

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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RECEIVED

AUG 28 2017

Appellate Case No. 2014-001788

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SC Court of Appeals

Clarence Winfrey, Employee, .....Respondent,

v.

Archway Services, Inc., Employer,  
and American Fire & Casualty Insurance  
Company c/o Liberty Mutual Group, Carrier, ..... Appellants.

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RESPONSE TO APPELLANTS'  
PETITION FOR REHEARING

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By way of Response to the Petition for Rehearing, the Respondent would respectfully respond as follows:

1. That the entire Petition for Rehearing is based upon what the Petitioners term as conflicting evidence in the Record and particularly that the Court overlooked or misapprehended alleged conflicts in the opinions of Dr. Greenfield, Dr. Travis and Dr. Lide, all of whom the Petitioners admit gave opinions that the Claimant's heart-related problems were directly related

to the electrocution injury.

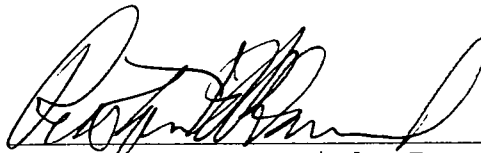
2. That, "the purpose of the Petition for Rehearing is not ... to have the case retried in the Appellate Court a second time." Herron v. Century BMW, 395 S.C. 461, 466 719 S.E.2d 640, 643 (2011). In reference to the basis for the Petition, overlooked/misapprehended conflicting evidence, and as to evidence in general, the Commission is the fact-finding body and our Appellate Courts are without any power to pass upon the force and effect of evidence. Where there is a conflict in the evidence, either of different witnesses or of the same witness, the Findings of Fact of the Workers' Compensation Commission as the trier of fact are conclusive. The final determination of witness credibility and the weight to be accorded evidence is reserved to the Commission and it is not the duty of the Courts to balance objective against subjective findings of medical witnesses or to weigh the testimony of one witness against that of another. That function belongs to the Workers' Compensation Commission alone. Thomas v. Five Star Transportation, 412 S.C. 1, 770 S.E.2d 183 (S.C. App. 2014), rehearing denied certiorari denied, Bass v. Kenco Group, 366 S.C. 450, 622 S.E.2d 577 (S.C. App. 2005); Potter v. Spartanburg School District #7, 395 S.C. 17, 716 S.E.2d 123 (S.C. App. 2011). As to this principle having been applied to an electrocution injury involving the heart see, Buff v. Columbia Baking Company, et al, 215 S.C. 41,

53 S.E.2d 879 (1949); as applied to a heart attack claim under the unusual/extraordinary conditions standard, which does not apply in this case, see, ex., Walsh v. U.S. Rubber Company, 238 S.C. 411, 120 S.E.2d 685 (1961).

**CONCLUSION**

While the Respondent would submit and while the Petitioners agree that all three of the doctors, whose opinions are questioned, Dr. Greenfield, Dr. Travis and Dr. Lide, all stated the opinion to a reasonable degree of medical certainty, not only that the most probable cause but in fact that the cause of, the Claimant's heart-related problems in their medical opinion was the electrocution injury, the Petitioners request rehearing based on conflicting statements within the medical evidence. The weight to be assigned any evidence is an issue of fact for the Commission. It is the Commission's responsibility and duty as the fact-finder to determine the force and effect of such evidence and the decision of the Commission is conclusive in that regard. The Petition for Rehearing should be denied.

Respectfully submitted by:



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(803) 771-7211  
Attorney for Employee/Claimant

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v.

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and American Fire & Casualty Insurance  
Company c/o Liberty Mutual Group, Carrier, ..... Appellants.

PROOF OF SERVICE

I certify that I have served the **RESPONSE TO APPELLANT'S  
PETITION FOR REHEARING** on August 28, 2017 as follows:

VIA HAND-DELIVERY

Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29211

RECEIVED


AUG 28 2017

SC Court of Appeals

VIA EMAIL - [brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com)

AND U.S. MAIL

Brett H. Bayne, Esquire  
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Proudly representing injured workers  
for over 30 years.

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August 28, 2017

**RECEIVED**

**VIA HAND-DELIVERY**

Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29211

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SC Court of Appeals

**RE: Clarence Winfrey v. Archway Services, Inc.**  
**Appellate Case No. 2014-001788**

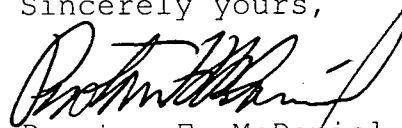
Dear Ms. Kitchings:

Please find attached the original and seven (7) copies of the Respondent's Response to the Appellants' Petition for Rehearing. Please clock in and return one copy for our records. I would note to the Court that the Certificate of Service on the Appellants' Petition for Rehearing noted that the Petition was served by hand-delivery on the Respondent but we did not receive a copy via hand-delivery. We did receive a copy via U.S. Mail subsequent to the day that it was filed with the Court, which according to the Affidavit, was filed on August 15, 2017.

By copy of this letter, I am notifying and serving a copy on Counsel for the Appellant Petitioners. I hope this is sufficient for filing this response with the Court and if anything else is needed, please advise.

As always, I appreciate all the courtesies and kindnesses shown to me by the Court in this and all matters.

Sincerely yours,



Preston F. McDaniel

PFM/abh  
Enclosure

cc: Brett H. Bayne, Esquire (Via email and US Mail: [brett.bayne@mgclaw.com](mailto:brett.bayne@mgclaw.com))