

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

Opinion No. 2017-UP-233 (SC. Ct. App. Filed May 31, 2017)

Appellate Case Nos. 2016-001339

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

v.

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

PETITION FOR WRIT OF CERTIORARI



E. Ros Huff, Jr., Esquire Bar No: 2767
Shelby G. Hapeshis, Esquire Bar No. 74731
HUFF & HAPESHIS, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232 telephone
Attorneys for Appellants Alice Manufacturing
Company, Inc. and Great American Alliance
Insurance Company

Other Counsel of Record:

W. Grady Jordan
Smith, Jordan, Lavery & Lee, PA
P. O. Box 1207
Easley, SC 29641
(864) 855-1661
Attorney for Respondent

RECEIVED

SEP 29 2017

SC Court of Appeals

INDEX

Table of Authorities.....	2
Certificate of Counsel	3
Question Presented	4
Statement of the Case	4
Arguments.....	6
1. The Court erred in finding the back injuries compensable and awarding workers compensation benefits, the error being that this was not supported by the evidence and is an error of law.	6
2. The Court erred in finding that the claimant was entitled to temporary total disability benefits when the claimant did not have a loss of earning capacity.	8
3. The Court's order is defective and not compliant with SC Code of Laws.	9
Conclusion	10

TABLE OF AUTHORITIES

STATUTES

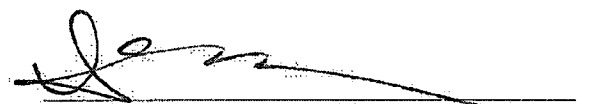
S.C. Code Ann. Section 1-23-350 (1976, as amended).....	9
S.C. Code Ann. Section 42-1-120 (1976, as amended).....	9
S.C. Code Ann. Section 42-17-40 (1976, as amended).....	9

CASES

<u>Aristizabal v. I.J. Woodside-Division of Dan River, Inc.</u> , 268 S.C. 366, 234 S.E. 2d 21 (1977).....	9
<u>Brunson v. Am. Koyo Bearings</u> , 395 S.C. 450, 718 S.E. 2d 755 (Ct. App. 2011).....	6
<u>Moore v. S.C. Alcohol Beverage Control Commission</u> , 304 S.C. 356, 404 S.E.2d 714 (S.C. App. 1991).....	9
<u>Pack v. S.C. DOT</u> , 381 S.C. 526, 673 S.E.2d 461 (Ct. App. 2009).....	6

CERTIFICATE OF COUNSEL

Counsel for the Petitioner hereby certifies, pursuant to SCACR Rule 226(d)(1), that the Petition for Rehearing was initially made to the Court of Appeals on June 14, 2017 and finally ruled on by the Court of Appeals on August 28, 2017.



E. Ros Huff, Jr., Esquire Bar No. ~~2767~~
Shelby G. Hapeshis, Esquire Bar No. 74731
HUFF & HAPESHIS, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232 telephone
Attorneys for Appellants Alice Manufacturing
Company, Inc. and Great American Alliance
Insurance Company

QUESTIONS PRESENTED

- I. Did the court err in finding the back injuries compensable and awarding benefits, the error being that this was not supported by the evidence and is an error of law?
- II. Did the court err 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?
- III. Did the court err 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?
- IV. Did the court err 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?
- V. Did the court err in that the findings of fact 21, 22, 23, 24, 27, 28, 29 and 30 are conclusory and not supported by the evidence?
- VI. Did the court err in that Conclusions of Law 2,3, and 5, are not supported by the evidence?
- VII. Did the court err in ordering medical treatment and TTD benefits for the two (2) back claims?

STATEMENT OF THE CASE

The claimant was hired on August 11, 2011 with the employer as a weaver. This Claimant alleged four separate accidents on four separate days. Two claims are to the back and two claims are to the legs, specifically her knees. These cases were heard together in the interest of judicial economy on May 20, 2015. The claimant was represented by W. Grady Jordan and the Defendants were represented by E. Ros Huff, Jr. The Commissioner issued an order on January 26, 2016 finding that the Claimant suffered compensable work-related injury or injuries

to her back on 08/08/13 and 05/19/14. The Hearing Commissioner found that the claimant's knee issues were not compensable. The Appellate Panel of the South Carolina Workers Compensation Commission affirmed the Hearing Commissioners order regarding the back claim. It is from that order that Defendants appeal.

The Claimant was working for the Defendant Employer as a textile weaver, tending twelve (12) to fourteen (14) machines that made cloth. She testified that she would move back and forth from one machine to the other during the day. Her job was to ensure the machines kept working/running. The one step in which the claimant had to walk up was only an eight to ten inch tall step from ground level to the level where she worked on the loom. She would step up onto the platform, work on the loom, step off the platform and go to the next loom. There were between 12 and 15 looms for which the Claimant was responsible. The activity of stepping up on the single step was an injury by accident.

On August 8, 2013, the claimant alleged that she suffered an injury to her back (WCC File # 1321387). On May 19, 2014, the claimant also contends that she suffered an injury to her back (WCC File #1407915). The claimant went to the Steadman Hawkins clinic where a negative x-ray was taken of the back. Defendants contend that the claimant did not suffer an injury by accident as the accident could not have happened in the way that the claimant described and that the activity of stepping up on a step is not an injury by accident. Further, they contend that even the claimant cannot recall how the accident occurred. Defendants further contend that the claimant is not entitled TTD from June 18, 2014, because the Claimant was responsible for obtaining her own MRI. The Defendants denied the claim, and, therefore, they were not under an obligation to pay for an MRI. On a denied claim, the Claimant has the burden of proving that the alleged claim for benefits is work related to an injury by accident. The claimant was

specifically written out of work until the MRI was obtained, not because the Claimant was incapable of working due to loss of earning capacity.

ARGUMENTS

ARGUMENT 1

The Court erred in finding the back injuries compensable and awarding workers compensation benefits, the error being that this was not supported by the evidence and is an error of law.

(Questions presented I and II)

The South Carolina's Administrative Procedures Act (APA) establishes the standard for judicial review of workers' compensation decisions. Brunson v. Am. Koyo Bearings, 395 S.C. 450 (S.C. Ct. App. 2011). Under the APA, the court can reverse or modify the decision of the Appellate Panel of the South Carolina Workers' Compensation Commission when the substantial rights of the appellant 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 considering the record as a whole. Id. Defendants first submit that the Appellate Panel's determination of compensability is a matter of law. When the evidence is susceptible of but one reasonable inference, the question becomes a matter of law. Pack v. S.C. DOT, 381 S.C. 526 (S.C. Ct. App. 2009).

Upon review of the Record as a whole in this matter, the Court's determination that claimant suffered a compensable injury by accident arising out of the course and scope of his employment, is an error of law as the evidence supports only one reasonable inference.

The claimant contends that she initially injured her back on August 8, 2013 when she was lifting a roll of cloth and sliding plastic sleeves into a tube. (R. Vol. I p. 34) However, the claimant states to the doctor in June of 2014 that she is not sure of that date. (R. Vol. II p. 185)

The claimant again contends at a visit on April 10, 2015 that she hurt her back over a year ago. (R. Vol. II p. 144) This statement is not consistent with either date for the back injuries.

The medical evidence does not support the back claims. The views of the lumbar spine were taken on August 14, 2013, and the impression was that there was no evidence for abnormality of the spine. (R. Vol. II p. 250)

On August 14, 2013, she states to the doctor that she can do her regular job so the doctor sent her back regular duty. On August 28, 2013, she states that her back feels better and changes the description of how the accident occurred to say that she strained her back while trying a new job.

Even at her visit with Dr. Wilson, she states that she is not sure if the incident was in August of 2013. She also had lumbar x-rays taken on that date which were normal. At her visit on June 18, 2014, she states that she **fell** when working on a loom at work. However, the claimant specifically states in her deposition that she can't recall when an accident happened to her back and thinks it might have been in the summer. (R. Vol. II p. 286) This time frame also does not line up with either date of injury.

The claimant's accident description changes again in her deposition when she states that she had to jump from the machine. (R. Vol. II p. 287) In the claimant's deposition on page 44, she states that she felt pressure in the lower part of her back when she was trying to apply for another job. The claimant again states that the injury keeps her from walking in skinny heels, standing for long periods of time etc. (R. Vol. II p. 301) However, this is once again refuted by the surveillance videos where claimant is wearing spike heels. She further states in her deposition that she cannot stand when she has heels on and has to support herself with something. (R. Vol. II p. 303) David Cooper testified in his deposition on page 9 that the

platform that the claimant allegedly "jumped off of, was only 8 to 10 inches tall. This also refutes her description of her back accident. He further testified that anytime a weaver is working on a machine, they are stepping on a step. (R. Vol. I p. 118) David Cooper on page 11 of his deposition, describes a weaver's job with respect to the platform and steps as follows:

- q. So the weaver would be at machine 1 for a couple of minutes, they would – and to do that. They would stand up on this. We call it—is it platform; can I use that word?
- a. Its called a step.
- q. The step, the 8- to 10- inch step.
- a. uh huh.
- q. Ant hen the weaver will do whatever on the machine. Step down from the step. Go to the next machine.—
- a. uh huh.
- a. —step up on the step?
- a. Yes. Sir.
- q. an then do that a couple of minutes, whatever they do at that machine?
- a. Yes.
- q. Step down, go to the next machine. Step up on the step?
- a. Yes.
- q. And. Correct me if I'm wrong, is that essentially what the weaver does during their shift?
- a. yes.

The claimant told Mr. Cooper that she was sliding plastic sleeves when she hurt her back. (R. Vol. I p. 121) However, she also told David Cooper that she had a back claim prior to being employed with Alice Manufacturing. (R. Vol. I p. 124) Because the record shows one thing, that the claimant did not suffer and injury by accident, the Court's determination was in error.

ARGUMENT 2

**The Court erred in finding that the claimant was entitled to temporary total disability benefits when the claimant did not have a loss of earning capacity.
(Questions Presented #5)**

The claimant was written out of work until an MRI was obtained. In a denied claim, the defendants were not responsible for payment of the MRI, and the claimant did not pay for her

own MRI. Therefore, her absence from the workforce was the result of her own conduct. 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. 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. Therefore, the Court's determination that the claimant was entitled to TTD benefits was in error.

ARGUMENT 3

The Court's order is defective and not compliant with SC Code of Laws.

(Questions Presented III and IV)

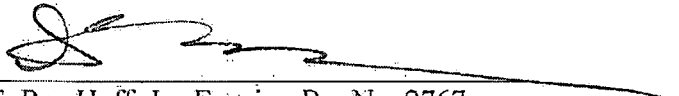
Defendants would also contend that the Court's order is defective in that Findings of Fact 21, 22, 23, 24, 27, 28, 29 and 30 are conclusory and Conclusions of Law 2, 3, and 5 are not supported by the evidence.

Section 42-17-40 and 1-23-350 outline the requirements for an order. Section 42-17-40 requires that an award have a statement of the findings of fact, rulings of law and other matters pertinent to the questions at issue. Section 1-23-350 imposes the same requirements. However, it requires that a finding of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings and they shall be separately stated. As the court in Aristizabal v. I.J. Woodside-Division of Dan River, Inc., 268 S.C. 366, 234 S.E.d 2d 21 (1977) states, "If a material fact is contested, the Hearing Commissioner must make a **specific, express** finding on it." Id. at 371. Statements not specifically designated as finding of fact or conclusion of law may not be considered and may results in at least a remand. Moore v. S.C. Alcohol Beverage Control Commission, 304 S.C. 356, 404 S.E.2d 714 (S.C. App. 1991). Because the Order is deficient, it should be reversed in that respect.

CONCLUSION

For the forgoing reasons, Petitioner respectfully asks that this Court to grant this Petition for Writ of Certiorari, permit oral arguments on these issues and issue a decision to reverse the Court of Appeal's ruling.

Respectfully submitted,



E. Ros Huff, Jr., Esquire Bar No. 2767
Shelby G. Hapeshis, Esquire Bar No. 74731
HUFF & HAPESHIS, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232 telephone
Attorneys for Appellants Alice Manufacturing
Company, Inc. and Great American Alliance
Insurance Company

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

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

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

v.

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

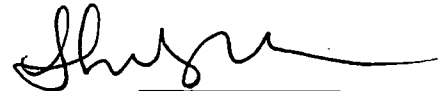
RECEIVED
SEP 29 2017
SC Court of Appeals

Certificate of Service

I certify that I have served the Petition Writ of Certiorari to Martha Perez and The Clerk of Court of the SC Court of Appeals by depositing a copy of the same in the United States Mail, postage prepaid, on September 27, 2017 addressed to:

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

The Honorable Jenny Kitchings
PO Box 11629
Columbia, SC 29211



Shelby G. Hapeshis #74731
7244 Woodrow Street
PO Box 1935
Irmo SC 29063
(803)252-2232

Attorneys for Employer/Carrier



E. Ros Huff, Jr.
roshuff@huffandhapeshis.com

HUFF & HAPESHIS LLC
ATTORNEYS AT LAW

Shelby G. Hapeshis
shapeshis@huffandhapeshis.com

September 27, 2017

Daniel E. Shearouse, Clerk of Court
Brenda F. Shealy, Deputy Clerk of Court
South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

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 Honorable Clerk Shearouse:

Please find enclosed herewith a Petition for Writ of Certiorari.

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/eoa

Enclosures
cc: W. Grady Jordan, Esquire

5500.0744
5500.0765

RECEIVED

SEP 29 2017

SC Court of Appeals



**HUFF &
HAPESHIS** LLC
ATTORNEYS AT LAW

Post Office Box 1935
Irmo, South Carolina 29063

COLUMBIA
SC 29017
28 SEP '17
PM 3 IL



PITNEY BOWES

\$ 001.40⁰

02 1P
0001950769 SEP 27 2017
MAILED FROM ZIP CODE 29063

The Honorable Jenny Kitchings
PO Box 11629
Columbia, SC 29211

RECEIVED

SEP 29 2017

SC Court of Appeals

29211-162929

