THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Op. No. 2017-UP-279 (S.C.Ct.App. filed July 5, 2017)

Jose Juan Jimenez, Employee,.....Petitioner,

v.

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

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 18, 2017.

QUESTIONS PRESENTED

1. Whether the Commission erred in failing to find Juan Jimenez sustained "injuries by accident" per S.C. Code Ann. §42-1-160?

2. Whether the Commission failed to provide sufficient Findings of Fact and Conclusions of Law to allow Appellate Review?

STATEMENT OF THE CASE

This is an appeal from the Workers' Compensation Commission. Petitioner, Jose Jimenez worked for Respondent making ceramic toilets in its Spartanburg manufacturing plant. He felt a pull in his back while emptying drain pans on July 14, 2011. He reported the accident to his supervisor at 5:00am on July 15, 2011. His supervisor completed an incident report and referred him to the plant nurse. He was seen by the plant nurse on July 15, 2011, who rendered medical care by applying Biofreeze to his low back and providing him Backquell tablets. (R. p. 476, p. 174).

On March 13, 2012, Appellant again hurt his back rolling over molds. He asked his supervisor for back pills. His supervisor provided him back pills that day. The next morning he complained of worsening pain in his back and left leg. His supervisor completed an incident report and sent him to the plant nurse. The plant nurse rendered medical care on March 14, 2012 by applying Biofreeze and giving him medication. (R. p. 475; p. 402, lines 14-15; p. 173).

These facts establish that Appellant suffered two compensable injuries by accident, per S.C. Code Ann. §42-1-160. Nothing occurring or failing to occur later is capable of altering this fact. Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E. 2d 753, 758 (Ct. App. 2007).

At the hearing before the Single Commissioner, Respondents argued Mr. Jimenez failed to give adequate Notice and that he did not suffer an "injury by accident." The crux of these two arguments was: that the supervisor completed an "incident" report, rather than an accident report; that Mr. Jimenez did not receive medical treatment from the company doctor after being treated by the nurse; and that there was an alleged gap in time between the reported accidents and Mr. Jimenez obtaining medical treatment from his doctors. Respondents asserted their internal company policies required an accident report and treatment by its company doctor in order for Mr. Jimenez to properly establish Notice and an "injury by accident," and that Mr. Jimenez's delay in seeking medical treatment reflected an "injury by accident" did not occur.

The Single Commissioner found Mr. Jimenez failed to provide timely Notice and denied his claim. An appeal to the Appellate Panel of the Commission followed. The Appellate Panel modified the findings to reflect Mr. Jimenez's claim was denied because he did not establish an "injury by accident" per §42-1-160.

Petitioner appealed these revised Findings and Conclusion to the Court of Appeals. These are the basis for the current appeal:

> Finding 9. We find that Claimant reported "incidents" following each alleged date of injury, however, we specifically find the claimant has failed to carry his burden of proving his current problems are causally-related to these reported "incidents". This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for numerous months following each

alleged date of injury. This finding is based upon the greater weight of the evidence in the record.

Finding 13. We find the claimant has failed to carry his burden of proving a compensable injury by accident to either his back of left leg on either alleged dates of injury. This finding is based upon the greater weight of the evidence in the record and moreover, Finding of Fact # 9 above.

Conclusion 3. Pursuant to §42-1-160, claimant did not sustain a compensable injury by accident to his low back and/or left leg on July 14, 2011, or March 13, 2012, for the reasons specifically stated in Finding of Fact #9, and based on the greater weight of the evidence. The claimant is therefore not entitled to any benefits under the Act.

The Court of Appeals affirmed the Appellate Panel in an unpublished opinion issued on July 5, 2017. Jimenez v. Kohler Company, Op. No. 2017-UP-279 (S.C. Ct. App. Filed July 5, 2017). After denial of the Petition for Rehearing, Jimenez filed this Petition for Writ of Certiorari.

The case raises important legal issues regarding the Workers' Compensation Commission imposing an incorrect higher standard to establish an "injury by accident" under S.C. Code Ann. §42-1-160, than is required by the statute and applicable case law.

ARGUMENT

1. The Commission erred in failing to find Mr. Jimenez suffered "injuries by accident" pursuant to S.C. Code Ann. §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**. (*Emphasis added*), Creech v. Ducane Co., 320 S.C. 559, 467 SE 2d 114 (Ct. App. 1995).

Appellant's Brief argued the Commission erred in its application of the law, regarding an "injury by accident" pursuant to SC Code §42-1-160, and erred in providing findings not supported by substantial evidence. The Court of Appeals addressed these issues by referencing a body of case law regarding the substantial evidence standard of

review. The Court of Appeals did not include any citations related to the definition of an "injury by accident" or the legal interpretation of S.C. Code Ann. §42-1-160. Mr. Jimenez respectfully submits the Court of Appeals failed to address his argument that the Commission applied an incorrect legal standard regarding his sustaining an "injury by accident" pursuant to SC Code Ann. §42-1-160.

On July 14, 2011, and on March 13, 2012, Mr. Jimenez suffered two different on-the-job accidents. On each occasion, he reported the work accident to his supervisor the following day. (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)[1] On both occasions, his supervisor prepared incident reports documenting the accidents and referred Mr. Jimenez 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. 403l lines 1-10; p. 475; p. 679, lines 17-19). The day after each accident, the plant nurse provided medical treatment for the work-related injuries and documented her treatment 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 evidence or argument suggesting that he feigned an accident or falsely reported an injury. Instead, Respondent's defense was that Mr. Jimenez's reporting accidents to his supervisor and the plant nurse was not sufficient to establish Notice or an "injury by accident." Specifically, Respondent argued its internal policies required more detailed reporting; its policies required Mr. Jimenez to obtain follow up treatment from its company doctor in order to sufficiently establish a claim; and, that by

[1] Pursuant to S.C, Code Ann. §42-15-20, Notice of an accident is timely if provided within 90 days of the accident.

allegedly delaying to seek medical treatment, Mr. Jimenez had demonstrated he did not give timely Notice or prove an "injury by accident" per S.C. Code Ann.§42-1-160.

The Hearing Commissioner originally ruled Mr. Jimenez failed to provide timely Notice of an injury by accident. As Mr. Jiminez reported each accident to his supervisor one day after it occurred, this was clearly error.[2] The Appellate Panel of the Commission acknowledged this error regarding Notice, but issued an amended Order affirming, on the grounds that Mr. Jimenez did not sustain an "injury by accident" per S.C. Code Ann. §42-1-160. (R. p. 37). Although Mr. Jiminez timely reported the work accidents to his supervisor and received treatment from the plant nurse, the Commission reasoned that, by his delay in seeking additional medical treatment after the initial treatment by the plant nurse, he did not establish an "injury by accident" pursuant to SC Code Ann. §42-1-160. This was not merely inartful wording, but reflects a misunderstanding of the applicable legal standard.

An "injury by accident" is defined by S.C. Code Ann. § 42-1-160 "Injury" and "personal injury":

> (A) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of employment . . .

This issue has been the subject of much case law. According to Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753,758 (Ct. App. 2007):

> To be compensable, an injury by accident must be one "arising out of and in the course of employment." S.C. Code Ann. § 42-1-160 (Supp.2006); *Grant v. Grant Textiles,* 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007); *Broughton v. South of the Border,* 336 S.C. 488, 496, 520 S.E.2d 634, 638 (Ct.App.1999).

[2] Pursuant to S.C, Code Ann. §42-15-20, Notice of an accident is timely if provided within 90 days of the accident.

The phrase "arising out of refers to the injury's origin and cause; whereas, "in the course of refers to the time, place, and circumstances under which the injury occurred. *Baggott v. Southern Music, Inc.,* 330 S.C. 1, 4, 496 S.E.2d 852, 854 (1998); *Owings v. Anderson County Sheriffs Dep't,* 315 S.C. 297, 300, 433 S.E.2d 869, 871 (1993); *Loges v. Mack Trucks, Inc.,* 308 S.C. 134, 138, 417 S.E.2d 538, 541 (1992). Although the requirements are somewhat overlapping, they are not synonymous and both must exist simultaneously to allow the claimant to recover workers' compensation benefits, *Osteen v. Greenville County School Dist.,* 333 S.C. 43, 49, 508 S.E.2d 21, 24 (1998); *Broughton,* 336 S.C. at 496, 520 S.E.2d at 638.

According to Douglas v. Spartan Mills, Startex Division, 245 S.C. 265, 140 S.E.2d 173 (1965):

> There are numerous decisions interpreting the words 'arising out of' and 'in the course of employment'. . . It is well established, at least in this jurisdiction, that these phrases are used conjunctively and that an accident, in order to be compensable, must both 'arise out of' and 'in the course of' the employment. In Eargle v. South Carolina Electric & Gas Co., 205 S.C. 423, 32 S.E.2d 240, this court said:
>
> 'The two elements must co-exist. They must be concurrent and simultaneous. One without the other will not sustain an award; yet the two are so entwined that they are usually considered together in the reported cases; and a discussion of one of them involves the other. * * *
>
> 'As is generally held, the words 'arising out of' refer to the origin of the cause of the accident, while the words 'in the course of employment,' have reference to the time, place and circumstances under which the accident occurs.'
>
> In that case the court then went on to quote with approval from Re Employers' Liability Assurance Corporation, 215 Mass. 497, 102 N.E. 697, L.R.A.1916A, 306, the following language:
>
> "It (the injury) arises 'out of' the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment.

Whether an accident arises out of and is in the course and scope of employment is largely a question of fact for the Appellate Panel. Pratt v. Morris Roofing, Inc., 357 S.C. 619, 622, 594 S.E.2d 272, 274 (2004); Gibson v. Spartanburg Sch. Dist. No. 3, 338 S.C.

510, 518, 526 S.E.2d 725, 729 (Ct. App. 2000). The claimant has the burden of proving facts sufficient to allow recovery under the Act. West v. Alliance Capital, 368 S.C. 246, 252, 628 S.E.2d 279, 282 (Ct.App.2006). Sharp v. Case Produce, Inc., 336 S.C. 154 at 160, 519 S.E.2d 102 (1999), (where evidence supported claimant "staged" an accident and was not injured on the job.) However, when the facts are undisputed, whether an accident is compensable is a question of law. Shuler v. Gregory Elec., 366 S.C. 435, 622 S.E.2d 569 (Ct.App.2005); *Gibson,* 338 S.C. at 518, 526 S.E.2d at 729.

In determining if an accident arose out of and in the course of employment, each case must be decided with reference to its own attendant circumstances. Lanford v. Clinton Cotton Mills, 204 S.C. 423, 425, 30 S.E.2d 36, 41 (1944). The general policy in South Carolina is to construe the Workers' Compensation Act in favor of coverage, and any reasonable doubts as to construction should be resolved in favor of the claimant. Davis v. S.C. Dep't of Corr.,289 S.C. 123, 125, 345 S.E.2d 245, 246 (1986).

Mr. Jimenez suffered compensable injuries by accident on July 14, 2011 and March 13, 2012. The Order holding Mr. Jimenez did not suffer any compensable injuries by accident per §42-1-160 is wrong. (R. p. 37).

The Commission muddled two separate issues. S.C. Code Ann. §42-1-160, provides the legal standard for a claimant to establish he has suffered an "injury by accident." A compensable injury by accident can be established without reaching the issue of causation between said accident and a claimant's physical complaints that develop later. Anderson v. Campbell Tile Co., 202 S.C. 54, 24 S.E.2d 104 (1943); Lawson v. Hanson Brick America, Inc., 393 S.C. 87, 710 S.E.2d 711 (Ct. App. 2011).

Unless the claimant has alleged a mental injury, then medical causation is not an element of the "injury by accident" determination. (See S.C. Code Ann. §42-1-160 (B), (C), and (D) and Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 at 300 (2012). Mr. Jimenez did not allege a mental injury.

The Commission imposed an impermissibly higher standard on Mr. Jimenez by requiring him to establish medical causation as part of establishing whether he suffered an "injury by accident." Moreover, an alleged delay in obtaining follow up medical treatment after an accident is not germane to the issue of medical causation. The Commission should have ruled that Mr. Jimenez suffered an "injury by accident" per §42-1-160, then addressed the separate issue of whether his current complaints were causally-related to the compensable injury by accident. S.C. Code Ann. §42-1-160 is not applicable to the issue of medical causation in a claim such as Mr. Jimenez's involving a simple back injury. Whether Mr. Jimenez's compensable injuries by accident entitle him to benefits for his current problems is a question that was never reached in the Appellate Panel's Order.

Further, assuming *arguendo* that Mr. Jimenez delayed in seeking additional treatment, which was highly disputed by the evidence, this cannot affect his having suffered an "injury by accident" per S.C. Code Ann. §42-1-160. One cannot undo having suffered an "injury by accident," by any subsequent action, inaction, or delay. Likewise, whether a claimant's medical problems are related to his work injury is not affected by the date he finally receives treatment.

Despite Respondent's claims to the contrary, Finding 9 of the Appellate Panel's Order did not reach the issue of a causal relationship between Mr. Jimenez's current complaints and his compensable injuries by accident.

Finding 9 provided:

> We find that Claimant reported "incidents" following each alleged date of injury, however, we specifically find the claimant has failed to carry his burden of proving his current problems are causally-related to these reported "incidents". This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for numerous months following each alleged date of injury. This finding is based upon the greater weight of the evidence in the record.

(R. p. 36).

The Commission's use of quoted "incidents" and the phrase "alleged dates of injury" reflect it did not reach the determination that compensable "injuries by accident" had occurred. This was the same terminology used in the original Hearing Order to find Mr. Jimenez failed to provide timely Notice of his accidents. (R. p. 28) This was further borne out by Finding 13 reflecting "claimant has failed to carry his burden of proving a compensable injury by accident . . . on either *alleged* dates of injury." (*Emphasis added*, R. p. 36). Finally, Conclusion of Law 3., provided that pursuant to S.C. Code Ann. §42-1-160, Mr. Jimenez did not sustain a compensable injury by accident based on Finding 9. The Commission could not address any causal relationship between his physical complaints and his injuries by accident, without first finding he suffered injuries by accident.

In accordance with S.C. Code Ann. §42-1-160, Mr. Jimenez suffered two "injuries by accident." Unfortunately, this question of law was not correctly answered by the Commission.

Appellant respectfully requests that the Court issue the writ; reverse the Commission; and, rule that "injuries by accident" were established per 42-1-160; and, award Appellant workers' compensation benefits.

2. **The Commission failed to provide sufficient Findings of Fact and Conclusions of Law to allow Appellate Review.**

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

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 of Appeals could not know from the Appellate Panel's Order what the basis was for the amendments to the Hearing Order. The Court of Appeals could not know which facts the Appellate Panel chose to interpret differently in its decision to amend the Findings from the Hearing Order. Without knowing the Appellate Panel's reasoning or final interpretation of the facts, the Court of Appeals could not determine whether the amended Findings were adequately supported by those unknown facts. The Commission's findings are conclusory and lack sufficient specificity to allow proper Appellate review, in violation of the statutory and case law of South Carolina.

The Hearing Commissioner's Finding of Fact 9 indicated that Mr. Jimenez's "reported 'incidents' did not rise to the level of defining an injury to the Employer. . ." The basis for this finding was Mr. Jimenez's "lack of requested follow-up and lack of medical treatment for several months following each alleged date of injury." (R. p. 28).

On appeal to the Full Commission, Mr. Jimenez argued that this Finding represented a misunderstanding of the law applicable to Notice. (R. p. 868, lines 17-25; p. 869, lines 1-25; p. 870, lines 1-2 and lines 21-25; p. 871, lines 1-3 and lines 17-22) Once Mr. Jimenez reported the work accidents and injuries to his supervisor the day after each occurred, his duty to provide Notice was satisfied. Any alleged failure to request follow-up or seek medical treatment could not change that fact.

The Full Commission recognized the apparent problem with Finding 9. During oral argument, the following comment was provided:

> What the Commissioner said was, he didn't rule on notice. He didn't touch notice. He didn't come in under 42-15-20 and say notice doesn't apply. What he said was, based upon what happened in this case, yes, your client told them about two incidents, but he never even went and saw a doctor, ever. For a year and almost 18 months, he never went and saw a soul. That doesn't rise to the level of an injury by accident. Yeah, he said, "You know, I think I might have strained back or I might have done something; give me pill." He took the pill, never to be heard from again between accident one and accident two. Never. Never heard a word.

(R. p. 877, lines 3-17).

He was interrupted by one of the Commissioners on the panel who asked: "If we agree with you, wouldn't you agree that perhaps that finding could be reworded? (R. p. 877, lines 22-24).

Respondent-Kohler's attorney replied:

> Sure. You could – you could – you could fix the wording to say what I just said. He gave notice of two accidents. They don't arise to an injury by accident under the Act. That's what the Commissioner I think said. That's what he says in his conclusion, if you go read the conclusion a little closer under 42-1-160. And then he said he didn't meet his burden of proving all of those things…

(R. p.877, lines 25; p. 878, lines 1-9).

However, in response to Mr. Jimenez's Appeal, the Full Commission, "Affirmed with an Amendment, specifically the clarification of Finding of Fact Number 9." (R. p. 37). The Commission's Order made specific changes to Findings of Fact 9 and 13, and Conclusion of Law 3. (R. pp. 27-28 and pp. 36-37)

However, the Commission's new revised Findings failed to resolve the problems with the Hearing Order, but rather created new error. Finding of Fact 9 was changed to:

> We find that Claimant reported "incidents" following each alleged date of injury, however, **we specifically find the claimant has failed to carry his burden of proving his current problems are causally-related to these reported "incidents"**. This issue is further revealed by the claimant's lack of requested follow-up and lack of medical treatment for numerous months following each alleged date of injury. This finding is based upon the greater weight of the evidence in the record.

Emphasis added. (R. p. 36).

Compounding the error, Finding of Fact 13 and Conclusion of Law 3 were changed to specifically reflect the bases for each to be new Finding of Fact 9.

Finding of Fact 13 provides:

> We find the claimant has failed to carry his burden of proving a compensable injury by accident to either his back of left leg on either alleged dates of injury. This finding is

based upon the greater weight of the evidence in the record and **moreover, Finding of Fact # 9 above.**

Emphasis added. (R. p. 36).

Yet, Finding 9 only addresses Mr. Jimenez's alleged behavior after the "injury by accident." Like Notice, once an "injury by accident" occurs, any alleged failure to request follow-up or seek medical treatment cannot change that fact.

Conclusion of Law 3 was changed to:

Pursuant to §42-1-160, claimant did not sustain a compensable injury by accident to his low back and/or left leg on July 14, 2011, or March 13, 2012, **for the reasons specifically stated in Finding of Fact #9, and based on the greater weight of the evidence.** The Claimant is therefore not entitled to any benefits under the Act.

Emphasis added. (R. p. 37).

Pursuant to S.C. Code Ann. § 42-17-50 (Supp.2007), the Commission shall weigh the evidence as presented at the initial hearing and, **if good grounds are shown**, make its own findings of fact and reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. (*Emphasis added*), Lowe v. Am-Can Transp. Servs. Inc., 283 S.C. 534, 537, 324 S.E.2d 87, 89 (Ct.App.1984); *see also* Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (1967) (holding although it is logical for the Commission to give weight to the Single Commissioner's opinion, the Commission may disagree with his findings based on the credibility of witnesses).

In Baldwin v. James River Corp., 304 S.C. 485, 405 S.E.2d 421 (Ct.App.1991), this court determined the findings of fact in the Commission's order were conclusory and remanded the case to the Commission to make sufficient findings of fact to afford a

reasonable basis for appellate review. The Court in Baldwin v. James River Corp., 405 S.E.2d at 422 also referenced the application of the Administrative Procedures Act § 1-23-350 (1986) ("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.").

> According to Pack v. State Dept. of Transp., 381 S.C. 526, 673 S.E.2d 461(Ct. App. 2009):
>
> The task of an appellate court is to inquire whether the Commission's findings are supported by substantial evidence. *Lark,* 276 S.C. at 136, 276 S.E.2d at 307. However, without clear findings of fact, this Court cannot evaluate the decision of the Commission under the substantial evidence standard. *See Drake v. Raybestos-Manhattan, Inc.,* 241 S.C. 116, 123, 127 S.E.2d 288, 292 (1962) (holding remand is proper where Commission's order affords no reasonable basis upon which the appellate court can determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings).

See also Fox v. Newberry County Mem'l Hosp., 319 S.C. at 280, 461 S.E.2d at 394 (holding when an administrative agency acts without first making the proper factual findings required by law, the proper procedure is to remand the case and allow the agency the opportunity to make those findings).

The basis for the Full Commission's new Finding 9 was not changed from the original Hearing Order, but the Finding was changed to reflect a failure to establish "injuries by accident" rather than Notice. Use of the word "incidents" in quotes and the phrase "alleged date of injury", rather than the word "accidents" and the term "date of injury" reflect the Commission was still operating under a misunderstanding of the applicable law regarding "injury by accident." The substantial evidence established Mr. Jimenez was injured at work on the reported dates. (R. pp. 475-476; pp. 173-174). Hutson v. S.C. State Ports Authority, 732 S.E.2d at 503. Moreover, the stated basis for

new Finding 9 remained: "upon the greater weight of the evidence in the records." This language is conclusory and lacks adequate specificity for the Appellate Court to determine if the Commission correctly applied the law to the facts. Baldwin v. James River Corp., 304 S.C. 485, 405 S.E.2d at 422. It points to no particular evidence for the Appellate Court to consider. It is not an explicit statement of the underlying facts supporting the findings as required per APA, SC Code Ann. §1-23-350 (1986). While Appellant agrees Finding 9 of the Hearing Order was in error, the Commission failed to identify the "good grounds... shown" for changing the Hearing Order, per S.C. Code §42-17-50 and Lowe v. Am-Can Transp. Servs. Inc., 283 S.C. at 537, 324 S.E.2d at 89. The Commission failed to provide any explanation for changing Finding of Fact 9.

Finding of Fact 13 is conclusory and not sufficient to afford a reasonable basis for Appellate review. As discussed *infra*, new Finding of Fact 9 provides no support to the issue of whether an "injury by accident" occurred. Finding of Fact 9 finds Mr. Jimenez's current back and left leg problems are not causally-related to the reported incidents because of alleged delay in requesting follow-up or seeking medical care. An injury by accident involves the origin and cause of the injury, and is date and time specific, Hall v. Desert Aire, Inc., 656 S.E.2d at 758. It cannot be changed by circumstances arising after the initial reported injury occurred. (See Argument I, pp. 25-37 of this brief). The only other basis provided for new Finding of Fact 13 is the generic "upon the greater weight of the evidence in the record." This basis lacks specificity or sufficient direction for the appellate court to determine the Commission's application of the facts to the law. Baldwin v. James River Corp., 405 S.E. 2d at 422. Drake v. Raybestos-Manhattan, Inc., 241 S.C. at 123, 127 S.E. 2d at 292. It is not an explicit

statement of the underlying facts supporting the findings as required per APA §1-23-350(1986). Again, the Commission failed to identify the "good grounds...shown" for its changes to the Hearing Order, per 42-17-50 and Lowe v. Am-Can Transp. Servs. Inc., 283 S.C. at 537, 324 S.E.2d at 89.

Conclusion of Law 3 holds Mr. Jimenez did not suffer an injury by accident "based on Finding of Fact #9 and the greater weight of the evidence in the record." Again Finding 9 provides no support for this conclusion. Hall v. Desert Aire, Inc., 656 S.E.2d at 758. Likewise, the basis is non-specific. It is not an explicit statement of the underlying facts supporting the findings as required per APA §1-23-350(1986). Again, the Commission failed to identify the "good grounds...shown" for its changes to the Hearing Order, per §42-17-50 and Lowe 283, S.C. at 537, 324 S.E.2d at 89. It is conclusory and not sufficient to afford a reasonable basis for appellate review per Baldwin 405 S.E.2d at 422; Drake, 241 S.C. at 123, 127 S.E.2d at 292.

Mr. Jimenez respectfully request the Court issue the writ; and reverse and remand for new findings and conclusions consistent with the substantial evidence presented that Mr. Jimenez suffered "compensable injuries by accident;" and, with new findings and conclusions containing sufficient specificity to allow appellate review should subsequent appeals arise.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari and permit further briefing of the issues.

Respectfully submitted

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Greenville, South Carolina
September 18, 2017

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Op. No. 2017-UP-279 (S.C.Ct.App. filed July 5, 2017)

Jose Juan Jimenez, Employee,.....Petitioner,

v.

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

PROOF OF SERVICE

I, certify that I, Kelly E. Ware, paralegal to Alton L. Martin, Jr., and I have caused a copy of the **Petition for a Writ of Certiorari** and **Appendix** to be served by mailing a copy of the same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on September 18, 2017, addressed as follows:

Grady L. Beard, Esquire
Nicholas L. Haigler, Esquire
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Sowell Gray
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Honorable Jenny Abbott Kitchings
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(Petition for a Writ of Certiorari only)

Kelly E. Ware

September 18, 2017
Greenville, South Carolina

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September 18, 2017

The Honorable Daniel E. Shearouse
Clerk of Court, S.C. Supreme Court
1231 Gervais Street
Columbia, SC 29201

RE: **José Juan Jiménez v. Kohler Company**
Appellate Case No.: 2015-001336

Dear Mr. Shearouse:

Please find enclosed the original and six (6) copies of our **Petition for a Writ of Certiorari** in the above-referenced matter, along with our check in the amount of One Hundred ($100.00) Dollars as payment of the filing fee. We have also enclosed two (2) copies of the **Appendix**, one of which is unbound per Rule 267(d).

By copy of this letter and enclosure to Grady Larry Beard, Nicholas Lee Haigler, and Robert E. Horner, counsel of record for the Respondent, we are serving a copy of our **Petition for a Writ of Certiorari** and **Appendix** upon them as indicated by the attached Proof of Service. We are also providing a copy of our **Petition for a Writ of Certiorari** to the South Carolina Court of Appeals pursuant to Rule 242 (c).

Should you have questions or need any additional information, please do not hesitate to contact me. Thank you for your consideration.

With kind regards, I am

Sincerely,

MARTIN & MARTIN, P.A.

Alton L. Martin, Jr.

ALMjr/kew
Enclosures
cc: Grady L. Beard, Esquire/Nicholas L. Haigler, Esquire/Robert R. Horner, Esquire (w/enclosures)
The Honorable Jenny Abbott Kitchings (Petition for Writ of Certiorari only)

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