THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
Susan S. Barden, Commissioner
Melody L. James, Commissioner
Aisha Taylor, Commissioner

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SC Court of Appeals

Appellate Case No.: 2016-001339

Martha Perez, Claimant, ...Respondent,

v.

Alice Manufacturing Company Inc., Employer, and Great American Alliance Insurance Company, Carrier, ... Appellants.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF CASE

A hearing was held before the Single Commissioner on May 20, 2015, wherein the Respondent claimed, *inter alia*, that she suffered a work-related injury to her back on August 8, 2013, and again on May 19, 2014, arising out of and within the course and scope of employment. Upon the consent of the parties, these two back claims were heard in conjunction with two other separate claims for the purposes of judicial economy. Those other two cases are not on appeal to this Court.

In the two cases on appeal, the Respondent asked at the Single Commissioner level for further medical treatment and for Temporary Total Disability (TTD) benefits from June 18, 2014, the day the then-authorized treating doctor at Steadman Hawkins, Michelle Wilson, M.D., wrote her out of work pending the results of an MRI of the lumbar spine. At the hearing before the Single Commissioner, the Appellant's position was that the Respondent did not sustain an injury while in the employ of the Defendant Employer. In regards to the Respondent's TTD claim, the Appellants' position was that the Respondent was responsible for obtaining her own MRI as this was a denied claim, and, therefore, she could not claim wages for being written out of work pending the MRI. The Appellants also took the position that Respondent should have taken action to have the MRI performed, notwithstanding their refusal to pay for it.

The Single Commissioner issued an Order filed on January 26, 2016, in which he found both of her back injuries, on August 8, 2013, and on May 19, 2014, to be compensable. He also ordered further medical care and treatment for the back injuries with Dr. Michelle Wilson to be the authorized treating physician. The Single Commissioner further ordered that the Respondent was entitled to any and all treatment modalities prescribed or directed by Dr. Wilson, including the MRI she had already ordered. The Single Commissioner further found that the Respondent was not at Maximum Medical Improvement (MMI) and that she was entitled to TTD from June 18, 2014, to the present and continuing.

The Appellants filed a Workers' Compensation Form 30, Request for Review, dated February 9, 2016. The Form asked that these two back cases be reviewed as the Appellants alleged, *inter alia,* that there was not substantial evidence to support the decision of the Single Commissioner.

The Appellate Panel of the Workers' Compensation Commission held a hearing on April 18,

2016. On May 24, 2016, the Appellate Panel issued a Decision and Order entitled "**FULL AFFIRMATION**" which upheld the Order of the Single Commissioner. In doing so, the Appellate Panel found both back claims compensable, and ordered, *inter alia*, more medical care, as well as the payment of TTD from June 18, 2014, and continuing until further Order of the Commission. In its Order the Appellate Panel set out its own Findings of Fact and Conclusions of Law in lieu of adopting those of the Single Commissioner, the result, however, being the same.

The Appellants filed a Notice of Intent to Appeal dated June 22, 2016, on both subject cases. The Notice states that the Appellants are appealing the Order of the Appellate Panel dated May 26, 2016. However, the Initial Brief of the Appellants makes reference to the Findings of Fact and Conclusions of Law of the Single Commissioner, not those of the Appellate Panel of the Workers' Compensation Commission. The Appellate Panel's findings are numbered 1 – 13, and those of the Single Commissioner that are discussed in the Initial Brief of the Appellants are numbered 21 – 30. Therefore, the Respondent will argue as to the findings of fact of the Appellate Panel, and as to those, the Respondent submits that they are not conclusory and are instead well supported by the evidence in this case.

The Respondent would further argue that the Appellants, by appealing the findings of fact of the Appellate Panel, which is the final order of the Commission, have not properly effectuated an appeal in this case. It appears that in this appeal, the Appellants just copied the Statement of Issues on Appeal directly off of the W.C.C. Form 30 that was filed with the Commission appealing the case from the Single Commissioner to the Appellate Panel. In doing so, the Appellants did not change any of the references alleging that the "Single Commissioner" had erred when in fact this appeal is and should be one appealing the decision of the Appellate Panel of the Commission.

STANDARD OF REVIEW

The appellate panel is the ultimate fact finder in workers' compensation cases and is not bound by the single commissioner's findings of fact. *Bass v. Isochem,* 365 S.C.454, 468, 617 S.E.2d 369, 376 (2005); *Houston v. Deloach & Deloach*, 378 S.C. 543, 551, 663 S.E.2d 85, 89 (Ct. App. 2008).

The South Carolina Administrative Procedures Act (APA), establishes the standard for judicial review of decisions of the Workers' Compensation Commission. *See* S.C. Code §1-23-380 (2008); *Bass v. Isochem,* 365 S.C.454, 617 S.E.2d 369, *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E. 2d 304 (1981); *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 599 S.E. 2d 604 (Ct. App. 2004).

§1-23-380(5) states in part: "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, inference, conclusions, or decisions are: (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record . . ."

The case law in worker's compensation matters has reiterated the scope of review. Under the scope of review established in the Administrative Procedures Act (APA), appellate court may not substitute its judgment for that of the Appellate Panel of the Workers' Compensation Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. *Kimmer v. Murata of America, Inc.* 372 S.C. 39, 640 S.E.2d 507 (S.C. App. 2006), rehearing denied, certiorari denied. Pursuant to the Administrative Procedures Act (APA), the Court

of Appeals' review in a workers' compensation proceeding is limited to deciding whether the Appellate Panel's decision is unsupported by substantial evidence or is controlled by some error of law. *Hall v. United Rentals, Inc.,* 371 S.C. 69, 636 S.E.2d 876 (Ct. App. 2006). *Hamilton v. Bob Bennett Ford,* 336 S.C. 72, 518 S.E.2d 599 (Ct. App. 1999); *Stephen v. Avins Constr. Co.,* 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996); *Lark v. Bi-Lo, Inc.,* 276 S.C. 130, 276 S.E.2d 304 (1981); *Gibson v. Spartanburg Sch.* Dist. No. 3, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000); *Lyles v. Quantum Chem. Co. (Emery),* 315 S.C. 440, 434 S.E.2d 292 (Ct. App. 1993) (in reviewing decision of Workers' Compensation Commission, Court of Appeals will not set aside its findings unless they are not supported by substantial evidence or they are controlled by error of law).

The Court of Appeals may not substitute its judgment for that of the Appellate Panel of the Workers' Compensation Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. *Hall,* 371 S.C. at 79, 636 S.E.2d at 882 (S.C. App. 2006).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. *Etheredge v. Monsanto Co.,* 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002); *Broughton v. South of the Border,* 336 S.C. 488, 520 S.E.2d 634 (Ct. App. 1999). The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. *Anderson v. Baptist Med. Ctr.,* 343 S.C. 487, 541 S.E.2d 526 (2001); *Hicks v. Piedmont Cold Storage, Inc.,* 335 S.C. 46, 515 S.E.2d 532 (1999). It is not within the province of the circuit

court or the Court of Appeals to reverse findings of the Commission which are supported by substantial evidence. *Broughton,* 336 S.C. at 496, 520 S.E.2d at 637.

Where there are conflicts in the evidence over a factual issue, the findings of the Appellate Panel are deemed to be conclusive. *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 599 S.E. 2d 604 (Ct. App. 2004).

ARGUMENTS

I. THE SUBSTANTIAL EVIDENCE SUPPORTS THE COMPENSABILITY OF THE TWO (2) BACK CLAIMS (DOI: 8/8/2013 AND 5/19/2014).

The Initial Brief of the Appellants contains five (5) Statements of Issues on Appeal, but only three (3) Arguments. In addition, the arguments are not in the same order as are the Statements of Issues on Appeal. In this Brief of The Respondent, the Respondent will set out five (5) Arguments matching up with the five (5) Statements of Issues on Appeal. Those Arguments will be in the same order as the Statements of Issues. In addition, each issue is argued to ensure proper addressing of the law applicable to the Statements of Issues on Appeal.

As was stated earlier herein, the Appellants' Initial Brief argues that the Findings of Fact of the Single Commissioner were not supported by substantial evidence. The Appellate Panel of the Workers' Compensation Commission made its own Findings of Fact, separate and distinct from those of the Single Commissioner and are numbered differently. Those of the Appellate Panel are the true Findings of Fact of the Commission, thereby superseding those of the Single Commissioner. The Appellate Panel is the ultimate fact finder in workers' compensation cases and is not bound by the single commissioner's findings of fact. *Isochem,* 365 S.C. at 468, 617 S.E.2d at 376; *Frame v.*

Resort Servs., Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); *Muir v. C.R Bard, Inc.,* 336 S.C. 266, 519 S.E. 2d 583 (Ct. App. 1999); *Houston v. Deloach & Deloach*, 378 S.C. 543, 663 S.E.2d 85, (Ct. App. 2008).

Firstly, the Appellants argue that there is not substantial evidence to support the award of these two back claims. The Respondent will show that there is not just substantial, but overwhelming evidence to support the findings of the Appellate Panel of the Workers' Compensation Commission (hereinafter referred to as the "Commission"). Respondent's testimony regarding these accidents is consistent with the medical records. The Respondent testified that she reported both accidents to her supervisor, David Cooper, and Mr. Cooper testified that she reported both accidents to him. Mr. Cooper also filled out an accident report on both accidents.

The Respondent was referred to and received treatment for her back from the "company" doctor, Michael Welborn, M.D., and was eventually referred to Steadman Hawkins for further treatment. However, once Dr. Wilson at Steadman Hawkins ordered an MRI of the back, the Carrier refused to provide any further medical care.

On June 18, 2014, Dr. Wilson did write the Respondent out of work pending the MRI, which is the basis of the claim for TTD.

The Appellants have no defense against these two (2) claims. To have a viable defense, they have to argue against their own supervisor, David Cooper, and the medical records of the authorized treating physicians, Drs. Welborn and Wilson.

The Salient facts as to these two (2) cases are as follows:

August 8, 2013, Accident

1. **On August 8, 2013, Respondent testified that she picked up a heavy metal roll from ground level** that she estimated to weigh approximately one hundred sixty-five (165 lbs.) pounds. When she picked it up, she felt pain in her back and she dropped it. [R. p. 60-61].

2. **Respondent reported the accident to her supervisor the same day.** The Supervisor of the Respondent, David Cooper, was called by the Respondent by his deposition testimony without objection. [R. p. 104, Lines 21-25]. He testified that he was a second shift manager at the Appellant Employer and had worked for The Employer for six (6) years. [R. p. 112 line 21 - p. 113, line 4]. He also testified that the Respondent worked for him up until the time she left the Employer. [R. p. 113, lines 5 - 13]. The Respondent told Mr. Cooper that she felt pain in her back. Mr. Cooper testified that he was familiar with this accident. He testified, "My knowledge of the accident is, is just what you said. I wasn't standing there when it happened. Martha came up to me, as best I remember, and told me that she was sliding the plastic sleeves back on the cloth tubes, and she pulled something and hurt her back, and she told me she would be okay." [R. p. 120, line 23 - p. 121, line 3].

3. **The Supervisor filled out an accident report.** Mr. Cooper filled out an accident report dated August 15, 2013, which stated in part, "Hurt lower back while sliding plastic sleeve on cloth tubes." [R. p. 133]. The report shows the Accident occurred on August 8, 2013. [R. p. 133]. Mr. Cooper testified that he filled out and signed the report. [R. p. 123, lines 3 – 16]. Mr.

Cooper also testified that he not only filled out the report, but to the best he could remember he sent her to see the company doctor. [R. p. 122, lines 5 – 7]. The Report shows on Page 2 that the physician was "Dr. Welborn." [R. p. 134]. He also testified that he likely called and notified his boss, David Byers, about the incident as that is the normal procedure. [R. p. 121, lines 10 – 16].

4. The Defendant Employer sent the Respondent to the doctor for this injury.

Mr. Cooper testified that he sent her to the company doctor. [R. p. 122, lines 5 - 7]. The medical records show that on August 14, 2013, Michael K. Welborn, M.D., saw the Respondent for her back and knees. The record states, "She has strained her back in the last few days . . . . ." [R. p. 207]. Dr. Welborn x-rayed the lumbar spine and diagnosed a low back strain. Dr. Welborn also signed a return to work form dated August 14, 2013 [R. p. 208], that states, "Strained back- while trying new job." He also diagnosed "low back strain" on the form and ordered follow-up on August 21, 2013. She returned to Dr. Welborn on August 21, 2013, again for her back and knees. His record states in part, "This was from straining her back when lifting." [R. p. 205]. The Return to Work note states, "Return to modified duty with the following restrictions; Light lifting (lifting 10 lbs maximum), Avoid stooping & bending, No repetitive activity with steps, no repetitive step climbing, could she have a different job?" [R. p. 206]. As she was also seen for her knees on this date, obviously some of this work note applies to the knees as well.

5. Dr. Welborn referred her to Steadman Hawkins at Greenville Hospital System.

On March 25, 2014, the Respondent saw Michelle Wilson, M.D., at Greenville Health

System, Steadman Hawkins Clinic of the Carolinas. The note states, "Patient presents today for low back and bilateral knee pain. The pain started when she was at work trying to move a roll and she noticed pain in her back." [R. p. 195]. The note goes on to discuss that she has had persistent pain, with the Respondent pointing to the lumbar spine as the site that was most painful. Dr. Wilson diagnosed low back pain and ordered physical therapy two to three times a week for four to six weeks. The Respondent testified that she did not receive the physical therapy ordered by Dr. Wilson because the Appellants refused to pay for it. [R. p. 76, lines 9 – 16].

May 19, 2014, Accident

1. **Respondent injured her back again when she hopped down from a weaving machine.** On May 19, 2014, the Respondent went up on a machine to fix it because the threads had broken. After correcting the issue on top of the machine, she hopped down from the weaving machine and felt pain to her back. [R. p. 62].

2. **Respondent reported the accident to her supervisor.** She testified that she told her supervisor, David Cooper. [R. p. 62, lines 4 - 11]. Mr. Cooper also testified about the May 19, 2014, accident as follows: "Okay, Martha came to me around 9:00 p.m. that night and told me she had, you know, climbed up on the machine, on the cloth side, stepped up on the cloth row; she cut out a mat up; she hopped back down to the step and re-injured her back. And she wanted to let me know she was fixing to go take a break. And I told Martha to go ahead and take her break. I made a phone call; talked with my boss." [R. p. 125, lines 7 – 14].

3. **Respondent's Supervisor filled out an accident report.** On May 20, 2014, Mr. Cooper filled out an accident report related to the May 2014 accident. The report is signed by Mr. Cooper, his boss, David Byers, as well as the Plant Manager. It states, "After cutting a mat up on loom 243 Martha hopped down from front side of loom to the step and said she injured her back again." [R. pp. 135-136]. Mr. Cooper testified that he did fill out and sign the report. [R. p. 123, lines 10 – 16; R. p. 124, lines 23 - 25].

4. **Respondent reported injury at her next visit with Dr. Wilson who she was already seeing for the first back injury.** Respondent had already been sent by the Appellants to Dr. Michelle Wilson at Steadman Hawkins for her knees and low back pain: at the next appointment on June 18, 2014, the Respondent told Dr. Wilson about this new injury. That note states, "She states she had another injury on May 19th where she fell while working on a loom at work, and she exacerbated her pain." [R. p. 185].

The note from the June 18, 2014, visit also shows that Dr. Michelle Wilson recommended an MRI of the Lumbar Spine. [R. p. 188]. The Respondent was also placed out of work per Dr. Wilson "until next appointment (after MRI)." [R. p. 178]. Laura Lee informed Dr. Wilson that the adjuster would not authorize the Lumbar MRI. [R. p. 183].

Interestingly, the Respondent's supervisor had no reason to disbelieve the respondent in spite of the position of the Appellants in this case. Mr. Cooper was asked whether he had any reason to disbelieve the Respondent and his testimony was as follows:

"Q: In either of these, the August 11 – let me make sure I saw the right date; August the 8th 2013 injury, or the May the 19th 2014 injury, in either one of those, did you have any reason to not believe Martha when she told you she had hurt herself?

A: No." [R. p. 125, lines 18 -23].

The evidence in this case is more than is required by the law to prove injury by accident in a workers' compensation case. The Appellants' argument that "[T]he defendants [Appellants] would assert that the Record is devoid of substantial evidence" [Brief of Appellants page 6] is baseless.

II. THE APPELLATE PANEL DID NOT ERR IN RULING AS A MATTER OF LAW AND FINDINGS OF FACT THAT THE RESPONDENT HAD TWO (2) INJURIES BY ACCIDENT, ON AUGUST 8, 2013, AND ON MAY 19, 2014.

The Single Commissioner and the Appellate Panel in its Full Affirmation made no error of law in this case. The only possible error of law that could be argued is that there is not substantial evidence to support the decision, which, as is already set out in Argument I, fails as there is more than the necessary "substantial" evidence in this case. Instead of reciting the evidence supporting the decision, which is also set out in the Statement of Facts, the Respondent would just make referenced to Argument I and the Statement of Facts.

III. THE FINDINGS OF FACT 21, 22, 23, 24, 27, 28, 29, AND 30 ARE NOT CONCLUSORY AND ARE SUPPORTED BY THE EVIDENCE.

The Appellants make a "conclusory" argument that the findings of fact of the Single Commissioner are "conclusory" and are not supported by the evidence. Yet, the Appellants do not

address each finding to tell this Court what is conclusory about each particular finding of fact. Furthermore, as has already been stated herein *supra*, the Order being appealed is that of the Appellate Panel of the Commission and that Order does not contain any such numbered findings of fact. Instead it contains Findings of Fact Numbered 1 – 13. Therefore, the Respondent will argue as to the findings of fact of the Appellate Panel, and as to those, the Respondent submits that they are not conclusory and are instead well supported by the evidence in this case.

The Appellants cite the cases of *Aristizabal v. I.J. Woodside-Division of Dan River, Inc.*, 268 S.C. 366, 234 S.E.2d 21 (1977) and *Moore v. S.C. Alcohol Beverage Control Commission*, 304 S.C. 356, 404 S.E.2d 714 (S.C. App. 1991) for supporting law in their argument. From the onset it should be pointed out that the *Moore* case was vacated by *Moore v. South Carolina Alcoholic Beverage Control Commission*, 308 S.C. 160, 417 S.E. 2d 555 (1992). The Appellants did not cite from the new *Moore* case.

S.C. Code Ann. § 1-23-350 states, "A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. 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. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record."

Perhaps the best reference for what the Supreme Court has required for "Findings of Fact" in an order of an administrative body can be found in the case of *Able Communications, Inc. v. SCPSC*,

290 S.C. 409, 351 S.E. 2d 151 (1986). In *Able*, the Court stated, "The findings of fact of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings. *Hill v. Jones*, 255 S.C. 219, 178 S.E. 2d 142 (1970). Implicit findings of fact are not sufficient. Where material facts are in dispute, the administrative body must make specific, express findings of fact. *Aristizabal v. Woodside-Division of Dan River*, 268 S.C. 266, 234 S.E.2d 21 (1977). No particular format is required. *Airco, Inc. v. Hollington* 269 S.C. 152, 236 S.E.2d 804 (1977). However a recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues." Id, at 411, 152

The Supreme Court reminded us of the requirements of *Able* and applied those requirements in a Workers' Compensation case in the matter of *Brayboy v. Clark Heating Co., Inc.,* 306 S.C. 56, 409 S.E.2d 767 (1991).

The findings of fact made by the Appellate Panel of the Workers' Compensation Commission must be sufficiently detailed to enable the reviewing court to determine whether the evidence supports the findings. *Canteen v. McLeod Regional Medical Center*, 400 S.C. 551, 735 S.E. 2d 246 (S.C. App. 2012).

The findings of Fact of the Appellate Panel are as follows:

1. In W.C.C. File #1321387 with an alleged date of accident of 08/08/13, the Claimant alleges that she suffered a work-related injury to her back arising out of and within the course and scope of her employment.

2. In W.C.C. File #1407915 with an alleged date of accident of 05/19/14, the Claimant alleges that she suffered a work-related injury to her back arising out of and within the course and scope of her employment.

3. On both occasions the Claimant reported the alleged back injuries in a timely manner. The record is clear and consistent as to her subject complaints and an injury by accident to her back.

4. The company sent the Claimant to their doctor for treatment. He then refers the Claimant to Dr. Wilson at Steadman Hawkins who is treating the Claimant. While the x-rays as to her back are negative, Dr. Wilson orders a MRI which the carrier would not authorize.

5. The Claimant was treating with authorized treating physicians for work-related injuries to her back.

6. The medical records are clearly treatment records. If Dr. Wilson did not believe the Claimant had suffered a back injury or injuries, she would not have taken the Claimant out of work pending the results of the MRI.

7. The first reports of injury as to the back claims are in the record. Mr. Cooper testified that the Claimant duly reported them and the treatment records are clear and consistent as are the Claimant's subjective complaints.

8. The release to return to work the Defendants cite in their APAs is from the Department of Surgery – Regional Urology. That release has nexus to a suspected kidney stone, not the issues with her back.

9. When the evidence is viewed as a whole, the Appellate Panel finds that the Claimant has suffered compensable work-related injury or injuries to her back on 08/08/13 and 05/19/14.

10. The Claimant is entitled to medical care and treatment for those injuries. The authorized treating physician is to be Dr. Michelle Wilson. The Claimant is entitled [sic] any and all treatment modalities prescribed or directed by Dr. Wilson to include imaging – specifically the MRI she has already ordered.

11. Given that Dr. Wilson has taken the Claimant out of work pending the MRI, the Claimant is entitled to TTD from 6/18/14 to the present and continuing.

12. The Claimant is not at MMI.

13. All other issues are held in abeyance.

(R. pp. 31-32)

Respondent would like to point out that Findings of Fact #8 was made due to a Return to Work Statement (R. p. 236). This was from the Department of Surgery Regional Urology, and had nothing to do with the back claims. Appellants argued, unsuccessfully, at the Commission that this was the reason for all of the back pain.

In the case at hand, the Commission provided pages of very specific evidence that supports the decision. With this abundance of evidence and underlying reasons, the Appeals Court is not left to speculate as to the Findings of Fact and Conclusions of Law. Instead, on appeal is a well supported decision of the Commission that sets out in detail the reasons for its findings.

The Respondent would submit that the Findings of Fact are more than sufficiently detailed to enable a reviewing court to determine that the Findings of Fact are supported and that the law has been correctly applied.

The Appellants are trying to put a burden on the Commission that does not exist. The Findings of Fact are well within the requirements of the law. *Aristizabal* is a case in which the issue

of notice was in dispute and the Commissioner did not make a specific finding on notice and therefore the case was remanded to the Full Commission for further remand to the Hearing Commissioner to make a finding on the issue of notice of the accident to the employer. In the case at hand, the Single Commissioner and then the Appellate Panel (Full Commission) made very specific findings of fact as to compensability and why.

IV. CONCLUSIONS OF LAW 2, 3, AND 5 ARE SUPPORTED BY THE SUBSTANTIAL EVIDENCE.

The three Conclusions of Law of the Appellate Panel being complained of are:

2) Pursuant to S.C. Code Ann. §42-1-160 (1976), the Claimant sustained a compensable injury by accident to her back on August 8, 2013, and on May 19, 2014, arising out of and during the course of her employment with the Defendant employer.

3) Pursuant to S.C. Code Ann. §42-15-60 (1976), the Defendants shall pay for the past causally-related medical treatment the Claimant has received for her back injuries, and they shall further provide additional causally-related medical care for her back injuries until the Claimant has reached MMI, with said treatment being with Michelle Wilson, M.D., or care directed by her.

5) Pursuant to S.C. Code Ann. §42-9-10 (1976) and §42-9-30 (1976) the Defendants shall pay unto the Claimant TTD benefits from June 18, 2014, and continuing until further order of the Commission.

As to Conclusion of Law #2: Having found that the Claimant did injury herself at work, did notify her supervisor, did receive treatment paid for by the company, and did have medical records showing complaints consistent with an injury at work, it was proper for the Commission to conclude

that by law she had sustained a compensable injury at work on the two subject dates. S.C. Code Ann. §42-1-160 (1976) is entitled: "Injury" and "personal injury" defined. The pertinent portion of the statute is Paragraph (A) which states in part, "'Injury' and 'personal injury' mean only injury by accident arising out of and in the course of employment . . ." This is the appropriate law under which to conclude that the Respondent injured herself at work. So the Commission not only properly states the conclusion, but it cites the specific law that is relevant. As was already set out under the Argument addressing the findings of fact, this Conclusion is well supported.

As to Conclusion of Law #3: Having found that the Respondent was injured at work and in need of medical care, the Commission properly concluded that she was entitled to causally-related medical care to her back. S.C. Code Ann. §42-15-60 (1976) is entitled, "Time period medical treatment and supplies furnished; refusal to accept treatment; settled claims; total and permanent disability." This Statute states in part, (A) The Employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required, for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty."

The medical care in this case was all authorized by and paid for by the Appellants. The authorized medical provider, Dr. Wilson, was of the medical opinion that an MRI of the back was needed and that the Respondent could not work until one was performed. The Commission properly set out in the body of the order and in the findings of fact sufficient evidence to support this conclusion. It also cited the proper statute that requires the Appellants to provide medical care to the

Respondent.

As to Conclusion of Law #5: Having found and concluded that the Respondent was injured at work and that the then-authorized treating physician had written her out of work pending an MRI, the Commission properly concluded that she was entitled to TTD for the time periods written out of work. The Commission properly cited §42-9-10 (1976) and §42-9-30 (1976) in that regard. §42-9-10 is entitled "Amount of compensation for total disability; what constitutes total disability. It states in part under Paragraph (A): "When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation rate equal to sixty-six and two-thirds percent of his average weekly wages . . ." One can then look at Regulation 67-502 found in Article 5 of the Workers' Compensation Regulations, which addresses Temporary Compensation to further understand the appropriateness of the Commission's ruling. Regulation 67-502(B) defines Disability as: "(1) Incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." It goes on to state (2) Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42-9-260."

V. THE HEARING COMMISSIONER DID NOT ERR IN ORDERING MEDICAL TREATMENT AND TTD BENEFITS FOR THE TWO (2) BACK CLAIMS.

Having properly found compensable injuries to the Respondent's back, the Commission properly awarded medical treatment and Temporary Total Disability (TTD) benefits.

As to the medical, §42-15-60 provides for medical treatment for an injured worker. It states in part, "A) The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required, for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty. In addition to it, the original artificial members as reasonably may be necessary must be provided by the employer. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown."

As to the Temporary Total Disability (TTD) benefits, the Appellant argues that the Respondent did not have a loss of earning capacity. It places on the Respondent, injured worker, a burden that does not exist in the law. The Appellants want this Court to find that an injured worker has to fund their own medical care to prove that their injuries are work-related. Specifically in this case, the Appellants want the Respondent to pay for an MRI that was ordered by the authorized treating physician before the claim became a "denied" claim.

The Respondent was written out of work by Dr. Wilson pending an MRI. At that point the Carrier in this case stopped paying for medical care. The Appellants argue the Respondent should have no loss of earnings capacity because she failed to get the MRI. The Appellants state in their brief, "In this instance, the work injury did not cause an incapacity for the claimant to earn wages, rather her failure to get an MRI is the cause." [Initial Brief of Appellants, page 9]. This argument is

incredulous and must fail as no law requires an injured worker to fund their own medical care. No law supports the Appellants' contention.

§ 42-1-120 defines states, "The term 'disability' means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." South Carolina Workers' Compensation Regulation 67-502 states,

"(B) Disability: (1) Incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment.

(2) Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42-9-260."

Regulation 67-503 entitled "Payment of Temporary Total and Temporary Partial Compensation," states in part in Section A. (1) "Temporary total or temporary partial compensation is incurred on the eighth calendar day of incapacity and from the first day of incapacity if the injury results in incapacity for more than fourteen calendar days. The seven and fourteen day periods need not be consecutive days."

The Appellant was written out of work by the then-authorized treating physician. The Appellant was written out for more than eight (8) days as the MRI has yet to be provided/done. There is no evidence in the file that either the Appellant is working or that the Appellant can work.

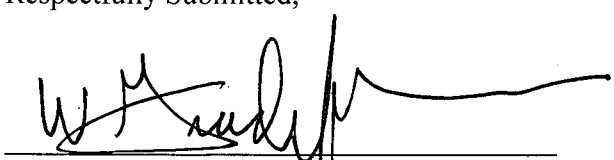
CONCLUSION

The Order of the Appellate Panel of the Workers' Compensation Commission was and is correct in its findings of fact and conclusions of law and should be affirmed in regards to these two (2) claims. The Appellants have brought an appeal in a case in which they were properly notified of two work accidents, made reports of same, provided the Respondent with medical care, and only stopped the medical care after the "company" doctor, the "authorized treating doctor" Michelle Wilson, M.D., ordered an MRI and placed the Respondent out of work pending the results.

As has already been pointed out, the Appellants did not provide this Court any "specifics" as to why they argued that the Findings of Fact of the Commission were "conclusory."

The Findings of Fact and Conclusions of Law are sufficient as written and are well supported by the evidence. This order leaves no need for speculation on the part of the reviewing court and should be affirmed in its entirety.

Respectfully Submitted,



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October 25, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
Susan S. Barden, Commissioner
Melody L. James, Commissioner
Aisha Taylor, Commissioner

RECEIVED
OCT 27 2016
SC Court of Appeals

Appellant Case No.: 2016-001339

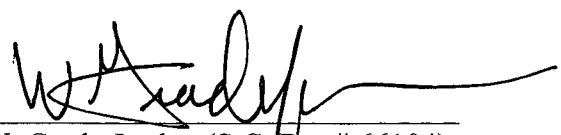
Martha Perez, Claimant, ...Respondent,

v.

Alice Manufacturing Company Inc., Employer, and Great American Alliance Insurance Company, Carrier ..... Appellants.

CERTIFICATE OF COUNSEL

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



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