THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Melody L. James, Commissioner
Mike Campbell, Commissioner
Avery B. Wilkerson, Jr., Commissioner

W.C.C. FILE NO.: 1215107

APPELLATE CASE NO.: 2016-002416

Randy Faulkenberry, Employee, Claimant .....RESPONDENT.

v.

Conbraco Industries, Inc., Employer, and Great American Alliance Insurance Company, Carrier, Appellants .....APPELLANTS.

INITIAL BRIEF OF RESPONDENT

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1) Did the South Carolina Workers' Compensation Commission (Appellate Panel) correctly find Mr. Faulkenberry sustained a compensable back injury within the meaning of S.C. Code Ann. Section 42-1-160 (2015) while performing his job duties for Conbraco Industries, Inc. on June 19, 2012?

2) Did the South Carolina Workers' Compensation Commission (Appellate Panel) properly exercise the discretion afforded by S.C. Code Ann. Section 42-15-60 (2015) in determining: (a) Appellants' attempted designation of a neurosurgeon as Mr. Faulkenberry's treating physician was inconsistent with his needs for non-operative care; and (b) the current circumstances established "good cause" per this statute to designate Dr. J. Kelby Hutcheson as Mr. Faulkenberry's treating physician?

3) Does the South Carolina Workers' Compensation Commission's (Appellate Panel's) November 1, 2016 order fully comply with the requirements of S.C. Code Ann. Section 42-17-40 (2015) and S.C. Code Ann. Section 1-23-350 (2005)?

STATEMENT OF THE CASE

This is an appeal from the November 1, 2016 Order of the South Carolina Workers' Compensation Commission (Appellate Panel) which determined: (a) Respondent, Randy Faulkenberry, had sustained a compensable back injury on June 19, 2012 while performing his job duties for Appellant, Conbraco Industries, Inc.; (b) he has not yet reached maximum medical improvement and requires further treatment for the consequences of this injury in accordance with the recommendations of several evaluating physicians; (c) the current circumstances established "good cause" per Section 42-15-60 to designate Dr. J. Kelby Hutcheson as Mr. Faulkenberry's authorized treater for the purposes of this claim; (d) Conbraco Industries, Inc. and co-Appellant, Great American Insurance Company, Inc. were obliged to satisfy the causally related medical expenses incurred during the period they had denied liability for Mr. Faulkenberry's injury; and (e) he was entitled to receive continued/ongoing temporary total disability compensation effective May 6, 2015.

Essentially, Appellants contend the Commission/Appellate Panel erroneously: (a) found Mr. Faulkenberry had sustained a compensable back injury on June 19, 2012, despite his contemporaneous report of a fall, consistent description of essential elements of this trauma and repeated references to symptoms that three medical specialists have causally related to the consequences of this documented accident; (b) designated Dr. Hutcheson as Mr. Faulkenberry's authorized treater, notwithstanding their consistent denial of liability for medical care, as well as their effort to circumvent a concomitant ruling recognizing his need for non-operative treatment by attempting to direct him for further surgical assessment; and (c) transmitted its rulings through

a "defective" order, maintaining that neither the exhaustive factual findings nor the ample legal conclusions contained in its order satisfied applicable statutory standards.

However, an analysis of the evidence of record, in light of the controlling legal authorities, reveals: (a) the Commission/Appellate Panel correctly found Mr. Faulkenberry had experienced a compensable back injury on June 19, 2012; (b) its designation of Dr. Hutcheson as Mr. Faulkenberry's treating physician was clearly appropriate under the present circumstances; (c) the content of the November 1, 2016 order satisfies all applicable criteria; and (d) the Commission's/Appellate Panel's order should be affirmed in its entirety.

On June 19, 2012, Mr. Faulkenberry sustained a compensable back injury while in the process of cleaning up a coolant spill in the water meter department located on the floor of Conbraco Industries, Inc.'s Chesterfield County, South Carolina facility. Specifically, he: (a) was informed of a coolant spill in this department by his supervisor, who instructed him "to get it cleaned up" (See, Record on Appeal, p. __); (b) then proceeded to the site of the spill, which was located in an area of the plant he referred to as "the floor" (See, Record on Appeal, p. __); (c) discovered this "coolant was everywhere, all out in the aisles, under the machines . . . [and] inside . . . a caged-in area around the machine" (See, Record on Appeal, p.__); and (d) began "sucking . . . up" the coolant with a "shop-vac" from a standing position (See, Record on Appeal, pp. __).

As some of the coolant had flowed to an inaccessible portion of the floor ("a caged-in area around the machine"; "inside the cage that's around the motors and stuff on the machine"), he "couldn't reach it . . . just standing on the ground" (See, Record on Appeal, pp. __). In view of this fact, Mr. Faulkenberry determined "the only logical way . . . to get it up was . . . [to take

his] foot and set it up on the side of the machine, and pull . . . [him]self up there so [he] . . . could lean over and get down in there and get it out with the wand . . . ." (See, Record on Appeal, p. __). After placing his right foot on the side of the machine and using a nearby pipe to "pull . . . myself up . . . so I could get my body and my wand up to reach over, . . . [this] foot . . . [, which had previously] been in coolant[,] . . . shot out from under" him. (See, Record on Appeal, pp. __). Mr. Faulkenberry, who was positioned approximately four feet above the plant floor surface at the time of this slip, then fell, initially straddling a floor fan "between [his] . . . legs [making] the fan shoot out from under [him] . . . , causing [his] . . . butt to hit the ground, and the back of [his] . . . head . . . [to strike] against the machine." (See, Record on Appeal, pp. __).

While this fall gave rise to feelings of "embarrassment" and "shock", it did not immediately produce pain. (See, Record on Appeal, p. __). However, Mr. Faulkenberry nonetheless "went straight to [his] . . . fill-in supervisor" (Jeff Gleaton) and informed him of the accident. Inspection of a "summary of communications" form generated by Conbraco Industries, Inc. reflects a June 19, 2012 entry that states, "Randy told me he fell in the back and hit his groin". (See, Record on Appeal, pp. __).

In this connection, Mr. Steve Kirchen, Conbraco's Human Resource and Safety Manager, acknowledged: (a) his understanding Mr. Faulkenberry's injury occurred when ". . . his foot slipped out from under him . . . [as] he stepped over the fan . . . [while] he was cleaning up the coolant"; and (b) Mr. Faulkenberry "fell on the fan, straddled the fan" after his foot slipped in this fashion. (See, Record on Appeal, pp.__)

On the following morning, Mr. Faulkenberry "could barely go, and . . . was hurting in [his] . . . groin and around [his] . . . left - - up into the side of [his] back", but nonetheless went

to work. (See, Record on Appeal, p. __). Upon arriving, he located his immediate supervisor, who he then advised of the prior day's fall, the subsequent onset of pain and his need to see a doctor. (Id.). In response to this request for treatment, he was told, "ah, go on out there . . . [,] I'll get you some help." (See, Record on Appeal, p. __).

Although he continued to report for work, Mr. Faulkenberry remained symptomatic, to the extent he advised his family physician (Dr. Ifediora F. Afulukwe) of this fall and associated symptoms during a June 28, 2012 "90 day checkup". (See, Record on Appeal, pp. __). A review of this physician's report confirms Mr. Faulkenberry: (a) informed Dr. Afulukwe as to the presence of "sharp", "worsening" back pain "radiating to the buttocks"; (b) told him of a "fall on the job recently . . . [involving his doing] a split"; (c) indicated he was "very sore" in the "upper inner thigh . . . [areas] bilaterally . . . [,] more on the L side"; (d) exhibited musculoskeletal "tenderness", as well as an "irregular gait"; and (e) received "a muscle relaxer and an anti[i]nflammatory" in conjunction with a one week work excuse." (See, Record on Appeal, pp. __).

When Mr. Faulkenberry resumed work activities on July 9, 2012, he was: (a) "informed . . . [by his] boss man . . . to take it easy"; (b) instructed "not to be shoveling out the machines"; and (c) provided with some assistance (from a summer employee). (See, Record on Appeal, pp. __). In this regard, a July 9, 2012 entry on the "Summary of Communications" form reflects:

> I talked to Steve Kirchen and he said that Randy needs to take it easy for a while and see if the hurt when he pulled his groin goes away - - if not he will be sent to the Dr. (See, Record on Appeal, pp. __).

As he continued to experience symptoms, Mr. Faulkenberry again approached his supervisor for assistance in obtaining treatment for the June 19, 2012 trauma. (See, Record on Appeal, pp. __). This request eventually prompted the August 29, 2012 completion of accident/injury report forms by both he and the plant manager. The "Report of Accident Investigation" form, which (by its terms) "is to be completed by the foreman or supervisor of the injured employee", specifically notes: (a) **Mr. Faulkenberry was injured while "cleaning up coolant spill with shop-vac"**; (b) **"his foot slipped causing his legs to split and He straddle the fan" while in the process of "step[ping] . . . over [the] . . . fan"**; and (c) **the "fan turned over and both ended up on the floor"**. (See, Record on Appeal, pp. __). The employee injury report completed by Mr. Faulkenberry is not only consistent with this data, but also his hearing testimony. (See, Record on Appeal, pp. __).

On September 4, 2012, Mr. Faulkenberry was directed by Defendants to CHC Urgent Care – Monroe, where he was assessed by a physician assistant, who: (a) was apprised of the material circumstances surrounding his June 19, 2012 injury **("pt states coolant on floor he was cleaning it up. He attempted to put his right leg over a fan. And his right leg slipped. Patient landed on the fan and hit his groin and testicular area.")**; (b) focused the examination on these groin symptoms; and (c) recommended obtaining an ultrasound in conjunction with a urological referral. (See, Record on Appeal, pp. __).

Approximately three weeks later (September 24, 2012), Mr. Faulkenberry was directed by Defendants to Dr. Thomas H. Douglas of Carolina Urology Partners, who: (a) was apprised of persistent groin pain ("a toothache between my legs"), as well as "pain across beltline and into back, [l]eft . . . worse than right"; (b) learned this **"pain started after a fall at work (did a split)**

in June, 2012"; (c) recommended referral to a general surgeon for hernia repair. (See, Record on Appeal, pp. __).

After this evaluation, Mr. Faulkenberry met with the Appellants' adjuster, who informed him they were denying his workers' compensation claim. (See, Record on Appeal, pp. __). In view of this fact, Mr. Faulkenberry was obliged to independently seek treatment from Dr. George David, a Lancaster, South Carolina general surgeon. Inspection of Dr. David's initial (December 6, 2012) report confirms: (a) a history of injury consistent with previously generated records **(foot slipping while crossing a barrier, resulting in trauma to his scrotum)**; (b) reference to the previously diagnosed hernias, as well as the results of ultrasound testing performed at CMC-Union; (c) Mr. Faulkenberry's development of **"some pain in the left leg and back"**; (d) **"back pain and left hip pain" in response to straight leg raise testing on the left**; and (e) his surgical recommendations. (See, Record on Appeal, pp. __).

Dr. Davis' December 21, 2012 report further indicates: (a) the previously-referenced **back symptoms had made it "somewhat difficult for him if . . . [not] impossible" to perform regular duty work activities for his employer**; (b) Mr. Faulkenberry voiced **"complain[ts] . . . of severe back pain"**; (c) clinical examination elicited **"pain on straight leg raising on the left leg for 45 degrees and flexion of the foot accentuates the pain"**; (d) this physician's intention to refer Mr. Faulkenberry "to an orthopedic physician sometime in the near future"; and (e) Dr. David's determination to place him on out-of-work status. (See, Record on Appeal, pp. __). This surgeon's post-operative reports likewise reflect: (a) the **continued presence of back pain**; (b) reiteration of the need for **focused assessment of Mr. Faulkenberry's lumbar symptoms**;

and (c) Mr. Faulkenberry's continued inability to resume pre-injury work activities. (See, Record on Appeal, pp. __).

On February 20, 2013, Mr. Faulkenberry was independently evaluated by Dr. Donald R. Johnson, II of Southeastern Spine Institute, who noted: (a) his work accident involved **"stepping over a standing fan, his foot slipped, resulting in a split which mashed his groin and turned the fan over"**; (b) "past back history [was] . . . negative"; (c) he was **"tender particularly at the 5-1 level", while range of motion was "somewhat limited secondary to pain"**; (d) ". . . [g]iven his history and diagnosis of back problems with Dr. David, . . . a lumbar MRI scan" was warranted; (e) he had not reached maximum medical improvement; and (f) it was **"most probable to a reasonable degree of medical certainty that his current back and radiating leg symptoms are related to his 6/1[9]/12 . . . work injury."** (See, Record on Appeal, pp. __).

Upon reviewing the results of this March 7, 2013 scan, Dr. Johnson verified: (a) the presence of "foraminal stenosis at multiple levels particularly bad at 4-5 on the left with some central stenosis at 2-3, 3-4 and 4-5"; (b) **his belief surgical intervention was not required at that point**; (c) Mr. Faulkenberry "would be a good candidate for a selective injection at 3-4 or 4-5 . . . [through] a pain management physician"; and (d) maximum medical improvement had not been attained. (See, Record on Appeal, pp. __).

Mr. Faulkenberry next underwent limited assessment by a local orthopaedist (Dr. Brian A. Blue), who was informed of **"constant sharp low back pain ... [in the context of] a previous low back injury on 06/19/12"**, for which he recommended injections. (See, Record on Appeal, pp. __). This recommendation prompted referral to Dr. Sanjay Nandurkar, who: (a) identified clinical abnormalities involving the lumbar spine, **which he attributed to a "work related fall"**

though aggravation of pre-existing stenosis; and (b) performed several lumbar epidural steroid injections that did not prove beneficial. (See, Record on Appeal, pp. __).

Mr. Faulkenberry was next evaluated (March 14, 2014) by Dr. Ezra B. Riber of Palmetto Pain Management, LLC, who: (a) was apprised his symptoms had **commenced in June, 2012 while "working in his usual capacity in maintenance for the Conbraco Machine Company when he fell awkwardly while cleaning up coolant from the floor with a shop vac [SIC]"**; (b) further noted ". . . **[he] describes doing a split and struck his private"; (c) referenced chief complaints of low back** and testicular pain; (d) identified limited lumbar range of motion with "flexion as well as returning upright and extension" and painful straight leg raise response ("back, gluteal and hamstring discomfort") as prominent clinical findings; (e) offered several diagnoses, including both lumbar radicular and facet syndromes; and (f) felt he was "not at MMI from an interventional pain management standpoint". (See, Record on Appeal, pp. __). Inspection of two additional reports (April 17, 2014 and December 18, 2014) generated by Dr. Riber's practice during 2014 similarly reveals the presence of persistent lumbar symptoms with associated clinical abnormalities. (See, Record on Appeal, pp. __).

Subsequently, per questionnaire responses dated July 13, 2015, Dr. Riber verified: (a) "Mr. Faulkenberry's **mechanism of injury was sufficient to aggravate a preexisting, asymptomatic spinal stenosis condition**"; (b) ". . . [b]ased on Mr. Faulkenberry's medical history, the temporal onset of symptoms (involving the groin, inner thighs/legs and back) and MRI findings, the **lumbar symptoms he has experienced in the aftermath of his June 19, 2012 trauma most probably result from the aggravation of preexisting spinal stenosis by the reported fall**"; (c) "the symptoms attributable to Mr. Faulkenberry's June 19, 2012 work

related fall warrant further treatment, including **both interventional and medical pain management modalities**"; (d) "his receipt of these pain management modalities is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of Mr. Faulkenberry's June 19, 2012 compensable accident"; and (e) the consequences of this "work related accident most probably prevent him from currently engaging in unrestricted employment activities . . . ." (See, Record on Appeal, pp. __)

Several months after his final visit with Dr. Riber, Mr. Faulkenberry was reevaluated (May 12, 2015) by Dr. Johnson, who: (a) noted he "continued to be symptomatic, despite receipt of the epidural steroid injections"; (b) detected not only the previously documented motion deficits, but also lumbar tenderness and buttocks pain in response to straight leg raise testing; (c) perceived he was walking in a slightly flexed position ("forward at 20 degrees"), "has more pain on extension than flexion" and developed "pain that radiates through the buttocks and down both legs posteriorly . . . [w]ith forced extension"; and (d) recommended obtaining an updated lumbar MRI scan, while reiterating maximum medical improvement had not been achieved. (See, Record on Appeal, pp. __).

In conjunction with undergoing this updated MRI scan, Mr. Faulkenberry was evaluated by Dr. Brett C. Gunter of Columbia Neurosurgical Associates, P.A. (May 27, 2015), who: (a) obtained a **history of pain following "an on the job injury 6/19/2012**"; (b) learned the **injury occurred while he was in the process of "cleaning . . . a coolant spill**"; (c) described the injury mechanism as **falling "4 – 6 feet landing on a large fan that was running and landed on the cover of the fan . . . centered on his scrotum and testicles . . . [, eventually] landing directly on his tailbone onto the concrete floor . . . [when] the fan slipped out of the way**"; (d)

referenced the fact symptoms of scrotum, back and leg pain, which **Mr. Faulkenberry attributed to the groin trauma, did not begin until the following morning**; (e) noted pre-injury "intermittent back pain that occurred generally as a result of heavy physical labor"; (f) observed the presence of ". . . [d]ecreased range of motion in all planes", as well as tenderness over the SI joint; (g) interpreted the updated MRI scan to reveal "moderately severe lumbar spinal stenosis at L4-5 and less so at L3-4"; and (h) did not believe these MRI findings were reflective of an acute injury. (See, Record on Appeal, pp. __)

Based upon Mr. Faulkenberry's medical history, this physical examination and his imaging study review, Dr. Gunter determined, to a reasonable degree of medical certainty: (a) "his back and leg pain occurred at the same time of his injury", but was believed to be "all part of his groin injury"; (b) assuming "his back and leg pain syndrome were not present prior to his injury, and . . . the injury and development of back and leg pain are temporally related, **than his current syndrome represents a . . . worsening of his pre-existing condition of lumbar spinal stenosis**"; and (c) further treatment, beginning with physical therapy, was warranted. (Id.)

In this regard, the Commission/Appellate Panel specifically found:

> (a) Dr. Gunter sought/obtained a greater level of detail relative to the mechanics of his compensable accident than previous physicians; (b) not only is consistent estimate of an approximately four foot drop onto the fan and ultimate landing on his buttocks, but also the absence of pre-accident lumbar symptoms of a nature that had led to his prior receipt of focused treatment; and (c) an initial belief his back and leg symptoms, which began the morning following his fall, emanated from his groin area. (See, Record on Appeal, pp. __)

When questioned as to the contents of his initial (February 20, 2013) report, Dr. Johnson testified:

> (a) his notation of **a "negative" past medical history referred to pre-accident treatment of the back involving "a level of sophisticated medical care, including such things as having MRIs, recommendations to have [spinal] . . . injections . . . , maybe an evaluation with a spine surgeon . . . or with a pain management physician"** (See, Record on Appeal, pp. __); (b) through "hands on" examination, he discovered tenderness of the lumbar spine (See, Record on Appeal, pp. __); (c) his reference to "neurologically intact" related to the absence of paralysis or "muscle atrophy because the nerves have [been] . . . damaged" (Id.); (d) he had not only reviewed the radiologist's report stemming from Mr. Faulkenberry's March 7, 2013 MRI scan, but also "the films themselves" (See, Record on Appeal, pp. __); (e) a patient information form completed by Mr. Faulkenberry identified an accident date of June 19, 2012 (as opposed to somewhat different dates appearing in his report) (See, Record on Appeal, pp. __); (f) this scan revealed stenosis (narrowing of the tunnel through which the nerve passes) at several lumbar disc levels (See, Record on Appeal, pp. __); (g) at that point, **he did not believe Mr. Faulkenberry had reached maximum medical improvement** (See, Record on Appeal, pp. __); and (h) his **treatment recommendation in 2013 included "selective injections between L3-L4 and L4-L5"** and physical therapy. (See, Record on Appeal, pp. ___).

Dr. Johnson further explained:

> (a) following his May 12, 2015 reexamination of Mr. Faulkenberry, he obtained an updated MRI scan that did not significantly differ from the prior imaging study (See, Record on Appeal, pp. __); (b) during this reexamination, he observed not only persistent motion deficits, but also Mr. Faulkenberry walking at 20 degrees of forward flexion (See, Record on Appeal, pp. __); (c) walking in this fashion was an unconscious reaction to the lumbar stenosis, as "it's your body's way of taking the pressure off the spinal cord by opening up the tunnel" that has become narrowed (See, Record on Appeal, pp. __); (d) Mr. Faulkenberry's level of stenosis as "severe" (See, Record on Appeal, pp. __); (e) as Mr. Faulkenberry's stenosis was "worse in some areas than others, . . . [he had purposely recommended selective injections] to

make sure the medicine gets to the areas that are most severely affected by the stenosis" (See, Record on Appeal, pp. __); (f) in view of Mr. Faulkenberry's particular pathology, the selective injections needed to be directed at the L3-4 and L4-5 levels (See, Record on Appeal, pp. __); (g) the epidural steroid injections performed by Dr. Nandurkar constituted "generic, nonspecific injection[s . . . that conveyed] a shotgun blast . . . [of] medicine" (See, Record on Appeal, pp. __); and (h) **Mr. Faulkenberry needed to undergo the previously recommended selective injections prior to achieving maximum medical improvement.** (See, Record on Appeal, pp. __)

Inspection of Dr. Johnson's deposition testimony also verifies:

(a) the **mere presence of preexisting lumbar stenosis was not indicative of any level of symptoms prior to the June 19, 2012 trauma** (See, Record on Appeal, pp. __); (b) **Mr. Faulkenberry's acknowledgement of pre-injury "intermittent back pain/ache" was not a significant factor, particularly in the context of an individual who performed relatively strenuous work, when determining the most likely source of his current lumbar symptoms** (See, Record on Appeal, pp. __); (c) after consideration of Mr. Faulkenberry's medical history, in light of the June 19, 2012 mechanism of injury, **"there is . . . , to a reasonable degree of medical certainty, . . . a causal relationship between [this] . . . trauma and the current symptoms through aggravation of [his] . . . preexisting condition"** (See, Record on Appeal, pp. __); (d) **absent a prior medical history of similar symptoms (i.e. constant, unremitting back pain going into the buttocks), he "would not change . . . [his] opinion" as to causation.** (See, Record on Appeal, pp. __); (e) his reference to Mr. Faulkenberry's being "neurologically intact . . . [did not] exclude pain that would be coming from nerve root irritation", actually indicating the presence of symptoms involving Mr. Faulkenberry's "buttocks and legs . . . is not inconsistent with [being] . . . neurologically intact" (See, Record on Appeal, pp. __); and (f) given Mr. Faulkenberry's clinical and MRI findings, **the most likely source of his buttock and leg symptoms, as well as those involving the groin area, was the traumatically aggravated spinal stenosis** (See, Record on Appeal, pp. __).

Additionally, when questioned as to the contents of records generated by several other physicians who had examined Mr. Faulkenberry following the June 19, 2012 trauma, Dr. Johnson confirmed/explained:

> (a) the **mechanism of injury referenced in Dr. Afulukwe's June 28, 2012 report was "essentially the same as" the one he had been provided** (See, Record on Appeal, pp. __); (b) this report similarly identified the "work accident as being the source of his pain" (Id.); (c) the **symptoms documented by Dr. Afulukwe were consistent with those he had "personally identified during" his February 20, 2013 evaluation** (See, Record on Appeal, pp. __); (d) the **contents of this report "ma[d]e . . . [him] feel more strongly that [his] . . . opinion in regards to the causal relationship between the accident and . . . [Mr. Faulkenberry's] symptoms is the correct one"** (See, Record on Appeal, pp. __); (e) the description of back pain noted by Dr. Douglas on September 24, 2012 was likewise **"consistent with what . . . [he was told and also] observed during his assessments of Mr. Faulkenberry"** (See, Record on Appeal, pp. __); (f) the **contents of Dr. David's initial report (history of injury, source of pain and clinical examination) were consistent with what he "ultimately diagnosed, discovered and . . . related to [the June 19, 2012] . . . work accident"** (See, Record on Appeal, pp. __); (g) each of these previous physicians had "documented symptoms and clinical findings that are consistent with [his] . . . diagnosis and . . . the consequences [he had] attributed to" the June 19, 2012 accidental fall (See, Record on Appeal, pp. __); (h) Mr. Faulkenberry's description of his fall (ultimately landing on the floor/hitting the floor itself) "was consistent with trauma to the back . . . [and] to a reasonable degree of medical certainty would . . . have produced some degree of trauma to the back" (See, Record on Appeal, pp. __); (i) he was "comfortable with [his] . . . opinion as to causation" (See, Record on Appeal, pp. __); and (j) the nature/severity of Mr. Faulkenberry's causally related symptoms/pathology warranted his remaining "out of work while he is undergoing treatment" (See, Record on Appeal, pp. __).

Finally, in response to questions relating to the impact of a prior lumbar CT scan on his opinions relative to causal relationship in this instance, Dr. Johnson testified:

> (a) CT scans are not typically utilized by spine surgeons, but instead "done in emergency rooms, if someone has a trauma," to identify fractures that cannot be seen on x-ray; (b) **the pre-accident performance of a CT scan, in and of itself, would not change his expressed opinions**; and (c) his **definition of relevant pre-accident factors remained "seeing a specialist, spine specialist, pain management specialist [or] . . . somebody who is doing focused treatment on [the] . . . lumbar spine for similar symptoms . . . of" back pain radiating to the buttocks and legs.** (See, Record on Appeal, pp. __).

During the course of his October 19, 2015 deposition, Dr. Riber similarly confirmed:

> (a) he was likewise informed **of pain involving the low back, buttocks, legs and groin area (testicular pain)** (See, Record on Appeal, pp. __); (b) notable clinical findings included **limited lumbar range of motion, positive straight leg raise response and tenderness over the paralumbar region** (See, Record on Appeal, pp. __); (c) this constellation of symptoms was **consistent with spinal stenosis** (See, Record on Appeal, pp. __); (d) the **general epidural injections performed by Dr. Nandurkar were "significantly different" from the selective procedures recommended by Dr. Johnson** (See, Record on Appeal, pp. __); (e) Mr. Faulkenberry's **relevant medical history included preexisting lumbar stenosis as well as the absence of any "focused treatment for similar symptoms in the past, things like pain management, MRI scanning, . . . and effectively a treatment regimen for the same type of problem"** (See, Record on Appeal, pp. __); and (f) his belief that, **in view of Mr. Faulkenberry's relevant medical history and mechanism of injury, "to a reasonable degree of medical certainty, . . . [the June 19, 2012 work related fall] is . . . [most probably] what aggravated . . . [the preexisting lumbar stenosis] to the extent these symptoms have commenced and remained since" sustainment of this trauma** (See, Record on Appeal, pp. __).

When asked to inspect/comment on several medical records contained in the parties' respective documentary evidence submissions, Dr. Riber verified:

> (a) a July 6, 2006 lumbar CT scan performed at Carolinas Medical Center was **part of a general protocol** to address a reported fall through global scanning (See, Record on Appeal, pp. __); (b) the records from this facility contained no reference to "specific complaints of low back or leg pain" (See, Record on Appeal, pp. __); (c) while this CT scan was interpreted to reveal lumbar stenosis, the records **generated during this emergency room visit did not attribute any symptoms to this stenosis, to the extent "he was asymptomatic from that stenosis at that time"** (See, Record on Appeal, pp. __); (d) the **symptoms and injury mechanism documented by Dr. Afulukwe on June 28, 2012 were consistent with the information he subsequently received** from Mr. Faulkenberry (See, Record on Appeal, pp. __); (e) **Dr. Douglas' references** to lumbar symptoms commencing after a work related fall involving "a split" were **also consistent** with what he "ultimately learned from" Mr. Faulkenberry (See, Record on Appeal, pp. __); and (f) the contents of Dr. David's records were likewise consistent with the information he received from Mr. Faulkenberry (See, Record on Appeal, pp. __).

Dr. Riber further explained:

> (a) as Mr. Faulkenberry's updated MRI scan did **not reflect progression of his lumbar stenosis since the 2013 study, it is "most probabl[e] . . . , to a reasonable degree of medical certainty, that the continued symptoms . . . [he had] documented . . . in 2014 come from the aggravation that occurred" as a result of the June 19, 2012 accident** (See, Record on Appeal, pp. __); (b) "given the absence of similar symptoms prior to this work related trauma, his current syndrome represents **worsening of his preexisting condition of lumbar stenosis**" (Id.); (c) his opinion remained **"to a reasonable degree of medical certainty that this accident most probably aggravated the preexisting stenosis and has produced symptoms that have been present since"** (See, Record on Appeal, pp. __); (d) Mr. Faulkenberry's history of **prior intermittent back aches**, especially in the context of a manual laborer, was **not a significant factor** (See, Record on Appeal, pp. __); (e) the **failure of Mr. Faulkenberry's back and radiating symptoms to respond to prior groin area surgery constituted "validation of the fact"**

> **these symptoms had a different source** (See, Record on Appeal, pp. __); (f) his previous encounters with similar situations where the true source of symptoms was not initially identified by other specialists (See, Record on Appeal, pp. __); and (g) ". . . **[i]t would be very unusual" for the medical (non-spine) specialists who evaluated Mr. Faulkenberry prior to Dr. Johnson to engage in "the type of differential diagnoses that a spine surgeon or a pain management specialist would have in evaluating somebody with those symptoms.**" (Id; Record on Appeal, pp. __).

Finally, Dr. Riber endorsed:

> (a) **Dr. Johnson's correlation between Mr. Faulkenberry's somewhat forward flexed gait and the symptoms stemming from his aggravated spinal stenosis condition** (See, Record on Appeal, pp. __); (b) the fact Mr. Faulkenberry had **not yet reached maximum medical improvement** as to the consequences of his compensable injury (See, Record on Appeal, pp. __); (c) **the June 19, 2012 mechanism of injury had actually created this aggravation** (See, Record on Appeal, pp. __); (d) the continued viability of his July 13, 2015 questionnaire responses (See, Record on Appeal, pp. __); and (e) Dr. Johnson's opinion Mr. Faulkenberry's causally related symptoms/pathology currently **prohibited him from working** (See, Record on Appeal, pp. __).

Given Appellants' assertion Mr. Faulkenberry had a long history of back pain, the Commission/Appellate Panel analyzed voluminous pre-accident medical records which they introduced into evidence, finding:

> (a) a fall producing bilateral arm fractures necessitated a July, 1999 hospitalization, during which he specifically "[d]enie[d] . . . any pain in his . . . back" (See, Record on Appeal, pp. __); (b) Mr. Faulkenberry underwent renal, gallbladder and scrotal ultrasound in January, 2003; (c) the performance of similar diagnostic testing in June, 2004; (d) his receipt of treatment for an apparent pulmonary condition through Springs Memorial Hospital in December, 2005; (e) a reference to "some back pain, arthritis, morning stiffness [and] . . . muscle aches" in conjunction with this December, 2005 hospitalization; (f) denial of back pain in conjunction with January 4, 2006 and March 21, 2006

examinations for headache and dizziness in the aftermath of a fall (See, Record on Appeal, pp. __); (g) disclosure of chronic hearing loss, but no indication of lumbar symptoms, during an April 27, 2006 neurological examination; (h) completion of essentially global CT scanning at Carolinas Medical Center on July 6, 2006 after another fall; and (i) 2011 references to osteoarthritis of his hands, as well as bone/joint pain, by Dr. Afulukwe. (See, Record on Appeal, pp. __)

It likewise found his "undisputed/uncontradicted testimony" confirmed he had:

> (a) worked with Springs Mill for 32 years before commencing his employment with Conbraco Industries, Inc. (See, Record on Appeal, pp. __); (b) also previously sustained injuries to his head and neck in a 1973 motor vehicle accident, as well as a gunshot wound to his right leg resulting from a 1972 from a hunting accident (See, Record on Appeal, pp. __); (c) neither experienced any pre-accident back symptoms other than intermittent pain/aching occasioned by heavy physical labor nor received focused treatment of his back prior to the June 19, 2012 accidental fall (See, Record on Appeal, pp. __); and (d) longstanding hearing difficulties (which became obvious to the undersigned during the delivery of his testimony) (See, Record on Appeal, pp. __).

The Commission/Appellate Panel also found the relevant evidence "unequivocally confirms":

> (a) Mr. Faulkenberry's job duties with Conbraco Industries, Inc. included mopping floors, cleaning out machinery, removing trash, disposing of chips and general cleanup (See, Record on Appeal, pp. __); (b) these work activities involved lifting, bending and stooping (See, Record on Appeal, pp. __); (c) they similarly required use of his back (See, Record on Appeal, pp. __); and (d) notwithstanding other unrelated physical conditions, he was performing these heavy duties without restriction prior to sustaining the June 19, 2012 accident (See, Record on Appeal, pp. __).

After thoroughly reviewing all evidence of record and acknowledging the single commissioner's observations of the witnesses during the course of the hearing, the Commission/Appellate Panel specifically found:

> (a) while Mr. Faulkenberry is hard of hearing, a chronic problem he has developed from working in a textile mill, the undersigned, as well as counsel for the respective parties, believe that (despite the need for some measure of repetition) he heard all posed questions; (b) although Defendants submitted a voluminous documentary package chronicling Mr. Faulkenberry's receipt of treatment for several medical conditions since at least 1999, **the hearing record is devoid of any evidence he had previously developed/experienced lumbar symptoms or pathology that required treatment, much less to the level Drs. Johnson and Riber indicated was necessary to be relevant in the current context**; (c) it is undisputed his **job duties for Conbraco Industries, Inc. were physical in nature**; and (d) **despite collateral medical issues referenced in various medical records, Mr. Faulkenberry was physically capable of performing/sustaining these heavy work activities, without limitation, up to the time of his June 19, 2012 compensable accident**. (See, Record on Appeal, pp. __).

It further found:

> (a) on June 19, 2012, he was instructed to clean up a coolant spill in the water meter department of the Conbraco Industries, Inc. facility with a shop-vac; (b) **as a portion of the floor area was not accessible from a standing position, Mr. Faulkenberry put his right foot on a machine and pulled on a pipe with his right hand in order to lean/reach down with the shop-vac to remove the spilled coolant**; (c) **while in the process of performing this task, his right foot (which had been exposed to the coolant) slipped, resulting in his falling an approximately four foot distance**; (d) **this fall initially caused him to straddle a floor fan between his legs, creating trauma to his groin area**; and (e) he then **continued his fall, striking/landing on the floor with this buttocks**. (See, Record on Appeal, pp. __).

In this connection, the Commission/Appellate Panel also found:

> (a) Mr. Faulkenberry's testimony regarding the circumstances of the accident is consistent with the "Report of Accident Investigation", which "is to be completed by the foreman or supervisor"; (b) inspection of the contents of this form, which were not personally entered by Mr. Faulkenberry, reveals a correct spelling of the word "straddle"; (c) conversely, the injury report that Mr. Faulkenberry admittedly filled out incorrectly spells this work ("strattle"); (d) **absent some unknown basis for denying this claim, it appears that semantics have caused some confusion/concern, in that Defendants may or may not interpret "stepping over a fan" as beginning with two feet on the floor and then lifting one foot to "step over" a fan**; (e) however, Mr. Faulkenberry's testimony described an attempt to clear or cross over the fan when he put his foot up on the machine to "step over" this obstacle in order to clean the floor; (f) **the descriptions of this accident contained in various records are actually largely consistent in that they mention the fan, the climbing or stepping onto the machine, the coolant, slipping and falling (eg., "He fell on his job recently . . . he did a split and his upper inner thigh bilaterally"; "coolant on floor he was cleaning up . . . He attempted to put his right leg over a fan . . . and his right leg slipped . . . patient landed on the fan and hit his groin and testicular area"; "pain started after a fall at work (did a split) in June, 2012"; "attempting to cross a barrier . . . he slipped . . . He had one foot across the barrier but then he slipped and whenever did he hit himself in the scrotum"; "stepping over a standing a fan, his foot slipped, resulting in a split which mashed his groin and turned the fan over"; "fell awkwardly while cleaning up coolant with a shop-vac . . . describes doing a split and struck his private"; "cleaning . . . a coolant spill . . . landing on a large fan that was running and landed on the cover of the fan . . . centered on his scrotum and testicles")**; and (g) while some of the medical history synopses generated by Mr. Faulkenberry's examiners are more detailed than others, **their aggregate contents, coupled with his testimony, more than satisfy the governing preponderance of the evidence standard**. (See, Record on Appeal, pp. __).

The Commission/Appellate Panel similarly found:

> (a) Mr. Faulkenberry **reported the accident on the same day it occurred**, advised his supervisor (Gleaton) that he was not

hurt or did not think he was hurt and finished the shift; (b) **if he were attempting to "manufacture" or fabricate a claim, it would have been far more expedient for him to tell his supervisor that he felt immediate pain and to similarly testify to this effect at the hearing**; (c) notwithstanding these facts, Mr. Faulkenberry **adhered to his prior statements that he did not develop pain until the following morning, which is reflective of candor, rather than expediency**; (d) he **likewise made statements which were against his own self-interest** (acknowledging a 2/10 pain level at the time of his evaluation by Dr. Gunter; volunteering during his hearing testimony that he was a very heavy alcohol user for 30 years) and **neither embellished his symptoms (consistent with the medical evidence) nor attempted to hide unflattering aspects of his past life experience**; and (e) this **forthright behavior certainly validates his testimony relative to the contested issues.** (See, Record on Appeal, pp. __).

The Commission/Appellate Panel likewise gave great weight to the facts:

> (a) Mr. Faulkenberry **honestly assumed his full constellation of symptoms, including those affecting/involving his back and leg, emanated from his groin, as opposed to his back, until the implications of his aggravated spinal stenosis were identified**; (b) Drs. Johnson and Riber each indicated the nature of Mr. Faulkenberry's spinal stenosis was **consistent with the development of groin pain**; and (c) it would be **"very unusual" for the physicians who evaluated Mr. Faulkenberry prior to Dr. Johnson to formulate differential diagnoses that encompassed conditions outside their realm of specialization or identify the types of differential diagnoses which are regularly considered by a spine surgeon or pain management specialist.** (See, Record on Appeal, pp. __).

The Commission/Appellate Panel further found:

> (a) although **the temporal evidence (hearing testimony, personnel records and medical reports generated in 2012) supporting the causal connection of Mr. Faulkenberry's symptoms to the consequences of his June 19, 2012 accident is quite compelling, the opinions expressed by Drs. Johnson, Gunter and Riber likewise convincingly support his contention this compensable fall aggravated preexisting spinal stenosis to an extent that has required and continues to need treatment**; (b) as the record contains **no medical evidence that suggests Mr.**

Faulkenberry had either sustained any pre-accident back injuries or previously received focused treatment for any low back conditions, these expert opinions remain viable; (c) **none** of these medical specialists **believed Mr. Faulkenberry's intermittent exertional back pain was relevant to the current inquiry** (confirmed by the testimony of Drs. Johnson and Riber; also recalling Dr. Gunter confirmed current causal relationship with awareness of this intermittent back pain); and (d) the **2006 lumbar CT scan can only be construed as a precautionary measure, particularly in view of the absence of any low back symptoms or complaints at the time this procedure was completed**. (See, Record on Appeal, pp. __).

It consequently found:

> (a) Mr. Faulkenberry's compensable accident resulted in the aggravation of preexisting lumbar spine stenosis, which has **created the symptoms documented by Drs. Johnson, Gunter and Riber**; and (b) the nature/degree of these causally related lumbar symptoms prohibit Mr. Faulkenberry from engaging in work activities per Drs. Johnson Riber. (See, May 24, 2016 Decision and Order, Finding of Fact No. 45).

The Commission/Appellate Panel also found:

> (a) Mr. Faulkenberry has not yet reached maximum medical improvement relative to the consequences of his June 19, 2012 compensable accident; (b) the causally related medical modalities which he has heretofore received/undergone relative to his back from the various medical providers outlined herein have been reasonable, medically necessary and tended to lessen his period of disability; (c) Mr. Faulkenberry requires further treatment of the nature identified by Drs. Johnson, Riber and Gunter; (d) the current circumstances, including, but not limited to, Defendants' denial of any liability for treatment of Mr. Faulkenberry's back injury and their request for designation of a surgeon in the conte[x]t . . . of a Commissioner Barden's ruling the medical evidence identified a need for nonsurgical care, warrant Commission designation of a treating physician; (e) his receipt of additional treatment modalities is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of his compensable accident; and (f) Mr. Faulkenberry has been

> temporarily totally disabled since May 6, 2015 and remains so at this time. (See, Record on Appeal, pp. __).

In this regard, among other things, concluded: (a) Mr. Faulkenberry had sustained a compensable injury to his back within the meaning of S.C. Code Ann. Section 42-1-160 (2015); (b) Appellants were obliged to satisfy previously incurred causally related medical expenses; and (c) Mr. Faulkenberry had established "good cause" for designation of Dr. Hutcheson as his treating physician.

This appeal followed. By motion dated January 13, 2017, Mr. Faulkenberry sought dismissal of this appeal in view of his belief the Commission's/Appellate Panel's November 1, 2016 Order was not subject to judicial review. While this motion was subsequently denied per Order dated March 2, 2017. Mr. Faulkenberry hereby preserves all arguments, positions, etc. contained in his motion and January 30, 2017 Reply to Appellants Return.

ARGUMENT

I. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S/APPELLATE PANEL'S DETERMINATION MR. FAULKENBERRY SUSTAINED A COMPENSABLE BACK INJURY PER S.C. CODE ANN. SECTION 42-1-160 (20) IS WHOLLY SUPPORTED BY THE SUBSTANTIAL EVIDENCE OF RECORD.

A. STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers' Compensation Commission." Gadson v. Mikasa Corp., 368 S.C. 214, 628 S.E. 2d 262, 266 (Ct. App. 2006); Tims v. J.D. Kitts Construction, 393 S.C. 496, 713 S.E. 2d 340, 343 (Ct. App. 2011). In the absence of legal error, a reviewing court will only reverse or modify the Commission's factual findings or ultimate

decision if it is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." South Carolina Second Injury Fund v. Liberty Mutual Insurance Company, 353 S.C. 117, 576 S.E. 2d 199, 202 (Ct. App. 2003); Turner v. SAIIA Construction, 419 S.C. 98, 796 S.E. 2d 150, 154 (Ct. App. 2016). However, the Court "will not substitute its judgment for that of the Appellate Panel[/Commission] . . . as to the weight of the evidence on questions of fact." Robbins v. Walgreens and Broadspire Services, Inc., 375 S.C. 259, 652 S.E. 2d (Ct. App. 2007); Thomas v. 5 Star Transportation, 412 S.C. 1, 770 S.E. 2d 183, 187 (Ct. App. 2015).

"The substantial evidence rule of the Administrative Procedures Act governs the standard of review in a workers' compensation decision." Jeffrey v. Sunshine Recycling, 386 S.C. 174, 687 S.E. 2d 332, 334 (Ct. App. 2009); Hamilton v. Martin Color-Fi, Inc., 405 S.C. 478, 748 S.E. 2d 76, 79 (Ct. App. 2013). This rule limits the Court's review "to deciding whether the commission's decision is unsupported by substantial evidence or is controlled by some error of law." White v. Medical University of South Carolina, 355 S.C. 560, 586 S.E. 2d 157, 159 (Ct. App. 2003); Ardis v. Combined Insurance Company, 380 S.C. 313, 669 S.E. 2d 628, 632 (Ct. App. 2008).

" '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 that the administrative agency reached or must have reached in order to justify its action." Lark v. Bi-Lo, Inc., 276 S.C. 136, 276 S.E. 2d 304, 306 (1981); Gibson v. Spartanburg School District No. 3, 338 S.C. 510, 526 S.E. 2d 725, 729 (Ct. App. 2000). In this connection, "[t]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by

substantial evidence." Pearson v. JPS Converter & Industrial Corp., 327 S.C. 393, 489 S.E. 2d 219, 221 (Ct. App. 1997); Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E. 2d 856 (1998).

Similarly, where there is: (a) "a conflict in the evidence, either of different witnesses or of the same witness, the findings of fact of the . . . commission, as triers of fact, are conclusive." Anderson v. Baptist Medical Center, 343 S.C. 487, 541 S.E. 2d 526, 528 (2001); Watt v. Piedmont Automotive, 384 S.C. 203, 681 S.E. 2d 615, 620 (Ct. App. 2009); and (b) "conflicting medical evidence, the findings of fact of the commission are conclusive." Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 454 S.E. 2d 320, 321 (1995); Nettles v. Spartanburg School District No. 7, 341 S.C. 580, 535 S.E. 2d 146, 152 (Ct. App. 2000).

Given this deferential standard of review, the "findings of . . . [the Appellate Panel] are presumed correct and will be set aside only if unsupported by substantial evidence." Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 92, 95 (Ct. App. 2002); Fragosa v. Kade Construction, LLC, 407 S.C. 424, 755 S.E. 2d 462, 465 (Ct. App. 2013). Consequently, ". . . [a] reviewing court should affirm a decision by the commission unless it is clearly erroneous in view of the substantial evidence on the whole record." Youmans v. Coastal Petroleum Co., 333 S.C. 195, 508 S.C. 2d 43, 45 (Ct. App. 1998); Brunson v. Wal-Mart Stores, Inc., 344 S.C. 107, 542 S.E. 2d 732, 733 (Ct. App. 2001).

B. SATISFACTION OF STATUTORY REQUIREMENTS

S.C. Code Ann. Section 42-1-160 (A)(2015) requires that a compensable "injury" per the South Carolina Workers' Compensation Act must result from an "accident arising out of and in the course of employment . . .." Additionally, where, as here, an injury aggravates a preexisting condition, medical evidence is required to establish this aggravation.

As confirmed by inspection of the Appellate Panel's/Commission's extensive factual findings, Mr. Faulkenberry contemporaneously informed a supervisor of his June 19, 2012 fall, including the impact on his groin area, which prompted documentation of these facts in Conbraco's "summary of communications" log. While his initial request for medical assessment went unheeded, Mr. Faulkenberry nonetheless informed his primary care physician as to the nature of his work related fall ("fall on the job recently . . . [involving his doing] a split"), as well as the presence of residual symptoms (affecting his "upper inner thigh bilaterally", back and buttocks) nine days following the June 19, 2012 trauma. Given the unquestioned content of his primary care physician's June 28, 2012 report, it is puzzling how Appellants continue to assert: (a) Mr. Faulkenberry "DENIED BACK PAIN" on June 28, 2012; and (b) he did not "mention . . . back pain . . . [until] three months after the accident occurred". (See, Appellants' Brief, pp. __).

Although Appellants similarly allege Mr. Faulkenberry "tells no less than three versions of how the accident occurred", this argument conveniently ignores the Commission's/Appellate Panel's insightful recognition that: (a) "the descriptions of this accident contained in various records are actually largely consistent in that they mention the fan, the climbing or stepping onto the machine, the coolant, slipping and falling"; (b) multiple medical providers were apprised of back and left leg symptoms developing in the aftermath of the June 19, 2012 trauma; (c) "absent some unknown basis for denying this claim, it appears that semantics have caused some confusion/concern in that Defendants may or may not interpret "stepping over a fan" as beginning with two feet on the floor and then lifting one foot to "step over" a fan; and (d) his "forthright behavior" (testimony "reflective of candor, rather than expediency"; "made statements which are against his own self-interest"; "neither embellished his symptoms

(consistent with the medical evidence) nor attempted to hide unflattering aspects of his past life experience") "certainly validates his testimony relative to the contested issues." (See, Record on Appeal, pp. __).

The Commission/Appellate Panel likewise addressed all other "issues" raised by Appellants, finding: (a) the delay in Mr. Faulkenberry's seeking treatment for his back through the South Carolina Workers' Compensation Act stemmed from not only his "honest . . . assum[ption] his full constellation of symptoms, including those affecting/involving his back and leg, emanated from his groin, as opposed to his back, until the implications of his aggravated spinal stenosis were identified", but also the fact "it would be 'very unusual' for the physicians who evaluated [him] prior to Dr. Johnson to formulate differential diagnoses that encompass conditions outside their realm of specialization"; (b) notwithstanding a pre-injury medical history involving treatment for various musculoskeletal injuries, "the record contains no medical evidence that suggests Mr. Faulkenberry had either sustained any pre-accident back injuries or previously received focused treatment for any low back conditions"; (c) "although Defendants submitted a voluminous documentary package chronicling Mr. Faulkenberry's receipt of treatment for several medical conditions since at least 1999, the hearing record is devoid of any evidence he had previously developed/experienced lumbar symptoms or pathology that required treatment, much less to the level Drs. Johnson and Riber indicated was necessary to be relevant in the current context"; and (d) "despite collateral medical issues raised in various medical records, Mr. Faulkenberry was physically capable of performing/sustaining . . . [the] heavy work activities . . . [incidental to his employment with Conbraco], without limitation up to the time of his June 19, 2012 compensable accident." (See, Record on Appeal, pp. __).

Additionally, it found: (a) "although the temporal evidence (hearing testimony, personnel records and medical reports generated in 2012) supporting the causal connection of Mr. Faulkenberry's symptoms to the consequences of his June 19, 2012 accident is quite compelling, the opinions expressed by Drs. Johnson, Gunter and Riber likewise convincingly support his contention this compensable fall aggravated preexisting spinal stenosis to an extent that has required and continues to need treatment"; (b) "none of these medical specialists believe Mr. Faulkenberry's intermittent exertional back pain was relevant to the current inquiry (confirmed by the testimony of Drs. Johnson and Riber; also recalling Dr. Gunter confirmed current causal relationship with awareness of this intermittent back pain)"; (c) "Mr. Faulkenberry's compensable accident resulted in the aggravation of preexisting lumbar spine stenosis, which has created the symptoms documented by Drs. Johnson, Gunter and Riber"; and (d) "the nature/degree of these causally related lumbar symptoms prohibit Mr. Faulkenberry from engaging in work activities . . . [, to the extent he] has been temporarily totally disabled since May 6, 2015 and remains so at this time."

It is axiomatic that: (a) "the Appellate Panel is the ultimate finder of fact"; and (b) the "final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel." Potter v. Spartanburg School District Number 7, 395 S.C. 17, 716 S.E. 2d 123, 126 (Ct. App. 2011); Thomas, 770 S.E. 2d at 187. In this regard, it is clear the Commission/Appellate Panel: (a) found Mr. Faulkenberry to be a credible witness; (b) accepted the uncontroverted opinions of Drs. Johnson, Riber and Gunter as to the causal relationship of his current symptoms to the aggravating effects of his June 19, 2012 fall; and (c) thoroughly identified the evidentiary basis for its factual rulings. As its determination of the contested issues

is founded upon a reasonable construction of the evidence, the Commission's/Appellate Panel's decision should not be disturbed.

Although Appellants' doggedly maintain Mr. Faulkenberry has not met his burden of proof, he respectfully submits: (a) the deposition testimony of Drs. Johnson and Riber addresses every conceivable aspect of his prior medical history, mechanism of injury, post-traumatic symptoms, imaging studies, treatment needs and work status; (b) this testimony, as well as the opinions expressed by Dr. Gunter, conclusively establish the causal relationship of his post-accident symptoms to the consequences of his June 19, 2012 trauma; (c) the record is devoid of any contrary causation opinion; and (d) the only reasonable inference which may be gleaned from the evidence of record wholly supports the Commission's/Appellate Panel's determination that "while some of the medical history synopses generated by Mr. Faulkenberry's examiners are more detailed than others, their aggregate contents, coupled with his testimony, more than satisfy the governing preponderance of the evidence standard. He likewise respectfully submits this medical evidence amply satisfies the requirement of Sections 42-1-160 and 42-9-35.

Accordingly, Mr. Faulkenberry respectfully requests the Court to affirm the Commission's/Appellate Panel's findings/determinations on these issues.

II. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION (APPELLATE PANEL) PROPERLY EXERCISED THE DISCRETION AFFORDED BY S.C. CODE ANN. SECTION 42-15-60 (2015) IN DETERMINING: (A) APPELLANTS' ATTEMPTED DESIGNATION OF A NEUROSURGEON AS MR. FAULKENBERRY'S TREATING PHYSICIAN WAS INCONSISTENT WITH HIS NEED FOR NON-OPERATIVE CARE; (B) THE CURRENT CIRCUMSTANCES ESTABLISH "GOOD CAUSE" PER THIS STATUTE TO DESIGNATE DR. J. KELBY HUTCHESON AS MR. FAULKENBERRY'S TREATING PHYSICIAN.

Section 42-15-60 provides in pertinent part:

> (a) . . . 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 in any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown.

As previously recognized by this Court, the Appellate Panel "is afforded much discretion under Section 42-15-60." Gattis v. Murrells Inlet VFW No. 10420, 353 S.C. 100, 576 S.E. 2d 191, 198 (Ct. App. 2003). While this statute was amended in 2007, the Legislature included a proviso ("unless otherwise ordered by the commission for good cause shown"), which clearly evinces an intent that the Commission/Appellate Panel: (a) retain "discretion to order medical treatment under . . . [S]ection 42-15-60 when a controversy . . . arises" (See, Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E. 2d 547, 555 (Ct. App. 2006); (b) maintain its ability to "override the employer's choice of providers" (Clark v. Aiken County Government, 366 S.C. 102, 620 S.E. 2d 99, 104 (Ct. App. 2005); and (c) remain "authorized and empowered to order further medical care and payment for that medical care when controversies arise between a claimant and the employer." See, Hall v. United Rentals, Inc., 371 S.C. 69, 636 S.E. 2d 876, 885 (Ct. App. 2006).

Despite Appellants' contrary contention, this Court's ruling in McKinney v. Kimberly Clark Corporation, 376 S.C. 636, 658 S.E. 2d 112 (2008) is neither inconsistent with the above-cited authorities nor dispositive of the current issue. Specifically, in McKinney, supra, the single commissioner required employer "to pay for causally related medical treatment and ordered it to select a treating physician for McKinney." However, rather than complying with this order, McKinney: (a) appealed the determination to the Appellate Panel; and (b) unilaterally obtained unauthorized treatment during the pendency of the appeal. In rejecting McKinney's contention she could independently "select her treating physician after being determined permanently and totally disabled", this Court: (a) noted "no particular physician was designated by the appellate panel to treat McKinney"; (b) ruled "McKinney's argument is inconsistent with . . . [Section] 42-15-60 . . . , which . . . **gives great deference to the appellate panel**"; and (c) declined to construe this statute in a manner that "**undermines the authority of the appellate panel, as prescribed by the legislature**." McKinney, 658 S.E. 2d at 114. (Emphasis added)

In this instance, Appellants contested not only the compensability of Mr. Faulkenberry's injury, but also his particular medical needs. Following the parties' receipt of the single commissioner's order drafting instructions, which included rulings as to not only compensability, but also Mr. Faulkenberry's need for the requested non operative treatment, counsel was invited to identify physicians who could potentially be designated as his authorized treater. In response, Mr. Faulkenberry proposed either Dr. Riber or Dr. Hutcheson, who each specializes in the provision of non-surgical spine treatment (injections, medications, etc.). Conversely, Appellants identified two neurosurgeons, who provide operative care, as opposed to the treatment regimen required by the single commissioner's order.

Given the nature of treatment required by Mr. Faulkenberry, in light of Appellants' obvious attempt to circumvent his receipt of this care by seeking designation of a neurosurgeon (which is unfortunately consistent with their denial of responsibility for and obstruction of Mr. Faulkenberry's receipt of appropriate medical care), the Commission/Appellate Panel properly: (a) determined Appellants' request for designation of the neurosurgeon was wholly consistent with its ruling Mr. Faulkenberry required non-surgical care; (b) recognized the current circumstances established "good cause" to override Appellants' choice of physician; and (c) directed Mr. Faulkenberry to Dr. Hutcheson for receipt of non-operative treatment.

As the Commission's/Appellate Panel's ruling constitutes a valid exercise of the discretion recognized by Section 42-15-60, its designation of Dr. Hutcheson should be affirmed.

III. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S/APPELLATE PANEL'S NOVEMBER 1, 2016 ORDER FULLY COMPLIES WITH THE REQUIREMENTS OF S. C. CODE ANN. SECTIONS 42-17-40 (2015) AND 1-23-350 (2005).

It is axiomatic that the provisions of S.C. Code Ann. Section 42-17-40 (1976, as amended) simply oblige this Commission to make "findings of fact . . . upon the essential factual issues. . . ." Hill v. Jones, 255 S.C. 219, 178 S.E. 2d 142, 144 (1970); Airco, Inc. v. Hollington, 269 S.C. 152, 236 S.E. 2d 804, 808 (1977). While these findings must "be sufficiently definite and detailed to enable the appellate court to properly determine whether the findings of fact are supported by the evidence and whether the law has been correctly applied to those findings . . . [, n]o particular format is required." Brayboy v. Clark Heating Company, Inc., 306 S.C. 56, 409 S.E. 2d 767, 768 (1991).

S.C. Code Ann. Section 1-23-350 (2005) likewise "requires that '[a] final decision . . . 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.'" Hartzell v. Palmetto Collision, LLC, 419 S.C. 87, 796 S.E. 2d 145, 148 (Ct. App. 2016). Like Section 42-17-40, the provisions of this statute merely require sufficient detail to allow the Court an opportunity to assess "whether the evidence supports the findings and whether the law was properly applied to those findings." (Id.)

Inspection of the Commission's/Appellate Panel's order unquestionably verifies: (a) the presence of voluminous findings which address all factual issues through exhaustive analysis of the evidence; (b) identification of the evidentiary basis for its ultimate factual determine; (c) proper application of the law governing the disputed issues; and (d) it satisfies all applicable criteria.

CONCLUSION

As Mr. Faulkenberry was legitimately unaware his June 19, 2012 compensable accident had produced a back injury component until Dr. Johnson confirmed this fact in February, 2013, Appellants cannot be criticized for denying this aspect of his workers' compensation claim pending further investigation. One could even expect their exercising the right to proceed with an evidentiary hearing following a discovery process which yielded satisfactory answers to any questions relative to Mr. Faulkenberry's mechanism of injury, consistent reports of symptoms which (in hindsight and otherwise) were indicative of a spinal injury and unrefuted medical opinion linking these symptoms to the aggravating consequences of his contemporaneously documented fall. It might also be charitably argued that, despite the single commissioner's

thorough and logical resolution of the disputed issues, it was not unexpected they would seek further validation from the Commission/Appellate Panel. However, following entry of the November 1, 2016, there is simply no reasonable basis for continuing to contest the compensability of Mr. Faulkenberry's back injury, particularly through arguments that misstate/misapprehend the content of the record.

Given Mr. Faulkenberry's need for non surgical treatment, a fact validated by the Commission/Appellate Panel, Appellants attempt to direct him for further assessment by a surgeon was accurately viewed as an effort to perpetuate their desire to deny treatment, rather than facilitate his receipt of necessary medical care. Claiming the Commission/Appellate Panel was powerless to ensure Mr. Faulkenberry's receipt of this treatment through designation of a physician, a long standing and continuing statutory prerogative, amounts to nothing less than a disingenuous attempt to impede his obtaining appropriate medical care.

The characterization of the Commission's/Appellate Panel's order as legally insufficient is patently absurd and deserves no further comment.

ACCORDINGLY, Mr. Faulkenberry respectfully prays that the Court fully affirm all aspects of the Commission's/Appellate Panel's November 1, 2016 order.

Respectfully submitted,

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Attorney for Respondent

May 31, 2017
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Melody L. James, Commissioner
Mike Campbell, Commissioner
Avery B. Wilkerson, Jr., Commissioner

W.C.C. FILE NO.: 1215107

APPELLATE CASE NO.: 2016-002416

Randy Faulkenberry, Employee, Claimant .....RESPONDENT.

v.

Conbraco Industries, Inc., Employer, and Great American Alliance Insurance Company, Carrier, Appellants .....APPELLANTS.

CERTIFICATE OF SERVICE

I, Paula F. Bregovi, Legal Assistant for Andrew N. Safran, Esquire, Attorney for Respondent, do hereby certify that on the 31st day of May, 2017, I caused to be filed, via hand delivery, the original of Respondent's Initial Brief and Designation of Matter, with the Clerk of the South Carolina Court of Appeals. One (1) copy of the Respondent's Initial Brief and Designation of Matter was furnished to counsel for Appellants via first class mail at the following address:

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May 31, 2017

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

RE: Randy Faulkenberry v. Conbraco Industries, Inc. and Great American Alliance Insurance Company
Appellate Case No.: 2016-002416

Dear Ms. Kitchings:

Enclosed please find an original and one copy of the Respondent's Brief and Designation of Matter to be Included in the Record on Appeal relative to the above-captioned case. At this time, I would appreciate your filing these documents and returning one clocked copy to my courier.

By copy of this letter, I am serving a copy of these documents on Ros Huff, attorney for Appellants. As always, in the event he has any questions or comments concerning this matter, I invite him to contact me.

Thank you for your cooperation.

With kindest regards, I am

Very truly yours,

Andrew N. Safran

ANS/pfb

cc: E. Ros Huff, Jr., Esquire