

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission

Appellate Case No.: 2015-001336

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

v.

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

PETITION FOR REHEARING

**RECEIVED**  
JUL 21 2017  
SC Court of Appeals

The Appellant, by and through his undersigned attorney, hereby files this Petition for Rehearing. On July 5, 2017, this Court issued an opinion affirming the Decision and Order of the South Carolina Workers' Compensation Commission. Jimenez v. Kohler Company, Op. No. 2017-UP-279 (S.C. Ct. App. Filed July 5, 2017).

As grounds for granting his Petition, Appellant would respectfully show the Court may have overlooked or misapprehended the issues of (1) the Commission erred in finding the injuries Mr. Jimenez reported at work did not establish an "injury by accident.": (2) The Commission failed to provide sufficient Findings of Fact and Conclusions of Law to allow Appellate Review.

## ARGUMENT

1. The Commission erred when it failed to find Mr. Jimenez suffered an “injury by accident, per §42-1-160.

The question of whether a Claimant asserts an “injury by accident” within the meaning of the South Carolina Workers’ Compensation Act is a question of law. Creech v. Ducane Co., 320 S.C. 559, 467 SW 2d 114 (Ct. App. 1995).

It is undisputed that Appellant reported two different on-the-job accidents to his supervisor on two separate occasions. (R. p. 398, lines 14-25; p. 399, lines 1-25; p. 400, lines 1-10; p. 476; p. 677, lines 11-15; p. 402, lines 18-25; p. 403, lines 1-10; p. 475) His supervisor documented those accidents and referred Appellant to the plant nurse. (R. p. 398, lines 14-25; p. 399, lines 1-25; p. 400, lines 1-10; p. 476; p. 402, lines 18-25; p. 403 lines 1-10; p. 475; p. 679, lines 17-19) The plant nurse provided medical treatment for his work-related injuries from each accident and documented same in her medical notes. (R. p. 174; p. 485, lines 11-24; p. 512, lines 4-11; p. 532; p. 173; p. 488, lines 17-25; p. 489, lines 1-2; p. 512, lines 12-21, p. 533). There was no suggestion that Appellant feigned an accident or falsely reported an injury.

In accordance with S.C. Code Ann. §42-1-160, these facts established an “injury by accident.” However, the Commission was operating under a misunderstanding of the definition of an “injury by accident”. The Commission’s ruling was that despite the above-noted facts, Appellant did not establish an “injury by accident”. The basis for the Commission’s ruling was that after the work accident and initial medical treatment, Appellant delayed in pursuing additional treatment. Assuming arguendo that Appellant delayed in pursuing treatment, which Appellant expressly denies, this would not affect

his having suffered an "injury by accident", per 42-1-160. Once an "injury by accident" occurred, it could not be retracted by a delay in seeking treatment.

The Court addressed the issues by referencing a body of case law regarding the substantial evidence standard of review, Appellant believes the Court overlooked his argument that the Commission committed legal error in its defining an "injury by accident."

The Court's citation of substantial evidence cases reflects a review of Appellant's arguments related to questions of fact. However, the Court did not include any citations related to the definition of an "injury by accident" or S.C. Code Ann. §42-1-160. Appellant respectfully submits the Court did not specifically address his argument concerning an "injury by accident" being a question of law.

Appellant respectfully requests that the Court reconsider its decision; reverse the Commission's error; rule that an "injury by accident" was established per 42-1-160; and, award Appellant workers' compensation benefits.

2. The Commission erred in provided conclusory Findings of Fact and Conclusions of Law.

The Full Commission issued an Order amending Findings contained in the Single Commission Hearing Order. The Full Commission's Order failed to provide any reasons for the amendments to the Hearing Order. The Full Commission's Order did not indicate it was adopting the recitation of facts given in the Hearing Order. The Full Commission's Order did not state which current or revised findings of fact support its amendment.

In amending an Order, the Commission must show good grounds for making any changes to the Findings and Conclusions of the Single Commissioner. S.C. Code Ann.

§42-17-50. Nothing in the Full Commission's Order reflects the basis for its amending the Single Commissioner's Order.

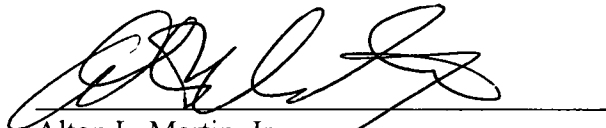
Respectfully, the Court cannot know from the Full Commission's Order what the basis was for its amendment to the Single Commissioner's Hearing Order. The Court cannot know which facts the Full Commission chose to interpret differently from the Single Commissioner, in its decision to amend the Findings from the Hearing Order. Without knowing the Full Commission's reasoning or final interpretation of the facts, the Court cannot determine whether the amended Findings are adequately supported by those unknown facts.

Appellant respectfully requests the Court reconsider its decision, and rule that the conclusory Findings and Conclusions of the Commission lack sufficient specificity for appellate review.

**CONCLUSION**

Based on the foregoing arguments, the Commission's Order finding no "injury by accident" should be reversed. Alternatively, the Court should hold the conclusory findings and conclusions of the Commission are insufficient for appellate review.

Respectfully submitted,



Alton L. Martin, Jr.  
S.C. Bar No. 064076  
MARTIN & MARTIN, PA  
PO Box 8220  
Greenville, SC 29604  
(864) 271-1822 telephone  
(864) 271-1814 fax  
Attorney for Claimant/Appellant

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Jose Juan Jimenez, Employee, Appellant,

v.

Kohler Company, Self-Insured Employer, Respondent.

Appellate Case No. 2015-001336

---

Appeal From the Workers' Compensation Commission

---

Unpublished Opinion No. 2017-UP-279  
Submitted May 1, 2017 – Filed July 5, 2017

---

**AFFIRMED**

---

Alton Lamar Martin, Jr., of Martin & Martin, PA, of  
Greenville, for Appellant.

Grady Larry Beard, Nicolas Lee Haigler, and Robert E.  
Horner, all of Sowell Gray Robinson Stepp & Laffitte,  
LLC, of Columbia, for Respondent.

---

**PER CURIAM:** Jose Juan Jimenez appeals an order of the Appellate Panel of the Workers' Compensation Commission (Appellate Panel) affirming the order of the single commissioner, which found Jimenez did not sustain an "injury by accident." On appeal, Jimenez argues the Appellate Panel erred in affirming the order of the single commissioner because (1) Jimenez met his burden of proving a compensable

injury and (2) the Appellate Panel's conclusory findings of fact and conclusions of law lacked sufficient specificity for appellate review. We affirm<sup>1</sup> pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the Appellate Panel erred in finding Jimenez did not meet his burden of proving a compensable injury: *Fishburne v. ATI Sys. Int'l*, 384 S.C. 76, 85, 681 S.E.2d 595, 599 (Ct. App. 2009) ("The Appellate Panel's decision must be affirmed if supported by substantial evidence in the record."); *Hutson v. S.C. State Ports Auth.*, 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012) ("Under this standard, [an appellate court] can reverse or modify the decision only if the claimant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record."); *Shealy v. Aiken Cty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) ("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 [Appellate Panel] reached."); *Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 22, 716 S.E.2d 123, 126 (Ct. App. 2011) ("In workers' compensation cases, the Appellate Panel is the ultimate fact finder."); *Langdale v. Carpets*, 395 S.C. 194, 200, 717 S.E.2d 80, 83 (Ct. App. 2011) ("Where the evidence is conflicting over a factual issue, the findings of the Appellate Panel are conclusive."); *Clade v. Champion Labs.*, 330 S.C. 8, 11, 496 S.E.2d 856, 857 (1998) ("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.").

2. As to whether the Appellate Panel erred in providing conclusory findings of fact and conclusions of law: *Canteen v. McLeod Reg'l Med. Ctr.*, 400 S.C. 551, 558-59, 735 S.E.2d 246, 250 (Ct. App. 2012) ("The findings of fact made by the Appellate Panel must be sufficiently detailed to enable the reviewing court to determine whether the evidence supports the findings."); *id.* at 559, 735 S.E.2d at 250 (finding the Appellate Panel failed to detail any evidence supporting its decision and remanding to the Appellate Panel to make specific findings).

**AFFIRMED.**

**LOCKEMY, C.J., and HUFF and THOMAS, JJ., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

**MARTIN** Attorneys  
**& MARTIN, P.A.**

Telephone (864) 271-1822

Facsimile (864) 271-1814

www.MartinsLawFirm.com

July 18, 2017

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

**RE: José Juan Jiménez, Employee, Appellant v. Kohler Company, Self-Insured  
Employer, Respondent**  
**Appellate Case No.: 2015-001336**

Dear Ms. Kitchings:

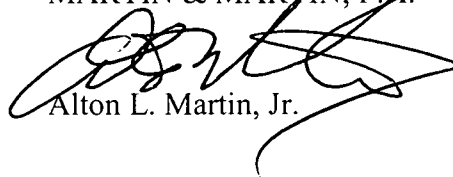
Please find enclosed the original and seven (7) copies of the Petition for Rehearing regarding the above-referenced matter, along with our Certificate of Service. I have served a copy of same on the attorneys for Respondent.

Should you have questions or need any additional information, please do not hesitate to contact my office. Thank you for your consideration in this matter.

With kind regards, I am

Sincerely,

MARTIN & MARTIN, P.A.

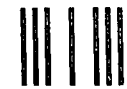


Alton L. Martin, Jr.

ALMjr/kew  
Enclosures

cc: Grady L. Beard, Esquire (w/enclosures)  
Nicholas L. Haigler, Esquire (w/enclosures)  
Robert E. Horner, Esquire (w/enclosures)

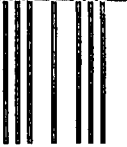
**RECEIVED**  
JUL 21 2017  
SC Court of Appeals



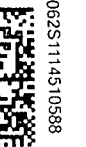
\$1.090  
 US POSTAGE  
 FIRST-CLASS  
 FROM 29605  
 JUL 18 2017  
 stamps.com



2S1114510588



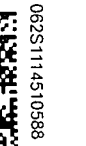
\$1.090  
 US POSTAGE  
 FIRST-CLASS  
 FROM 29605  
 JUL 18 2017  
 stamps.com



062S1114510588



\$1.090  
 US POSTAGE  
 FIRST-CLASS  
 FROM 29605  
 JUL 18 2017  
 stamps.com



062S1114510588

Martin & Martin Attorneys, PA  
 PO Box 8220  
 Greenville, SC 29604



The Honorable Jenny Abbott Kitchings  
 Clerk Of The South Carolina Court Of App  
 1015 Sumter St.  
 Columbia SC 29201-3726

RECEIVED

JUL 21 2017  
 SC Court of Appeals

