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

2132
Judge Code

12/3/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 3 day of Dec 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 3rd day of Dec, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

M. Hope Bradley
CLERK OF COURT
McShane, PC

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

2015 DEC -3 AM 10:26
CLERK OF COURT
M. HOPE BRADLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-42-1015

RAQUEL MARTINEZ, Employee,)
Claimant/Petitioner,)

-vs.-

ORDER

SPARTANBURG COUNTY)
SHERIFF'S OFFICE, Employer,)
and SOUTH CAROLINA)
ASSOCIATION OF COUNTIES)
SELF INSURANCE FUND, Carrier,)
Defendants/Respondents.)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 DEC -3 AM 10:27
M. HON. J. J. HANLEY

On June 26, 2015, this matter was heard before me in Spartanburg, South Carolina. Present at the hearing were David T. Pearlman and J. Kevin Holmes of the Steinberg Law Firm, L.L.P., Charleston, South Carolina, and Chadwick D. Pye, of Chadwick D. Pye, L.L.C., Spartanburg, South Carolina, attorneys for the Petitioner, as well as Richard B. Kale, Jr., Wilson, Jones, Carter & Baxley, Greenville, South Carolina, attorney for the Respondents. The purpose of the hearing was to consider the Petition for Judicial Review from the decision of the Appellate Panel of the Workers' Compensation Commission dated February 24, 2015. After carefully considering the record, the memoranda submitted by the parties, and the oral arguments of counsel, the Court issues this Order reversing the decision of the Appellate Panel for the reasons stated herein. This claim is remanded to the Workers' Compensation Commission for enforcement of and for further proceedings consistent with this Order.

SCANNED

1 *JMH*

8

The Court file contains the Petition for Judicial Review filed by the Petitioner on March 11, 2015. The Petitioner filed the record of the proceedings consisting of the Appendix filed with the Petition for Writ of Certiorari to the South Carolina Supreme Court¹, a copy of the Supreme Court decision dated January 8, 2014, a transcript of the oral arguments before the Appellate Panel on December 15, 2014, and a copy of the remand decision of the Appellate Panel dated February 24, 2015. The Court file also contains memoranda of law submitted by both parties. At the hearing, a copying error was discovered and the Petitioner supplemented the record with a complete copy of the Petition for Judicial Review on June 29, 2015.

A review of the procedural history of this claim is important to understanding the questions presented for judicial review. On February 26, 2009, this Court issued its Order ruling that the Commission's prior Order failed to perform an analysis enabling this Court to determine whether the proper legal standards for compensability in a mental injury claim under the Workers' Compensation Act had been applied and further ruling that Deputy Martinez had established causation of her mental injury claim as a matter of law. After reviewing the undisputed testimony of the only witnesses who testified and the legal standard for compensability in a mental injury claim, this Court remanded the claim to the Commission for "further review consistent with this Order." (Sup. Ct. Appendix, Vol. I, pp. 13-33). Thereafter, on March 16, 2009, the Respondents filed a Notice of

¹ All references to the record cited herein are to the Supreme Court Appendix unless otherwise indicated.

Appeal to the Court of Appeals. (Sup. Ct. Appendix, Vol. I, p. 476). On June 15, 2011, the Court of Appeals issued its decision reversing this Court on the grounds that the Commission's findings on compensability were supported by substantial evidence. (Sup. Ct. Appendix, Vol. I, pp. 1-10). The Court of Appeals majority decision did not address the issue of causation. On October 6, 2011, a Petition for Rehearing was denied by the Court of Appeals. (Sup. Ct. Appendix, Vol. I, p. 11). On November 2, 2011, Deputy Martinez filed a Petition for Writ of Certiorari to the Supreme Court. On February 7, 2013, the Supreme Court granted the Petition. On January 8, 2014, the Supreme Court issued an Order vacating the decision of the Court of Appeals on the grounds that the appeal was interlocutory under the holding in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013) and remanded the claim to the Commission for further proceedings consistent with this Court's Order. (Sup. Ct. Order dated 1/8/14). On December 15, 2014, the Appellate Panel heard oral arguments.² On February 24, 2015, the Appellate Panel issued a new forty-six page remand Decision stating, "the Commission withdraws its previous Findings of Fact and hereby substitutes the following Findings of Fact for the Court's consideration." (App. Panel Decision dated 2/24/15, p. 5). On March 11, 2015, Deputy Martinez filed the Petition for Judicial Review that is the subject of this Order.

² During oral arguments before the panel, one commissioner stated that the parties were free to argue the parameters of the remand. (S.C. Workers' Compensation Commission Hr'g Tr. 3:17-20, Dec. 15, 2014). Despite having prepared a nineteen page order outlining the direction of the remand, the remand order was described to the commission as the remanding court "having its cake and eating it too." (S.C. WCC Hr'g Tr. 16:1-2). Instead of encouraging the commission to look at the entire order, the commission was told to isolate one part to the exclusion of the whole order. (S.C. WCC Hr'g Tr. 15:8-11).

Deputy Martinez again seeks judicial review of the Appellate Panel's remand decision. Judicial review of administrative agency decisions are governed by § 1-23-380(5) of the South Carolina Code, which is part of the South Carolina Administrative Procedures Act and provides:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decision are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (S.C. 1981). The Appellate Panel's new findings of fact submitted for this Court's consideration addressed both the issue of compensability and the issue of causation.

The first issue presented for judicial review is whether the findings by the Appellate Panel on causation were in violation of constitutional provisions, in excess of the statutory authority of the agency, made upon an unlawful procedure, or affected by other error of law. This claim was remanded to the Commission by this Court and the Supreme Court to conduct further proceedings consistent with this

2015 DEC -3 AM 10:27

Court's Order dated February 26, 2009. When a claim is remanded to an administrative agency following judicial review, the administrative agency is granted only limited jurisdiction. "After a remittitur is sent down from an appellate court, the [lower tribunal] acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling." Mullen v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 438 S.E.2d 248 (1993); Christy v. Christy, 317 S.C. 145, 452 S.E.2d 1 (Ct. App. 1994). "Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated [by the administrative agency], even under the guise of a different form." 5 C.J.S., Appeal and Error, § 975(a) (1993). "It is the duty of the trial court to follow the decision of the appellate court." Ackerman v. McMillian, 324 S.C. 440, 477 S.E.2d 267 (Ct. App. 1996).³ The Appellate Panel exceeded its jurisdiction on remand by reconsidering and, in effect, reversing this Court's prior ruling on causation.

This Court is troubled by the discussion between the Appellate Panel and Respondent's counsel when oral arguments were heard by the Appellate Panel on December 15, 2014:

MR. KALE: Okay. May it please the panel. First, let me address Judge Hayes' order and what it requires or implies. And I would cite you to the very bottom sentence of page nine. He says, this court is left to speculate if the proper analysis was applied by the commission and whether the factual conclusions upon which the law was applied has a substantial base in the record. If he says

³ See also 5 C.J.S. Appeal and Error § 1137 (2015) ("On the remand of the cause after appeal, it is the duty of the lower court to comply with the mandate of the appellate court and to obey the directions therein, even though the mandate is, or may be, erroneous. . . . Where a trial court is told to proceed in conformity with the reviewing court's mandate, the trial court should consult the opinion to determine what the mandate requires.") (citations omitted).

15 DEC -3 AM 10:27
CLERK OF COURT
JUDICIAL BRANCH
COURT HOUSE
COLUMBIA, SC 29903

that the record is not sufficient findings of fact that would allow him to do a judicial review, then how can we [accept] all of this other analysis as being a proper judicial review when he says he can't make it. And that's what I have a problem with, with Judge Hayes. Judge Hayes, I think, is clear from his order what he wanted to do in this case.

COMMISSIONER BARDEN: Right, right.

MR. KALE: And the fact is he's having his cake and eating it too.

COMMISSIONER BARDEN: By saying he has to speculate or he can only speculate, but then ---

MR. KALE: And then he tells us -- he's supposedly telling the commission where they went wrong. So I think it's very clear from his order that the remand is to get sufficient findings of fact that would support judicial review. And is not any kind of mandate that you have follow his -- anything else that's in his order. But let me also, if I may --

COMMISSIONER BARDEN: Do you think that we are bound by his -- they're a couple of things in here I don't ---

MR. KALE: I do not think you're bound by anything he puts in the order, because he has already prefaced that he's remanding it because are insufficient findings of fact, and he would have to speculate as to what findings of the commission were and what the conclusions of the commissioner were. So I don't think that you're bound by anything that is in his order.

2015 DEC -3 AM 10:27
IN-HOUSE COUNSEL
SOUTH CAROLINA

(Tr. of Oral Argument on Remand, pp. 15-16) (emphasis added). The mandate from this Court and the Supreme Court required the Commission to enforce this Court's prior ruling that Deputy Martinez had established causation as a matter of law.

This Court decided the issue of causation as a matter of law. When the evidence gives rise to only one reasonable inference or is undisputed, the question becomes one of law for the court to decide. Smith v. Union Bleachery/Cone Mills, 276 S.C. 454, 280 S.E.2d 52 (1881); Lorrick v. S.C. Electric & Gas Co., 245 S.C. 513, 141

S.E.2d 662 (1965); Kinsey v. Champion American Service Center, 268 S.C. 177, 232 S.E.2d 720 (1977).

A trial court on remand may not exceed the remand, the appellate court's instructions in the mandate circumscribe the trial court's authority on remand, and it is the trial court's duty to follow the instructions the trial court received from the appellate court. Price v. Beaufort Mem'l Hosp., 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011). This Court ruled that the crime scene investigation performed by Deputy Martinez on April 4, 2005, was "a" proximate cause of her mental injury as a matter of law. This Court ruled, "all of the qualified medical experts agreed the crime scene investigation performed by Deputy Martinez was a contributing proximate cause of Martinez's mental break down." This Court stated, "[t]his Court strains to infer the analysis used by the Commission in its Order to find the burden of proof as to causation was not met by [Deputy Martinez]. The medical testimony overwhelmingly establishes the causative link to the work environment even when considering her pre-existing mental issues and the death of her husband's cousin." (Sup. Ct. Appendix, Vol. I, p. 27). This Court ruled, "[t]he only conclusion that can be drawn from the record is that [Deputy Martinez] established her burden of proof that her mental injuries were proximately caused by the stress from the accident investigation." This Court could not have been more emphatic when it ruled, "all of the doctors, psychiatrists, and counselors who submitted medical opinion, including the defense expert, state the investigation of the tragic death of Officer Johnson's daughter on April 4, 2005, caused, aggravated, or contributed to the Appellant's

7 

mental injury. All of the medical opinions in this case establish that the Appellant's mental injury was proximately caused by the investigation into the tragic death of Officer Johnson's infant daughter on April 4, 2005 as a matter of law." (Sup. Ct. Appendix, Vol. I, p. 30) (emphasis added).

Again, all of the medical opinions supported the causation to her investigation. Even the doctor hired by the respondent to perform an independent psychological evaluation supported causation to the investigation. This doctor noted that the claimant was a victim of sexual molestation as a child and was raped at age nineteen (19) by a family friend. The doctor noted:

The above testimony would seem to support a diagnosis of Post Traumatic Stress Disorder by history. There is a recognized connection in the field of psychiatry between prior episodes of abuse or trauma and the development or redevelopment of Post Traumatic Stress Disorder. Claimant's early life experience with sexual molestation could have predisposed her to develop Post Traumatic Stress Disorder. Her description of how her behavior changed after she was raped is strongly suggestive of developing a Post Traumatic Stress Disorder at that time. This first episode of Post Traumatic Stress Disorder could have made her more vulnerable to future traumatic events.

The work event of having to investigate the death of a young child, having to move that child and having to face the reality of how the child suffered and died would certainly qualify as meeting the criteria of a legitimate traumatic event for Post Traumatic Stress Disorder. The traumatic event may have had special meaning to the Claimant in light of her having been abused as a young girl, and in light of her having worked with the father of the victim.

(Sup. Ct. Appendix, Vol. I, p. 331). The doctor went on to note:

2015 DEC -3 AM 10:27
M. H. P. E. S. S. O. R. T. Y.

The patient herself was treated about 12 years prior to her work related trauma for depression. She was treated by her primary care physician with the antidepressant Luvox. She took this for 1-2 years and was able to stop it. The patient has one brother that has been diagnosed and treated for depression. This would seem to indicate there exists a genetic loading toward some type of affective disorder. Bipolar Disorder is one type of Affective Disorder.

(Sup. Ct. Appendix, Vol. I, p. 332). In response to questions from the Respondent, the doctor answered in the following manner:

1) WHAT IS YOUR DIAGNOSIS OF MS. MARTINEZ'S PSYCHIATRIC CONDITION?

Her primary psychiatric diagnoses are:

**Post Traumatic Stress Disorder, Recurrent Episode,
Chronic Bipolar I Affective Disorder**

2) IN YOUR OPINION, DID SHE HAVE ANY OF THESE CONDITIONS PRIOR TO 4 APRIL, 2005?

Claimant has evidence of a Bipolar Mood Disorder existing prior to her work related trauma although the diagnosis was not officially recognized. This includes rebelliousness toward authority in her childhood, difficulty managing her anger by her own admission, and treatment for depression with the anti-depressant Luvox approximately 12 years prior to her work related trauma.

Claimant has evidence of a Post Traumatic Stress Disorder existing prior to her work related trauma. The Claimant indicates she was raped at age 19. She developed symptoms consistent with Post Traumatic Stress Disorder at that time which included dropping out of school for one year, not wanting to relate to males, not wanting to go out of her house, and feeling "gun shy" of men.

...

3) IN YOUR OPINION, WAS ANY OF MS. MARTINEZ'S PSYCHIATRIC CONDITIONS CAUSED OR AGGRAVATED BY THE ACCIDENT INVESTIGATION CONDUCTED BY MS. MARTINEZ ON 4 APRIL, 2005?

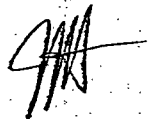
Yes. Both Bipolar and Post Traumatic Stress Disorders were aggravated by the trauma experienced during the accident investigation she conducted on 4 April, 2005.

...

Post Traumatic Stress Disorder occurs more frequently in individuals where there exists a prior history of abuse. Claimant described sexual abuse for about 18 months around the age of 7-8 while living in Puerto Rico. She clearly developed symptoms of Post Traumatic Stress Disorder after being raped at age 19. Once an individual develops Post Traumatic Stress Disorder, they are more at risk for redeveloping it than are others who never experienced abuse or who never previously suffered from Post Traumatic Stress Disorder. Certainly the accident investigation would qualify as the type of event that could trigger a Post Traumatic Stress Disorder. In Claimant's case, this event led to a recurrence of a previously experienced Post Traumatic Stress Disorder.

(Sup. Ct. Appendix, Vol. I, p. 333-35).

On remand, the Appellate Panel did not have jurisdiction to rehear, reconsider, or relitigate the issue of causation under the guise of making new findings of fact. Deputy Martinez's substantial rights were prejudiced by the Appellate Panel reconsidering the issue of causation and, in effect reversing, rather than enforcing this Court's prior Order. Reconsidering the issue of causation was in violation of constitutional provisions, in excess of the statutory authority of the agency, made upon an unlawful procedure, or affected by an error of law. The Appellate Panel's new findings of fact on causation are reversed under § 1-23-380(5)(a), (b), (c), and (d)



2015 DEC -3 AM 10:27

because they are in excess of the statutory authority of the agency, made upon an unlawful procedure, and affected by other error of law.

The second question presented for judicial review is whether the Appellate Panel conducted further proceedings on compensability consistent with this Court's prior Order. This Court did not have a problem determining what the facts were, it had a problem determining whether the proper legal standards for compensability had been applied to the facts. The facts have not changed since this claim was before this Court in 2009. No additional testimony was taken. This Court reviewed the evidence on compensability in its prior Order and began by noting, "all of the witnesses gave testimony supportive of [Deputy Martinez's] claim of unusual and extraordinary condition of employment." (Sup. Ct. Appendix, Vol. 1, p. 14). This Court summarized the evidence:

The Appellant, Raquel Martinez, had been in law enforcement for twenty-four (24) years as a probation officer and police officer before she became a forensic investigator for the Spartanburg County Sheriff's Department in 2001. On April 4, 2005, she was dispatched to investigate a fatal motor vehicle accident involving an infant child whose body burst like a watermelon when her father's patrol car rolled over her. The father of the child was a fellow police officer and friend of the Appellant. Within approximately four months after the Appellant's investigation, she had a nervous breakdown and was found hiding in bushes after doing substantial physical damage to her patrol car and home. When she was found, she was ranting about an unidentified little girl. The Appellant was hospitalized for psychiatric treatment and eventually, through counseling sessions, began to address the issues involving her investigation into the death of her fellow police officer's young daughter.

RECEIVED
CLERK OF COURT
SPARTANBURG COUNTY
2015 DEC -3 AM 10:27

(Sup. Ct. Appendix, Vol. 1, p. 16). This Court reviewed the uncontested testimony of the only witnesses who testified:

The Respondent called no witnesses to testify before the Commission. The facts surrounding the investigation were uncontested. (Hearing Tr. p. 88).

The Appellant described what she saw when she arrived on the scene:

I saw the Sheriff, our Sheriff, Sheriff Wright ... squatting down in the corner of the garage with a man who was scrunched up, rocking like this. I couldn't see who it was... and they told me that it was Anthony Johnson, who used to work for the Spartanburg County Sheriff's Office... And the Sheriff spent, I'd say 20 or 30 minutes trying to talk Anthony down because A.J. was wanting to die, understandably, he'd just killed his child. (Hearing Tr., pp. 19 - 20). When the Appellant realized she knew Officer Johnson, she asked to be allowed to leave the scene for the first time in her career. (Hearing Tr., pp. 20 - 21, 82). Captain Denton denied her request but later regretted his decision and testified at the hearing, "knowing what I know now, I probably would have let somebody else more experienced come out there and listened to the employee instead of deciding that regardless we're gonna do our job." (Hearing Tr., p. 107).

During the investigation the Appellant was required to move the infant child's crushed body so measurements and photographs could be taken. She recalled, "when moving the child - it was like a broken doll - when you moved her, it sounded like you were tumbling over some blocks." (Hearing Tr., pp. 34 - 35). The image that appears in her recurring nightmares is:

I had to get underneath [the car] to take - to see if any evidence of where the child was

underneath the vehicle, and there were clumps of her hair and skin on the tire and on the asphalt, and then on the part of the - I don't know the undercarriage of the car very well, but the biggest part, I guess is going to be the gasoline tank. There were fingerprints, and there was the impression of a hand, I should say, not the whole hand, just the little-bitty fingerprints dragging across the gasoline tank. (Hearing Tr., p. 24).

The Appellant explained that even though investigating violent deaths were part of her job, this present crime scene was different because she had never been called upon to investigate a violent death that involved a person she knew personally and considered a friend. The Appellant explained the difference her prior relationship with Officer Johnson made:

I think the difference is that when you go to a burn scene, this is - sounds cold, but you get through it the way you get through it. This is no longer a person; this is an object. To keep a distance when you do these. I think A.J.'s case, or the child's case, was different because I had never seen it with anyone that I knew or that I couldn't turn her into an object. I couldn't just say that's just a little girl over there. I couldn't do that. You can't do that." (Hearing Tr., pp. 39 - 40).

Her feelings were shared by Captain Denton who responded to questions at the Hearing by the Respondent's attorney:

Q: As far as the grisliness or gruesomeness of the April 4th scene, where does it rank in all the death scenes you've seen?

A: Well, first of all, having known the officer and having a child run over by a vehicle or the person you know causing the death of that, I've never encountered that. As far as ranking the grotesqueness of it, it's a child.

It was run over by a police car. It was an accident. If I had to rank it as far as my feeling, my emotions, it would be the worst.

Q: That was my next question, as far as the emotional part of the investigating a crime scene, how did the April 4th investigation rank emotionally?

A: Emotionally, it was the worst. I mean we knew him. It was an infant child. For everybody it was hard. (Hearing Tr., p. 81).

Captain Denton testified the investigation in this case was unusual and extraordinary:

Q: All right. Well, let me ask you this: as a 20-plus year veteran of the Sheriff's Office with 70 to 75 percent of your time spent in death investigations, and as Raquel's supervisor, would you say that the April 4th, 2005 investigation involving your former employee, A.J., killing his two-year-old daughter would have been an extreme situation in her employment?

A: Yes.

Q: Was this a scene that was out of the ordinary?

A: Yes. (Hearing Tr., pp. 93 - 94).

Even though the Appellant and Officer Johnson may not have seen each other daily when he was with the Spartanburg Sheriff's Department, she testified:

... The county was cut into eight ... zones. I was assigned to one zone; he was assigned to another zone. So, a lot of times if you were in this zone here and there as a call in this zone that you're not sure about, it might be a bad call or whatever or just sounds suspicious, you go that way to go back up the officer that responds to the call... So that's why I said we backed each other up. Did we work in the same area? I don't think we ever worked the same area, but we worked side by side, and if got into fights or if I got into

fight, we would respond. He would be there and I would be there. (Hearing Tr., p. 57).

She explained the close friendship that developed as a result of their being fellow police officers:

It's hard to believe -- that I can recall in 28 years, I have never had to deal with someone in a violent situation or in which violent death -- I have never had to deal with someone that I actually knew, that I considered a friend, not to mention a co-police officer. We kind of stick together like a thin blue line, if y'all have ever heard of that expression. We deal with things all the time regular people don't see, so you get very close to your workers. (Hearing Tr., p. 29).

2015 DEC -3 AM 10:27
M. HOPKINS, CLERK

This Court emphasized, "the only witnesses who testified whether the investigation conducted on April 4, 2005, into the tragic death of Officer Johnson's infant daughter was usual or unusual, ordinary or extraordinary, were Deputy Martinez and her supervisor, Captain Denton." They both testified that the April 4, 2005, investigation was unusual and extraordinary based on their combined forty-eight (48) years of law enforcement experience. This Court quoted Captain Denton's testimony:

Q: So the fact that she was investigating a child doesn't take it out of her ordinary investigation, does it?

A: I don't think the whole -- you get the whole story until you add the conditions that existed, and the whole truth is that, that condition existed that day, and I think it was extraordinary because of that.

Q: Because...

A: I don't think it was ordinary that day.

Q: Pardon?

A: I don't think it was an ordinary job for anybody that day, and I think...

Q: But what she did was ordinary in her job, was it not?

A: What she did was her job. Ordinary, if you're talking about, you know, had it been anywhere else that day, it would have been ordinary. But it wasn't anywhere else, and that's ...

Q: Well, as far as the child is concerned – let's take the father out of it. If some other child had been run over, would you consider that to extraordinary?

A: That's not what happened.

Q: Well, I'm not asking you – I'm saying assume if it was some other person's child that had been run over, then would that – and she investigated the child, would there be anything unusual or extraordinary about that?

A: No.

Q: So it boils down to the fact that this child was a former employee of the Spartanburg Sheriff's Department?

COMMISSIONER: The child's father.

Q: I'm sorry the child's father.

A: It boils down to this – that's half of the fact. The other half of the fact is, again, it's an infant that was over by a police car that was driven by a former employee who we were friends with. That's the whole fact. (Hearing Tr., pp. 98 – 99).

M. HOFFMAN J. HOFFMAN

2015 DEC -3 AM 10:27

CLERK OF COURT
SPARTANBURG COUNTY

(Sup. Ct. Appendix, Vol. I, pp. 25 – 26).

It was out of deference to the Commission that this Court remanded the claim for further proceedings consistent with its Order. While this Court did not intend to substitute its judgment for that of the Commission as to the weight of the evidence or to substitute its findings of fact for those of the Commission, it did intend for the Commission to consider the testimony of the only witnesses who testified, quoted by this Court in its prior Order and set forth above. Brown v. R. L. Jordan Oil Company, 291 S.C. 272, 353 S.E.2d 280 (1987); Crisp v. Southco, Inc., 390 S.C. 340, 701 S.E.2d 762 (Ct. App. 2010).

Under the guise of making findings of fact, however, the Appellate Panel did not include any of the quoted testimony supporting compensability. Not only did the Commission ignore the testimony quoted by this Court, it ignored the case law on compensability cited by this Court. This Court cited six cases addressing compensability of mental injuries under the Workers' Compensation Act.⁴ Only three of the cases were cited in the Appellate Panel's remand Order and none of them were cited for the reasons they were cited by this Court. Ignoring the evidence quoted by this Court and the case law cited by this Court on the issue of compensability is not conducting further proceedings consistent with this Court's Order; but, rather, constitutes an arbitrary or capricious disregard of the mandate from this Court. The Appellate Panel's findings of fact on the issue of compensability are reversed because Deputy Martinez's substantial rights were prejudiced by the Appellate Panel's arbitrary and capricious ignoring of the undisputed testimony quoted by this Court and case law cited by this Court, and the Appellate Panel's findings of fact on compensability are reversed under § 1-23-380(5)(f) because they are arbitrary or capricious or characterized by abuse of discretion or clearly an unwarranted exercise of discretion.

The third question presented for judicial review is whether the Appellate Panel's findings of fact on compensability are clearly erroneous in light of the reliable, probative, and substantial evidence on the whole record. To determine

⁴ Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000); Dickert v. Metropolitan Life Ins. Co., 306 S.C. 311, 411 S.E.2d 672 (Ct. App. 1991); Doe v. S.C. Department of Disabilities, 377 S.C. 346, 660 S.E.2d 260 (2008); Frame v. Resort Services, Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); Kearse v. S.C. Wildlife Resource Dept., 236 S.C. 540, 115 S.E.2d 183 (1960); and Stokes v. First Nat'l Bank, 298 S.C. 13, 377 S.E.2d 922 (Ct. App. 1988).

whether the Appellate Panel's findings on compensability are supported by substantial evidence requires this Court to review the whole record, including a review of the evidence contrary to the Appellate Panel's findings. The evidence contrary to the Appellate Panel's new findings is the very same testimony quoted by this Court that was ignored by the Appellate Panel.

A review of history of the "substantial evidence on the whole record" standard of review is helpful in understanding this issue. There was little dispute historically that courts had jurisdiction to interpret the statutes that administrative agencies are charged with enforcing and to insure that fundamental due process is followed in the administrative process. The courts, however, had a more difficult time deciding what scope of review to apply to an administrative agency's findings of fact. The deference to administrative expertise and to the many considerations that can enter into an administrative agency's decision-making process made it difficult for the courts to precisely define the appropriate scope of judicial review of an administrative agency's findings of fact. The scope of judicial review that generally developed was called the "substantial evidence rule" and it was incorporated into various statutes. For example, the Federal Wagner Act, predecessor to the Taft-Hartley Act, expressly adopted the substantial evidence rule for review of Labor Board decisions by providing, "The findings of the Board as to facts, if supported by substantial evidence, shall be conclusive." The U.S. Supreme Court interpreted the Wagner Act and held substantial evidence meant "such relevant evidence as a

reasonable mind might accept to support a conclusion." Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938).

The scope of judicial review was revisited by the U.S. Supreme Court in Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951), because of what Justice Frankfurter described as a "want of certainty" in judicial review of Labor Board decisions prior to the enactment of the Federal Administrative Procedures Act and the Taft-Hartly Act. It was the failure of the courts to consider the whole record, including the evidence contrary to the agency's findings of fact that led to the criticism of the substantial evidence rule.

Justice Frankfurter discussed what led to the adoption of the substantial evidence on the whole record standard for judicial review. He noted that "variant applications" of the substantial evidence standard bred criticism by suggesting that the standard was satisfied as long as "the evidence supporting the Board's result was 'substantial' when considered by itself." Universal, 340 U.S. at 477. This criticism led to the formation of a U.S. Attorney General's Committee to consider the scope of review when it was enacting the Federal Administrative Procedures Act and the Taft-Hartley Act. The majority report of the Commission issued in January of 1941 recommended that standard remain the substantial evidence rule. Three members of the Committee, however, filed a dissenting report described by Justice Frankfurter:

Their view was that the 'present system or lack of a system of judicial review' led to inconsistency and uncertainty. They reported that under a 'prevalent' interpretation of the 'substantial evidence' rule' if what is called 'substantial evidence' is found anywhere in the record to support conclusions of fact, the courts are said to

be obligated to sustain the decision without reference to how heavily the countervailing evidence may preponderate – unless indeed the stage of arbitrary decision is reached. Under this interpretation, the courts need to read only one side of the case and, if they find any evidence there, the administrative action is to be sustained and the record to the contrary is to be ignored.

Id. at 481. Justice Frankfurter found the use of the phrase “substantial evidence on the whole record” first appeared in the minority report. The criticism made by the minority report was noted by Congress, and the new “substantial evidence on the whole record” standard was included in both the Federal Administrative Procedure Act and the Taft-Hartley Act.

The unanimous Supreme Court⁵ discussed the significance of the new scope of review and held:

Whether or not it was ever permissible for courts to determine the substantiality of evidence supporting a Labor Board decision merely on the basis of the evidence which in and of itself justified it, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn, the new legislation definitely precludes such a theory of review and bars its practice. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. This is clearly the significance of the requirement in both statutes that courts consider the whole record.

RECEIVED
U.S. DEPT. OF COMMERCE
WASHINGTON, D.C. 20540
2015 DEC -3 AM 10:28

Id. at 487–88 (emphasis added). The Supreme Court ruled, “Congress has merely made it clear that a reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board’s view.” Id. at 488

⁵ Justice Black and Justice Douglas dissented but not from this part of the Supreme Court’s decision.

(emphasis added). Justice Frankfurter concluded this part of the Supreme Court's decision with the statement, "It cannot be too often repeated that judges are not automata." Id.

South Carolina's Administrative Procedures Act expressly adopted the substantial evidence on the whole record standard of review. Section 1-23-380(5)(e) provides:

The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decision are:

- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record...

The "whole record" requirement has found expression in this State's ^{2015 DEC -3 AM 10:28} ~~decisional~~ law interpreting the Administrative Procedures Act. Our appellate courts have observed in numerous cases that "[t]he substantial evidence required to support a finding is not a mere scintilla of evidence, nor 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." Port Oil Company v. Kenneth E. Allen, 282 S.C. 430, 319 S.E.2d 695 (1984) (emphasis added); Etheredge v. Monsanto Co., 349 S.C. 452, 562 S.E.2d 679 (Ct. App. 2002); Gibson v. Spartanburg School District #3, 338 S.C. 510, 526, S.E.2d 725 (Ct. App. 2000). "While courts may not substitute their judgment for that of the Commission on questions of fact, they may reverse the Commission when its decision is not supported by substantial evidence on the whole record."

See Sturkie v. Ballenger, 268 S.C. 536, 235 S.E.2d 120 (1977); Etheredge v. Monsanto Co., 349 S.C. 452, 562 S.E.2d 679; Muir v. C. R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999); Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 S.E.2d 599 (Ct. App. 1999).

The only witnesses who testified in this case were Deputy Martinez and Captain Denton, both of whom were law enforcement officers who were found to be credible. They offered the testimony quoted at length by this Court that was left out of the Appellate Panel's findings of fact. Both Deputy Martinez and Captain Denton testified that the crime scene investigation performed on April 4, 2005, was unusual or extraordinary for two reasons. First, because the investigation involved the death of an innocent two year old infant that was smashed like a watermelon. Second, the infant was crushed when a fellow police officer, who Petitioner knew, accidentally backed over the infant with his patrol car.

As to the first condition of Deputy Martinez's employment on the day in question, that the investigation involved the death of an innocent infant child smashed like a watermelon, even the Appellate Panel conceded the infant's death was "tragic and horrific." (Appellate Panel Order dated 2/24/15, p. 7, finding no. 3). By any definition, the word "horrific" means emotionally disturbing and implies something far beyond usual and ordinary experience. For some unexplained reason, however, the Appellate Panel did not find "horrific" was enough to make the investigation unusual and extraordinary. Although we expect law enforcement

officers to encounter circumstances that are grisly and tragic, the testimony plainly establishes that not all crime scenes are created equal.

As to the second condition of Deputy Martinez's employment on the day in question, that the infant was crushed when a fellow police officer, with whom Deputy Martinez and Captain Denton had previously served, backed over her with his patrol car, the Appellate Panel's new findings are that:

The greater weight of the evidence shows that Claimant's relationship with the toddler's father on the date of the toddler's death, was, at most, as an acquaintance (or a loosely defined "friend") of a fellow law enforcement officer. Claimant in her testimony emphasized the "thin blue line" relationship, as evidence to establish extraordinary and unusual condition of employment. However, as the toddler's father (a) had never worked alongside Claimant (they worked in different zones), (b) was working for another employer on the date of the toddler's death, (c) had never socialized with the Claimant, and (d) was not the dead victim, we find this fellow enforcement relationship insufficient."

2015 DEC -3 AM 10:28
H. HOFFMAN
CLERK

(Appellate Panel Order dated 2/24/15, p. 13, finding no. 26(a)(vii)). The Appellate Panel's finding that Deputy Martinez never worked alongside Officer Johnson later morphed into that they only saw each other "in passing" and "exchanged pleasantries" during shift changes. (Appellate Panel Order dated 2/24/15, p. 15, finding no. 28). That is clearly not what the substantial evidence on the whole records says.

The finding that Deputy Martinez did not have a law enforcement relationship with Officer Johnson is unsupported by the substantial evidence on the whole record. The undisputed testimony is that this prior relationship with Officer Johnson is what

made it impossible for Deputy Martinez to turn the crushed infant into an "object" and to emotionally distance herself from the horrific tragedy of a fellow police officer backing over his infant daughter and crushing her like a watermelon. Deputy Martinez never claimed Officer Johnson was her best friend or even a "close personal friend." She never claimed she had met his wife or daughter, visited their home, or socialized with them. What Martinez claimed was:

I considered [him] a friend, not to mention a co-police officer. We kind of stick together like a thin blue line, if y'all have ever heard that expression. We deal with things all the time that regular people don't see, so you get very close to your workers.

(Sup. Ct. Appendix, Vol. 1, p. 29). When questioned further by the Commissioner what she meant by this "special bond" of friendship, Martinez explained:

It's really us against them and — ... this is the way I feel, anyway as a police officer. I can be in the middle of a park full of people, and if somebody jumps me to hurt me, then I've got to defend myself, but if there's somebody in uniform near me, I know that I'm not going to die because somebody's gonna be there to back me up. That person. I don't know about all the other 99 behind me, but that police officer has a bond that's going to make them help a fellow officer. That's just it. If you ever hear a bunch of lights and sirens going in one direction and more than one or two patrol cars, you know it's a fight that an officer has got and they're trying to get help to him as fast as they can.

M. HOFFMAN

2015 DEC -3 AM 10:28

(Sup. Ct. Appendix, Vol. 1, pp. 115 - 116).

The Appellate Panel's findings—that Deputy Martinez and Officer Johnson were not social friends, were no longer employed by the same police department, and, when they did work for the same police department, they often worked different shifts and were assigned to different zones—may all be supported by substantial

evidence, but that is not the whole record. The whole record established that Deputy Martinez not only knew Officer Johnson but served side by side with him:

The county was cut into like eight pieces, and each one was a zone; [Officer Johnson] was assigned another zone. Sometimes we had two to a zone. Sometimes we didn't have but one person working two zones. So, a lot of times if you were in this zone here and there was call in this zone that you're not sure about it, it might be a bad call or whatever or just sounds suspicious, you go that way to go back up the officer that responds to the call. That way you don't have 20 minutes, you know, when they get into a fight or whatever to get there; you're already close to them. So, that's why I said that we backed each other up. Did we work in the same area? I don't think we ever worked the same area, but we worked side by side, and if he got into fights or if I got into fights, we would respond. He would be there and I would be there.

(Sup. Ct. Appendix, Vol. 1, p. 111).

Deputy Martinez explained how this prior relationship with Officer Johnson changed everything that day she was called to investigate the gruesome tragedy at his home when he ran over his infant daughter:

I think the difference is that like when you go to a burn scene, this is – and it sounds cold, but you get through it the way you get through it this is no longer a person; this is an object. And you have to keep a distance when you do these. I think [Officer Johnson's] case, or the child's case, was different because I have never seen it with anyone that I knew or that I couldn't turn her into an object. I couldn't just say that's just a little girl over there. I couldn't do that. You can't do that.

(A. Vol. 1, pp. 93–94).

By ignoring the uncontested testimony from the only witnesses who testified, the Appellate Panel blindly viewed the evidence from only one side of the case. The

2015 DEC -3 AM 10:28

substantial evidence on the whole record established that these officers did in fact know each other, served together, and backed each other up in the line of duty. When this Court considers all the testimony, including the testimony quoted above that was ignored by the Appellate Panel, it cannot conscientiously find the Appellate Panel's findings on compensability are supported by substantial evidence on the whole record. The Appellate Panel's findings that Deputy Martinez did not have a law enforcement relationship with Officer Johnson are reversed under § 1-23-380(5)(e) because they are not supported by substantial evidence on the whole record.

This Court is mindful that the Supreme Court has decided the case of Bentley v. Spartanburg Cnty., 398 S.C. 418, 730 S.E.2d 296 (2012), since this case was last before this Court. In Bentley, a divided Court held evidence that a police officer, who alleged he suffered a mental injury when he shot and killed a suspect, knew he would sometimes be required to use deadly force, was trained on the use of deadly force, and authorized by departmental policy to use deadly force, constituted substantial evidence supporting the Commission's finding the use of deadly force resulting in the death of a suspect was not unusual or extraordinary. This Court believes the facts in the present case are distinguishable. There is no evidence Deputy Martinez was trained how to investigate violent crimes involving fellow officers or their families. There was no departmental policy requiring forensic investigators to investigate violent crimes involving fellow police officers they knew and had served with. The investigation in this case was more than just

a rare occurrence. In Captain Benton's and Deputy Martinez's combined 48 years of law enforcement experience, it was the only time it had ever happened. And, most importantly, Deputy Bentley shot an unknown suspect, not a friend and fellow police officer.

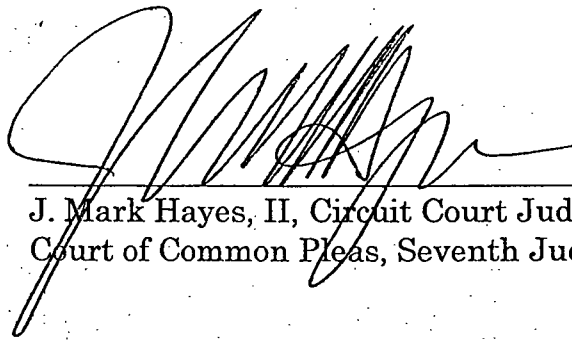
IT IS HEREBY ORDERED that the Appellate Panel's new findings of fact on causation are reversed and the claim is remanded to the Commission with the specific instruction that the Appellate Panel is not to reconsider the issue of causation and to enforce this Court's previous Order ruling that causation was established as a matter of law based upon the unanimous opinions of the medical experts; and

IT IS HEREBY ORDERED that the Appellate Panel's new findings on compensability are reversed and the claim is remanded to the Commission with the specific instruction that ignoring the undisputed testimony quoted by this Court and the case law supporting compensability cited by the Court is not conducting further proceedings consistent with this Court's prior Order and constitutes an arbitrary and capricious abuse of discretion under § 1-23-380(5)(f); and

IT IS HEREBY ORDERED that the Appellate Panel's new findings of fact on compensability that Deputy Martinez and Officer Johnson did not have a law enforcement relationship are reversed because they are not supported by the substantial evidence on the whole record under § 1-23-380(5)(e).

AND IT IS SO ORDERED.

2015 DEC -3 AM 10:28
M. HOLT-BENTLEY



J. Mark Hayes, II, Circuit Court Judge
Court of Common Pleas, Seventh Judicial Circuit

Spartanburg, South Carolina

8th day of December, 2015.

CLERK OF COURT
SPARTANBURG COUNTY
2015 DEC -3 AM 10:28
M. HAYES, II

ATTACHMENT C

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-42-1015

Raquel Martinez, Employee,)
)
Plaintiff,)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.)

Spartanburg County Sheriff's Office,)
Employer, and S.C. Association of Counties)
Self Insurance Fund, Carrier,)

Defendant.)

Plaintiff's Attorney:

J. Kevin Holmes, Bar No. _____

Address:

P.O. Box 9, Charleston, SC 29402-0009

Phone: 843-720-2800 Fax 843-722-1190

E-mail: kholmes@steinberglawfirm.com

Other: _____

Defendant's Attorney:

Richard B. Kale, Jr., Bar No. 3264

Address:

872 S. Pleasantburg Dr., Greenville, SC 29607

Phone: 864-527-3272 Fax 864-235-6015

E-mail: rbkale@wjlaw.net Other: _____

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Alter Judgment (Rule 59e)

Estimated Time Needed: 1 hour

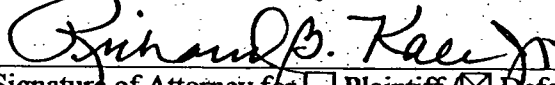
Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for ☐ Plaintiff / ☒ Defendant

December 11, 2015

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

CLERK OF COURT
SPARTANBURG COUNTY
2015 DEC 11 AM 10:18
M. HOPE BLACKLEY

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

CLERK OF COURT
SPARTANBURG COUNTY

2015 DEC 11 AM 10:18

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-42-1015

Raquel Martinez, Employee,)
)
Claimant/Petitioner,)

-vs-

Spartanburg County Sheriff's Office,)
Employer, and S.C. Association of Counties)
Self Insurance Fund, Carrier,)

Defendants/Respondents.)
_____)

MOTION TO ALTER OR
AMEND A JUDGMENT
PURSUANT TO S.C.R.C.P. 59 (e)

TO: J. Kevin Holmes and David T. Pearlman, The Steinberg Law Firm, Post Office Box 9,
Charleston, South Carolina 20402; Chadwick D. Pye, Post Office Box 6346, Spartanburg,
South Carolina 20304

YOU WILL PLEASE TAKE NOTICE that on the 10th day after service hereof, or as soon thereafter as counsel may be heard, the Defendants-Respondents, by and through their undersigned counsel, will move before the Honorable J. Mark Hayes, II, Presiding Circuit Judge, pursuant to Rule 59(e) of the S.C. Rules of Civil Procedure, for amendment of the Order, dated December 3, 2015, on the grounds that:

1. The Circuit Court erred as a matter of law in reweighing the evidence presented to the Commission, that error being that Circuit Court exceeded its scope of review under Section 1-23-380, S.C. Code Ann. (1976).

2. The Circuit Court erred in holding that the Appellate Panel exceeded its jurisdiction on remand, that error being that the Circuit Court's Order of February 25, 2009, specifically required the Commission on remand to make findings that were "sufficiently

2015 DEC 11 AM 10:08
SPARTANBURG COUNTY
CLERK OF COURT
M. HOPKINS
BLACKLEY

detailed to enable the reviewing Court to determine whether the evidence supported the findings.”

3. The Circuit Court erred in holding that the Appellate Panel exceeded its jurisdiction on remand, that error being that the Circuit Court’s Order of February 25, 2009, required the Commission to make specific findings of fact when it provided “The Findings of Fact made by the Commission must be sufficiently detailed to enable a reviewing Court to determine whether the evidence supports the finding. (Citations omitted). The Order issued by the Commission lacks the ‘concise and explicit’ statement of facts. . . .”

4. The Circuit Court erred in holding that the Appellate Panel exceeded its jurisdiction on remand by reconsidering the Court’s prior ruling on causation that error being that the Circuit Court’s Order of February 25, 2009, specifically required the Commission on remand to make findings that were “sufficiently detailed to enable the reviewing Court to determine whether the evidence supported the findings.”

5. The Circuit Court erred in holding that the Appellate Panel exceeded its jurisdiction on remand by reconsidering the Court’s prior ruling on causation that error being that the Circuit Court’s Order of February 25, 2009, specifically stated that the Commission’s original Order “requires the Court to speculate as to how, factually, the Appellant did not meet her ‘burden of proof.’”

6. The Circuit Court erred in holding that the Commission incorrectly ruled that the investigation conducted by Deputy Martinez on April 4, 2005, was not unusual or extraordinary, that error being that the Circuit Court failed to address whether the evidence cited by the Commission in support of its ruling was supported by substantial evidence on the whole record.

CLERK OF COURT
PARTIAL RECORD
2015 DEC 11 AM 10:18
M. HOPE BLAUGLE

7. The Circuit Court erred in reweighing the evidence in this case, that error being that reweighing the evidence exceeded the Circuit Court's scope of review under Section 1-23-380, S.C. Code Ann. (1976). ("The Court may not substitute its judgement for the judgement of the agency as to the weight of the evidence on questions of fact.")

8. The Circuit Court erred in reweighing the evidence in this case, that error being that where evidence is conflicting, the Commission's findings of fact are conclusive. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999)

9. The Circuit Court erred in reweighing the evidence in this case, that error being the determination of witness credibility and the weight to be accorded evidence is strictly reserved to the Commission. Brown v. Peoplease Corp., 402 S.C. 476, 741 S.E.2d 761 (Ct. App. 2013); O'Banner v. Westinghouse Electric Corp., 319 S.C. 24, 459 S.E.2d 324 (Ct. App. 1995).

10. The Circuit Court erred in holding that the Commission was bound by undisputed testimony of witnesses, that error being that it is strictly within the province of the Commission as to the credibility and weight to be given such evidence.

11. The Circuit Court erred in reversing the Commission's finding that the investigation on April 4, 2005, was not an unusual or extraordinary condition of employment, that error being that in so ruling the Circuit Court substituted its judgment for that of the Commission contrary to its scope of review under Section 1-23-380, S.C. Code Ann. (1976).

12. The Circuit Court erred in reversing the Commission's findings of fact on causation, that error being that the Commission's findings of fact on causation were supported by reliable, probative, and substantial evidence on the whole record.

13. The Circuit Court erred in reversing the Appellate Panel's finding on compensability on the ground that the Appellate Panel ignored undisputed testimony quoted by

the Court, that error being that determination of witness credibility and the weight to be accorded evidence is strictly reserved to the Commission and not the Circuit Court.

14. The Circuit Court erred in reversing the Appellate Panel's finding on compensability on the ground that the Appellate Panel ignored undisputed testimony quoted by the Court, that error being that the Appellate Panel clearly considered all of the evidence in the record when making its decision regarding compensability.

15. The Circuit Court erred in finding that the Commission did not consider the testimony of Deputy Martinez and Captain Denton, that error being that such finding was clearly erroneous.

16. The Circuit Court erred in holding that the Appellate Panel's finding that Deputy Martinez and Officer Johnson did not have a "law enforcement relationship" was not supported by substantial evidence, that error being that there was reliable, probative and substantial evidence on the whole record to support the Appellate Panel's findings.

17. The Circuit Court erred in holding a "law enforcement relationship" constitutes an unusual and extraordinary condition of employment, that error being that such holding was not supported by applicable case law or Section 42-1-160, S.C. Code Ann. (2007).

18. The Circuit Court erred in holding that the Commission ignored testimony quoted by the Court, that error being that the Commission clearly considered all the evidence, but the determination of witness credibility and the weight to be accorded evidence is reserved solely to the Commission and not the Circuit Court.

19. The Circuit Court erred in substituting its judgment as the weight of the evidence, that error being that the weight to be accorded evidence is strictly reserved to the Commission.

CLERK OF DISTRICT COURT
SPARTANBURG COUNTY
2015 DEC 14 AM 10:18
M. HOPE LACKEY

20. The Circuit Court erred in requiring the Commission to substitute the Circuit Court's findings of fact for those of the Commission, that error being the Commission, not the Circuit Court, is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 344 S.E.2d 613 (1986).

21. The Circuit Court erred in not reviewing the Commission's findings as to causation to determine if supported by substantial evidence, that error being that the Circuit Court's scope of review is to determine if the Commission's findings are supported by substantial evidence.

22. That the Circuit Court erred as a matter of law in concluding that the evidence gave rise to only one reasonable inference and that Deputy Martinez established proximate cause for her mental condition, that error being that the Court failed to consider contrary medical evidence that Deputy Martinez's mental condition was caused by the death of her "cousin," the abrupt cessation of Xanax, and her other medical conditions.

23. The Circuit Court erred in holding that the proximate cause of Deputy Martinez's mental condition could be decided as a matter of law, that error being that there was conflicting evidence as to the proximate cause issue, which required the Commission as finder of fact to decide the proximate cause issue. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999) ("Where there is a conflict in the evidence, the Commission's findings of fact are conclusive.")

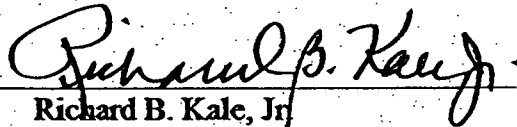
24. The Circuit Court erred as a matter of law in its interpretation of Bentley v. Spartanburg Cnty., 398 S.C. 418, 730 S.E.2d 296 (2012), that error being that the Circuit Court focused on the frequency of the type of investigation, and not the fact that the investigation was a necessary condition of Deputy Martinez's employment.

25. The Circuit Court erred in ordering the Appellate Panel of the Workers' Compensation Commission to consider only the testimony quoted by the Court, that error being that that essentially makes the Circuit Court the finder of fact contrary to its scope of review under Section 1-23-380, S.C. Code Ann. (1976).

26. The Circuit Court erred in finding that the Appellate Panel did not consider testimony quoted by the Court, that error being that the Appellate Panel clearly stated in its Order that it reviewed "the evidence presented at the initial hearing."

Respectfully submitted,

WILLSON, JONES, CARTER & BAXLEY, P.A.

BY: 

Richard B. Kale, Jr.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3272
Attorney for Defendants-Respondents

December 11, 2015

CLERK OF COURT
SPARTANBURG COUNTY
2015 DEC 11 AM 10:18
M. HOPE BLACKLEY

ATTACHMENT D

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Raquel Martinez, Employee,)
)
Claimant/Appellant,)
)
-vs-)
)
Spartanburg County, Employer, and)
S.C. Association of Counties SIF, Carrier,)
)
Defendants/Respondents.)
)

2015-CP-42-10) 5
Civil Action No. 2007-CP-42-1966

**MEMORANDUM IN SUPPORT
OF RESPONDENTS'
RULE 59e MOTION**

STATEMENT OF THE CASE

On February 24, 2015, the Appellate Panel of the South Carolina Workers' Compensation Commission issued its Decision and Order on remand, finding and concluding that Appellant, a Spartanburg County Master Deputy Forensic Investigator, failed to prove that she encountered extraordinary or unusual work conditions in her employment on April 4, 2015, as compared to her normal conditions of employment. The Panel further found that Appellant also failed to prove by the greater weight of the evidence that the accident investigation of April 4, 2005 was the proximate cause of her mental breakdown. Therefore, the Panel denied Appellant's claim.

On March 11, 2015, Appellant filed her Petition for Judicial Review. The Appeal was heard on June 26, 2015, and on December 3, 2015, this Court issued its Order reversing the Commission's Order. On December 11, 2015, Respondents filed their Motion to Alter or Amend a Judgment pursuant to S.C.R.C.P. 59(e).

ISSUES

- I. Whether the Court erred in holding that the Commission exceeded its authority on remand?
- II. Whether the Court erred in holding that the Commission did not conduct proceedings on the compensability issue consistent with the Court's prior Order?
- III. Whether the Court erred in holding that the Commission ignored evidence?
- IV. Whether the Court exceeded its scope of review under Section 1-23-380, S.C. Code Ann. (1976)?
- V. Whether the Court erred in holding that the Commission's finding as to extraordinary and unusual condition of employment was not supported by reliable, probative, and substantial evidence in the whole record?
- VI. Whether the Court erred in holding that the evidence gave rise to only one reasonable inference on the issue of causation?

ARGUMENT

I.

THE COURT ERRED IN HOLDING THAT THE COMMISSION EXCEEDED ITS AUTHORITY ON REMAND.

In its prior Order of February 25, 2009, the Court stated:

As will be briefly discussed herein, the decision by the Full Commission is reversed and remanded for further action consistent with this Order. The Findings of Fact made by an administrative agency must be sufficiently detailed to enable the reviewing Court to determine whether the evidence supports the finding. A reviewing Court may not make findings of fact as to basic issues of liability for compensation where to do so, would impose upon the Court the function of determining such facts from conflicting evidence. [citations omitted]

Additionally, the decision of this Court is that the Order from the Full Commission should be reversed because the analysis, as such as can be determined from the Orders in their present form, is flawed by misapplying, as a matter of law, the "unusual or extraordinary conditions of employment" test for determining compensability of mental injuries [citations omitted] and also due to misapplication, as a matter of law, of the "proximate cause" standard for relatedness of the work stressors to the mental injuries for compensation purposes. (Order of February 25, 2009, pp. 3-4) (Emphasis added).

Thereafter, the Court stated that there were only three Findings of Fact which were relevant to the decision: Finding of Fact 14 which found that the investigation of the child's death was not an unusual or extraordinary condition of Appellant's employment; Finding of Fact 15 which found that Appellant failed to prove that she encountered an unusual or extraordinary condition in her employment on April 4, 2006; and Finding of Fact 16 which found to prove the accident investigation of April 4, 2005 was the proximate cause of her mental condition. As to these three Findings of Fact, the Court stated that the Commission gave no factual basis for the three findings. The Court noted that findings of fact made by the Commission must be sufficiently detailed to enable a reviewing court to determine whether the evidence supports the finding.

Here, even though the orders from the Commission give a summary of some of the testimony presented during the hearing, no basis for the Findings of Facts 14, 15, and 16 is provided and, thus, this Court is left to speculate if the proper analysis was applied by the Commission upon which the law was applied has a substantial basis in the record.

When an administrative agency acts without first making proper factual findings as required by law, the proper procedure is to remand the case and allow the agency the opportunity to make these findings. [citation omitted]. (Order of February 25, 2009, pp. 9-10) (Emphasis added).

The Court further stated in footnote 8:

Given the evidence in the record which supports a finding in favor of Appellant, it is due to this Court's respect for the role of the Commission as fact-finder that the decision is to remand the case given the defectiveness of the Order rather than reversal. (Order of February 25, 2009, fn 8, p. 14) (Emphasis added).

In this case, no separate mandate was issued by the Court, so the Commission had to look solely at this Court's Order of February 25, 2009, to determine the scope of remand. Considering the above quoted statements in the Order of February 25, 2009, it seems clear that the Commission was being directed to make specific findings of fact to support its findings that

Appellant had failed to prove both that her mental injury was due to an extraordinary and unusual condition of employment and medical causation. "Ultimately, the scope of a remand Order must be determined by reference to the analysis contained in the appellate court's opinion." 5 Am. Jur. 2d Appellate Review §753. "When a trial court makes insufficient findings of fact, an appellate court may tailor a remedy appropriate to the case, including remanding the case for further development." Id. at §762.

An appellate court may order remand where findings of fact in the record are ambiguous, and in need of clarification. Thus, where the record on appeal generates doubt concerning the facts found or the law applied by the lower tribunal, it is ordinarily appropriate for the appellate court to remand to the lower tribunal to allow it to exercise its discretion in the matter. In this regard it has been variously stated: that if the record is so obscure and ambiguous that the appellate court cannot ascertain what judgment would be just because it is impossible to determine the applicable legal principles, the case should be remanded for appropriate presentation of facts. ... Am. Jur. 2d §763.

This is exactly what the Court indicated it was doing in its Order of February 25, 2009, and the Commission fully complied with the Court's mandate.

II.

THE COURT ERRED IN HOLDING THAT THE COMMISSION DID NOT CONDUCT PROCEEDINGS ON THE COMPENSABILITY ISSUE CONSISTENT WITH THE COURT'S PRIOR ORDER.

As stated in Argument I above, the Court in its Order of February 25, 2009, stated:

The Findings of fact made by an administrative agency must be sufficiently detailed to enable the reviewing Court to determine whether the evidence supports the finding. A reviewing Court may not make findings of fact as to basic issues of liability for compensation where to do so, would impose upon the Court the function of determining such facts from conflicting evidence. (Order of February 25, 2009, p. 3). (Emphasis added).

The Court further stated that:

When an administrative agency acts without making proper factual findings as required by law, the proper procedure is to remand the case and allow the agency the opportunity to make these findings. (Order of February 25, 2009, p. 18).

The only reasonable interpretation that can be given to the Court's statements is that the case was being remanded for the Commission to make specific findings of fact to support its decision to deny the claim.

Contrary to the above statements in 2009, the Court in its December 3, 2015 Order stated:

This Court did not have a problem determining what the facts were, it had a problem determining whether the proper legal standards for compensability had been applied to the facts.

This statement is dramatically different from what the Court stated in its 2009 Order. Moreover, the Court in its 2009 Order proceeded to discuss the testimony of the witnesses, quoting testimony, describing testimony as uncontradicted or as supportive of the claim. It is clear that the intent of the Court was to essentially make findings of fact and then have the Commission "rubber stamp" or adopt the Court's findings. This would in fact make the Court, the actual finder of fact contrary to the Appellate Court's scope of review as legislatively mandated in Section 1-23-380, S.C. Code Ann. (1976). This statute provides that the Appellate Court cannot substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact.

The fact that the Commission did not give weight to what the Court described as undisputed evidence is not ignoring the evidence; rather, it is the Commission exercising its singular, final authority to determine witness credibility and the weight to be given to such evidence. Hargrove v. Carolina Orthopaedic Surgery Associates, P.A., 389 S.C. 199, 697 S.E.2d 641 (S.C. App. 2010). Indeed, the Commission may disregard even undisputed testimony if

there is other competent evidence in the record. Tiller v. National Health Care Center, 334 S.C. 333, 513 S.E.2d 843 (1999).

This Court further noted that of the six cases it cited in its Order of February 25, 2009 [Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000); Dickert v. Metropolitan Life Insurance, 306 S.C. 311, 411 S.E.2d 672 (Ct. App. 1991); Doe v. S.C. Department of Disabilities, 377 S.C. 346, 660 S.E.2d 260 (2008); Frame v. Resort Services, Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); Kearse v. S.C. Wildlife Resource Dept., 236 S.C. 540, 115 S.E.2d 183 (1960) and Stokes v. First Nat'l Bank, 298 S.C. 13, 377 S.E.2d 922 (Ct. App. 1988)], the Appellate Panel only cited three [Shealy, Doe and Frame, surpa]. The Court fails to explain how Dickert (an exclusive remedy case involving employee alleging on-the-job harassment), Kearse (a stroke resulting from working an unusual length of time and involving extraordinary exertion), and Stokes (mental injury resulting from drastic increase in work hours) added anything to the decisions in Shealy, Doe, and Frame. The failure to cite cases which are merely duplicative to the cases cited by the Commission certainly should not be considered conducting proceedings inconsistent with the Court's Order of February 25, 2009.

III.

THE COURT ERRED IN HOLDING THAT THE COMMISSION IGNORED EVIDENCE.

The Appellate Panel's Order of February 24, 2016 is 46 pages in length and consists of 99 separate findings of fact. The Panel thoroughly discussed all of the evidence, expert and lay, and clearly revealed the weight it was affording each piece of evidence – including the reasons it gave certain evidence “great weight” and the reasons it found other evidence not persuasive. Respondents respectfully disagree with this Court's statement that the Appellate Panel ignored evidence. A fair review of the Appellate Panel's Order clearly reveals that the panel reviewed all

the evidence in minute detail in making its findings of fact. It appears that the gravamen of the Court's complaint is that the Panel ignored evidence pointed out by the Court in its previous Order. That is simply not the case.

The Panel's Order discussed in detail how the Appellant conducted her investigation and Appellant's testimony why this investigation was different. (See Findings of Fact #3, 4, 11, 12, 13, 14 18, 19, 20, 22, 23, 24, 26, 27, 28). The Panel also discussed Captain Denton's testimony. (Findings of Fact #3, 11, 12, 13, 27, 29, 89, 92, 93). Likewise, the Panel discussed all of the medical evidence including the medical reports of Dr. Wieder, Appellant's family doctor (Findings of Fact #30 thru 34, 36), her hospitalization records at Spartanburg regional Medical Center (Findings of Fact #35, 39 thru 43, 45 thru 48, 49, 50, 51), her treatment by Dr. Caston (Finding of Fact #44) and her hospitalization at Carolina Center for Behavioral Health. (Findings of Fact #54 thru 69). The Panel discussed the treatment by Dr. Diehl (Findings of Fact #70, 71, 74, 78, 79, 80, 82) Dr. Sherbondy (Findings of Fact #76, 77, 78), and Dr. Abess (Findings of Fact #83 thru 87). It is clear that the disagreement that this Court has with the Appellate Panel's decision is the weight that the Panel assigned to the lay testimony and medical evidence. While this Court would have no doubt weighed the evidence differently, that function is not within the scope of this Court's appellate authority. As stated above, the Commission, not the Appellate Court, is the finder of fact. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000). The task of assessing the credibility of the witness and the weight to be accorded evidence is reserved to the Appellate Panel. Id. There is simply no basis for the Court's conclusion that the Panel ignored evidence. The fact that the Panel may have given less weight to evidence that this Court felt important was not ignoring evidence.

IV.

THE COURT EXCEEDED ITS SCOPE OF REVIEW UNDER SECTION 1-23-380, S.C. CODE ANN. (1976).

In workers' compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). Whether a causal connection exists between employment and an alleged injury is a question of fact for the South Carolina Workers' Compensation Commission. Sharpe v. Case Produce, Inc., 336 S.C. 154, 159, 519 S.E.2d 102, 105 (1999). The Appellate Court's review of these findings of fact is limited to determining whether the findings are supported by substantial evidence in the record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). "Substantial evidence" necessary to support a decision of the Commission is:

'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . . It must be enough to justify, if the trial were [sic] to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. . . . This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.'

Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981); *see also*, O'Banner v. Westinghouse Electric Corp., 319 S.C. 24, 30, 459 S.E.2d 324, 327 (Ct. App. 1995) (The determination of witness credibility and the weight to be accorded evidence is reserved to the Commission.)

The findings of the Commission are presumed correct and will be set aside only if unsupported by substantial evidence. Etheredge v. Monsanto Company, 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002); Medlin v. Upstate Plaster Serv., 329 S.C. 92, 495 S.E.2d 447 (1998). This Court may not weigh the evidence in its review of a factual finding by the Commission. *See Walker*

v. City of Columbia, 247 S.C. 241, 146 S.E.2d 856 (1966). Accordingly, this Court's review of the Commission's findings of fact is limited to determining whether the findings are clearly unsupported by substantial evidence in the record, rather than reweighing the evidence presented to the Commission. *See generally*, Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306-7 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987); Brown v. Jordan Oil Co., 291 S.C. 272, 275, 353 S.E.2d 280, 282 (1987); O'Banner, 319 S.C. at 30, 459 S.E.2d at 327. Thus, if reasonable minds could reach the conclusion reached by the Commission, the Commission's findings must be affirmed. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162, 163 (1992). Of special note is that where the evidence is conflicting, "the Commission's findings of fact are conclusive." Sharp, 336 S.C. at 160, 519 S.E.2d at 105; *See also*, Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 407 (1991) ("Where there is a conflict in the evidence, either of different witnesses or of the same witnesses, the findings of fact of the Commission as triers of fact are conclusive.") Indeed, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Tiller v. National Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999); Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998).

In this case, the Court, by making findings of fact contrary to the Appellate Panel's, has assumed the role of finder of fact. This is clearly beyond the scope of this Court's appellate review under § 1-23-380 S.C. Code Ann. (1976). Moreover, the Court has again failed to examine the Appellate Panel's 99 findings of fact to determine if those findings of fact are supported by substantial evidence.

The Court did not find fault with the Appellate Panel's finding that Officer Johnson had not worked for Spartanburg County for approximately 2-3 years prior to the toddler's death, that Officer Johnson and Appellant had never worked as partners, that Appellant did not witness the accident,

that Appellant had never socialized with Officer Johnson, that Appellant had never been to Officer Johnson's home, had never met Officer Johnson's wife or the child or even seen a photograph of the toddler.

Instead, the Court found that evidence that Appellant and Officer Johnson knew each other, served together, and for the one year backed each other up, outweighed the Commission's findings of fact. In so holding, the Court on fact reweighed the evidence contrary to its scope of review under Section 1-23-380, S.C. Code Ann. (1976).

V.

THE COURT ERRED IN HOLDING THAT THE COMMISSION'S FINDING AS TO EXTRAORDINARY AND UNUSUAL CONDITION OF EMPLOYMENT WAS NOT SUPPORTED BY RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE IN THE WHOLE RECORD.

Mental injuries caused solely by emotional stress are compensable if the emotional stimuli or stressors are incident to or arise from unusual or extraordinary conditions of employment. Stokes v. First National Bank, 298 S.C. 13, 377 S.E.2d 922 (S.C. App. 1988); Powell v. Vulcan Materials Co., 299 S.C. 325, 384 S.E.2d 725. In order to recover workers' compensation benefits, a Claimant must prove both:

- (1) that he was exposed to unusual and extraordinary conditions in his employment; and (2) that these unusual and extraordinary conditions were the proximate cause of his mental breakdown.

Frame v. Resort Services, Inc., 357 S.C. 520, 529, 593 S.E.2d 491, 496 (S.C. App. 2004). Moreover, the requirement of "unusual or extraordinary conditions in employment" refers to the conditions of the particular job in which the injury occurs, not to the conditions of employment in general. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000). The statute and our case law speak of *conditions* of employment and not the frequency of an event occurring.

Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 (2012). The standard to be applied is whether the work conditions at issue were unusual compared to the particular employee's normal strains. Id. at 457, 535 S.E.2d at 443; Doe v. S.C. Dept. of Disabilities and Special Needs, 377 S.C. 346, 349-350, 660 S.E.2d 262 (2008).

In the instant case, substantial evidence supports the Commission's decision that Martinez did not encounter an unusual or extraordinary condition in performing her specific job on April 4, 2005.

A. At the accident investigation on April 4, 2005, Martinez performed her ordinary job duties in an ordinary manner as a forensic investigator with the Spartanburg County Sheriff's Department.

Martinez described the "overall" job as a forensic investigator with the Spartanburg County Sheriff's Department as "stressful" and "dangerous." (APA #9, p. 289). According to Martinez, her job as a forensic investigator required her to go to accident and crime scenes (including homicide and other violent crimes) and:

- Collect evidence;
- Take photographs of the area;
- Take measurements, including those of bullet holes;
- Process fingerprints or other forensic evidence including DNA;
- Take photographs of bodies
- Move bodies for purposes of (a) determining whether there is a gunshot or stab wound and (b) photographing the bodies;
- Download photographs into a computer; and
- Write two different reports in two separate computers to document everything.

(Tr. 15, 33-36). Captain Denton also testified that it was not uncommon for a forensic investigator to touch a dead body and that a forensic investigator must investigate the deaths of children. (Tr. 97-98).

Over the course of her career as a forensic investigator, Martinez had been involved in 100-150 death calls, including 24 cases involving suspicious deaths/homicides (Tr. 38 & 56). She participated in approximately 24-26 autopsies where the pathologist removed organs from the body. (Tr. 38-39). She admitted that it was not unusual for a forensic investigator to see "blood and guts." (Tr. 39). She had also been to gruesome fire scenes in which bodies had been badly burned. Id. While she was working previously for the Greenville County Sheriff's Department, Martinez had gone to an accident scene where a dump truck had driven over a child's head. (Tr. 47). She admitted that the scene did not bother her and she did not cry or have nightmares thereafter. (Tr. 51). The sole difference, according to Martinez, was that the child was not run over by a fellow police officer with whom she was acquainted. (Tr. 52).

Martinez also testified that it was not uncommon for investigators to go to motor vehicle accidents in which the occupants had been decapitated or had lost an arm. (Tr. 56). On one occasion, Martinez had investigated a motor vehicle accident in which two teenagers rolled a stolen vehicle, while attempting to escape capture. (Tr. 54). The driver was ejected from the car and the car rolled over him. Id. On that occasion, the teenager died in Martinez's arms after she had moved him to where he could breathe. Id. She also remembered another instance in which a man had accidentally shot his leg off with a shotgun. (Tr. 56).

When questioned about the investigation she performed on April 4, 2005, Martinez testified that she documented the accident scene extensively to determine that the accident had occurred the way it appeared.¹ (Tr. 34). She took 100-150 photographs, including photographs of the front lawn of the house, the area around the child's body including underneath the car, and inside the house. Id. She also took measurements of the position of the body and collected any kind of DNA or fibers. (Tr. 34-35). Martinez testified that the reason the victim's body is

¹ Martinez did not witness the accident in question. (Tr. 53).

moved or turned over is to determine if there is any evidence of harm (gunshot wound or stab wound) on the other side of the body. (Tr. 35). Martinez admitted that taking photographs, measurements, collecting evidence, and moving the body of the child were all part of her job as a forensic investigator. (Tr. 97). Similarly, Captain Denton testified that when Martinez was taking photographs, making measurements, and moving the body, she was doing her ordinary job. (Tr. 34). Significantly, Martinez admitted each of the activities she performed during the investigation on April 4, 2005, would have had to be performed by another forensic investigator had she not been dispatched to the scene. (Tr. 45-46).

Substantial evidence in the record, including Martinez's own testimony, clearly supported the Appellate Panel's finding that Martinez was performing her ordinary job duties in an ordinary manner as a forensic investigator at the scene of the child's death on April 4, 2005.²

B. Martinez's relationship with Johnson was, at most an acquaintance of a fellow law enforcement officer, and was not such that would cause her employment condition on April 4, 2005 to be unusual or extraordinary.

Martinez contended that her relationship with Johnson, a *former* officer with the Spartanburg County Sheriff's Department, transformed her employment condition on the day of the investigation into the extraordinary and unusual. At the hearing, Martinez specifically explained exactly what she believed was "unusual or extraordinary" about April 4, 2005:

Q. [Mr. Pye] Had you ever investigated a scene like the April 4th, 2005, scene before that day where a fellow officer was involved with the death of his own child?

A. No. I've never -- like I said, I've never done anything that involves somebody that I know in any kind of violent crime.

(Tr. 30:5-11). However, Captain Denton testified that, with regard to crime scene investigations, the Sheriff's Department had no policy prohibiting employees from investigating an accident

² See Finding of Fact #26

scene where they know the victim or a relative of the victim and that "I've always maintained that we are to work it no matter what, and I maintained it that day." (Tr. 89). Captain Denton took the same position on April 4, 2005 and required Martinez to work the investigation. (Tr. 89-90). In fact, with regard to his instruction to Martinez to process the April 4, 2005 incident, Captain Denton further testified:

Q. [Mr. Kale] And when you made that decision, you were basically saying, "You've got to do your job," right?

A. Yes.

(Tr. 107:18-20).

It is not speculation to say that the longer a forensic investigator works the broader variety of cases he or she will experience. Thus, the gaining of knowledge and experience by working new and various types of accidents is not an "unusual or extraordinary" condition of employment any more than an attorney's first trial or a surgeon's first operation could be considered an "unusual or extraordinary" condition of employment. A "first experience" is not by definition "unusual or extraordinary." Furthermore, as recently pointed out by the Supreme Court, "in defining what constitutes unusual and extraordinary, the statute and our case law speak of *conditions* of employment and not the frequency of an event occurring." Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 (2012)(citing S.C. Code Ann. § 42-1-160; Shealy v. Aiken County, 341 S.C. at 456, 535 S.E.2d at 442).

Furthermore, Martinez's "thin blue line" argument, regarding her relationship with Johnson, makes much of testimony that Johnson and Martinez "backed each other up." (Tr. 57). Yet, neither Martinez nor Captain Denton testified regarding any specific instances where she backed up Johnson, or vice versa. As the Commission specifically found, Martinez's "relationship" with Johnson was insufficient to transform the employment condition on April 4, 2005 into the extraordinary and unusual. (See Finding of Fact #26).

Importantly, the evidence established that Martinez had only known Johnson for about 1-1½ years during the time that he was employed by the Spartanburg County Sheriff's Department. (Tr. 41). During that time, Martinez and Johnson were never partners, and while Martinez and Johnson had worked the same shift at the Spartanburg County Sheriff's Department, they were assigned to different platoons and worked different zones. (Tr. 57-58). Thus, there were only two working days each week that Martinez and Johnson actually worked at the same time, and on those days, they might only see each other at roll call at the beginning or end of the shift. (Tr. 58). Interestingly, Martinez testified that she did not know whether her reaction would have been the same if the officer who had run over his child had worked on the second shift instead of the third shift. (Tr. 62).

Additionally, one important piece of information which Martinez has consistently overlooked, is the fact that Johnson left the Spartanburg County Sheriff's Office at least 3 ½ years prior to this accident. (Tr. 40). Thus, Martinez and Johnson had not worked together for at least 3 ½ years prior to the April 4, 2005 investigation.³ The only times Martinez saw Johnson after he left the department was when they would occasionally bump into each other while both were on duty, such as when Johnson might drop off a prisoner. (Tr. 42). In addition, Martinez candidly admitted that she and Johnson were not "best friends." (Tr. 61). Martinez never socialized with Johnson, and she had never been to Johnson's house prior to the date of the investigation. (Tr. 42). Finally, Martinez had never met Johnson's child, and she testified that she could not recall ever meeting Johnson's wife. (Tr. 41-42).

Based on the foregoing, substantial evidence in the whole record supported the Commission's finding that Martinez's "fellow law enforcement officer relationship" with

³ Martinez testified that Anthony Johnson left the department while she was still in uniform patrol. (Tr. 40). Since Martinez had been a forensic investigator for 3½-4 years (Tr. 17), it is clear that he had left his Spartanburg County employment at least 3½-4 years before the accident.

Johnson was insufficient to make the investigation in question unusual or extraordinary.⁴ The Court nevertheless concluded that the Appellate Panel's finding that Appellant did not have a law enforcement relationship with Officer Johnson was not supported by substantial evidence, because Appellant and Johnson worked in adjoining zones and might have to back up each other. However, the record is devoid of any evidence that a backup ever occurred. Moreover, if it had happened, it occurred some 3½-4 years before the accident investigation. In effect, the Court is elevating law enforcement personnel to a special category in mental-mental cases creating a presumption of extraordinary and unusual condition of employment when a law enforcement officer is involved. While the General Assembly may legislate such a special category for law enforcement, this Court does not have authority to judicially legislate such an exception.

VI.

THE COURT ERRED IN HOLDING THAT THE EVIDENCE GAVE RISE TO ONLY ONE REASONABLE INFERENCE ON THE ISSUE OF CAUSATION.

The Court concluded that the evidence in this case gave rise to only one reasonable inference as to the proximate cause of Appellant's mental injury and that was that the crime scene investigation caused her mental breakdown. However, in so holding, the Court ignored the reliable, probative and substantial evidence relied upon by the Commission that indicated otherwise.

On April 7, 2005, three days after the crime scene investigation, Appellant was evaluated by her family physician, Dr. John R. Weider, for complaints of hypertension and headaches. While Appellant complained of having to work alternative shifts, she made no mention of the crime scene investigation or the child's death. On April 19, 2005, the day after her "cousin" died

⁴ The Appellate Panel noted in its findings of fact that "Although a friendship (something more abiding or meaningful than simply seeing/exchanging pleasantries with someone at work) or a present—or perhaps even former—law enforcement partnership might produce a different outcome with regard to compensability, those circumstances are not applicable in the case before us." (See Finding of Fact #26).

of AIDS, Appellant presented again to her family doctor very upset and crying over the death of her very close friend/relative. She was placed on Xanax to help her get through grieving over her "cousin's" death. There was no mention of the crime scene investigation or the child's death. On April 25, 2005, Appellant again visited her family doctor because of dizziness and syncope. Appellant reported increased stress due to a death in the family, but no mention of the crime scene investigation. She was sent to the hospital to get her blood pressure under control. Appellant saw her family physician for further visits on April 29, 2005, May 5, 2005, May 12, 2005, May 26, 2005, June 2, 2005, June 7, 2005, and June 24, 2005, but never mentioned the child's death or the crime scene investigation. Clearly, these office visits in which she never complained of the crime scene investigation create a reasonable inference that the death of her "cousin" from AIDS and other personal health issues were the cause of her mental problems.

Appellant was also seen at Spartanburg Regional Medical Center on April 24, 2005 after a fainting spell. She reported fatigue and increased stress due to a death in her family. There was no mention of the toddler's death to the doctors in the Emergency Room. During her hospitalization at Spartanburg Regional from April 25-27, 2005, Claimant was given mental health therapy for grieving.

At some point in late July or early August 2005, Appellant abruptly stopped taking the Xanax which had been prescribed by Dr. Wieder as a result of the death of her "cousin." Thereafter, Appellant experienced delirium due to Benzodiazepine withdrawal. She was hospitalized at Spartanburg Regional Medical Center where it was noted that she was grossly disoriented and confused after abruptly stopping Xanax. Dr. Chris Caston, the treating psychiatrist at the hospital, noted that Appellant was admitted due to Benzodiazepine withdrawal delirium. A drug screen was positive for opiates but no other medications. It was also noted by Dr. Caston that Appellant's best friend recently died. (Report of Dr. Caston, R. 180-82). There

was no mention of the death of the toddler in any hospital history, intake form, or treatment records during the hospitalization from August 7-9, 2005. In fact, there were multiple entries during the hospitalization noting that Appellant had admitted that she stopped the Xanax 2 or 3 days before her withdrawal delirium and referring to the loss of her cousin to whom she was "very close." (R.pp. 214, 219-20). Furthermore, Dr. Caston in his discharge report stated that Appellant had problems with anxiety, insomnia, and depression "related to the death of her best friend who apparently was a male cousin." (R. pp. 192-4).

On August 10, 2005, Appellant was admitted to the Carolina Center for Behavioral Health. In a comprehensive assessment form, Appellant's chief complaint was recorded "in her own words" as follows:

I became psychotic last Sunday. I tore my home up and tore my police car up. I'm glad I didn't hurt anyone because I carry a gun. I stopped taking Xanax and became psychotic.

Under precipitating events it was recorded:

My cousin died mid April 05 and I took Xanax for my nerves. I stopped taking Xanax 1-2 weeks ago and became psychotic.

The above evidence as well as other evidence in the record cited by the Commission supports a conclusion that Appellant's mental condition was caused by the death of her cousin, the abrupt cessation of Xanax, and other health issues. In summary, there were more than four months of temporal medical evidence from various providers which contain no reference to the toddler's death or the crime scene investigation as the cause of Appellant's medical condition. Clearly, there is more than one reasonable inference that can be drawn from the evidence in this case as to the proximate cause of Appellant's mental illness.

It is well settled that in an appeal from the Commission, an Appellate Court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions

of fact. Brunson v. American Koyo Bearings, 395 S.C. 450, 718 S.E.2d 755 (S. C. App. 2011). The final determination of witness credibility and the weight of the evidence is for the Appellate Panel. Hargrove v. Carolina Orthopaedic Surgery Associates, PA, 389 S.C. 199, 697 S.E.2d 641 (S.C. App. 2010). While medical testimony is entitled to great respect, the Commission, as fact finder, may disregard it if there is other competent evidence in the record. Tiller v. National Health Care Center, 334 S.C. 333, 513 S.E.2d 843 (1999). Medical testimony should not be held to be conclusive, irrespective of other evidence. Ballenger v. Southern Worsted Corp., 209 S.C. 463, 40 S.E.2d 681 (1946). The Appellate Panel is given discretion to weigh and consider all the evidence, both lay and expert, when deciding whether causation has been proven. Potter v. Spartanburg School District 7, 395 S.C. 17, 716 S.E.2d 123 (S.C. App. 2011). The Commission is not bound by the opinion of medical experts. Id. Where there are conflicts in the evidence over a factual issue, the findings of the Appellate Panel are conclusive. Hargrove v. Titan Textile Co., 360 S.C. 276, 599 S.E.2d 604 (S.C. App. 2004).

In this case, the Court has set aside the findings made by the Commission, because it disagrees with the Commission's decision not to give weight to certain expert medical evidence. In so doing, the Court has invaded the province of the Commission. Section 1-23-380(5) clearly provides:

The Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact.

In concluding that the evidence gave rise to only one reasonable inference as to proximate cause, the Court has in fact reweighed the evidence and substituted its own judgment as to the credibility and weight to be accorded certain evidence. While this Court may have weighed the evidence differently, the Commission, not the Appellate Court, is the ultimate fact finder. It was within the Appellate Panel's discretion, as the ultimate fact finder, to discount medical evidence

and to choose between conflicting testimony and evidence in finding that the investigation on April 4, 2005 was not the proximate cause of Appellant's mental condition.

CONCLUSION

For the foregoing reasons, the Court should amend its Order of December 11, 2015, and affirm the Order of the Appellate Panel as being supported by substantial evidence.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.



Richard B. Kale, Jr., Esquire
Zachary M. Smith, Esquire
872 S. Pleasantburg Drive
Greenville, SC 29607
Attorneys for Respondents

Date: February 16, 2016

CLERK OF COURT
SPARTANBURG COUNTY
2016 FEB 16 AM 11:18
M. HOPE BLACKLEY

ATTACHMENT E

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

RAQUEL MARTINEZ, Employee,)

Claimant/Petitioner,)

-vs.-)

SPARTANBURG COUNTY)
SHERIFF'S OFFICE, Employer,)

and SOUTH CAROLINA)

ASSOCIATION OF COUNTIES)

SELF INSURANCE FUND, Carrier,)

Defendants/Respondents.)

COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-42-1015

ORDER DENYING MOTION TO
ALTER OR AMEND JUDGMENT

SPARTANBURG COUNTY
2016 MAY -2 AM 11:22
H. HOPE BLANCHLEY

This appeal from the South Carolina Workers' Compensation Commission was heard on June 26, 2015. An Order was issued reversing the decision of the Appellate Panel on December 3, 2015. The Respondents filed a Motion to Alter or Amend the Court's Order under Rule 59(e), S.C.R.C.P., on December 11, 2015. The Petitioner filed a Return to the Motion and Memorandum in Opposition on February 9, 2016. The Respondents filed a Memorandum in Support of the Motion on February 16, 2016.

The facts and procedural history related to this claim are fully set forth in the Court's Order dated December 3, 2015. A Rule 59 motion can be used when a party contends a court failed to rule on an issue that was raised and presented. See: Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton, 311 S.C. 56, 427 S.E.2d 673 (1993); Alex Sanders and John S. Nichols, Trial Handbook for South Carolina Lawyers, Section 36:5. The Respondents' Motion alleges 26 grounds challenging the

10 

Court's findings and rulings but does not allege the Court failed to consider or rule upon any ground that had been raised. A Rule 59 motion may also be used when a party simply requests a court to reconsider issues and arguments that were raised and ruled on adversely to them. See: Elam v. South Carolina Dept. of Transportation, 361 S.C. 9, 602 S.E.2d 772 (2004); Trial Handbook for South Carolina Lawyers, *supra*. at Section 36:5. The Respondents ask the Court to reconsider issues the Court already decided. Under Rule 7 (b), S.C.R.C.P., a Rule 59 motion, like all motions, must state the grounds with particularity. A Rule 59 motion may be determined on briefs without oral argument in the discretion of the court. See: Rule 59(f), S.C.R.C.P.; Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994).

The first ground raised by the Respondents' motion is whether the Court exceeded the scope of judicial review allowed under § 1-23-380, S.C. Code Anno., 1976 as amended, the Administrative Procedures Act. (Respondent's Ground No. 1). The Respondents would improperly limit the scope of judicial review to reviewing findings of fact to determine whether they are supported by substantial evidence on the whole record. Judicial review is guaranteed by S.C. Constitution, Art. 1, § 22 as a constitutional check on administrative adjudication of private rights. § 1-23-380(5), S.C. Code Anno., 1976, provides a court may reverse or modify the decision of the Commission if the appellant's substantial rights have been prejudiced because the administrative findings, inferences, conclusions, or decision are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;

2 

- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (S.C. 1981). This issue was fully raised, briefed, and argued before the Court and the statutory reasons for reversing the Appellate Panel are set forth in the Court's Order filed on December 3, 2015. No further hearing is necessary and the motion on these grounds is denied.

The second ground raised by the Respondents' motion is that the Court did not have the statutory authority to reverse the Appellate Panel because it failed to conduct further proceedings consistent with the Court's Order remanding the case. (Respondent's Grounds Nos.: 2, 3, 14, 15, 20, 25, and 26). The Court's Order remanding the claim required the Commission to do more than just make new findings of fact in an attempt to circumvent the Court's rulings. The case was remanded to conduct further proceeding consistent with this Court's remand Order dated February 26, 2009. An administrative agency is not permitted to ignore the remand Order of an Appellate Court. "After a remittitur is sent down from an appellate court, the [agency] acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling." Ackerman v. McMillan, 324 S.C. 440, 477 S.E.2d 167 (Ct. App. 1996); Mullen v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 438 S.E.2d 248 (1993); Christy v. Christy, 317 S.C. 145, 452 S.E.2d 1 (S.C. App. 1994). "Matters decided by the appellate court cannot be

reheard, reconsidered, or relitigated [by the administrative agency], even under the guise of a different form.” 5 C.J.S., Appeal and Error, § 975 (a) (1993). The Appellate Panel misinterpreted the Court’s Order remanding the claim as nothing more than an invitation for a “do over.” The Appellate Panel impermissibly reheard, reconsidered, and reversed matters that had been decided by the Court.

The Court never found the Appellate Panel did not consider the testimony of the Petitioner and Officer Johnson as alleged in Respondents’ ground 15. Nor did the Court order that the Appellate Panel to consider only the evidence quoted at length in the Court’s Order as alleged in Respondents’ grounds 25 and 26. What the Court found disturbing was the Appellate Panel, in making its new findings, ignored and did not include any of the undisputed testimony of the only witnesses who testified and the unanimous opinions of the medical experts that had been quoted extensively in the Court’s remand Order. Furthermore, the Appellate Panel ignored and did not include any of the case law cited in the Court’s remand Order for the reasons the cases were cited by the Court. Ignoring and not including any of the undisputed testimony, the unanimous opinions of the medical experts, and the case law cited by the Court is not conducting further proceedings consistent with this Court’s remand Order. Rather, it is arbitrary or capricious or characterized by abuse of discretion. This issue was fully raised, briefed, and argued before the Court and addressed in detail in the Court’s Order filed on December 3, 2015. This Court had the statutory authority to reverse the Appellate Panel for failing to conduct proceeding consistent with its remand Order under § 1-

23-380 (5) (a), (b), (c), (d), and (f). No further hearing is necessary and the motion on these grounds is denied.

The third ground raised by the Respondents' motion is that the Court did not have the statutory authority to reverse the decision of the Appellate Panel because the issue of causation had been decided by the Court as a matter of law. (Respondent's Grounds Nos. 4, 5, 11, 12, 13, 21, 22, and 23). It was not based on the Petitioner's testimony that the Court found the issue of causation was established as alleged in Respondents' ground 22. The Court relied upon the unanimous opinions of medical experts, including the medical expert retained by the Respondents, in deciding the issue of causation as a matter of law. The Court ruled, "all of the qualified medical experts agreed the crime scene investigation performed by Deputy Martinez was a contributing proximate cause of Martinez's mental break down." This Court could hardly have been clearer when it stated, "[t]his Court strains to infer the analysis used by the Commission in its Order to find the burden of proof as to causation was not met by [the Petitioner]. The medical testimony overwhelmingly establishes the causative link between the work environment even when considering her pre-existing mental issues and the death of her husband's cousin." (Sup. Ct. Appendix, Vol. I, page 27). This Court ruled, "[t]he only conclusion that can be drawn from the record is that [the Petitioner] established her burden of proof that her mental injuries were proximately caused by the stress from the accident investigation." This Court emphatically stated, "all of the doctors, psychiatrist, and counselors who submitted medical opinion, including

the defense expert, state the investigation of the tragic death of Officer Johnson's daughter on April 4, 2005, caused aggravate, or contributed to the Petitioner's mental injury... All of the medical opinions in this case, establish that the Petitioner's mental injury was proximately caused by the investigation into the tragic death of Officer Johnson's infant daughter on April 4, 2005 as a matter of law." (*Emphasis added*) (Sup. Ct. Appendix, Vol. 1, p. 30). When the evidence gives rise to only one reasonable inference or is undisputed, the question becomes one of law for the court to decide. Smith v. Union Bleachery/Cone Mills, 276 S.C. 454, 280 S.E.2d 52 (1881); Lorrick v. S.C. Electric & Gas Co., 245 S.C. 513, 141 S.E.2d 662 (1965); Kinsey v. Champion American Service Center, 268 S.C. 177, 232 S.E.2d 720 (1977). This Court had statutory authority to reverse the Appellate Panel's relitigating the issue of causation that had been decided as a matter of law under § 1-23-380 (5) (a), (b), (c), (d), and (f). This issue was fully raised, briefed, and argued before the Court and addressed in detail in the Court's Order filed on December 3, 2015. No further hearing is necessary and the motion on this ground is denied.

The fourth ground raised by the Respondents' motion is that the Court did not have the statutory authority to reverse the finding of the Appellate Panel that the Petitioner and Officer Johnson did not have a law enforcement relationship because it was not supported by substantial evidence on the whole record. (Respondents' Ground Nos.: 6 and 16). This Court never ruled the investigation conducted by Petitioner was unusual or extraordinary as alleged in Respondents'

ground 6. This Court ruled that the Appellate Panel's finding the Petitioner did not have a law enforcement relationship with Officer Johnson is not supported by substantial evidence. While courts may not substitute their judgment for that of the Commission on questions of fact, they may reverse the Commission when its decision is not supported by substantial evidence "on the whole record." See: Sturkie v. Ballenger, 268 S.C. 536, 235 S.E.2d 120 (S.C. 1977); Etheredge v. Monsanto Co., 349 S.C. 452, 562 S.E.2d 679 (S.C. App. 2002); Muir v. C. R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (S.C. App. 1999); Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 S.E.2d 599 (S.C. App. 1999). The substantial evidence required to support a finding is not a mere scintilla of evidence, nor 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. (*Emphasis added*) Etheredge v. Monsanto Co., *supra*; Gibson v. Spartanburg School District #3, 338 S.C. 510, 526, S.E.2d 725 (S.C. App. 2000). The undisputed testimony that the Appellate Panel ignored and did not include in its new findings, the very same testimony that was quoted at length by this Court in its remand Order, established the crime scene investigation performed on April 4, 2005 was unlike any investigation the Petitioner or her captain had ever performed before. The Petitioner and her supervisor, Captain Denton, the only witnesses who testified, both testified two conditions made this particular investigation unusual and extraordinary: first, the investigation involved the death of an innocent two year old infant who was "smashed like a watermelon"

and, second, the infant was crushed when a fellow police officer they knew and served with backed over his daughter with his patrol car. With regard to the first condition, that the investigation involved the death of an innocent two year old infant who was "smashed like a watermelon," even the Appellate Panel conceded the death was "tragic and horrific." (Appellate Panel Order dated 2/24/15, p. 7, finding no. 3). By any definition the word "horrific" means emotionally disturbing. Putting aside the Appellate Panel opinion the horrific death of a two year old is not unusual or extraordinary enough, the Appellate Panel went further and found the fact the infant was crushed by a fellow police officer they knew, considered a friend, and served with in the line of duty was not unusual or extraordinary because, according to the Appellate Panel's new findings, the Petitioner's relationship with the father was, at most, an acquaintance (or a loosely defined "friend") of a fellow law enforcement officer. The Appellate Panel supported this finding by noting the father (a) had never worked alongside [Petitioner] (they worked in different zones), (b) was working for another employer on the date of the toddler's death, (c) had never socialized with the [Petitioner], and (d) the officer was not the dead victim. For these reasons, the Appellate Panel found the fellow law enforcement relationship was "insufficient." (Appellate Panel Order dated 2/24/15, p. 18, finding no. 26(a)(vii)). These findings by the Appellate Panel for some unexplained reason later morphed into the Petitioner and Officer Johnson only saw each other "in passing" during shift changes. (Appellate Panel Order dated 2/24/15, p. 15, finding no. 28). It is significant that the Appellate Panel acknowledged the importance of

this finding when it said, "[a]lthough a friendship (something more abiding or meaningful than simply seeing/exchanging pleasantries with someone at work) or a present – or perhaps even former – law enforcement partnership might produce a different outcome with regard to compensability, those circumstances are not applicable in the case before us." (Appellate Panel Order dated 2/24/15, p. 14, finding no. 26 (a)(vii)(a)). It is this finding that the Court reversed because it is not supported by substantial evidence on the whole record. The undisputed testimony of the only witnesses who testified about this law enforcement relationship was quoted in the Court's remand Order, quoted at length in the briefs submitted on appeal, discussed at oral argument, and set forth in the Court's decision dated December 3, 2015. It was the Petitioner's relationship with Officer Johnson that changed everything and made it impossible for the Petitioner to turn the crushed infant into an "object" as she had been able to do in her other investigations and that made it impossible for her to distance herself emotionally from the horrific tragedy. By ignoring and not including this undisputed testimony, the very same testimony quoted at length in the Court's remand Order, the Appellate Panel did not consider the substantial evidence on the whole record. Rather, it blindly viewed the evidence from only one side of the case. The Court has statutory authority to reverse a decision of the Commission when it is not supported by substantial evidence on the whole record under § 1-23-380(5) (c). No hearing is required and the Respondents' motion on this ground is denied.

The fifth ground raised by the Respondents' motion is that the Court failed to apply the proper legal standard for compensability in a mental/mental workers' compensation injury claim. (Respondents' Ground No.: 24). The unusual and extraordinary standard was originally developed by the Court for application in heart attack cases. It was later applied by the Court and statutory amendments to mental/mental workmen's compensation claims. Respondents' ground 24 incorrectly assumes, if an injured worker is performing his or her usual job duties, then the conditions of the employment can never be unusual and extraordinary. This is not a correct interpretation of the unusual and extraordinary standard.

Heart attacks were held compensable when they were induced by unexpected strain or overexertion in the employment or by unusual and extraordinary conditions in the employment. (*Emphasis added*) See: McWhorter v. S.C. Dept. of Insurance, 252 S.C. 90, 95, 165 S.E.2d 365 (1969); Walker v. Columbia, 247 S.C. 241, 146 S.E.2d 856 (1966); Walsh v. U.S. Rubber Co., 238 S.C. 411, 120 S.E.2d 685 (1961); Wynn v. Peoples Natural Gas Co., 238 S.C. 1, 118 S.E.2d 812 (1960); Kearse v. S.C. Wildlife Resources Dept., 236 S.C. 540, 115 S.E.2d 183 (1960). While unexpected strain or overexertion were often discussed in the context of physical exertion in heart attack cases, it was recognized that emotional and/or mental strain resulting from great mental stress, emotional involvement, lack of sleep, time pressure and worry could also cause heart attacks. See: McWhorter, supra. 356 S.E.2d at 368 - 69. In determining whether the conditions of the employment were unusual or extraordinary, the question is whether the work conditions at the time

in question were unusual and extraordinary when compared to the employee's normal employment. See: Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000) (a mental injury case) citing Larson's Workers' Compensation Law §44.05(4)(d)(1). The right to compensation is barred because the employee was performing work of the same general type as that in which he was regularly engaged. See: McWhorter, *supra* 356 S.E.2d at 367 citing Sweatt v. Marlboro Cotton Mills, 206 S.C. 476, 334 S.E.2d 762 (1945); Ricker v. Village Management Corporation, 231 S.C. 47, 97 S.E.2d 83 (1957). Our Supreme Court has recognized that, "[a]lthough stress may be inherent in a given job, a combination of stressful events may still be unusual and extraordinary and, therefore, compensable." See: Doe v. S.C. Department of Disabilities, 377 S.C. 346, 660 S.E.2d 260 (2008) (a mental injury case). The case of SC Second injury Fund v. Liberty Mutual, 353 SC 117, 576 S.E.2d 199 (Ct. App. 2003), illustrates that an injured worker can be performing his usual and normal duties, but the condition of his employment on the date in question can still be unusual and extraordinary. In that case a farm worker was performing his usual and normal job burning off harvested fields when the fire escaped threatening unharvested fields. The Commission awarded compensation for the heart attack the farm worker suffered after fighting the fire. The Court of Appeals affirmed the award noting, "[a]lthough the record here discloses that... what was a usual task for farm employees-- the burning of harvested fields-- turned into the extraordinary task of managing an out-of-control fire threatening fifty-five acres of unharvested wheat." Our Supreme Court has indicated it is a "fatal flaw"

for the Commission to focus on the normal job duties to the exclusion of the unusual and extraordinary conditions of the employment at the time in question as the Respondents' ground 24 suggests. Doe, supra. 600 S.E.2d at 262. Although the Petitioner was performing her usual job as a crime scene investigator, the conditions of her employment at the time in question were unusual and extraordinary because they involved the death of a two year infant crushed like a watermelon by a fellow police officer she knew, worked alongside with, and considered a friend.

The Court was mindful of the decision in Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 (2012) when it issued its decision. In distinguishing *Bentley* the Court did equate the rarity of the investigations described by the Petitioner and Captain Denton with usual or extraordinary as alleged in Respondents' ground 24. The Court considered several factors which distinguish the *Bentley* decision. Unlike the officer in *Bentley*, the Appellant was not trained how to investigate violent deaths involving fellow officers or their families. The Court also considered that there was no departmental policy that requiring the Petitioner to conduct the investigation on the date in question. And the Court considered that the officer in *Bentley* shot a suspect not an innocent child or fellow police officer. The Court did note, however, that, unlike police officers having to discharge their firearms in the line of duty which fortunately happens only rarely, this was only time in the combined 48 years of law enforcement experience of the only witnesses who testified that an investigation like the one involved in this case had ever happened. The Court understands *Bentley* to mean the mere fact something happens infrequently does not make the occurrence unusual and

extraordinary. The Court does not understand *Bentley* to mean that the rarity of something happening cannot be considered together with other factors. This issue was fully raised, briefed, and argued before the Court and addressed in detail in the Court's Order filed on December 3, 2015. No further hearing is necessary and the motion on this ground is denied.

Finally, the Respondents raised numerous other grounds but failed to state the grounds with particularity as required under Rule 7 (b) (1), S.C.R.C.P. (Respondents' Grounds Nos. 7, 8, 9, 10, 15, 17, 18, and 19). The Respondents' motion alleges the Court erred in reweighing evidence or invading the Commission province to determine the credibility or weight to be given the evidence without indicating with particularity what evidence they are referring to. The Respondents' motion further alleged the Court's finding that "law enforcement relationship" could constitute an unusual and extraordinary condition of employment is contrary to applicable case law without indicating with particularity what case law they are referring to. As set forth above, it was the Appellate Panel, not the Court, that said, "...a present – or perhaps even former – law enforcement partnership might produce a different outcome with regard to compensability..." The Respondents' motion lacks particularity on these grounds. No hearing is necessary and the Respondents' motion on these grounds is denied.

IT IS HEREBY ORDERED that the Respondents' Motion to Alter or Amend the Court's Order dated December 3, 2015 is denied.

AND IT IS SO ORDERED.



J. Mark Hayes, II, Presiding Judge
Court of Common Pleas

Spartanburg, South Carolina

2nd ^{MAY} day of April, 2016.

SPARTANBURG COUNTY
2016 MAY -2 AM 11:23
M. HOPE BLACKLEY

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED

MAY 31 2016

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

J. Mark Hayes, II, Circuit Court Judge

Case No. 2015-CP-42-1015

Raquel Martinez, Employee, Claimant,

Respondent,

v.

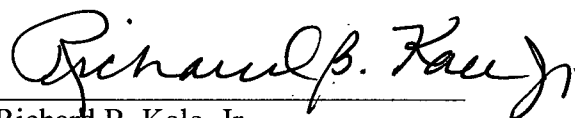
Spartanburg County Sheriff's Office, Employer
and South Carolina Association of Counties Self
Insurance Fund, Carrier,

Appellants.

PROOF OF SERVICE

I certify that I have served the Return to Motion to Dismiss Appeal as Interlocutory on Raquel Martinez by depositing a copy of it in the United State Mail, postage prepaid, on May 31, 2016, addressed to her attorneys of record, Chadwick D. Pye, Esquire, Chadwick D. Pye, LLC, P.O. Box 6346, Spartanburg, South Carolina 29304 and J. Kevin Holmes, Esquire and David T. Pearlman, Esquire, The Steinberg Law Firm, P.O. Box 9, Charleston, South Carolina 29402-0009.

May 31, 2016



Richard B. Kale, Jr.
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3272
Attorney for Appellants

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

GREENVILLE

CHARLESTON

COLUMBIA

CHARLOTTE

RALEIGH

ATLANTA

Richard B. Kale, Jr.
Direct (864) 527-3272
Fax (864) 235-6015
rbkale@wjlaw.net

872 S. Pleasantburg Drive
Greenville, SC 29607
www.wjcbaw.net

May 31, 2016

(Hand Delivered)
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
MAY 31 2016
SC Court of Appeals

Re: Raquel Martinez vs. Spartanburg County
Appellate Case No.: 2016-001055
WCC File No.: 0515098 DOI: 4/4/2005
Claim No.: 58-218332
WJC&B File No.: 0560.00114

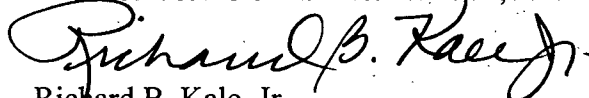
Dear Ms. Kitchings:

I am enclosing the original and six copies of Appellants' Return to Motion to Dismiss Appeal as Interlocutory. As indicated on the enclosed Proof of Service, a copy of the Return has been served on the attorneys for the Respondent.

With cordial best wishes, I am

Very truly yours,

WILLSON JONES CARTER & BAXLEY, P.A.


Richard B. Kale, Jr.

RBK,Jr/jw
Enclosures

cc: Mr. Chadwick D. Pye
Mr. J. Kevin Holmes
Mr. David T. Pearlman