

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE WORKERS COMPENSATION COMMISSION

Susan S. Barden, Commissioner  
Melody L. James, Commissioner  
Aisha Taylor, Commissioner

WCC File Nos. 1321387 & 1407915  
Appellate Case Nos. 2016-001339

RECEIVED  
JUN 14 2017  
SC Court of Appeals

Martha Perez, Claimant,..... Respondent,

v.

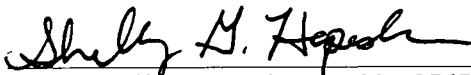
Alice Manufacturing Company, Inc. Employer, and Great American Alliance Insurance  
Company, Carrier..... Appellants.

PETITION FOR REHEARING

The Appellants Alice Manufacturing Company, Inc. Employer, and Great American Alliance Insurance Company hereby move the court for a Rehearing in the above referenced matter. The grounds for this Petition as set forth below are discussed in the attached memorandum:

1. The court erred in finding the back injuries compensable and awarding benefits, the error being that this was not supported by the evidence and is a matter of law.
2. The Court erred in ordering medical treatment and TTD benefits for the two (2) back claims.

June 14<sup>th</sup>, 2017

  
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 Company, Inc. and Great American Alliance Insurance  
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MEMO FOR PETITION FOR REHEARING

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The Appellants, Alice Manufacturing Company, Inc. Employer, and Great American Alliance Insurance Company, hereby submit this Memorandum in Support of their Petition for Rehearing and the grounds are as follows:

1. The court erred in finding the back injuries compensable and awarding benefits, the error being that this was not supported by the evidence and is a matter of law.

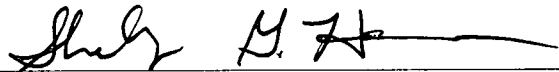
The Court erred as a matter of law and finding of fact that the respondent had two injuries by accident on August 8, 2013 and May 19, 2014. The medical reports, accident reports, and testimony of the claimant are evidence of one thing—the claimant doesn't know how she injured her back. As such, it was error for the commissioner to find the back claims compensable. As such, the court erred in determining that the injury is compensable as the Appellants were entitled to judgment as a matter of law. See Green v. Cottrell, 346 S.C. 53, 550 S.E.2d 324 (Ct. App. 2001), if the pleadings, depositions, answers to interrogatories, and

admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

2. The Court erred in ordering medical treatment and TTD benefits for the two (2) back claims.

She cannot meet the burden of proving loss of earning capacity and is not entitled to temporary total disability benefits. In 42-1-120, "disability" is the incapacity to earn wages because of the work injury." See also; *Pollack v. Southern Wine & Spirits of America*, 405 S.C. 9, 747 S.E.2d 430 (2013). In this instance, the work injury did not cause an incapacity for the claimant to earn wages, rather her failure to get an MRI is the cause.

June 14<sup>th</sup>, 2017



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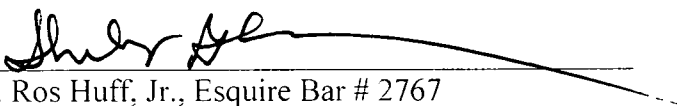
Alice Manufacturing Company, Inc. Employer, and Great American Alliance Insurance  
Company.....Carrier, Appellants.

**PROOF OF SERVICE**

I certify that I have served the Petition for Rehearing and Memo by depositing a copy of the same in the United States Mail, postage prepaid, on June 14, 2017 to the following parties, and or their representatives:

**W. Grady Jordan**  
**Smith, Jordan, Lavery & Lee, PA**  
**P. O. Box 1207**  
**Easley, SC 29641**

June 14, 2017

  
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Attorneys for Appellants Star Food Products/  
Mrs. Stratton's Salads, Inc., Employer and Great American  
Alliance Ins., Carrier, Appellants.



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ATTORNEYS AT LAW

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June 14, 2017

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SC Court of Appeals

*Via Hand Delivery*

The Honorable Jenny Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Martha Perez,.....Claimant, Respondent,  
v.  
Alice Manufacturing Company, Inc. Employer, and Great American Alliance Insurance  
Company.....Carrier, Appellants.

Appellate Case Nos. 2016-001339

Dear Ms. Kitchings:

Please find enclosed herewith the Appellant's Petition for Rehearing, Memo and Proof of Service.

By copy of this letter, I am hereby serving Martha Perez, through her attorney, W. Grady Jordan. If you have any further questions, please do not hesitate to contact me.

Sincerely,

E. Ros Huff, Jr.  
Shelby G. Hapeshis  
HUFF & HAPESHIS

ERHjr/ea

Enclosures

cc: W. Grady Jordan, Esquire

5500.0744  
5500.0765