

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE APPELLATE PANEL OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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W.C.C. File No.: 1318928  
Appellate Case No. 2016-002423

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**RECEIVED**

MAY 30 2017

**SC Court of Appeals**

James A. Ashford, Employee, Claimant.....Respondent/Appellant

v.

Prysmian Power Cables & Systems, USA, Employer, and  
Sentry Insurance Company, Carrier..... Appellants/Respondents.

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**APPELLANTS' INITIAL BRIEF OF APPELLANTS/RESPONDENTS**

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**TABLE OF CONTENTS**

Table of Authorities .....3

Statement of Issues .....4

Statement of the Case..... 5-6

Facts ..... 6-9

Standard of Review..... 9-10

Argument ..... 10-18

I. Whether the Commission denied Prysmian Power of its right to due process by (1) finding the alleged injury to Ashford’s psyche was not timely and not properly before the Commission, and (2) delaying the issuance of a Decision and Order by the Hearing Commissioner for more than one year after the filing of the Form 21 by Prysmian Power and more than ten months after the hearing. .... 11-16

II. Whether the Commission erred in Finding of Fact #4, in which it found Ashford "has a pending Form 50 that alleged injuries to his psyche, right lower extremity and right side which are not timely for the purposes of this hearing and are not properly before me" because this finding is not supported by substantial evidence as these issues were in fact properly and timely before the Commission. ....16-18

Conclusion ..... 18

## TABLE OF AUTHORITIES

### CASES

<i>Aristizabal v. I. J. Woodside-Div. of Dan River, Inc.</i> , 268 S.C. 366, 234 S.E.2d 21 (1977) .....	14, 17
<i>Canteen v. McLeod Reg'l Med. Ctr.</i> , 400 S.C. 551, 735 S.E.2d 246 (Ct. App. 2012).....	18-19
<i>Conner v. City of Forest Acres</i> , 363 S.C. 460, 611 S.E.2d 905 (2005) .....	11
<i>Davis v. Parkview Apartments</i> , 409 S.C. 266, 762 S.E.2d 535 (2014).....	17
<i>Ellis v. Spartan Mills</i> , 276 S.C. 216, 277 S.E.2d 590 (1981) .....	11
<i>Etheredge v. Monsanto Co.</i> , 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002).....	11
<i>Ford v. Allied Chem. Co.</i> , 252 S.C. 561, 167 S.E.2d 564 (1969).....	11
<i>Frame v. Resort Servs. Inc.</i> , 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004).....	18
<i>Gray v. Club Grp., Ltd.</i> , 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000) .....	11
<i>Howell v. Pac. Columbia Mills</i> , 291 S.C. 469, 354 S.E.2d 384 (1987).....	10,17
<i>Hunter v. Patrick Constr. Co.</i> , 289 S.C. 46, 344 S.E.2d 613 (1986).....	10
<i>Lark v. Bi-Lo, Inc.</i> , 276 S.C. 130, 276 S.E.2d 304 (1981).....	10
<i>Leventis v. S.C. Dep't of Health &amp; Envtl. Control</i> , 340 S.C. 118, 530 S.E.2d 643 (Ct. App. 2000) .....	10
<i>Nettles v. Spartanburg Sch. Dist. #7</i> , 341 S.C. 580, 535 S.E.2d 146 (Ct. App. 2000) .....	14
<i>Nelson v. Taylor</i> , 347 S.C. 210, 214, 553 S.E.2d 488, 490 (2001).....	11
<i>Nicholson v. S.C. Dep't of Soc. Servs.</i> , 411 S.C. 381, 384, 769 S.E.2d 1, 2-3 (2015) .....	10
<i>Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n</i> , 282 S.C. 430, 319 S.E.2d 695 (1984).....	16
<i>Parsons v. Georgetown Steel</i> , 318 S.C. 63, 456 S.E.2d 366 (1995).....	14,18
<i>Sharpe v. Case Produce, Inc.</i> , 336 S.C. 154, 519 S.E.2d 102 (1999) .....	11
<i>Singleton v. Young Lumber Co.</i> , 236 S.C. 454, 114 S.E.2d 837 (1960).....	15
<i>Smith v. S.C. Dep't. of Mental Health</i> , 329 S.C. 485, 494 S.E.2d 630 (Ct. App. 1997).....	12

*Swilling v. Pride Masonry of Gaffney*, 401 S.C. 178, 736 S.E.2d 672 (Ct. App. 2012).....15

*Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d 913 (1996).....10

**STATUTES**

S.C. Const. art. 1, §22 .....12

S.C. Code Ann. § 1-23-350 (2017).....18

S.C. Code Ann. § 1-23-380 (2017).....11-12

S.C. Code Ann. § 42-17-40 (2017).....16

**OTHER AUTHORITIES**

South Carolina Regulation 67-1802 (2017).....15

## STATEMENT OF ISSUES ON APPEAL<sup>1</sup>

- I. Whether the Commission denied Prysmian Power of its right to due process by (1) finding the alleged injury to Ashford's psyche was not timely and not properly before the Commission, and (2) delaying the issuance of a Decision and Order by the Hearing Commissioner for more than one year after the filing of the Form 21 by Prysmian Power and more than ten months after the hearing.
- II. Whether the Commission erred in Finding of Fact #4, in which it found Ashford "has a pending Form 50 that alleged injuries to his psyche, right lower extremity and right side which are not timely for the purposes of this hearing and are not properly before me" because this finding is not supported by substantial evidence as these issues were in fact properly and timely before the Commission.

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<sup>1</sup> Prysmian Power submitted a Notice of Appeal to this Court outlining several issues on appeal. Since the filing of the Notice of Appeal, the parties have settled all issues except the issues related to the alleged psychological condition. Specifically, Prysmian Power will address Issues number One, Two, and Eleven outlined on the Notice of Appeal.

## STATEMENT OF THE CASE

This is an appeal by Prysmian Power Cables & Systems USA and Sentry Insurance Company (Prysmian Power) from the Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission (the Appellate Panel) filed on November 1, 2016.

This claim was before the South Carolina Workers' Compensation Commission (the Commission) pursuant to the Form 50 that the claimant, James A. Ashford (Ashford), filed on February 16, 2015, and the Form 21 that Prysmian Power filed on April 30, 2015. Commissioner R. Michael Campbell, II (the Hearing Commissioner) proceeded over a June 23, 2015 hearing. At the hearing, Prysmian Power objected to the admissibility of reports and opinions of Todd Hanson, licensed marriage and family therapist (LMFT), that Ashford submitted in support of the compensability of an alleged psychological condition. The Hearing Commissioner overruled the objection but agreed to leave the record open to allow Prysmian Power an opportunity to depose Hanson. Prysmian Power deposed Hanson on July 27, 2015. The deposition transcript was subsequently submitted to the Hearing Commissioner for consideration and included as part of the record.

In a Decision and Order filed on May 4, 2016, the Hearing Commissioner found among other things no longer the subject of this appeal, the Form 50, in which Ashford alleged a psychological injury, was "not timely for the purposes of this Hearing and [was] not properly before [him]." (Hearing Commissioner Or. p. 7). Prysmian Power appealed to the Appellate Panel, requesting the Appellate Panel to reverse the Decision and Order of the Hearing Commissioner based upon several issues to include the following: (1) the Hearing Commissioner erred in failing to rule on the compensability of the alleged psychological injury; and (2) the greater weight of the evidence in the record supported finding the allegedly psychological injury

was not compensable. The Appellate Panel reversed portions of the Hearing Commissioner's order, finding Prysmian was entitled to terminate temporary benefits and was entitled to credit for benefits paid. With the exception of the correction of minor and non-substantive clerical errors, the Appellate Panel affirmed the remainder of the Decision and Order. Accordingly, the Appellate Panel did not specifically address the psychological issue in its order. This appeal followed.

### **STATEMENT OF FACTS**

On February 16, 2015, Ashford filed a Form 50, "Employee's Notice of Claim and/or Request for Hearing," requesting a hearing and alleging he sustained an injury to his right upper extremity, right lower extremity, right side, and "resultant psychological" while employed by Prysmian Power. (Ashford's Form 50). On March 12, 2015, Prysmian Power filed a Form 51, "Employer's Answer to Request for Hearing," admitting Ashford sustained a compensable injury to his right wrist but denying any injuries to the right lower extremity, right side, or psyche. (Prysmian Power's Form 51).

On April 30, 2015, Prysmian Power filed a Form 21, "Employer's Request for Hearing," seeking to stop payment of compensation, determine if compensation was due, and request credit for overpayment or temporary compensation.<sup>2</sup> (Prysmian Power's Form 21). Subsequently, the Commission notified the parties that a hearing was set for June 23, 2015, "To determine if employer/carrier may stop payment, and if so, to determine if claimant is entitled to any further benefits. Carrier also request (sic) credit for temporary total benefits paid in excess of award." (Notice of Hearing).

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<sup>2</sup> Prysmian Power originally filed the Form 21 on April 8, 2015; however, by request of the Commission, Prysmian Power refiled the Form 21 on April 30, 2015, to include a Form 15, "Temporary Compensation Report."

On June 8, 2015, Ashford filed a Form 58, "Pre-Hearing Brief" for the June 23, 2015 hearing, stating the facts in controversy were as follows: "(1) *Whether [Ashford] needs additional medical/psychological care?*; (2) *Whether [Ashford] is at MMI?*; (3) *If [Ashford] is at MMI, whether [Ashford] is permanently and totally disabled?;* and] (4) *Whether [Prysmian Power] may stop TTD benefits?"* (Ashford's Form 58). (emphasis added). On June 16, 2015, Ashford submitted a "2<sup>nd</sup> Supplemental APA Submissions," supplementing his Pre-Hearing Brief to include evidence from Todd Hanson, a LMFT with Post Trauma Resources. (Ashford's 2nd Supplemental APA pp. 117-123). Specifically, the evidence included therapy reports from Hanson and a Medical Questionnaire signed by Hanson, stating Ashford had a psychology injury and the work-related injury induced the resultant psychological injury. *Id.* Further, Hanson stated Ashford had reached MMI as to his resultant psychological injury or condition emanating from his work-related physical injury. (Ashford's 2nd Supplemental APA pp. 117). Hanson stated he drew his conclusions to a "reasonable degree of medical certainty." (Ashford's 2<sup>nd</sup> Supplemental APA pp. 117-123).

At the start of the June 23, 2015 hearing, Prysmian objected to evidence from Hanson, arguing the reports and questionnaire were untimely. (H.T. 3-4). Further, Prysmian Power argued Hanson was not a medical expert, but was instead a marriage counselor; therefore, Hanson could not provide an expert opinion on this issue. (H.T. 4). Ashford argued he delivered the reports and questionnaire to Prysmian Power as soon as he could and his only other alternative was to subpoena the person to the hearing, which he typically did not do because he did not "think that's very good as a practitioner." (H.T. 4). Further, he argued there was no prejudice to Prysmian Power in including the evidence. (H.T. 4-5).

The Hearing Commissioner allowed the report into evidence, stating the following:

And to the point of letting it in as discussed in our pre-hearing conference, I'm going to allow it in. And I know, [counsel for Prysmian Power], you had requested a determination on whether the marriage counselor was qualified to give the opinions that they have and *I will address that in my Order.*

(H.T. 5). (emphasis added). The Hearing Commissioner also allowed the record to stay open for counsel for Prysmian Power to depose Hanson. (H.T. 5). When Prysmian Power asked whether the Hearing Commissioner intended to leave the record open for the deposition, the Hearing Commissioner stated, "Yes. I did not say that and I'm glad you brought it up. But I will leave the record open so that you can depose the doctor." (H.T. 5).

Thereafter, in placing his position on the record, counsel for Prysmian Power argued Prysmian Power admitted the wrist injury but denied the alleged injuries to the right lower extremity, right side injury, and psychological injury. (H.T. 6). Prysmian Power asked the Hearing Commissioner to deny the compensability of the right lower extremity, the right side and the psychological overlay. (H.T. 7). After Ashford argued a determination of permanency was premature because the case was subject mandatory mediation, Prysmian Power noted that if the Hearing Commission found this was a claim involving only the right wrist injury, i.e., a single member injury, mandatory mediation would not be required. (H.T. 7-8).

Following the hearing, Prysmian Power immediately scheduled the deposition of Hanson for the first date available to all the parties. Further, on the day following the hearing, June 24, 2015, Ashford moved for adjournment of Prysmian Power's Form 21 hearing on June 23, 2015, arguing the hearing should be canceled so the parties could attempt mandatory mediation. The Hearing Commissioner effectively denied the motion as the hearing proceeded. On August 6, 2015, Prysmian Power filed the original deposition transcript of Hanson taken on July 27, 2015.

On May 26, 2016—over year after the requests for hearings were filed—the Hearing Commissioner filed a Decision and Order on May 26, 2016. (Hearing Commissioner Or. 1). The order states the purpose of the hearing was “To determine the issues set forth on the Forms 21 of [Prysmian Power] and Forms 50 and 51 of the parties.” (Hearing Commissioner Or. 1). The Hearing Commissioner found the psychological issue was not properly before him and failed to rule on the issue. Prysmian Power appealed to the Appellate Panel, which affirmed the finding without specifically addressing the issue. This appeal followed.

### **STANDARD OF REVIEW**

The Administrative Procedures Act (“APA”) governs this Court's review of the Full Commission's decisions. *See Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). “The claimant has the burden of proving facts that will bring the injury within the workers’ compensation law, and such award must not be based on surmise, conjecture or speculation.” *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 384, 769 S.E.2d 1, 2-3 (2015) (quoting *Crisp v. South Co.*, 401 S.C. 627, 641, 738 S.E.2d 835, 842 (2013)). “A decision of the Worker's Compensation Commission will not be overturned by a reviewing court unless it is clearly unsupported by substantial evidence in the record.” *Howell v. Pac. Columbia Mills*, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987). Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the Full Commission reached. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d 913 (1996).

In workers' compensation cases, the Full Commission is the ultimate fact finder. *Hunter v. Patrick Constr. Co.*, 289 S.C. 46, 344 S.E.2d 613 (1986). The final determination of witness credibility and the weight to be accorded evidence is reserved exclusively to the Full

Commission. *Ford v. Allied Chem. Co.*, 252 S.C. 561, 167 S.E.2d 564 (1969). It is not the task of an appellate court to weigh the evidence as found by the Full Commission. *Ellis v. Spartan Mills*, 276 S.C. 216, 277 S.E.2d 590 (1981). Further, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. *Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 519 S.E.2d 102 (1999). Where the record includes conflicts in the evidence over a factual issue, the findings of the Full Commission are conclusive. *Etheredge v. Monsanto Co.*, 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002).

However, an appellate court may reverse or modify a decision of the Full Commission “if the findings and conclusions of the [Full Commission] are affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” *Gray v. Club Grp., Ltd.*, 339 S.C. 173, 182, 528 S.E.2d 435, 440 (Ct. App. 2000); *see also* S.C. Code Ann. §1-23-380(5) (2017). “An abuse of discretion occurs if the Commission's findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law.” *Conner v. City of Forest Acres*, 363 S.C. 460, 467, 611 S.E.2d 905, 908 (2005); *Nelson v. Taylor*, 347 S.C. 210, 214, 553 S.E.2d 488, 490 (2001).

## ARGUMENTS

- I. **The Commission denied Prysman Power of its right to due process by (1) finding the alleged injury to Ashford’s psyche was not timely and not properly before the Commission, and (2) delaying the issuance of a Decision and Order by the Hearing Commissioner for more than one year after the filing of the Form 21 by Prysman Power and more than ten months after the hearing.<sup>3</sup>**

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<sup>3</sup> Prysman Power has combined Issues Two and Eleven outlined in its Notice of Appeal.

It is fundamental in South Carolina that administrative agencies are required to meet minimum standards of due process. *Smith v. S.C. Dep't. of Mental Health*, 329 S.C. 485, 494 S.E.2d 630 (Ct. App. 1997) (citing S.C. Const. art. 1, §3; *Stono River Envtl. Prot. Ass'n v. S.C. Dep't. of Health & Envtl. Control*, 305 S.C. 90, 406 S.E.2d 340 (1991)). It is also fundamental that “[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice or an opportunity to be heard.” S.C. Const. art. 1, §22. Finally, the Administrative Procedures Act (APA) provides “[a] court may reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are: . . . characterized by abuse of discretion or clearly unwarranted exercise of discretion.” S.C. Code Ann. § 1-23-380 (2017). Here, the decision and delay in the decision constituted not only an abuse of discretion by the Hearing Commissioner but a violation of the right of Prysmian Power to have the issue, properly raised before the Hearing Commissioner, adjudicated as to the merits of the allegation.

**A. The Commission violated Prysmian Power’s right to due process.**

As previously noted, Ashford filed a Form 50 on February 10, 2015, requesting a Hearing to determine the compensability of alleged injuries to his right upper extremity, right lower extremity, right side and *psyche*, and requesting additional medical treatment for each of those injuries. Prysmian Power filed a Form 51 on March 12, 2015, admitting the compensability of the right wrist injury, but denying all further allegations, including Ashford’s entitlement to additional medical treatment for any of his alleged psychology injury. On April 30, 2015, Prysmian Power filed a Form 21. A Hearing was scheduled on June 23, 2015 and importantly, the Order of the Hearing Commissioner notes the purpose of the scheduled Hearing was to

“determine the issues set forth on the Forms 21 of [Prysmian Power] and Forms 50 and 51 of the parties.” (Hearing Commissioner Or. p. 1). On June 8, 2015, Ashford filed his Form 58 Pre-Hearing Brief, alleging injuries to the same body parts identified on the Form 50. The first issue raised by Ashford on the Form 58 was *whether Ashford was entitled to additional medical or psychological care.* (Ashford’s APA, p. 1).

It is commonplace and procedurally appropriate for a claimant, in response to a Form 21 hearing request, to request the adjudication of the compensability of injuries other than those admitted by the defendant(s). In fact, failing to do so could be deemed a concession of those injuries as compensable. Significantly, not only did Ashford request a determination as to the compensability of the alleged psychological injury, he also submitted purported expert evidence to support the allegation. Specifically, Ashford submitted a Medical Questionnaire and numerous reports from Todd Hanson, a LMFT. (Ashford’s APA, pp. 117-123). Over Prysmian Power’s objections to the submission of the report, the Hearing Commissioner ruled as follows: “I’m going to allow [Todd Hanson’s records] in. And I know, [counsel for Prysmian Power], you had requested a determination on whether the marriage counselor was qualified to give the opinions that they have and *I will address that in my Order.*” (H.T., p. 5). (emphasis added). The Hearing Commissioner then agreed to leave the record open to allow Prysmian Power the opportunity to depose Todd Hanson. The hearing proceeded as scheduled and the Hearing Commissioner allowed Ashford to provide specific testimony regarding his alleged psychological injury. (H.T. 24-25, 48-53). Further, counsel for Ashford asked Ashford, “So do you want Commissioner Campbell to order that you get some psychological treatment as well, based on this accident?” and Ashford responded, “Yes.” (H.T., p. 25).

Based on the foregoing, the record reveals the psychological issue was properly before the Hearing Commissioner and the Hearing Commissioner should have ruled on the issue. *See Aristizabal v. I. J. Woodside-Div. of Dan River, Inc.*, 268 S.C. 366, 370-71, 234 S.E.2d 21, 23 (1977) (“If a material fact is contested, the Hearing Commissioner must make a specific, express finding on it.”). Furthermore, at no point, did either counsel for Ashford request or the Hearing Commissioner indicate or rule that the issue of Ashford’s alleged psychological injury was “not timely” or “not properly before him.” There is no procedural, statutory, or regulatory basis for such a ruling by the Hearing Commissioner. Instead, South Carolina is well settled that the Commission must make specific, express findings on contested material facts brought before it, which are sufficiently detailed to allow an appellate court to consider whether the findings are supported by the evidence and whether the law has been properly applied. *Parsons v. Georgetown Steel*, 318 S.C. 63, 66, 456 S.E.2d 366, 368 (1995). Importantly, failure to do so requires remand to the Commission for further findings. *Nettles v. Spartanburg Sch. Dist. #7*, 341 S.C. 580, 591, 535 S.E.2d 146, 151 (Ct. App. 2000).

Moreover, the Hearing Commissioner specifically stated he would address the argument regarding the marriage counselor’s qualifications as an expert in the Order but he failed to address it in the order. By contrast, the ruling by the Hearing Commissioner was contrary to all the arguments presented and ruled upon during the hearing. It is inconceivable for the Hearing Commissioner to (1) overrule an objection regarding the admissibility of evidence, (2) take testimony on the issue, and (3) leave the record open to secure additional deposition testimony on the issue if the issue cannot be adjudicated. The issue was obviously before the Hearing Commissioner and he must have deemed the evidence to relevant as he accepted testimony on the issue. Therefore, the Hearing Commissioner’s finding that the issue was not properly before

him was an abuse of discretion and violated the due process rights of Prysmian Power as the finding was wholly unsupported by the evidence. *See Swilling v. Pride Masonry of Gaffney*, 401 S.C. 178, 190, 736 S.E.2d 672, 678 (Ct. App. 2012) (“An abuse of discretion occurs if the Commission's findings are wholly unsupported by the evidence . . . .”); *Leventis v. S.C. Dep't of Health & Envtl. Control*, 340 S.C. 118, 131, 530 S.E.2d 643, 650 (Ct. App. 2000) (“Due process is flexible and calls for such procedural protections as the particular situation demands.”).

Contrary to Ashford’s arguments, the Hearing Commissioner ruling on this issue would not have violated South Carolina Regulation 67-1802. Regulation 67-1802 mandates mediation in specific circumstances, one of which is when a claimant contends he or she is permanently and totally disabled. Here, as correctly noted by Prysmian Power during the hearing, if the Hearing Commissioner found Ashford did not suffer a psychological injury and the only injury was the admitted wrist injury, this would not be a case potentially involving permanent and total disability. Therefore, it would not be subject to mandatory mediation. *See Singleton v. Young Lumber Co.*, 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960) (“The finding of the Commission in this case was that ‘It is only the leg which makes up the claimant's present disabling conditions.’ Therefore, the injury to the respondent is confined to a scheduled member of the body. Where the injury is confined to the scheduled member, and there is no impairment of any other part of the body because of such injury, the employee is limited to the scheduled compensation, even though other considerations such as age, lack of training, or other conditions peculiar to the individual, effect a total or partial industrial incapacity. To obtain compensation in addition to that scheduled for the injured member, claimant must show that some other part of his body is affected.”).

**B. Prysmian Power suffered prejudice as a result of the due process violation.**

Furthermore, Prysmian Power was significantly prejudiced as a result of this ruling. *See Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984) (“[P]roof of a denial of due process in an administrative proceeding requires a showing of substantial prejudice.”). The Hearing Commissioner overruling the objection and allowance of the reports and evidence from Hanson required Prysmian Power to spend additional litigation expenses to expeditiously prepare for and take the deposition of Hanson to defend this claim. Additionally, the consequence of the Hearing Commissioner failing to rule on the issue has resulted in two separate legal actions involving the same issue—whether Ashford sustained a compensable psychological injury and was entitled to psychological treatment—and could potentially lead to two different results.

Prysmian Power was also prejudiced by the significant delay in the issuance of the Order. *See* S.C. Code Ann. §42-17-40 (2017) (providing that following a contested hearing, “the award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue, must be filed with the record of the proceedings and a copy of the award must *immediately* be sent to the parties in dispute” (emphasis added)). The Hearing Commissioner indicated it would address the issue in its Order. (H.T. 5). Because the Commissioner failed to issue the Order for over a year and subsequently failed to address the issue in the Order, Prysmian Power suffered significant legal expenses and is now subjected to the relitigation of this issue. During that year, Prysmian Power continued to incur medical expenses, legal fees, deposition costs, and payment of benefits to Ashford. Had Prysmian Power known the Commissioner did not intend to rule on the issue, Prysmian Power would have pursued other legal strategies and potentially decided against increasing the legal costs to defend this claim.

Accordingly, this decision of the Hearing Commissioner constitutes an unwarranted abuse of discretion. *See Davis v. Parkview Apartments*, 409 S.C. 266, 282, 762 S.E.2d 535, 543 (2014) (“An ‘abuse of discretion’ may be found by this Court where the appellant shows that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and, therefore, amounted to an error of law.”). Prysmian Power requests this Court to reverse the decision of the Appellate Panel and remand the case to the Commission for a ruling the merits of the alleged psychological injury. *See Aristizabal*, 268 S.C. at 371, 234 S.E.2d at 23 (remanding the case to the Full Commission for further remand to the single hearing commissioner to make a finding on a contested issue where the single hearing commissioner failed to rule on an issue).

**II. The Commission erred in Finding of Fact #4, in which it found Ashford "has a pending Form 50 that alleged injuries to his psyche, right lower extremity and right side which are not timely for the purposes of this hearing and are not properly before me" because this finding is not supported by substantial evidence as these issues were in fact properly and timely before the Commission.**

The Hearing Commissioner’s finding that the issue was not properly before him was not supported by substantial evidence. *See Howell v. Pac. Columbia Mills*, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987) (“A decision of the Worker's Compensation Commission will not be overturned by a reviewing court unless it is clearly unsupported by substantial evidence in the record.”). As stated in part I of this brief, the record demonstrates the issue was properly and timely before the Hearing Commissioner. As noted in the Hearing Commissioner’s final order, in the Pre-Hearing briefs and during the hearing, Ashford argued he suffered from a psychology injury and Prysmian Power denied the injury. Ashford stated the first issue in controversy was whether Ashford needs additional psychological care. Ashford sought to prove his alleged

psychological injury by including evidence from a marriage and family therapist and arguing there was no prejudice to Prysmian Power by including the evidence. (H.T. 4-5).

Further, Prysmian Power objected to the admission of Ashford submission of records from Todd Hanson, LMFT, which addressed an alleged psychological injury. Not only did the Hearing Commissioner overrule the objection, the Commissioner left the record open for Prysmian Power to take the deposition of Hanson. The Hearing Commissioner then accepted the deposition transcript of Hanson's deposition and included it as part of the record. Consequently, the alleged psychological injury was clearly an issue properly before the Hearing Commissioner and there is no substantial evidence to support it was not.

Moreover, the Hearing Commissioner erred as a matter of law in finding the psychological issue was not properly before him and failing to rule on the issue because he failed to include any basis for his factual finding that the psychological issue was not properly before him. South Carolina law requires findings of fact to be sufficiently detailed to enable the reviewing court to determine whether evidence supports the findings. *Frame v. Resort Servs. Inc.*, 357 S.C. 520, 531, 593 S.E.2d 491, 497 (Ct. App. 2004); *see also Parsons v. Georgetown Steel*, 318 S.C. 63, 66, 456 S.E.2d 366, 368 (1995) ("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."). Further, pursuant to Section 1-23-350 of the South Carolina Code (2017),

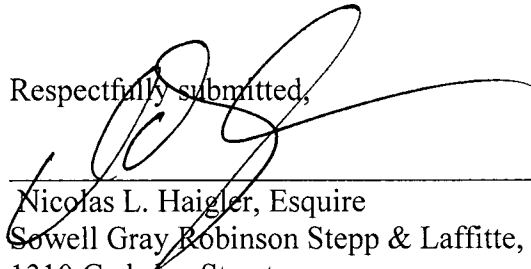
A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

*See also Canteen v. McLeod Reg'l Med. Ctr.*, 400 S.C. 551, 559, 735 S.E.2d 246, 250 (Ct. App. 2012) (“[T]he Appellate Panel failed to detail any of the evidence presented to the Commission. The Appellate Panel's findings simply indicate it rejected Canteen's brain injury claim because no evidence supported a finding that she suffered any brain damage. The record, however, contains conflicting evidence on this issue. In light of the various facts and issues presented by this case, the Appellate Panel's findings are insufficient to permit this court to ascertain whether evidence supported the Appellate Panel's findings and whether the law was correctly applied.”). The Hearing Commissioner failed to give any explanation or reasoning for its finding and conclusion.

### **CONCLUSION**

Prysmian Power respectfully requests this Court to reverse the decision of the Appellate Panel and remand the case to the Commission for a ruling the merits of the alleged psychological injury.

Respectfully submitted,



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Nicolas L. Haigler, Esquire  
Sowell Gray Robinson Stepp & Laffitte, L.L.C  
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Columbia, South Carolina 29201  
(803) 929-1400

APPELLANTS/RESPONDENTS

May 30, 2017

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM THE APPELLATE PANEL OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

---

RECEIVED

W.C.C. File No.: 1318928  
Appellate Case No. 2016-002423

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MAY 30 2017  
SC Court of Appeals

James A. Ashford, Employee, Claimant ..... Respondent/Appellant

v.

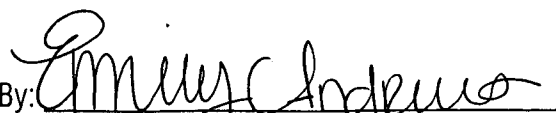
Prysmian Power Cables & Systems, USA, Employer, and  
Sentry Insurance Company, Carrier ..... Appellants/Respondents.

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**PROOF OF SERVICE**

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I certify that I have served the Appellants' Initial Brief on James Ashford by depositing a copy of it in the United States Mail, postage prepaid, on May 30, 2017, addressed to his attorney of record, David N. Truitt, Esquire, 925 Calhoun Street, Columbia SC 29201 and Honorable Jenny Abbott Kitchings, Judicial Director, South Carolina Court of Appeals, 1015 Sumter Street, Columbia, SC 29201 (via Hand-delivery on May 30, 2017).

By: 

Emily S. Andrews  
Sowell Gray Gray Stepp & Laffitte, LLC  
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**SOWELL GRAY  
ROBINSON**

Litigation + Business

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May 30, 2017

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

**RECEIVED**

MAY 30 2017

SC Court of Appeals

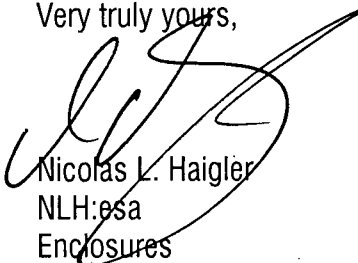
RE: James A. Ashford v. Prysmian Power Cables  
WCC File No.: 1318928  
Appellate Case No.: 2016-002423  
Date of Accident: 10/30/13  
Claim No.: 55C098612  
Our File No.: 5431/8392

Dear Ms. Kitchings:

Please find enclosed herewith the original and one (1) copy of the Appellants' Initial Brief and an original and one (1) copy of the Designation of Matter to be Included in the Record on Appeal in the above-referenced matter. We would appreciate your filing the original Brief and Designation of Matter and returning a clocked-in copy of the same to us via our courier.

By copy of this letter and aforementioned documents to the Respondent's attorney, we are serving him with a copy of the Appellants' Initial Brief and Designation of Matter.

Very truly yours,



Nicolas L. Haigler  
NLH:esa  
Enclosures

cc: David N. Truitt, Esquire (via U.S. Mail)  
Ms. Dietra Garland (via e-mail)  
Ms. Christina Trainor (via e-mail)  
Mr. Terry Cummings (via e-mail)  
Ms. Shafia Sarwar (via e-mail)  
Ms. Dianne Wells (via e-mail)  
Ms. Melissa Manwaring (via e-mail)