IN THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

Jose Juan Jimenez, Employee,.....Appellant,

v.

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

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Workers' Compensation Commission erred in finding Mr. Jimenez did not carry his burden of establishing a compensable injury, based on the substantial evidence and applicable law.

2. Whether the Workers' Compensation Commission erred in providing conclusory findings and conclusions lacking sufficient specific for appellate review.

STATEMENT OF THE CASE

This is an Appeal by Jose Jimenez, Appellant, from a decision of the South Carolina Workers' Compensation Commission finding that he did not sustain an "injury by accident" on July 14, 2011 or March 13, 2012, per 42-1-160. Mr. Jimenez contends the Commission erred in determining that both of his work accidents were not an "injury by accident". This finding was made despite the fact that both accidents were reported to Appellant's supervisor; his supervisor documented the accidents; and the company nurse treated him for both reported injuries. Mr. Jimenez further contends the Commission did not correctly apply the law related to the determination of an "injury by accident" on either date. Alternatively, Mr. Jimenez, contends the Commission's Findings and Conclusions are conclusory and do not provide sufficient grounds for the Court to conduct appellate review.

Mr. Jimenez injured his back on July 14, 2011, when he was emptying drain pans at Kohler where he worked as a caster. (R. p. 230, lines 6-22; p. 476; p. 674, lines 19-25; p. 675, lines 1-4) Mr. Jimenez reported the accident to his supervisor, Sam Barnwell, the following day. (R. p. 398, lines 14-25; p. 399, lines 1-25; p. 400, lines 1-10; p. 476; p. 677, lines 11-15). His supervisor completed an incident report and referred him to the plant nurse, Pat Zimmerman. (R. p. 398, lines 14-25; p. 399, lines 1-25; p. 400, lines 1-

10; p. 476). The nurse documented his visit and provided treatment. (R. p. 174, p. 485, lines 11-24; p. 512, lines 4-11; p. 532).

On March 13, 2012, Claimant injured his back and legs while picking up molds from the floor while performing his job at Kohler. (R. p. 678, lines 5-10; p. 679, lines 13-16). He reported the incident to the same supervisor, Sam Barnwell, the following day March 14, 2012. (R. p. 402, lines 18-25; p. 403, lines 1-10; p. 475). His supervisor completed a second accident report and again referred him to the plant nurse. (R. p. 402, lines 18-15; p. 403, lines 1-10; p. 475; p. 679, lines 17-19). The nurse again documented his visit and provided treatment. (R. p. 173; p. 488, lines 17-25; p. 489, lines 1-2; p. 512, lines 12-21; p. 533).

Mr. Jimenez asked his supervisor several times about the company providing further medical treatment with a doctor. (R. p. 240, lines 5-10; p. 241, lines 9-19). When he received no response from his supervisor, Mr. Jimenez sought medical treatment on his own in April 2012 and October 2012 for problems related to his back. (R. p 175; pp. 145-148). These back problems began after he was injured at work.

A meeting was scheduled by his supervisor on November 1, 2012, for Mr. Jimenez to speak with the nurse. (R. p. 406, lines 15-24).

On November 1, 2012, Mr. Jimenez went to the nurse's station for the meeting. (R. p. 427, lines 22-25; p. 530; p. 759, lines 2-5). He expected to meet with the nurse to request treatment by a doctor for his work injury. Instead, in addition to the plant nurse; his supervisor; his manager, and, the Safety Director, were waiting for him in the nurse's station. (R. p. 172; p. 530; p. 680, lines 4-8). At the meeting, Mr. Jimenez asked to see the company doctor about his back. (R. p. 439, lines 22-25; p. 440, lines 1-25; p. 450,

lines 9-25; p. 451, lines 1-10; p. 681, lines 15-17). He said it was still bothering him from the March 2012 work accident. (R. p. 431, lines 1-12; p. 681, lines 9-12). Mike Tolleson, the Safety Director, told him he would not be sent to the company doctor because he had waited too long to ask for treatment. (R. p. 431, lines 18-20; p. 452, lines 19-25; p. 453, lines 1-8; p. 439, lines 22-25; p. 440, lines 1-25; p. 681, lines 18-25). Mr. Jimenez returned to work. (R. p. 687, lines 11-25; p. 688, lines 1-3).

Mr. Jimenez continued to seek medical care on his own. (R. p. 432, lines 1-24; p. 682, lines 1-9). Dr. Erica Savage-Jeter at Family Medical Center (FMC) referred him for an MRI and surgical consult with Dr. Rodriguez at Orthopaedic Specialties of Spartanburg. (R. p. 244, lines 15-23; p. 311, lines 19-25; p. 312, lines 1-2, lines 8-9; and lines 13-14; p. 313, lines 3-8). FMC was the same medical group Respondent-Kohler used as its company doctor. (R. p. 494, lines 14-18; p. 380, lines 8-10; p. 316, lines 7-10). Dr. Savage-Jeter placed Mr. Jimenez on light duty until he could be seen for the orthopaedic surgery evaluation. (R. p. 312, lines 8-9, lines 13-14; p. 313, lines 3-8). Dr. Savage-Jeter advised Mr. Jimenez he would need a special form used by Respondent-Kohler for workers' compensation in order to address work restrictions. (R. p. 313, lines 23-25; p. 314, lines 1-8, lines 23-24; p. 316, lines 14-25; p. 317, lines 1-14; p. 245, lines 2-7; p. 683, lines 15-16). She told him to bring her a copy of the Kohler form so that she could document his work restrictions. Mr. Jimenez met with his supervisor, Sam Barnwell and David Lee on January 30, 2013 and requested the special Kohler form that the doctor told him was required for light duty. (R. p. 245, lines 8-18; p. 432, lines 19-25; p. 433, lines 1-5). Mr. Barnwell and Mr. Lee told him they didn't know what he was talking about. They told him he must get a note from the doctor allowing him to return to

work without restrictions. (R. p. 433, lines 5-25; p. 434, lines 1-25; p. 435, lines 1-8; p. 458, lines 3-22; p. 463, lines 14-25; p. 464, lines 8-22; p. 540, lines 12-25; p. 541, lines 15-25; p. 542, lines 1-6; p. 683, lines 8-22).

Dr. Savage-Jeter testified in her deposition, Respondent Kohler uses a special form for work restrictions. (R. p. 316, lines 11-25; p. 317, lines 1-9).

The plant nurse testified in her deposition that Respondent Kohler requires a special form be completed by its company doctor regarding work restrictions for light duty for employees injured on-the-job. (R. p. 515, lines 22-25; p. 516, lines 1-25; p. 517, lines 1-25; p. 518, lines 1-15).

Mr. Jimenez returned to Dr. Savage-Jeter and asked her to provide him with a note addressing his restrictions. The doctor wrote the note and he provided it to Kohler (R. p. 122; p. 542, lines 7-20).

Form 50 Hearing Requests were filed on February 1, 2013 for both dates of accident. (R. pp. 38 – 43).

Mr. Jimenez was terminated on February 5, 2013 for having accrued too many points. He accrued the excess points due to his not being allowed to work light duty by Kohler. (R. p. 571, lines 8-24). Had Mr. Jimenez been given the special Kohler form he requested from his supervisor, (the one he was told did not exist) he would not have accrued the additional points that resulted in his termination. (R. p. 543, lines 6-25; p. 544, lines 1-9).

Mr. Jimenez was deposed on April 16, 2013. (R. p. 205).

A Hearing was scheduled for May 8, 2013. Pre-Hearing Briefs were timely filed by both parties. However, the hearing was postponed on Motion of Respondent-Kohler

in order to conduct additional discovery. Specifically, Respondent-Kohler's wanted to depose witnesses, Jesus Lugo and Yuri Valderamma, who had been identified by Appellant, in his Pre-Hearing Brief.

In Respondent's Pre-Hearing Brief, Respondent-Kohler disclosed the existence of surveillance video. After obtaining and reviewing a copy of the video, Appellant filed a Motion seeking to exclude evidence and hold Kohler in Contempt. (R. pp. 52-66). The basis for the Motion was that Respondent-Kohler had sent a team of private investigators to Mr. Jimenez's home on April 22, 2013. The investigators, posing as AT & T contractors came onto Mr. Jimenez's property wearing hard hats and vests. They asked him why he wasn't working. They told him he needed to move a pile of gravel out of the right-of-way. This resulted in Mr. Jimenez calling the trailer park maintenance man to come and move the gravel. One of the investigators then asked Mr. Jimenez to help him lift the other side of a chair. (R. pp. 57-59; pp. 62-63; p. 65). While none of the video showed Mr. Jimenez performing anything that violated his restrictions, Appellant's attorney sought sanctions for Kohler's investigators directly communicating with his client when Kohler was aware he was represented. (R. p. 54) The surveillance was conducted 6 days after Respondent-Kohler had taken Mr. Jimenez's deposition. (R. p. 205).

A motion hearing was scheduled and then postponed by the hearing Commissioner to allow the parties to submit briefs. Respondent-Kohler subsequently agreed the surveillance report and video were inadmissible and their investigators would not be called as witnesses. The parties were directed to mediate.

After mediation was held, a hearing was rescheduled for May 23, 2014 on the still pending Form 50 filed on February 1, 2013. Respondent-Kohler never deposed Mr. Lugo and Mr. Valderamma, as requested in their Motion for additional discovery prior to the hearing

The hearing took place over the course of three (3) days, May 23, 2014; June 3, 2014; and June 4, 2014.

Sam Barnwell, the supervisor that completed both incident reports, testified at the hearing. Although his recollection was extremely limited, he admitted Mr. Jimenez reported both work accidents to him. He testified that he completed both incident reports and referred Mr. Jimenez to the plant nurse. (R. p. 398, line 14-25; p. 399, lines 1-25; p. 400, lines 1-20; p. 402, lines 18-25; p. 403, lines 1-15; p. 404, lines 3-12) Mr. Barnwell provided no testimony suggesting the accidents were staged or that Mr. Jimenez feigned injury. Nor did he provide any testimony that Mr. Jimenez's reported injuries of July 15, 2011 and March 14, 2012 were not caused from the reported accidents of July 14, 2011 and March 14, 2012.

The plant nurse, Pat Zimmerman, was deposed at the Kohler plant on May 30, 2014, between hearing dates. Nurse Zimmerman had worked as Kohler's only plant nurse for forty-six and a half years prior to her retirement on February 1, 2014. (R. p. 482, lines 2-15). She was eighty-four years old at the time of her deposition. (R. p. 519, lines 24-25; p. 520, lines 1-4). She also confirmed that Mr. Jimenez reported to her office for treatment of injuries on July 15, 2011 and March 14, 2012 related to the work accidents that he had reported to Mr. Barnwell. (R. p. 484, lines 12-21; p. 485, lines 11-22; p. 488, lines 17-25, p. 489, lines 1-4). She confirmed her notes accurately

documented his treatment on those dates. (R. p. 173; p. 174; p. 488, lines 12-14; p. 497, lines 19-25; p. 498, lines 1-9; p. 532; p. 533). She testified Mr. Jimenez had done everything necessary to report an injury. (R. p. 512, lines 4-25, p. 513, lines 1-22).

Respondents provided no other evidence about the events of these two accidents. In particular, there was no suggestion that Mr. Jimenez did not actually suffer the accidents as he claimed, or that the complaints of back pain he made to the nurse the day following each accident were not attributable to his work accidents. Rather, Respondents witnesses testimony dealt with Mr. Jimenez's actions after each reported accident. Specifically: returning to work after reporting each accident; continuing to perform his job after treating with the nurse; allegedly failing to return to the nurse for follow up after his initial treatment for the reported injuries; and, alleged delay in seeking additional medical treatment for several months after each reported accident. Respondents argued this evidence addressed the issues of notice and whether an injury by accident occurred. This remained Respondents position throughout the hearing[1]. In fact, the Hearing Commissioner noted several times that the issues were notice of an injury, and injury by accident. (R. p. 326, lines 19-25, p. 327, lines 1-20; p.587, lines 15-22; p. 641, lines 22-25; p. 642, lines 1-25; p. 643, lines 1-14).

The hearing Order was issued on October 24, 2014. Of note, Finding 9 of the Order held:

> 9. I find that claimant reported "incidents" following each alleged date of injury, however, **I find these do not rise to the level of defining an injury to the employer**. This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for months following each alleged date of injury. This Finding is based upon the greater weight of the evidence in the record.

[1] Respondents also later raised an intervening accident argument.. (R. p. 389, lines 5-25; p. 390, lines 1-20).

(R. p. 28).

A Form 30 was timely filed by Appellant. (R. pp. 190-192). The Full Commission hearing was held on March 16, 2015. Appellant argued Mr. Jimenez provided notice to his supervisor and the plant nurse. (R. p. 868, lines 17-25; p. 869, lines 1-25; p. 870, lines 1-2). His alleged delay in seeking treatment or follow-up actions, after he provided Notice, could not undo the fact he had given notice.

The Full Commission issued its Order on May 22, 2015 finding "the Decision and Order of the Hearing Commissioner must be affirmed with an Amendment, specifically, the clarification of Finding of Fact 9." (R. p. 37).

The Commission attempted to correct the Hearing Order's unsupportable ruling on Notice, but in modifying Finding 9, Finding 13, and Conclusion 3, created new and different error.

This Appeal followed.

STATEMENT OF THE FACTS

It was undisputed that the Appellant, Jose Jimenez, was in need of medical treatment for his back at the time of the May 23-June 4, 2014 hearing. (R. p. 281, lines 21-25, p. 282, lines 1-2). He was seeking authorization of the surgery recommended by the treating orthopaedic surgeon, Dr. Rodriguez, and payment of temporary total benefits for his time out of work. (R. p. 68; p. 69; p. 325, lines 24-25; p. 326, lines 1-18).

Mr. Jimenez was referred to the treating orthopaedic surgeons, Dr. Rodriguez and Dr. Terzella, by Dr. Erica Savage-Jeter with Family Medical Center. (R. pp. 127-128; p. 313, lines 6-10). Family Medical Center (FMC) is the same group used by Respondent Kohler as its company doctor for workers' compensation claims. (R. p. 316, lines 7-10; p.

380, lines 4-10; p. 494, lines 14-18; p. 495, lines 2-9).

According to Dr. Savage-Jeter, Dr. Rodriguez, and Dr. Terzella, Mr. Jimenez's back problems were the result of his injuries from his work accidents at Respondent-Kohler. (R. p. 79; p. 289, lines 14-25; p. 290, lines 1-2; p. 317, lines 16-25; p. 318 lines 1-20). Respondents did not provide an IME or any medical evidence disputing the opinions of the three treating doctors.

Mr. Jimenez reported an injury by accident to his supervisor, Sam Barnwell, on July 14, 2011. (R. p. 398, lines 14-25; p. 399, lines 1-20). The incident report provided:

> Associate reported to me at 5:00 a.m. on Friday July 15, 2011, that during the process of emptying his drain pans on his floor at 6:30 on Thursday, July 14, 2011, he felt something in the lower middle part of his back. Associate stated there was no pain, only a little tightness. Associate stated that he could cast his floor, as he continued to do all the procedures that day before he reported this to me, and felt fine. Had associates cast production and send associates to the reinstated associate. All accidents must be reported as soon as they happen on the same day, which he is aware of. Reinstated the associate proper lifting techniques and how to bend his knees while keeping his back straight and let the legs do the lifting.

(R. p. 476).

Mr. Jimenez was sent by his supervisor to the plant nurse, Pat Zimmerman. (R. p. 400, lines 8-10.) The nurse's records of July 15, 2011, reflect "on 7-14-11 @ 7:00 or 7:30 am was draining molds picked up a slip pan and felt low back pull is sore now." (R. p. 174; p. 532). She applied Bio Freeze to Mr. Jimenez's low back. She provided him with Back Quell tablets and advised him to use warm soaks over the weekend. (R. p. 174; p 532; p. 485, lines 16-22; p. 488, lines 18-25; p. 489, lines 1-2).

Mr. Jimenez reported another injury by accident to his supervisor, Sam Barnwell, on March 14, 2012. (R. p. 402, lines 18-25; p. 403, lines 1 - 10). Again, an incident report was prepared by Sam Barnwell. His supervisor's report provided:

> On Tuesday morning, March 13, 2012, associates told me as I was passing by him that his back was sore and asked me if he could get some pills from the nurse. I asked the associates if he was okay and he said yes. Wherein, I got him three packs of back pills from Sid DeVaul. The associate finished his work for the day at 13:30 and went home with no more complaints. On Wednesday morning at 4:50 a.m. associate came to me and stated that his left leg felt like it was asleep or numb and that this came from rolling the molds over on his floor on Tuesday around 9:00 a.m.. When I asked the associates why he did not report this he said this is why his back was sore and needed pills. I asked the associate if he could work and he stated that he had no problem casting today and is running production. Talked to the associate about the correct procedures and rolling over bowls and how important it was to work with his partner and make sure both castors were rolling over together and that one not getting ahead of the other in order to keep the weight distributed evenly. Also, to never rush while doing this procedure. Associate will also be required to do double exercise for the week in order to keep back muscles loose"

(R. p. 475).

Mr. Jimenez was again referred to Nurse Zimmerman for treatment by his supervisor. (R. p. 402, lines 11-15). The nurse saw Mr. Jimenez on March 14, 2012, and noted "EE says was rolling ware over yesterday and left low back felt sore. Today area feels like electric shock down leg." She applied Bio Freeze and gave him medication. (R. p. 173; p. 533).

Mr. Jimenez repeatedly asked his supervisor to be sent for further medical treatment with a doctor. (R. p. 240, lines 5-10; p. 241, lines 9-19). On April 30, 2012, Mr. Jimenez sought medical treatment at Doctor's Care for back pain and shoulder pain from lifting at work. (R. p. 175). He was given a light duty note. (R. p. 176). He provided a copy of his medical note to his supervisor, Sam Barnwell. (R. p. 405, lines 13-25). A copy of the light duty note was later produced by Respondent Kohler, in

response to a subpoena for Mr. Jimenez's personnel file and employment records. (R. p. 383, lines 13-25; pp. 384-387).

On October 15, 2012, Mr. Jimenez sought medical treatment at the Family Medical Center (FMC) for his back and shoulder. (R. pp. 145 - 148). Dr. Savage-Jeter recommended he discuss his problem with his employer. (R. p. 310, lines 23-24; p. 311, lines 1-6). Mr. Jimenez insisted his supervisor, Sam Barnwell, schedule a meeting with the plant nurse. (R. p. 406, lines 15-24; p. 680, lines 9-10).

There was a meeting on November 1, 2012 in the nurse's office with Mike Tolleson, the Safety Manager; Sam Barnwell, Appellant's supervisor; Joe Brown, Appellant's manager; Pat Zimmerman, the plant nurse; and, Mr. Jimenez. (R. p. 406, lines 1-6; p. 427, lines 22-25; p. 759, lines 2-5). The nurse's notes from that meeting reflect:

> Meeting with J. Brown, S. Barnwell and M. Tolleson.... EE says that he has seen a doctor with his back. EE came in on 3-14-12 and reported that on 3-13-12 he was rolling ware over and his left low back felt sore (see note in card dated 3-14-12 @ 8:55 a.m.) Was treated here on 3-14-12 was supposed to be rechecked on 3-15-12 but did not return.

(R. p. 172; p. 530).

Mr. Jimenez wanted a referral to the company doctor for his work-related back injury, but Safety Manager, Mike Tolleson, told him that he had waited too long and there was too big of a gap between his March accident and his seeking medical treatment now, (November 1, 2012) (R. p. 439, lines 22-25; p. 440, lines 1-25; p. 450, lines 9-25; p. 451, lines 1-10; p. 452, lines 19-25; p. 453, lines 1-18; p. 681, lines 9-17). He told Mr. Jimenez "if he could not do his job, there's the door." (R. p. 681, lines 18-25; p. 687, lines 3-16; p. 241, lines 22-25; p. 242, lines 1-16).

Following the meeting at the nurse's station, Mr. Jimenez was moved to slightly lighter job by Joe Brown on November 28, 2012. (R. p. 455, lines 15-25; p. 456, lines 1-21; p. 548, lines 5-12; p. 686, lines 13-23; p. 461, lines 12-21; p. 462, lines 1-9). Mr. Jimenez returned to FMC on his own. (R. p. 682 lines 4-6). Dr. Savage-Jeter referred him for an MRI and surgical consult. (R. p. 244, lines 15-25; p. 245, ln 1; p. 311, lines 15-25; p. 312, lines 1-2, lines 13-25; p. 313, lines 1-10). He told his supervisor that he had undergone an MRI. (R. p. 682, lines 20-25; p. 683, ln. 1; p. 503, lines 22-25, p. 504, lines 1-20; p. 542, lines 17-20). The MRI showed spinal stenosis at L4-5 and L5-S-1, as well as a herniation at the L5-S1 level. (R. pp. 151-152; p. 263, lines 16-20). Dr. Savage-Jeter directed him to obtain a special form from Kohler which was required whenever one of Kohler's employees was given work restrictions for an on-the-job injury. (R. p. 245, lines 4-7; p. 313, lines 23-25; p. 314, lines 1-8). When Mr. Jimenez requested the form, Kohler refused to give him one. (R. p. 245, lines 8-12; p. 464, lines 16-22; p. 683 lines 8-22). Instead, he was told to get a note from the doctor releasing him to work at full duty, and until then he could not work. (R. p. 540, lines 15-25; p. 541, ln. 1; lines 15-25; p. 542, lines 1-6). Mr. Jimenez returned to FMC and obtained a light duty excuse that he provided to Kohler. (R. p. 122; p. 458, lines 3-22; p. 463, lines 14-25; p. 464, lines 8-15). However, he was terminated for accruing too many points due to absences while out of work on light duty. (R. p. 571, lines 8-25; p. 572, lines 1-12; p. 708, lines 22-25). Had he been given the special form by Kohler for the doctor to complete, he would not have accrued points for these absences.

Nurse Zimmerman testified in her deposition that Respondent-Kohler requires its injured workers take a special form to the company doctor for completion regarding work restrictions in workers compensation cases. (R. p. 515, lines 22-25; p. 516, lines 1-25; p.

517, lines 1-20).

Dr. Savage-Jeter also testified in her deposition, Respondent-Kohler uses a special form for light duty that she completes when an employee is being seen for workers' compensation. (R. p. 316, lines 11-25; p. 317, lines 1-9).

At the hearing, Respondents did not dispute that two incidents occurred on July 14, 2011 and March 13, 2012. (R. p. 349, lines 5-25, p. 350, lines 1-25; p. 351, lines 1-22; p. 354, lines 14-25; p. 355, lines 1-25; p. 356, lines 1-5). Instead, Respondents position was that Mr. Jimenez failed to provide adequate notice, and he did not suffer an injury by accident. (R. p. 326, lines 19-25; p. 327, lines 1-20). Respondents relied on these positions throughout the hearing.[2] (R. p. 587, lines 15-22; p. 641, lines 22-25; p. 642, lines 1-25; p. 643, lines 1-14) While arguing that Mr. Jimenez: 1) continued to work his regular job after reporting each accident; 2) failed to return for follow-up care with the nurse after her initial treatment following each accident; and 3) allegedly did not request to see a doctor for several months after the reported injuries.

The self-insured Respondent-Kohler presented several witnesses at the hearing, all of whom provided contradicting testimony.

Mike Tolleson, the company Safety Manager, was the first witness. Mr. Tollenson had been with Kohler for eighteen years. (R. p. 330, lines 11-13). The majority of his testimony proved to be false. He testified that he never knew about Mr. Jimenez claiming any work accidents until the Form 50 was filed in February 2013 and he was deposed.[3] (R. p. 335, lines 17-25; p. 336, lines 1-25; p. 337, lines 1-25; p. 338, lines 1-25; p. 339, lines 1-13). He said Kohler company policy required that Mr. Jimenez must request to see a doctor,

[2] Respondents also later added Intervening Accident as a defense. (R. p. 389, ln. 5-25; p. 390, ln. 1-20).
[3] False Joe Brown, Sam Barnwell and Nurse Zimmerman testified he was in the meeting November 1, 2012. (R. 491, lines 2-4; p. 427, lines 21-25; p. 430, lines 7-17; p. 499, lines 15-17).

in order to sufficiently give notice of a workers' compensation claim.[4] (R. p. 358, lines 2-23) Until an injured employee asks for a doctor's visit it's not workers' compensation.[5] (R. p. 359, lines 12- 19). An injured employee must follow up with the plant nurse every day until released without restrictions.[6] (R. p. 333, lines 5-8; p. 352, lines 7-11). He claimed Mr. Jimenez never asked to be seen by a doctor[7] and if Mr. Jimenez had asked, he would have been sent.[8] (R. p. 359, lines 3-11, lines 20-25; p. 360, lines 1-5, ln 23-25; p. 379, lines 12-23). According to Mr. Tolleson, while Mr. Jimenez would have been sent, Mr. Tolleson has nothing to do with deciding whether an injured employee could see the company doctor.[9] (R. p. 365, lines 23-25; p. 366, line 1). He testified he never told Mr. Jimenez he could not go to the doctor.[10] At the meeting on November 1, 2012, Mr. Jimenez did not say he was injured on the job,[11] nor did he ask to see a doctor.[12] (R. p. 337, lines 12-25; p. 338, lines 1-25; p. 339, lines 1-15). Kohler does not have a special form for the company doctor to complete regarding light duty in workers' compensation cases.[13] Mr .Tolleson also testified he was not involved with Jesus Lugo's case. (R. p. 363, lines 12-16; p. 365, lines 6-25; p. 366, line 1). Mr. Lugo was an ex-employee that testified for Mr. Jimenez at the

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[4] False (Joe Brown and Nurse Zimmerman confirmed he had given notice) (R. p. 451, lines 19-25; p. 512, lines 4-25; p. 513, lines 1-22).
[5] False Nurse Zimmerman testified a request for a doctor is not required) (R. p. 514, lines 9-12).
[6] False (Yuri Valderamma testified he was not required to do this) (R. p. 641, lines 3-5).
[7] False (Joe Brown testified Mr. Jimenez asked Mike Tolleson to send him to the company doctor) (R. p. 439, lines 22-25; p. 440, lines 1-25; p. 450, lines 20-25; p. 451, lines 1-10; p. 452, lines 19-25; p. 453, lines 1-18).
[8] False (Joe Brown testified Mr. Jimenez asked Mike Tolleson to send him to the company doctor) (R. p. 452, lines 19-25; p. 453, lines 1-8).
[9] False (Joe Brown and Nurse Zimmerman testified Mike Tolleson decided who went to doctor.) (R. p. 440, lines 3-7, p. 451, lines 19-25; p. 452, lines 1-10; p. 511, lines 7-17).
[10] False (Joe Brown testified Mike Tolleson told Mr. Jimenez he could not go to the doctor. (R. p. 431, lines 18-20, and see footnote 7 above).
[11] False (Joe Brown testified Mr. Jimenez said he was injured on the job during the November 1, 2012 meeting.) (R. p.430, lines 24-25; p. 431, lines 1-17; p. 439, lines 22-25; p, 440, lines 1-25; p. 450, lines 20 25; p. 451, lines 1-10; p. 452, lines 19-25; p. 453, lines 1-18).
[12] False (Joe Brown testified Mr. Jimenez asked to see the company doctor during the November 1, 2012 meeting) (R. p. 452, lines 19-25; p. 453, lines 1-18).
[13] False (R. p. 515, lines 22-25; p. 516, lines 1-24) Nurse Zimmerman testified Kohler required a special form".

hearing. Mr. Tollseon admitted Mr. Jimenez reported both accidents to his supervisor and was returned to the nurse. (R. p. 351, lines 15-22; p. 354, lines 14-25; p. 355, lines 1-25; p. 356, lines 1-5).

Sam Barnwell testified Mr. Jimenez reported both incidents to him. He confirmed the incident reports, were the ones he completed (R. p. 398, lines 14-25; p. 339, lines 1-11; p. 402, lines 18-25; p. 403, lines 1-10; p. 475, p. 476). He confirmed that he referred Mr. Jimenez to the plant nurse for both accidents. (R. p. 399, lines 15-25; p. 400, lines 1-10; p. 403, lines 11-15; p. 173, p. 174). He stated, reporting the accident to your supervisor and going to the nurse are the standard procedure at Kohler to report an injury. (R. p. 400, lines 11-16; p. 402 lines 14-15). He did not recall giving Mr. Jimenez any pills (R. p. 401, lines 17-25). He did not recall Mr. Jimenez giving him a light duty note from Doctor's Care, but admitted it would have been placed in his personnel file if he had. (R. p. 405, lines 13-25). He did not suggest Mr. Jimenez had staged his accidents. He did not suggest Mr. Jimenez was feigning the injuries he reported after each accident. Joe Brown was Mr. Barnwell's immediate supervisor. (R. p. 410, lines 24-25).

Joe Brown was a manager for Respondent-Kohler. He recalled that Mr. Jimenez asked about seeing the company doctor during the 11/1/12 meeting. (R. p. 430, lines 24-25; p. 431, lines 1-20; p. 439, lines 22-25; p. 440, lines 1-25; p. 450, lines 20-25; p. 451, lines 1-10; p. 452, lines 19-25; p. 453, lines 1-18) He testified that Mike Tolleson told Mr. Jimenez he would not be allowed to go to the doctor. Mr. Tolleson said Mr. Jimenez hadn't complained and was working production and there was too big a gap between his reported accident in March 2012 and his request to go to the doctor now (November 1, 2012). (R. p. 452, lines 19-25; p. 453, lines 1-18) During the meeting on November 1, 2012, Mr.

Jimenez said his back hurt from his injury on-the-job in March 2012 and he didn't understand why he couldn't claim it under workers' compensation. (R. p. 450, lines 9-25; p. 451, lines 1-10) During the November 1, 2012 meeting, Nurse Zimmerman told Mr. Jimenez "if you did hurt your back and you still had soreness in your back how come you never came back and saw me in six months. (R. p. 546, lines 22-25, p. 547, lines 1-6). Mr. Brown testified normal procedure was to send an injured worker back to the plant nurse, and then the nurse and Mike Tolleson would decide whether to send the worker to the company doctor. (R. p. 451, lines 19-25; p. 452, lines 1-10). In January of 2013, Mr. Jimenez brought by a note that he had an MRI and they wanted to put him on light duty. (R. p. 542, lines 7-20). We told him we would not honor that because we didn't consider it work-related. He had waited six months since his accident in March. (R. p. 434, lines 20-25; p. 435, lines 1-21; p. 543, lines 18-25; p. 544, lines 1-11). Kohler does not accommodate non-work-related injuries. (R. p. 458, lines 18-22). Mr. Jimenez was told he needed to go back to his doctor and get a full duty release (R. p. 434, lines 20-25; p. 435, lines 1-21; p. 540, lines 18-25; p. 541, line 1). He did not know how the 4/30/12 light duty note from Doctor's Care could have gotten into Mr. Jimenez's personnel file, in light of Kohler not allowing light duty notes from the doctors for non-work-related injuries. (R. p. 442, lines 12-25; p. 443, lines 1-11). He was not aware of any special form to address work restrictions that Kohler provided to its company doctor in workers' compensation cases. (R. p. 434, lines 8-14). He admitted the job he moved Mr. Jimenez to in November was lighter. (R. p. 455, lines 15-25; p. 456, lines 1-21; p. 548, lines 5-12; p. 461, lines 12-17). This was the first job change for Mr. Jimenez in eight years. (R. p. 462, lines 1-9).

Company Nurse, Pat Zimmerman did not appear at the hearing. Her testimony was

submitted by deposition only. Her deposition was taken between hearing dates on May 30, 2014. The Hearing Commissioner never laid eyes on her. (R. p. 327, lines 8-14). Nurse Zimmerman was eighty-four years old at the time of her deposition. (R. p. 519, lines 24-25, p. 520, lines 1-4). She was Kohler's only plant nurse for forty-six and a half years until her retirement in 2014. (R. p. 482, lines 2-15). She testified that if an employee requested to be seen by a doctor, he would be sent. (R. p. 497, lines 11-15; p. 506, lines 19-25; p. 507, lines 1-6). She reiterated "if they specifically ask, they are sent" (R. p. 507, lines 8-9). Mr. Jimenez did not ask her to be referred to a doctor. (R. p. 492, lines 2-11; p. 497, lines 11-15; p. 522, lines 11-12). However, she could not recall if he had asked the Safety Director, Mike Tolleson, to send him to the company doctor during the November 1, 2012 meeting.[14] (R. p. 499, lines 18-25; p. 500, lines 1-4; p. 530). Additionally, she could not recall if Mike Tolleson told Mr. Jimenez there had been too big a gap between his March accident and his request for medical treatment on November 1, 2012.[15] (R. p. 499, lines 18-25; p.500, lines 1-10). She did not recall ex-employee, Jesus Lugo, ever requesting to be seen by a doctor for his work injury.[16] (R. p. 508, lines 14-25; p. 509, line 1). She did admit that Kohler uses a specific form which it requires injured workers to have completed at FMC. (R. p. 515, lines 22-25; p. 516, lines 1-24). However, she said if Mr. Jimenez had requested a copy of the form from someone at Kohler, it would not have been given to him because Kohler did not

[14]Joe Brown testified Mr. Jimenez asked to be sent to the company doctor at the 11/1/12 meeting and was refused by Mike Tolleson. (R. p. 452, lines 19-25; p. 453, lines 1-8).

[15] Joe Brown confirmed that Mr. Tolleson told Mr. Jimenez this. Joe Brown also testified about Nurse Zimmerman's similar comments. (R. p. 440, lines 5-17; p. 451, lines 1-10; p. 546; lines 22-25; p. 547, lines 1-6).

[16] At the conclusion of the hearing, the Commissioner requested the nurse's notes related to Jesus Lugo. (R. p. 817, lines 25; p. 818, line 1). In her notes that were produced after the hearing, the nurse documented Mr. Lugo's request to see the company doctor and Mike Tolleson's refusal. The documented reason for the refusal . . .Mr. Lugo didn't return to the nurse after his initial medical treatment. The nurse's notes reflected Mr. Lugo's accident was reported on October 2, 2006 and his request for treatment was denied on October 26, 2006 a total of 22 days later. (R. pp. 862-864).

consider his injuries work-related. (R. p. 516, line 25; p. 517, lines 1-25; p. 518, lines 1-15). This was despite the 11/1/12 nurse's note in which she documented, in her own hand, that Mr. Jimenez attributed his back problems to his March 2012 work accident. (R. p. 497, lines 19-25; p. 498, lines 1-9; p. 530). Finally, she admitted Mr. Jimenez had done everything necessary to report an accident. (R. p. 512, lines 4-25; p. 513, lines 1-25; p. 514, lines 1-14).

Sid DeVaul was the Human Resources Manager for Respondent-Kohler. He had that position at the plant for eighteen years. (R. p. 568, lines 3-7). He occasionally provided pills to workers. (R. p. 569, lines 2-6). He also provided pills to supervisors to give to employees. (R. p. 569, lines 7-10).

Two witnesses testified in support of Mr. Jimenez. The first witness for Appellant was ex-Kohler employee, Jesus Lugo. A Spanish interpreter was required for Mr. Lugo. He worked at Kohler in the same department as Mr. Jimenez. Mr. Lugo testified that he was injured on the job at Kohler in 2005 and again in 2006. (R. p. 585, lines 11-13). When he was injured his supervisor completed an incident report and he was referred to the same plant nurse. Despite specifically requesting to see a doctor, the plant nurse refused. (R. p. 592, lines 21-24; p. 593, lines 1-3). Mr. Lugo was told he could seek medical treatment with his private doctor. (R. p. 593, lines 4-11). Mr. Lugo continued to work for several months after his accident and eventually paid for his first back surgery himself. (R. p. 595, lines 3-18; p. 601, lines 13-23). His claim was also initially denied. (R. p. 601, lines 8-12). He was found to be permanently and totally disabled with incomplete paraplegia by the Commission.

Ex-employee, Yuri Valderamma testified that he was also injured on the job at Respondent-Kohler. (R. p. 630, lines 6-24). He worked at Kohler in casting, later as a rover

and in the lab. He testified about Kohler's repeated denial of medical treatment and failure to pay temporary benefits in his case. (R. p. 633, lines 22-25; p. 634, line 1; p. 648, lines 12-19). He testified he was not required to follow-up with the plant nurse every day while on light duty. (R. p. 642, lines 3-5). He was released from employment by Kohler after he refused to perform a job that violated his light duty work restrictions. (R. p. 646, lines 5-25; p. 647, lines 1-25; p. 648, lines 1-9). He too was eventually found permanently and totally disabled by the Commission. (R. pp. 728-746) Respondent-Kohler's attorney also cross-examined Mr. Valderamma on his legal status and sought the Commission's permission to contact Homeland Security to verify his Social Security Number. (R. p. 664, line 4- p. 668, line 23).

Jose Jimenez was the last person to testify. A Spanish interpreter was provided for Mr. Jimenez. (R. p. 672, lines 11-17). He worked at Kohler from April 2001 to January 2004. (R. p. 674, lines 1-7). He was terminated, but then rehired one month later in February 2004 and continued to work there in the casting department until he was terminated again in February 2013. (R. p. 674, lines 12-18). He reported both accidents to Sam Barnwell, his supervisor, the day after each accident occurred. (R. p. 677, lines 11-15; p. 678, lines 3-19; p. 679, lines 13-16). Mr. Barnwell completed an incident report each time and referred Mr. Jimenez to the plant nurse. (R. p. 677, lines 11-25; p. 678, lines. 1-9; p. 679, lines 17-21). The plant nurse treated him with Bio-Freeze and back pills. (R. pp. 173-174). He complained to Sam Barnwell on several other occasions about continuing problems with his back. (R. p. 680, lines 24-25; p. 681, lines 1-7). Mr. Barnwell would provide him with pills for his back. Mr. Jimenez went to Doctor's Care, on his own, for his work-related back problems in April 2012. (R. pp. 175–178; p. 709, lines 17-25). He

provided a light duty work note from Doctor's Care to Mr. Barnwell. (R. p. 176; p. 405, lines 13-25). Later he went to FMC as his back pain continued to worsen. (R. p. 138; p. 148). He was referred to physical therapy. (R. p. 145; p. 161; p. 163). His medical provider at FMC recommended he speak with his employer about his problems since it was work-related. (R. p. 310, lines 19-25). He told Mr. Barnwell he needed to see the plant nurse about sending him to the doctor. (R. p. 406, lines 15-24; p. 680, lines 9-10, lines 19-25; p. 681, lines 1-4). Mr. Barnwell set up a meeting with the nurse on November 1, 2012. (R. p. 530; p. 172). Mr. Jimenez was surprised to see several of his superiors waiting for him in the nurse's office. Mike Tolleson, Joe Brown, Sam Barnwell, and Pat Zimmerman were in the meeting. (R. p. 172; p. 530; p. 680, lines 4-8). He told them he had seen the doctor about his back. (R. p. 681, lines 13-14). He told them his back was still bothering him from when he injured it at work in March 2012. (R. p. 681 lines 2-12). He asked for medical treatment with a doctor or at least a lighter job. (R. p. 681, lines 15-17). Joe Brown asked what kind of lighter job. Mike Tolleson interrupted and said "no, no, no, if you can't do the job, there's the door." (R. p. 687, lines 6-16). Mike Tolleson said his injury could not be covered under workers' compensation because there had been too big a gap between March 2012 and now (November 1, 2012). Mr. Tolleson said he had been working his regular job all this time and had waited too long to request treatment. Mike Tolleson asked if he would be able to get back to work. He felt if he didn't return to work he would be fired. (R. p. 681, lines 18-25; p. 687, lines 17-25; p. 688, lines 1-3). He returned to work and continued to treat with the doctor at FMC on his own. (R. p. 682, lines 4-6). He was referred for an MRI and surgical consult. (R. pp. 127-128; pp. 131-134). He told his supervisor, Sam Barnwell, about the referral for an MRI. (R. p. 683, lines 2-7). He

completed paperwork provided by the orthopaedic surgeon's office for his upcoming appointment. (R. pp. 82-85; p. 806, lines 9-25). After finally getting approval from his health insurance for the MRI, he returned to FMC. The FMC doctor told him to get a special form from Kohler for her to complete regarding light duty. (R. p. 683, lines 9-16). He requested the form from Sam Barnwell, but was told no. (R. p. 683, lines 17-21). Instead, he would need to get a note from his doctor releasing him to full duty. He went back to Dr. Savage-Jeter and told her Kohler would not give him the form. He was provided a light duty note. (R. p. 122). Shortly thereafter, he was fired for the points he had accrued from being out of work, because Kohler would not provide the form for the company doctor to complete. (R. p. 708, lines 22-25). After that his health insurance was cut off. (R. p. 685, lines 14-17). He could not afford to follow-up with a surgeon because he was out of work and had to rely on his brother and wife for income. (R. p. 685, lines 24-25; p. 686, lines 1-12). He is not working and remains under physical restrictions.

Before the hearing concluded, the Commissioner directed Defendants to produce the plant nurse's notes related to Jesus Lugo, in order to determine whether the records supported Mr. Lugo's testimony. (R. p. 625, line 25; p. 626, lines 1-14; p. 817, lines 24-25; p. 818, line 1). Defendant's counsel submitted these records to the Commissioner by e-mail on June 6, 2014. (R. pp. 858-865). The nurse's notes concerning Jesus Lugo reflect on October 2, 2006, Mr. Lugo's supervisor e-mailed her an incident report:

> EE was rolling over partner's molds on 9-26-06 @ 9:45 A.M. when he felt pain in lower back…
> 10:40 EE came to medical –Bio freez to rt. Low back – says pain radiates down back of rt. leg…
> 10/25/06 EE came in w interpreter says is seeing a Chiropractor since last week…asked if he could see specialist 10/25/06 will check with M Tolleson tomorrow….
> 10/26/06 Talked w M. Tolleson since EE didn't return to

> see me, is doing his regular job and went to Chiropractor on his own will not send to FMC @ this point in time.

(R. pp. 862-864).

Throughout the hearing, the Commissioner made references to Respondent's defenses of Notice and injury by accident. (R. p. 326, lines 19-25; p. 327, lines 1-20; p. 587, lines 15-22; p. 641, lines 22-25; p. 642, lines 1-25; p. 643, lines 1-14) The hearing Commissioner issued his Order on October 24, 2014 finding, in effect, that Mr. Jimenez failed to provide adequate Notice of an injury by accident to the employer. (R. p. 28).

The Hearing Order of October 24, 2014 made no reference to the nurse's notes regarding Jesus Lugo that were submitted by e-mail at the direction of the Commissioner. (R. p. 1-29; p. 625, lines 25; p. 626, lines 1-14; p. 817, lines 24-25; p. 818, line 1; pp. 858-865).

A Form 30 was timely filed. (R. pp. 190-192). Before the Full Commission, Appellant argued that timely Notice was given after each accident; and, that Respondent-Kohler's allegations of Mr. Jimenez failing to follow-up or seek additional treatment for several months after he provided notice was irrelevant to such a finding. (R. p. 868, lines 17-25; p. 869, lines 1-25; p. 870, lines 1-2, lines 21-25; p. 871, lines 1-3, lines 17-22). Moreover, had the Commissioner reviewed these notes, it is difficult to believe he would have found Nurse Zimmerman "very credible." (R. p. 872, lines 20-25; p. 873, lines 1-4; p. 874, lines 19-25; p. 875, lines 1-6).

The Full Commission apparently recognized Finding 9 of the Hearing Order regarding lack of Notice was not accurate. During Oral argument, in response to Appellant's argument that Finding 9 found insufficient notice, Respondent-Kohler's

attorney argued:

> What the Commissioner said was, he didn't rule on notice. He didn't touch notice. He didn't come in under 42-15-20 and say notice doesn't apply. What he said was, based upon what happened in this case, yes, your client told them about two incidents, but he never even went and saw a doctor, ever. For a year and almost 18 months, he never went and saw a soul. That doesn't rise to the level of an injury by accident. Yeah, he said, "You know, I think I might have strained back or I might have done something; give me pill." He took the pill, never to be heard from again between accident one and accident two. Never. Never heard a word.

(R. p. 877, lines 3-17).

He was interrupted by one of the Commissioners on the panel who asked: "If we agree with you, wouldn't you agree that perhaps that finding could be reworded? (R. p. 877, lines 22-24).

Respondent-Kohler's attorney replied:

> Sure. You could – you could – you could fix the wording to say what I just said. He gave notice of two accidents. They don't arise to an injury by accident under the Act. That's what the Commissioner I think said. That's what he says in his conclusion, if you go read the conclusion a little closer under 42-1-160. And then he said he didn't meet his burden of proving all of those things...

(R. p. 877, line 25; p. 878, lines 1-8).

Unfortunately, the Commission, "Affirmed with an Amendment, specifically the clarification of Finding of Fact Number 9." (R. p. 37). The Commission modified Finding 9, Finding 13, and Conclusion 3 from the Hearing Order. (R. pp. 28-29, pp. 36-37). However, these modifications created new and different error.

This appeal followed.

STANDARD OF REVIEW

The Administrative Procedures Act ("APA") provides the standard for judicial review of decisions by the Commission. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 540, 689 S.E2d 615, 618 (2010); Lark v. Bi-Lo, Inc., 276 S.C 130, 133-34, 276 S.E.2d 304, 306 (1981). Under the APA , the Appellate Court can reverse or modify the decision of the Commission if the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. S.C. Code Ann. § 1-23-380(5)(d), (e) (Supp. 2011).

"[T]he guiding principle undergirding our workers' compensation system [is] that the Act is to be liberally construed in favor of the claimant. The second is equally compelling evidentiary principle that an award may not rest upon surmise, conjecture, or speculation Hutson v. S.C. State Ports Authority, 399 S.C 381 732 S.E.2d 500 (2012). The Commission's decision "must be founded on evidence of sufficient substance to afford a reasonable basis for it." Wynn v. People's Natural Gas Co. of S.C., 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961).

The Commission is permitted to disregard medical evidence only when there is other competent evidence in the records to supports their conclusion. Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 716 S.E.2d 123 (Ct. App. 2011). Where a finding is based on "the medical opinion of the single commissioner, adopted by the Commission," rather than on the opinion of a medical provider, the finding must be reversed as unsupported by substantial evidence. Burnette v. City of Greenville, 737 S.E. 2d 200, 401 S.C. 417 (Ct. App. 2012). A conclusion by the Commission "based on rank speculation...cannot now

be used as the basis for denying [an injured worker's] claim for lost wages." Hutson, 732 S.E 2d at 504

I. THE COMMISSION ERRED IN FINDING THE INJURIES MR. JIMENEZ REPORTED AT WORK DID NOT ESTABLISH AN "INJURY BY ACCIDENT."

The Commission was operating under a misunderstanding of the law when it incorrectly found Mr. Jimenez did not suffer an "injury by accident" and its findings are not supported by substantial evidence. This was error.

At the hearing, Respondents primary positions were that Mr. Jimenez did not provide adequate notice of an accident, and that he did not suffer an injury by accident. This strategy continued throughout the Hearing, while Respondents based these arguments on Mr. Jimenez returning to work after reporting each accident; continuing to work his regular job after receiving treatment from the nurse; allegedly failing to follow-up with the nurse after the initial treatment when he reported the injuries; and alleged delay in seeking additional medical treatment for several months after each reported accident.

During the course of the hearing, the Commissioner noted on the record several times that Respondent-Kohler was disputing notice and injury by accident. (R. p. 326, lines 19-25; p. 327, lines 1-20; p. 587, lines 15-22; p. 641, lines 22-25; p. 642, lines 1-25; p. 643, lines 1-14) .

Despite the unequivocal evidence that Mr. Jimenez reported two "injuries by accident" to his supervisor and the plant nurse, the Hearing Commissioner mistakenly accepted Respondent's Notice defense, ruling:

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

Emphasis added (R. p. 28).

This Finding was appealed. Before the Full Commission, Appellant argued Mr. Jimenez's actions of reporting an accident to his supervisor and the plant nurse one day after the accident occurred, satisfied the notice requirement, per S.C. Code Ann. §42-15-20 and Bass v. Isochem, 365 S.C. 454, 617 SE 2d 369 (Ct. App. 2005); Mize v. Sangamo Elec. Co., 251 S.C. 250, 161 SE 2d 846 (1968); Buggs v. U.S. Rubber Co., Winnsboro Mills 201 S.C. 281, 22 SE 2d 881(1942) . Once given, Notice cannot be taken back by a Claimant's subsequent actions.

The Full Commission apparently recognized a problem. During oral argument, in response to Appellant's argument that Finding 9 found Insufficient Notice, Respondent-Kohler's attorney argued:

> What the Commissioner said was, he didn't rule on notice. He didn't touch notice. He didn't come in under 42-15-20 and say notice doesn't apply. What he said was, based upon what happened in this case, yes, your client told them about two incidents, but he never even went and saw a doctor, ever. For a year and almost 18 months, he never went and saw a soul. That doesn't rise to the level of an injury by accident. Yeah, he said, "You know, I think I might have strained back or I might have done something; give me pill." He took the pill, never to be heard from again between accident one and accident two. Never. Never heard a word.

(R. p. 877, lines 3-17).

He was interrupted by one of the Commissioners on the panel who asked: "If we

agree with you, wouldn't you agree that perhaps that finding could be reworded? (R. p. 877, lines 22-24).

Respondent-Kohler's attorney replied:

> Sure. You could – you could – you could fix the wording to say what I just said. He gave notice of two accidents. They don't arise to an injury by accident under the Act. That's what the Commissioner I think said. That's what he says s in his conclusion, if you go read the conclusion a little closer under 42-1-160. And then he said he didn't meet his burden of proving all of those things,

(R. p. 877, line 25; p. 878, lines 1-8).

Unfortunately, the Full Commission "Affirmed with an Amendment, specifically the clarification of Finding of Fact number 9." (R. p. 37).

Rather than fixing the erroneous Hearing Order, the Full Commission's alterations to Finding 9, Finding 13, and Conclusion 3, created new and different error. (R. pp. 28-29; pp. 36-37) . Finding of Fact 9 was changed to:

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

Emphasis added to reflect the change made from Hearing Order. (R. p. 36).

Finding of Fact 13 and Conclusions of Law 3 were changed to expressly provide the basis for each to be the Commission's new Finding of Fact 9.

Finding of Fact 13 provides:

> We find the claimant has failed to carry his burden of proving a compensable injury by accident to either his back

> of left leg on either alleged dates of injury. This finding is based upon the greater weight of the evidence in the record and **moreover, Finding of Fact # 9 above.**

Emphasis added to reflect the change made from Hearing Order. (R. p. 36).

Conclusion of Law 3 holds:

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

Emphasis added to reflect change from Hearing Order. (R. p. 37).

According to Pee v. AVM, Inc., 543 S.E.2d 232, 344 S.C. 162 (Ct. App. 2001):

> The question of whether a claimant asserts an "injury by accident" within the meaning of the Act is a question of law. *Creech v. Ducane Co.,* 320 S.C. 559, 467 S.E.2d 114 (Ct.App.1995). This Court may review the Commission's legal conclusion to determine if it is affected by an error of law.
>
> *Id.;* S.C. Code Ann. § 1-23-380(A)(6) (Supp.1999). Notwithstanding the scope of review on this legal question, this Court must affirm the Commission's factual findings if they are supported by substantial evidence and not controlled by legal error. *Tiller v. Nat'l Health Care Ctr.,* 334 S.C. 333, 513 S.E.2d 843 (1999)

An "injury by accident" is defined by S.C. Code Ann. § 42-1-160 "Injury" and "personal injury":

> (A) "Injury" and "personal injury" mean only **injury by accident** arising out of and in the course of employment . . .

This issue has been the subject of much case law. According to Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753,758 (Ct. App. 2007):

> To be compensable, an injury by accident must be one "arising out of and in the course of employment." S.C. Code Ann. § 42-1-160 (Supp.2006); *Grant v. Grant*

Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007); *Broughton v. South of the Border,* 336 S.C. 488, 496, 520 S.E.2d 634, 638 (Ct.App.1999).

The phrase "arising out of refers to the injury's origin and cause; whereas, "in the course of refers to the time, place, and circumstances under which the injury occurred. *Baggott v. Southern Music, Inc.,* 330 S.C. 1, 4, 496 S.E.2d 852, 854 (1998); *Owings v. Anderson County Sheriffs Dep't,* 315 S.C. 297, 300, 433 S.E.2d 869, 871 (1993); *Loges v. Mack Trucks, Inc.,* 308 S.C. 134, 138, 417 S.E.2d 538, 541 (1992). Although the requirements are somewhat overlapping, they are not synonymous and both must exist simultaneously to allow the claimant to recover workers' compensation benefits, *Osteen v. Greenville County School Dist.,* 333 S.C. 43, 49, 508 S.E.2d 21, 24 (1998); *Broughton,* 336 S.C. at 496, 520 S.E.2d at 638.

According to Douglas v. Spartan Mills, Startex Division, 245 S.C. 265, 140 S.E.2d 173 (1965):

> There are numerous decisions interpreting the words 'arising out of' and 'in the course of employment'. . . It is well established, at least in this jurisdiction, that these phrases are used conjunctively and that an accident, in order to be compensable, must both 'arise out of' and 'in the course of' the employment. In Eargle v. South Carolina Electric & Gas Co., 205 S.C. 423, 32 S.E.2d 240, this court said:
>
> 'The two elements must co-exist. They must be concurrent and simultaneous. One without the other will not sustain an award; yet the two are so entwined that they are usually considered together in the reported cases; and a discussion of one of them involves the other. * * *
>
> 'As is generally held, the words 'arising out of' refer to the origin of the cause of the accident, while the words 'in the course of employment,' have reference to the time, place and circumstances under which the accident occurs.'
>
> In that case the court then went on to quote with approval from Re Employers' Liability Assurance Corporation, 215 Mass. 497, 102 N.E. 697, L.R.A.1916A, 306, the following language:
>
> "It (the injury) arises 'out of' the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment.

Whether an accident arises out of and is in the course and scope of employment is largely a question of fact for the Appellate Panel. Pratt v. Morris Roofing, Inc., 357 S.C. 619, 622, 594 S.E.2d 272, 274 (2004); Gibson v. Spartanburg Sch. Dist. No. *3,* 338 S.C. 510, 518, 526 S.E.2d 725, 729 (Ct. App. 2000). The claimant has the burden of proving facts sufficient to allow recovery under the Act. West v. Alliance Capital, 368 S.C. 246, 252, 628 S.E.2d 279, 282 (Ct.App.2006). Sharp v. Case Produce, Inc., 336 S.C. 154 at 160, 519 S.E.2d 102 (1999), (where evidence supported claimant "staged" an accident and was not injured on the job.) However, when the facts are undisputed, whether an accident is compensable is a question of law. Shuler v. Gregory Elec., 366 S.C. 435, 622 S.E.2d 569 (Ct.App.2005); *Gibson,* 338 S.C. at 518, 526 S.E.2d at 729.

In determining if an accident arose out of and in the course of employment, each case must be decided with reference to its own attendant circumstances. Lanford v. Clinton Cotton Mills, 204 S.C. 423, 425, 30 S.E.2d 36, 41 (1944). The general policy in South Carolina is to construe the Workers' Compensation Act in favor of coverage, and any reasonable doubts as to construction should be resolved in favor of the claimant. Davis v. S.C. Dep't of Corr.,289 S.C. 123, 125, 345 S.E.2d 245, 246 (1986).

Finding an accident arises out of and in the course of employment does not require a determination that a claimant's current physical problems are causally related to the work injury. Anderson v. Campbell Tile Co., 202 S.C. 54 24 S.E.2d 104 (1943), Lawson v. Hanson Brick America, Inc. 393 SC 87, 710 S.E.2d 711 (Ct. App. 2011). Note, this differs from a mental-mental injury, in which a causal relationship must be shown to establish an "injury by accident" per S.C. Code Ann. §42-1-160 (B)(2) and Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 at 300 (2012).

As noted above, Finding 9 addresses Mr. Jimenez's alleged behavior after his work accident. Like Notice, once an "Injury by Accident" occurs, any alleged failure to request follow-up or seek medical treatment cannot alter that fact. The use of the word "incidents" in quotes and the phrase "alleged dates of injury" in new Finding of Fact 9 show the Commission was still operating under a misunderstanding of the law related to an "injury by accident." Clearly, an "injury by accident" occurred on both reported dates. Mr. Jimenez was injured while performing his job at Kohler as a caster. He immediately reported both accidents to his supervisor and was subsequently sent to the plant nurse per Kohler procedure. (R. p. 475-476, p. 173-174). These actions alone constitute an "injury by accident" under S.C. Workers' Compensation Law. We need go no further to show a work injury occurred. When and how the Claimant requested further treatment has no impact on the fact that Claimant was injured while performing his job and immediately reported the injury to his supervisor.

Finding 9 provides no support to either Finding 13 or Conclusion 3. Assuming *arguendo* that Mr. Jimenez failed to request follow-up or seek medical treatment for several months following each reported accident, this has no bearing on whether Mr. Jimenez suffered an "injury by accident" on the reported dates.

When an employee suffers an "injury by accident" and requests medical treatment, the employer shall provide treatment, per S.C. Code Ann. §42-15-60(A). Respondent-Kohler should have sent Mr. Jimenez to the company doctor, a doctor it is allowed to select. It was Respondent-Kohler's right to ask its company doctor to address whether Mr. Jimenez's "injuries by accident" were casually-related to his current physical problems, per S.C. Code Ann. §42-15-80. The company doctor is expressly

allowed to discuss causation with the employer, per S.C. Code Ann. §42-15-95(B). Had this occurred, the company doctor could then opine whether there was a causal relationship between Mr. Jimenez's current physical problems and his "injuries by accident" on July 14, 2011 and March 13, 2012. If there was no causal relationship found by the company doctor, Respondent-Kohler could have denied further medical treatment on that basis.

Consider the following hypothetical: On Monday, January 1st, 2014, a clerk trips while retrieving a brief at work and lands hard on her knee. It hurts. The following day, she tells her supervisor that yesterday she injured her knee when she fell while retrieving a brief. Her supervisor documents the incident. She is sent to Human Resources where she is provided an ibuprofen and asked if she needs anything else. She tells the HR manager "I think I'll be alright" and returns to her job researching and writing briefs. Neither her supervisor, nor the HR manager dispute that she reported an accident and complained she was hurt. There is no suggestion she staged an accident or feigned her injury. Six months later, she returns and tells the HR Manager that her knee is still bothering her and she would like to see a doctor.

Indisputably, the clerk suffered a "compensable injury by accident" at work, as that term is defined under the law. The accident arose out of her employment as a clerk and occurred when she tripped injuring her knee while performing her job. Her delay in asking for medical treatment does not change the fact that she was injured on the job on January 1, 2014.

Now suppose, the same clerk ran a marathon and was involved in three car accidents during the intervening months between her work accident and her request for medical treatment. Her employer may well question whether her current problems are causally-related to her work injury several months earlier. However, the clerk's actions or inactions after the work accident cannot change the fact that she fell at work and hurt her knee, therefore suffering an "injury by accident." Whether her current physical problems are causally related to her accident, is a separate and distinct issue from whether she suffered a compensable injury by accident on January 1, 2014. She suffered a compensable "injury by accident" and is entitled to medical treatment. Now, her employer may want to ask the company doctor whether her current problems are causally-related to her "injury by accident" of January 1, 2014. S.C. Code Ann. §42-15-60 (A), 42-15-80 (A), 42-15-95 (B).

In Anderson v. Campbell Tile, 202 S.C. 54, 24 S.E.2d 104 (S.C. 1943), the employer admitted Mr. Anderson was involved in an accident arising out of his work and suffered a strain in the course of his employment. However, the employer disputed that his injury (the strain) resulted in his death several weeks later. The court, in affirming the award of death benefits, did not question the employer's admission of an "injury by accident," while at the same time disputing Claimant's death was causally-related to his previous injury.

In the present case, Mr. Jimenez suffered two accidents while at work. Each time, he reported to his supervisor the following day that he had injured himself as a result of a work accident. He reported an injury to his back following the first accident and an injury to his back and legs following the second accident. Each time, his supervisor

completed an incident report and sent him to the plant nurse. (R. pp. 475-476). Each time, the nurse documented that he was injured the previous day as a result of an accident at work. (R. pp. 173-174).

The supervisor and nurse both testified that Mr. Jimenez reported two work accidents. (R. p. 398, lines 24-25; 399, lines 1-20; p. 402, lines 21-25; p. 403, lines 1-10; p. 512, lines 4-25; p. 513, lines 1-25; p. 514, lines 1-12). His supervisor completed an incident report for each accident and referred him to the nurse. (R. pp. 475-476). The nurse documented his physical complaints from his injuries by accident. (R. pp. 173-174). The Nurse provided treatment. She confirmed both of these facts in her deposition. (R. p. 485, lines 16-24; p. 488, lines 20-25; p. 489, lines 1-2). Respondent-Kohler's manager, Joe Brown, testified that medical treatment was refused to Mr. Jimenez because there was too great a gap in time between Mr. Jiminez reporting his injuries and his seeking medical treatment. (R. p. 439, lines 22-25; p. 440, lines 1-25; p. 450, lines 20-25; p. 451, lines 1-10; p. 452, lines 19-25: p. 453, lines 1-18; p. 687, lines 10-16). Respondents improperly refused Mr. Jimenez's request for medical treatment in violation of S.C. Code Ann. §42-15-60 (A). Although two injuries by accident had been reported, Respondents sought to rely on the lack of medical treatment caused by their improper refusal to authorize a visit to the company doctor, as a defense to Mr. Jimenez's claims.

There was no evidence that Mr. Jimenez "staged" an accident. No witness suggested that Mr. Jimenez was faking an injury when he saw the nurse the day after each accident. This would have been the only type of evidence that could have supported the Commission finding Mr. Jimenez did not suffer an "injury by accident" Sharp v. Case

Produce, Inc., 336 S.C. 154 at 160, 519 S.E.2d 102 (1999). No such evidence is in the record.

Instead, Respondents argued 1) Mr. Jimenez did not give sufficient notice of his accidents; 2) after reporting accidents and treating with the nurse for his work injuries, Mr. Jimenez returned to his regular work; allegedly failed to follow-up with the nurse after his initial treatment; and, allegedly delayed seeking treatment for several months after the reported accidents, and 3) the reason he allegedly did not seek care for several months was because his current injuries were from an intervening cause. These arguments are simply not relevant to the issue of whether Mr. Jimenez suffered a "compensable injury by accident" on July 14, 2011 and March 13, 2012. An injury by accident involves the origin and cause of the injury, and is date and time specific, it cannot be changed by circumstances arising after the injury occurred. Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d at 758. The Commission's finding that Mr. Jimenez did not suffer "injuries by accident" because he allegedly failed to seek medical treatment after the accident at work and after being treated by the nurse for his injuries, is not supported by substantial evidence and reflects a misunderstanding of the applicable law by the Commission. Hutson v. S.C. State Ports Authority, 399 S.C 381 732 S.E.2d at 504; Wynn v. People's Natural Gas Co. of S.C., 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961); Creech v. Ducane Co., 320 S.C. 559, 467 S.E.2d 114 (Ct.App.1995).

The substantial evidence established Mr. Jimenez suffered an "injury by accident" on July 14, 2011 and March 12, 2012. These accidents were duly recorded by Mr. Jimenez's supervisor and the plant nurse. (R. pp. 475-476; pp. 173-174).

Accepting that Mr. Jimenez did suffer "injuries by accident" on July 14, 2011 and March 13, 2012, the remaining issue to be addressed is whether Mr. Jimenez's "compensable injuries by accident" are causally-related to his current back and left leg problems. The Commission never reached this issue. The use of the word "incidents" in quotes and the phrase "alleged date of injury" in Finding 9 reflect the Commission continued to operate under a misunderstanding of the law regarding Mr. Jimenez's injuries by accident. (R. p. 36). Finding 9 incorrectly found Mr. Jimenez's current problems were not causally-related because he failed to establish he was hurt at work on July 14, 2011 and March 12, 2012. Again, the issue that should have been addressed was whether his "compensable injuries by accident" were causally-related to his current physical problems. However, when the evidence is susceptible of but one reasonable inference, the question becomes a matter of law. Mullinax v. Winn Dixie Stores, Inc., 318 S.C. 431, 437, 458 S.E.2d 76, 80 (Ct.App.1995). Respondents lay witnesses testified about Mr. Jimenez continuing to work after the accidents, and allegedly delaying to seek medical care. Yet, the Order found "defendant's argument of an intervening accident is not dispositive." (R. p. 36). While the Order found Dr. Savage-Jeter and Dr. Rodriguez's deposition testimony was not dispositive on the issue of compensability (R. p. 36, Findings 10 and 11). Both doctor's testimony was compelling on causation. (R. p. 318; p. 289, lines 14-24). For that matter, all of the expert medical opinion established Mr. Jimenez's current need for back surgery is causally-related to his work accidents. (R. p. 289, lines 14-24). Terzella's medical questionnaire stated to a reasonable degree of medical certainty, that Mr. Jimenez's low back problems are most probably causally-related to his work accident while emptying drain pans on or about July 14, 2011. (R. p.

79). The MRI provides objective medical evidence of his current back problems. (R. pp. 151-152). The only substantial evidence in the record regarding causation established Mr. Jimenez's current physical problems are causally-related to the "injuries by accident" he suffered on July 14, 2011 and March 13, 2012.

In light of Mr. Jimenez: having suffered "compensable injuries by accident" in satisfaction of S.C. Code Ann. §42-1-160; there being no intervening cause between his accidents and request for medical treatment (R. p. 36, Finding 12); and, the only substantial evidence on causation establishing that Mr. Jimenez's current back and left leg problems are causally-related to his work accidents (R. p. 289, lines 14-24; p. 79) the only reasonable inference supported by the evidence is that the claim is compensable. The Commission's findings 9 and 13 and Conclusion 3 amount to error. The Order should be REVERSED. Respondents should be ordered to provide medical treatment, per S.C. Code Ann. §42-15-60 (A) and Dodge v. Bruccoli, 514 S.E.2d 593, 334 S.C. 574 (Ct. App. 1999) Per, S.C. Code Ann. §42-9-200, Mr. Jimenez is entitled to temporary benefits for the time he has been written out of work, until such time as his benefits may be suspended or terminated in accordance with the Act.

II. THE COMMISSION FAILED TO PROVIDE SUFFICIENT FINDINGS OF FACT AND CONCLUSIONS OF LAW TO ALLOW APPELLATE REVIEW.

The Commission's findings are conclusory and lack sufficient specificity to allow proper Appellate review, in violation of the statutory and case law of South Carolina.

The Hearing Commissioner's Finding of Fact 9 indicated that Mr. Jimenez's "reported 'incidents' did not rise to the level of defining an injury to the Employer. . ."

The basis for this finding was Mr. Jimenez's "lack of requested follow-up and lack of medical treatment for several months following each alleged date of injury." (R. p. 28).

On appeal to the Full Commission, Mr. Jimenez argued that this Finding represented a misunderstanding of the law applicable to Notice. (R. p. 868, lines 17-25; p. 869, lines 1-25; p. 870, lines 1-2 and lines 21-25; p. 871, lines 1-3 and lines 17-22) Once Mr. Jimenez reported the work accidents and injuries to his supervisor the day after each occurred, his duty to provide Notice was satisfied. Any alleged failure to request follow-up or seek medical treatment could not change that fact.

The Full Commission recognized the apparent problem with Finding 9. During oral argument, the following comment was provided:

> What the Commissioner said was, he didn't rule on notice. He didn't touch notice. He didn't come in under 42-15-20 and say notice doesn't apply. What he said was, based upon what happened in this case, yes, your client told them about two incidents, but he never even went and saw a doctor, ever. For a year and almost 18 months, he never went and saw a soul. That doesn't rise to the level of an injury by accident. Yeah, he said, "You know, I think I might have strained back or I might have done something; give me pill." He took the pill, never to be heard from again between accident one and accident two. Never. Never heard a word.

(R. p. 877, lines 3-17).

He was interrupted by one of the Commissioners on the panel who asked: "If we agree with you, wouldn't you agree that perhaps that finding could be reworded? (R. p. 877, lines 22-24).

Respondent-Kohler's attorney replied:

> Sure. You could – you could – you could fix the wording to

> say what I just said. He gave notice of two accidents. They don't arise to an injury by accident under the Act. That's what the Commissioner I think said. That's what he says in his conclusion, if you go read the conclusion a little closer under 42-1-160. And then he said he didn't meet his burden of proving all of those things...

(R. p.877, lines 25; p. 878, lines 1-9).

However, in response to Mr. Jimenez's Appeal, the Full Commission, "Affirmed with an Amendment, specifically the clarification of Finding of Fact Number 9." (R. p. 37). The Commission's Order made specific changes to Findings of Fact 9 and 13, and Conclusion of Law 3. (R. pp. 27-28 and pp. 36-37)

However, the Commission's new Findings failed to resolve the problems with the Hearing Order, but rather created new error. Finding of Fact 9 was changed to:

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

Emphasis added. (R. p. 36).

Compounding the error, Finding of Fact 13 and Conclusion of Law 3 were changed to specifically reflect the bases for each to be new Finding of Fact 9.

Finding of Fact 13 provides:

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

Emphasis added. (R. p. 36).

Yet, Finding 9 only addresses Mr. Jimenez's alleged behavior after the "injury by accident." Like Notice, once an "injury by accident" occurs, any alleged failure to request follow-up or seek medical treatment cannot change that fact.

Conclusion of Law 3 was changed to:

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

Emphasis added. (R. p. 37).

Pursuant to S.C. Code Ann. § 42-17-50 (Supp.2007), the Commission shall weigh the evidence as presented at the initial hearing and, **if good grounds are shown**, make its own findings of fact and reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. Lowe v. Am-Can Transp. Servs. Inc., 283 S.C. 534, 537, 324 S.E.2d 87, 89 (Ct.App.1984); *see also* Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (1967) (holding although it is logical for the Commission to give weight to the Single Commissioner's opinion, the Commission may disagree with his findings based on the credibility of witnesses).

In Baldwin v. James River Corp., 304 S.C. 485, 405 S.E.2d 421 (Ct.App.1991), this court determined the findings of fact in the Commission's order were conclusory and remanded the case to the Commission to make sufficient findings of fact to afford a reasonable basis for appellate review. The Court in Baldwin v. James River Corp., 405 S.E.2d at 422 also referenced the application of the Administrative Procedures Act § 1-

23-350 (1986) ("Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.").

> According to Pack v. State Dept. of Transp., 381 S.C. 526, 673 S.E.2d 461(Ct. App. 2009):
>
> The task of an appellate court is to inquire whether the Commission's findings are supported by substantial evidence. *Lark,* 276 S.C. at 136, 276 S.E.2d at 307. Howevèr, without clear findings of fact, this Court cannot evaluate the decision of the Commission under the substantial evidence standard. *See Drake v. Raybestos-Manhattan, Inc.,* 241 S.C. 116, 123, 127 S.E.2d 288, 292 (1962) (holding remand is proper where Commission's order affords no reasonable basis upon which the appellate court can determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings).

See also Fox v. Newberry County Mem'l Hosp., 319 S.C. at 280, 461 S.E.2d at 394 (holding when an administrative agency acts without first making the proper factual findings required by law, the proper procedure is to remand the case and allow the agency the opportunity to make those findings).

The basis for the Full Commission's new Finding 9 was not changed from the original Hearing Order. Use of the word "incidents" in quotes and the phrase "alleged date of injury", rather than the word "accidents" and the term "date of injury" reflect the Commission was still operating under a misunderstanding of the applicable law regarding "injury by accident." The substantial evidence established Mr. Jimenez was injured at work on the reported dates. (R. pp. 475-476; pp. 173-174). Hutson v. S.C. State Ports Authority, 732 S.E.2d at 503. Moreover, the stated basis for new Finding 9 remained: "upon the greater weight of the evidence in the records." This language is conclusory and lacks adequate specificity for the Appellate Court to determine if the Commission correctly applied the law to the facts. Baldwin v. James River Corp., 304 S.C. 485, 405

S.E.2d at 422. It points to no particular evidence for the Appellate Court to consider. It is not an explicit statement of the underlying facts supporting the findings as required per APA, SC Code Ann. §1-23-350 (1986). While Appellant agrees Finding 9 of the Hearing Order was in error, the Commission failed to identify the "good grounds... shown" for changing the Hearing Order, per S.C. Code §42-17-50 and Lowe v. Am-Can Transp. Servs. Inc., 283 S.C. at 537, 324 S.E.2d at 89. The Commission failed to provide any explanation for changing Finding of Fact 9.

Finding of Fact 13 is conclusory and not sufficient to afford a reasonable basis for Appellate review. As discussed *infra*, new Finding of Fact 9 provides no support to the issue of whether an "injury by accident" occurred. Finding of Fact 9 finds Mr. Jimenez's current back and left leg problems are not causally-related to the reported incidents because of alleged delay in requesting follow-up or seeking medical care. An injury by accident involves the origin and cause of the injury, and is date and time specific, Hall v. Desert Aire, Inc., 656 S.E.2d at 758. It cannot be changed by circumstances arising after the initial reported injury occurred. (See Argument I, pp. 25-37 of this brief). The only other basis provided for new Finding of Fact 13 is the generic "upon the greater weight of the evidence in the record." This basis lacks specificity or sufficient direction for the appellate court to determine the Commission's application of the facts to the law. Baldwin v. James River Corp., 405 S.E. 2d at 422. Drake v. Raybestos-Manhattan, Inc., 241 S.C. at 123, 127 S.E. 2d at 292. It is not an explicit statement of the underlying facts supporting the findings as required per APA §1-23-350(1986). Again, the Commission failed to identify the "good grounds...shown" for its

changes to the Hearing Order, per 42-17-50 and Lowe v. Am-Can Transp. Servs. Inc., 283 S.C. at 537, 324 S.E.2d at 89.

Conclusion of Law 3 holds Mr. Jimenez did not suffer an injury by accident "based on Finding of Fact #9 and the greater weight of the evidence in the record." Again Finding 9 provides no support for this conclusion. Hall v. Desert Aire, Inc., 656 S.E.2d at 758. Likewise, the basis is non-specific. It is not an explicit statement of the underlying facts supporting the findings as required per APA §1-23-350(1986). Again, the Commission failed to identify the "good grounds...shown" for its changes to the Hearing Order, per §42-17-50 and Lowe 283, S.C. at 537, 324 S.E.2d at 89. It is conclusory and not sufficient to afford a reasonable basis for appellate review per Baldwin 405 S.E.2d at 422; Drake, 241 S.C. at 123, 127 S.E.2d at 292.

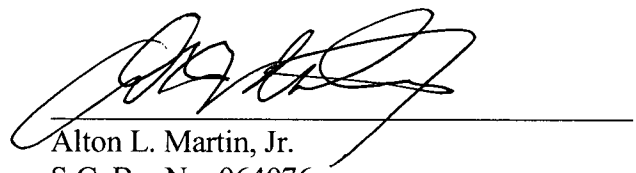
The Order of the Full Commission should be reversed and remanded for new findings and conclusions consistent with the substantial evidence presented that Mr. Jimenez suffered "compensable injuries by accident; and, with sufficient specificity to allow appellate review should subsequent appeals arise.

CONCLUSION

For the foregoing reasons, the Decision of the Appellate Panel should be Reversed. Mr. Jimenez suffered an" injury by accident" to his low back and left leg per S.C. Code Ann. §42-1-160. Respondents should provide medical treatment in accordance with the Act and pay temporary benefits until Claimant has reached MMI or been released to return to work without restrictions. Alternatively, the Court should Reverse and Remand for findings consistent with the evidence that Mr. Jimenez suffered a "compensable injury by

accident" and providing sufficient specificity to allow for appellate review should any subsequent appeal arise.

Respectfully submitted,



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June 16, 2016

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

Jose Juan Jimenez, Employee,.....Appellant,

v.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211 (b), SCARC

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PROOF OF SERVICE

I, certify that I, Kelly E. Ware, paralegal to Alton L. Martin, Jr., and that I have caused the **Final Brief of Appellant** and **Final Reply Brief of Appellant** to be served upon counsel for the Respondents by mailing a copy of the same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below, addressed as follows:

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June 16, 2016
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