

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA
COURT OF APPEALS

Unpub. Op. No. 2017-UP-336
(filed August 2, 2017)

RECEIVED

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S.C. SUPREME COURT

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

v.

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

APPENDIX
VOLUME III

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c/o Liberty Mutual Group*

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The South Carolina Court of Appeals

Clarence Winfrey, Employee, Claimant, Respondent,

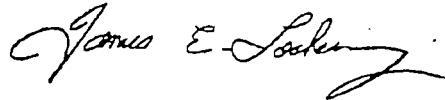
v.

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

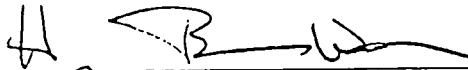
Appellate Case No. 2014-001788

ORDER

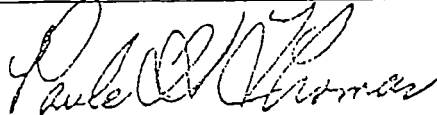
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

cc: Brett Harris Bayne, Esquire
Preston F. McDaniel, Esquire
Amy Bracy

FILED

September 28, 2017

**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**

Clarence Winfrey, Employee, Claimant, Respondent,

v.

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

Appellate Case No. 2014-001788

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2017-UP-336
Heard December 6, 2016 – Filed August 2, 2017

AFFIRMED

Brett Harris Bayne, of McAngus Goudelock & Courie,
LLC, of Columbia, for Appellants.

Preston F. McDaniel, of McDaniel Law Firm, of
Columbia, for Respondent.

PER CURIAM: Archway Services, Inc., and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group (collectively Archway) appeal from the order
of the Appellate Panel of the Workers' Compensation Commission (Appellate

Panel) finding Clarence Winfrey suffered a compensable injury under the Workers' Compensation Act. Archway alleges the Appellate Panel erred in (1) failing to vacate the order of the Single Commissioner because the Single Commissioner erred in holding the original hearing of Archway's objection because the Single Commissioner operated in an appellate capacity without proper jurisdiction; (2) failing to find a date on which Winfrey suffered a plaque rupture in his heart; (3) failing to find what caused the plaque rupture in Winfrey's heart; (4) failing to find a date on which Winfrey suffered a myocardial infarction; (5) relying on Dr. Jeffery Travis's written medical opinion when the evidence presented at the hearing and his own subsequent deposition testimony directly contradicted his written medical opinion; (6) relying on Dr. Lanneau Lide's written medical opinion when the evidence presented at the hearing and his own subsequent deposition testimony directly contradicted his written medical opinion; (7) relying on Dr. Karen Greenfield's written medical opinion when the evidence presented at the hearing and her own subsequent deposition testimony directly contradicted her written medical opinion; (8) finding Winfrey began sweating the night of the electrical shock when Winfrey's own testimony refutes that finding; and (9) finding that three physicians have opined the electrical shock resulted in Winfrey's heart attack regardless of the date on which the heart attack occurred. We affirm.

II. FACTS

On May 22, 2013, Winfrey received an electrical shock while working on a rotisserie oven in the course of his employment. On May 28, 2013, Winfrey underwent surgery at Lexington Medical Center for a myocardial infarction and ventricular septal defect. Winfrey filed a Form 50, Employee's Notice of Claim, on June 6, 2013, alleging he suffered an injury by accident arising out of and in the course and scope of his employment to his heart, left hand/arm/shoulder, neck, head, brain, and chest. Archway began providing Winfrey with temporary total disability benefits on June 1, 2013, continuing through September 14, 2013. Archway additionally provided Winfrey medical treatment between the date of the injury and September 12, 2013. On September 12, 2013, Archway terminated Winfrey's workers' compensation benefits following a good faith investigation.

Following the Single Commissioner's order finding Archway complied with section 42-9-260 of the South Carolina Code (2015) in denying Winfrey worker compensation benefits based on a good faith investigation, Winfrey filed a Form 50 with the Commission alleging he had suffered a compensable injury. Winfrey requested a hearing before the Commission through his Form 50. Archway filed a

Form 51 denying Winfrey had suffered a compensable injury. The hearing was held before the Single Commissioner on January 13, 2014.

Archway objected on jurisdictional grounds to the Form 50 hearing being held because of the outstanding order from the Form 15 hearing held in response to Archway's denial of benefits after a good faith investigation under section 42-9-260. Specifically, Archway alleged the Single Commissioner in the Form 50 hearing would be sitting in a quasi-appellate capacity because the order of the Single Commissioner in the Form 15 hearing found Winfrey suffered a heart attack on May 28, 2013, and if the Commissioner in the Form 50 hearing found another date, the Commissioner would be repudiating the order of the Commissioner in the Form 15 hearing. After considering Archway's objection, the Single Commissioner denied the motion and proceeded with the Form 50 hearing. In the order following the hearing, the Single Commissioner found with respect to Archway's jurisdictional argument:

This Commissioner was assigned to hear this case as to the merits/compensability issue. The decision of Commissioner Beck [(the Form 15 hearing Commissioner)] is under appeal and after the arguments made at the hearing on this issue were considered by me, this Commissioner would not have held this hearing on the merits if this Commissioner did not believe that in doing so that I was not operating within my authority to hold the hearing on the merits/compensability. Further, in reference to my decision as set forth hereinafter, this Order is not inconsistent with Commissioner Beck's Findings and no attempt was made to change or disagree with Commissioner Beck's Finding of a heart attack occurring on a particular date. In fact, it is my specific and intentional finding based on the evidence presented before me that [Winfrey] injured his heart on the date of the accident. Under the testimony and evidence presented, having made that decision, whether or not the heart attack occurred on a particular date is not made and there is no Finding contained within this Order that [Winfrey] sustained a heart attack on the date of the shock/electrocution. This order is written to make Findings in reference to the merits of the claim as to

whether or not the injury to [Winfrey's] heart stemmed from the accident. Whether or not I agree or disagree with Commissioner Beck's Finding as to a particular date for the heart attack, no decision is made on that issue so as to prevent any conflict with the previous Decision by commissioner Beck and as being an unnecessary Finding to the issues before me, i.e., merits/compensability.

In further support of the decision to hold the Form 50 hearing, the Single Commissioner cited the following language from Commissioner Beck's order from the Form 15 hearing:

It is furthermore ordered that all other issues in contention, specifically including the question of whether [Winfrey] sustained an injury by accident arising out of and in the course of his employment with [Archway] resulting [in] compensable disability is preserved for adjudication at the hearing set pursuant to [Winfrey's] October 21, 2013, Form 50 Employee's Request for Hearing.

During the Form 50 hearing, Winfrey testified he was working on a rotisserie oven at a Publix Supermarket on May 22, 2013, when he came into contact with an exposed electrical wire that caused a significant shock to his left arm all the way up to his neck, shoulder, and chest. Winfrey stated he immediately called his supervisor Bobby Ruppe to notify him of the electrical shock. Winfrey recalled he had never suffered such a significant shock in his life. Winfrey testified he awoke the next morning dripping in sweat yet attempted to go to work. Winfrey recalled he made it to Wal-Mart to work on some machinery in the deli but could not proceed with the tasks because he was in too much pain. Winfrey stated he spent the next few days at home suffering significant pain, which he attempted to treat with Motrin and Tylenol. Winfrey testified he presented to Doctor's Care on May 28, 2013. Dr. Karen Greenfield examined him and became alarmed after performing an EKG. Winfrey was immediately transferred to Lexington Medical Center and into the care of Dr. Lanneau Lide and Dr. Jeffery Travis. The doctors discovered he had a ventricular septal defect and required immediate surgery. Winfrey underwent surgery to repair the defect and has been under the care of Dr. Travis and Dr. Lide since that day.

Following the hearing, the Single Commissioner issued an order finding Winfrey had met his burden of proof by demonstrating by a preponderance of the evidence he sustained a compensable injury to his heart as a result of the electrical shock, which occurred on May 22, 2013. Specifically, the Single Commissioner found Winfrey sufficiently demonstrated the electrical shock resulted in his heart attack, and ventricular septal defect. The Single Commissioner reinstated benefits to September 15, 2013, when benefits were stopped by Archway under section 42-9-260 of the South Carolina Code. Having been found to have sustained a compensable injury to his heart, the Single Commissioner ruled Winfrey is to:

[R]eceive medical care for all injuries and conditions stemming from the accident that occurred in the matter and to specifically include all conditions related to the heart as found to be causally related by the authorized treating physicians. . . . [Archway] reserve[s] the right to contest the compensability of any injury or condition opined to be related to the injury involving any bodily part, member, organ or system and the right to direct the treatment for all causally related medical problems outside the medical expertise of the two authorized treating physicians including the right to choose authorized treating physicians to provide that medical care.

In support of the finding that Winfrey suffered a compensable injury, the Single Commissioner found Winfrey received an electrical shock during the course of his employment in the range of 240-480 volts resulting in pain that got progressively worse. The Single Commissioner noted Winfrey began sweating the night of the accident and into the next morning. The Single Commissioner specifically relied on the opinions of three physicians, all of whom opined to a reasonable degree of medical certainty that the electrical shock ultimately resulted in Winfrey's heart attack, regardless of the date it actually occurred. The Single Commissioner found the deposition testimony of Dr. Travis, the treating cardiovascular surgeon, to be especially compelling. Further, the Single Commissioner noted Dr. Lide, the treating cardiologist, twice testified he saw no way Winfrey's myocardial infarction and the ventricular septal defect were not related to the electrical shock. The Single Commissioner explained he fully considered the opinion of Dr. Feldman, Archway's expert and the only physician who found no nexus between the accident and the injury, but found his opinion outweighed by the opinions of the other three

doctors, each of whom treated Winfrey rather than simply reviewing his medical records. With respect to Dr. Feldman's conclusions, the Single Commissioner noted Dr. Feldman:

(a) did not examine [Winfrey] or even speak to [Winfrey]; (b) did not see [Winfrey's] heart, as opposed to Dr. Travis, who held it in his hand; (c) initially states in his written opinion that it is "possible" that there was no connection between the plaque rupture and the electrical shock, and then in the very next sentence states that it is of the "highest certainty"; (d) Dr. Feldman is a cardiologist and not a cardiovascular surgeon; nor has he undergone a surgical residency; and (e) Dr. Feldman was specifically asked to opine in writing as to whether there was a connection between an electrical shock and a [ventricular septal defect], although he does address other pertinent issues for [Archway] in his deposition.

Following the issuance of the Single Commissioner's order, Archway filed a Form 30 and appealed to the Appellate Panel.

The Appellate Panel held a hearing on the matter on May 19, 2014. Following the hearing, the Appellate Panel issued an order affirming the Single Commissioner's order in part and reversing in part. Specifically, the Appellate Panel reversed the Single Commissioner's findings of fact and conclusions of law related to the alleged injury to Winfrey's head, brain, or both. The Appellate Panel denied Winfrey's alleged injury due to insufficient medical evidence after raising the issue before the Commission. The Appellate Panel affirmed all remaining issues decided by the Single Commissioner and appealed by Archway in its Form 30. With respect to the compensability of Winfrey's myocardial infarction and ventricular septal defect, the Appellate Panel found facts essentially identical to those found by the Single Commissioner. Concerning Archway's jurisdictional argument, the Appellate Panel held, pursuant to section 42-3-180 of the South Carolina Code (2015), the Single Commissioner had jurisdiction over the Form 50 hearing such that a hearing on compensability could be conducted despite the ongoing appeal from the Form 15 hearing. This appeal followed.

III. ISSUES ON APPEAL

1. Whether the Appellate Panel erred by failing to vacate the Single Commissioner's decision and order because the Single Commissioner erred in holding the original hearing over Appellants' objections because, by conducting the hearing and ruling on material compensability issues, the Single Commissioner operated in an appellate capacity without proper jurisdiction?
2. Whether the Appellate Panel erred in failing to find a date on which Winfrey suffered a myocardial infarction?
3. Whether the Appellate Panel erred in failing to find what caused the plaque rupture in Winfrey's heart?
4. Whether the Appellate Panel erred in failing to find a date on which Winfrey suffered a plaque rupture in his heart?
5. Whether the Appellate Panel erred in relying on Dr. Travis's written medical opinion when the evidence presented at the hearing and his own subsequent deposition testimony directly contradicted his written medical opinion?
6. Whether the Appellate Panel erred in relying on Dr. Lide's written medical opinion when the evidence presented at the hearing and his own subsequent deposition testimony directly contradicted his written medical opinion?
7. Whether the Appellate Panel erred in relying on Dr. Greenfield's written medical opinion when the evidence presented at the hearing and her own subsequent deposition testimony directly contradicted her written medical opinion?
8. Whether the Appellate Panel erred in Finding of Fact #7 by finding Winfrey began sweating the night of the electrical shock when Winfrey's own testimony refutes that finding?
9. Whether the Appellate Panel erred in Finding of Fact #9 that three physicians have opined the electrical shock resulted in Winfrey's heart attack regardless of the date on which the heart attack occurred?

IV. STANDARD OF REVIEW

The South Carolina Administrative Procedures Act¹ (APA) governs the standard of judicial review in workers' compensation cases. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Under the APA, this court's review is limited to deciding whether the Appellate Panel's decision is unsupported by substantial evidence or is controlled by an error of law. *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 289, 599 S.E.2d 604, 610–11 (Ct. App. 2004). "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." *Shealy v. Aiken Cty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000).

"On appeal from [the Appellate Panel], this [c]ourt can reverse or modify the decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record." *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 384, 769 S.E.2d 1, 2 (2015). "In a workers' compensation case, the [A]ppellate [P]anel is the ultimate fact-finder." *Id.* at 384, 769 S.E.2d at 3. "Workers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Workers' Compensation Act; only exceptions and restrictions on coverage are to be strictly construed." *Id.* at 385, 769 S.E.2d at 3.

V. Archway's Jurisdictional Argument

Archway argues the Single Commissioner in this case sat in an unlawful appellate capacity by ruling on issues material to Winfrey's initial appeal, and therefore, lacked jurisdiction because the Appellate Panel had not yet heard Winfrey's appeal from Commissioner Beck's order. By refusing to find a specific date on which Winfrey's myocardial infarction occurred, Archway asserts the Single Commissioner either implicitly affirmed Commissioner Beck's order finding the heart attack occurred on May 28, 2013, or reversed Commissioner Beck's finding as to the date of the heart attack. Archway contends the Appellate Panel's decision and order should be vacated in its entirety because the underlying hearing should not have been held because the Single Commissioner sat in an unlawful appellate capacity, and therefore, lacked jurisdiction over the matter. We disagree.

¹ S.C. Code Ann. §§ 1-23-310 through -400 (2005 & Supp. 2016).

"All questions arising under this title, if not settled by agreement of the parties interested therein with the approval of the commission, shall be determined by the commission. . . ." S.C. Code Ann. § 42-3-180 (2015). "In determining whether a work-related injury is compensable, the Workers' Compensation Act is liberally construed toward providing coverage and any reasonable doubt as to the construction of the Act will be resolved in favor of coverage." *Whigham v. Jackson Dawson Commc'ns*, 410 S.C. 131, 135, 763 S.E.2d 420, 422 (2014).

We find the Single Commissioner had jurisdiction and did not sit in an improper appellate posture by ruling on material issues of compensability. Commissioner Beck's decision and order was issued after Winfrey's Form 15, Section III, request for a hearing. The issues before Commissioner Beck concerned whether Appellants conducted a good faith investigation prior to denying Winfrey coverage as required by section 42-9-260 of the South Carolina Code (2015). Winfrey commenced this present action by filing a Form 50 with the Commission, alleging he suffered a compensable injury under the Act. Therefore, we find the two actions were separate and distinct, and the Single Commissioner in this case had jurisdiction and did not sit in an improper appellate capacity.

VI. Date of the Myocardial Infarction

Archway claims the Appellate Panel's decision and order is speculative, conjecture, and without evidentiary support because the Appellate Panel failed to find a specific date of when Winfrey suffered his acute myocardial infarction. Archway asserts the Appellate Panel was required to make findings of fact based on the evidence of when the acute myocardial infarction occurred and that the acute myocardial infarction was caused by the electrical shock. Absent these findings, Archway asserts the Appellate Panel cannot make a finding the ventricular septal defect is a compensable injury. We disagree.

The Appellate Panel was ultimately tasked with finding whether Winfrey's various maladies resulted from an injury by accident occurring in the course of his employment. This is an evidentiary question. We review the Appellate Panel's determinations to ensure they are supported by substantial evidence. *See Hargrove*, 360 S.C. at 289, 599 S.E.2d at 610–11 (Under the APA, this court's review is limited to deciding whether the Appellate Panel's decision is unsupported by substantial evidence or is controlled by an error of law.).

The Appellate Panel found Winfrey suffered an accident during the course of his employment on May 22, 2013. Archway does not dispute this occurrence. The Appellate Panel found this accident ultimately led to a myocardial infarction and subsequent ventricular septal defect. We find substantial evidence supports this finding.

Archway contends Winfrey's ventricular septal defect cannot be found to be compensable under the Act absent a finding of the specific date on which Winfrey suffered his myocardial infarction. Such a specific finding is not required. What is necessary is a finding that Winfrey suffered an accident resulting in injury during the course of employment. *See* S.C. Code Ann. § 42-1-160(A) (2015) (stating "[i]njury' and 'personal injury' mean only injury by accident arising out of and in the course of employment"). Archway has not disputed Winfrey suffered an electrical shock during the course of his employment. Three doctors have opined to a reasonable degree of medical certainty that the electrical shock Winfrey suffered caused the heart attack. Like the Appellate Panel, we find the written opinion and deposition testimony of Dr. Travis, the treating cardiovascular surgeon, to be particularly persuasive. Dr. Travis's written opinion states "I find it quite unbelievable that [Winfrey's] surgery and postoperative course have been considered separate from his electrical injury at work. I see almost no other plausible explanation other than a direct cause and effect." During the course of his deposition, Dr. Travis was asked, "I believe that you've issued a questionnaire in this case, you've indicated that [Winfrey's] condition was brought about by electrical shock of 480 volts is that correct?" Dr. Travis replied, "I believe it, absolutely, had cause (sic) the defect on this presentation." Later in his deposition, the following exchange took place:

[Archway:] In the medical reports I believe in the post surgical report you talked about seeing, I guess white marks on either other side of the heart.

[Dr. Travis:] Correct

[Archway:] What, I think your opinion was, that probably caused or most likely caused by an electrical shock entering and exiting the heart, is that correct?

[Dr. Travis:] Correct

[Archway:] Have you've [sic] seen anything like that in your career prior to that point?

[Dr. Travis:] Not with the heart, I've certainly seen electrical injuries, when I took care of burn patients, you would see people that were burn [sic] electrically and you would see the type of changes as it entered or exited the extremity which is more common. I've never seen it on a heart, I've never seen anything that looked liked [sic] that on the heart.

[Archway:] Okay

[Dr. Travis:] That's what made me think this was related to his electrical injury, certainly, looked like a [sic] entry, exit wound. It's shriveled, drawn up, kind of welded together around the tissues around it, so I have seen it in other locations, I've never seen it in the heart.

[Archway:] Would the electricity if that -- if those marks are indicative of that, would that electricity, I guess, going through the heart had [sic] caused any issues other than it may have led to the infarction itself?

[Dr. Travis:] It could of rupture [sic] the plaque led to the infarction. I don't think it was directly related to the -- I don't think it made a hole in the heart

[Archway:] Okay

[Dr. Travis:] I think the hole in the heart came from the infarction you know muscle dying over time and the hole developing. I do think it could relate to any electrical disturbance in the heart and ventricular function.

[Archway:] Okay

[Dr. Travis:] Those are the things that it could effect.

Accordingly, we find the evidence in the record substantially supports the Appellate Panel's conclusion that Winfrey's myocardial infarction was caused by the electrical shock he suffered during the course of his employment. Because the record supports a finding that the electrical shock caused the heart attack, it was not necessary for the Appellate Panel to find the specific date on which the heart attack occurred. However, we find it was necessary for the Appellate Panel to hold that Winfrey suffered an injury by accident arising during and in the course of his employment. *See* S.C. Code Ann. § 42-1-160(A) (2015) (stating "[i]njury' and 'personal injury' mean only injury by accident arising out of and in the course of employment"). We find this is exactly what the Appellate Panel did.

VII. Cause of the Plaque Rupture

Archway contends the Appellate Panel erred in failing to find what caused the plaque rupture in Winfrey's heart. Archway argues Winfrey's ventricular septal defect could only be compensable if it was caused by the plaque rupture and the plaque rupture was caused by the electrical shock. Archway posits an award of compensability as to the ventricular septal defect absent a finding as to what caused the plaque rupture in relation to the electrical shock is an award based on surmise, conjecture, and lacking in evidentiary support. We disagree.

We find the Appellate Panel committed no error in failing to find whether Winfrey's plaque rupture was caused by the electrical shock. The Appellate Panel found Winfrey suffered an electrical shock during the course of his employment resulting in a myocardial infarction that caused a ventricular septal defect. As discussed above, we find that ruling to be supported by substantial evidence.

We view the Appellate Panel's finding to encompass Winfrey's plaque rupture. *See Hargrove*, 360 S.C. at 289, 599 S.E.2d at 610–11 (stating that under the APA, "[t]his [c]ourt's review is limited to deciding whether the [Appellate Panel]'s decision is unsupported by substantial evidence or is controlled by some error of law"). Three physicians opined Winfrey's myocardial infarction and attendant ventricular septal defect were caused by the electrical shock he suffered while working on a rotisserie oven during the course of his employment. Dr. Lide admitted during his deposition testimony he could not say definitively whether the electrical shock caused the plaque rupture because modern medicine has been unable to establish what causes a plaque rupture to an absolute certainty. However, Dr. Lide repeatedly stood by his opinion that all of Winfrey's ailments he

observed to that point were caused by the electrical shock. Clearly, this opinion encompasses the plaque rupture.

Further, during his deposition Dr. Travis opined that the plaque rupture, myocardial infarction, and ventricular septal defect were all more likely than not causally related to the electrical shock Winfrey suffered during the course of his employment. Like the Appellate Panel, we find Dr. Travis's deposition testimony and written opinion to be especially compelling given the fact he was the treating cardiovascular surgeon and physically held and observed Winfrey's heart.

Additionally, we recognize the Appellate Panel explicitly stated "[a]ll of the submissions to the Single Commissioner were reviewed, including the testimony presented at the hearing; medical opinions and records; and depositions of [Winfrey], Dr. Lanneau Lide, Dr. Karen Greenfield, Dr. Barry Feldman and Dr. Jeffery Travis." Further, we note the Appellate Panel listed Dr. Feldman's beliefs with regard to the plaque rupture amongst the reasons the Appellate Panel gave greater weight to the opinions of Dr. Lide and Dr. Travis. We recognize that questions regarding weight of the evidence are exclusively within the province of the Appellate Panel. *See Hargrove*, 360 S.C. at 289, 599 S.E.2d at 611 ("The final determination of . . . the weight to be accorded evidence is reserved to the Appellate Panel."). Further, Appellate Panel factual findings are conclusive when there is conflicting evidence. *Id.* at 290, 599 S.E.2d at 611 ("Whe[n] there are conflicts in the evidence over a factual issue, the findings of the Appellate Panel are conclusive."). All of this leads us to the inescapable conclusion that the Appellate Panel fully considered the evidence with respect to the plaque rupture and implicitly found the electrical shock caused the plaque rupture by finding the electrical shock caused the myocardial infarction and ventricular septal defect.

VIII. Appellate Panel's Failure to Find a Specific Date on which Winfrey Suffered a Plaque Rupture in His Heart

Archway alleges the Appellate Panel erred in finding Winfrey suffered a heart attack sometime between suffering the electrical shock at work on May 22, 2013, and presenting to Doctors Care on May 28, 2013. Archway asserts the key to determining whether Winfrey's ventricular septal defect is compensable is determining whether the plaque rupture was caused by the electrical shock. Archway states the Appellate Panel must find a date on which the plaque rupture occurred in order to find the plaque rupture was caused by the electrical shock. Archway argues the Appellate Panel's decision and order is speculative, conjecture,

and without any evidentiary support absent a specific finding of when Winfrey suffered the plaque rupture. We disagree.

The Appellate Panel was charged with finding whether Winfrey suffered an injury by accident arising during and in the course of his employment. *See* S.C. Code Ann. § 42-1-160(A) (stating "[i]njury' and 'personal injury' mean only injury by accident arising out of and in the course of employment"). As discussed above repeatedly, the Appellate Panel's decision finding Winfrey suffered a compensable injury is supported by substantial evidence. *See Hargrove*, 360 S.C. at 289, 599 S.E.2d at 610-11 (finding under the APA, this court's review is limited to deciding whether the Appellate Panel's decision is unsupported by substantial evidence or is controlled by an error of law). Winfrey held the burden of proving he suffered a compensable injury by establishing causation between the accident suffered at work and the resulting injury. *See Hall v. Desert Aire, Inc.*, 376 S.C. 338, 349, 656 S.E.2d 753, 759 (Ct. App. 2007) ("The claimant has the burden of proving facts sufficient to allow recovery under the Act."). The three treating physicians each gave opinions to the best of their medical knowledge that Winfrey's ailments were causally related to electrical shock he suffered during the course of his employment. The Appellate Panel found this sufficiently established that Winfrey suffered a compensable injury under the Act. As we have repeatedly stated, we find the Appellate Panel's decision and order to be supported by substantial evidence. Therefore, Winfrey has met his burden of proving a compensable injury, and the exact date of the plaque rupture is only ancillary to that conclusion.

IX. Appellate Panel's Reliance on Dr. Travis's Written Medical Opinion

Archway argues the Appellate Panel erred in relying on Dr. Travis's written medical opinion for two reasons: (1) Dr. Travis's opinion that the electrical shock caused Winfrey's heart condition is based solely on the sequence of events between the shock and the acute myocardial infarction as well as the presence of plaque on Winfrey's heart; and (2) Dr. Travis's opinion is based on the fact Winfrey was shocked by 480 volts of electricity which is clearly contradicted by the evidence. Archway contends the Appellate Panel erred in not properly considering all evidence and reaching an incorrect conclusion in light of the full evidence. Archway argues Dr. Travis's written opinions do not establish a clear causal connection between the electrical shock and Winfrey's heart attack when read in conjunction with his deposition testimony. We disagree.

We find the Appellate Panel's reliance on Dr. Travis's testimony to simply be a determination on the weight to be given to evidence. Such a determination is exclusively within the province of the Appellate Panel. *See Hargrove*, 360 S.C. at 289, 599 S.E.2d at 611 ("The final determination of . . . the weight to be accorded evidence is reserved to the Appellate Panel."). Further, we find Archway's contention that Dr. Travis's opinion is based on the fact Winfrey was shocked by 480 volts of electricity is contradicted by the evidence to be correct in theory but unfounded in law. It is true that Dr. Travis admitted in his deposition testimony he had no way of knowing the actual voltage and simply relied on Winfrey's representation in reaching his conclusion. However, Winfrey testified at the hearing he believed he suffered a shock of 240 to 480 volts. Archway presented no evidence to rebut Winfrey's estimation. Specifically, the Appellate Panel found:

In the mechanics of the accident, [Winfrey] was shocked with 240-480 volts of electricity; [Winfrey] believed the actual voltage was 480 volts. [Archway's] witness admitted at the hearing that he was unsure of the voltage amount involved, and [Archway] did not present any evidence to rebut [Winfrey's] estimation even though Employer had access to the rotisserie in question. The fact that [Archway] did not present any specific evidence leads us to rely on [Winfrey's] estimation.

We acknowledge the evidence as to the actual voltage which struck Winfrey was conflicting. However, Appellate Panel findings with respect to conflicting evidence are conclusive. *See Hargrove* at 290, 599 S.E.2d at 611 ("Whe[n] there are conflicts in the evidence over a factual issue, the findings of the Appellate Panel are conclusive."). Therefore, we are bound by the finding that Winfrey was struck by 480 volts of electricity. Accordingly, we find the Appellate Panel committed no error in relying on Dr. Travis's written medical opinion.

X. Appellate Panel's Reliance on Dr. Lide's Written Medical Opinion

Archway advances the same arguments against the Appellate Panel's reliance on Dr. Travis's written medical opinion as against the Appellate Panel's reliance on Dr. Lide's written medical opinion. For the same reasons discussed in Section IX above, we find no error in the Appellate Panel's reliance on Dr. Lide's written medical opinion.

XI. Appellate Panel's Reliance on Dr. Greenfield's Written Medical Opinion

The same arguments Archway advanced against the Appellate Panel's reliance on Dr. Travis's and Dr. Lide's written medical opinions are advanced against the Appellate Panel's reliance on Dr. Greenfield's written medical opinion. For the same reasons discussed in Section IX above, we find no error in the Appellate Panel's reliance on Dr. Greenfield's written medical opinion.

XII. Appellate Panel's Finding of Fact Winfrey Began Sweating the Night of the Attack

Archway asserts the medical and testimonial evidence do not support a finding that Winfrey began sweating the night of the electrical shock. Archway points to the fact Winfrey testified he began sweating the morning after the electrical shock to support their argument. Archway contends the Appellate Panel relied on this Finding of Fact in finding the heart condition, chest injury, or both compensable. Archway asks this court to remand this case to the Single Commissioner for a finding not inconsistent with the evidence and entry of a denial of compensability for the chest injury, heart condition, or both.

Winfrey testified before the Single Commissioner during the Form 50 hearing "the next morning when I got up, I was just dripping sweat." The Single Commissioner stated in the decision and order she found Winfrey to be "very credible." The Appellate Panel found "[Winfrey] began sweating the same night of the Thursday accident and also the next morning." Any questions regarding Winfrey's testimony are simply matters of weight and credibility, which should be left to the ultimate fact finder. *See Hargrove*, 360 S.C. at 289, 599 S.E.2d at 611 ("The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel."). We recognize Winfrey's testimony can reasonably be construed to imply he began sweating during the night and awoke drenched in sweat. We acknowledge the testimony could be read differently; however, we note it is not our place to override the Appellate Panel on this matter. *See id.* at 290, 599 S.E.2d at 611 ("Where there are conflicts in the evidence over a factual issue, the findings of the Appellate Panel are conclusive.").

XIII. Appellate Panel's Finding of Fact that Three Physicians Opined the Electrical Shock Resulted in Winfrey's Heart Attack Regardless of the Date on which the Heart Attack Occurred

Archway asserts the doctors' opinions and the Appellate Panel's findings of fact can essentially be boiled down to a finding that because B happened after A, A caused B. Archway argues this is simply insufficient to support a finding of compensability under the act. Archway claims the Appellant Panel had to find Winfrey suffered his heart attack on a specific date to find it was caused by the electrical shock and was therefore compensable. We find the Appellate Panel's findings with respect to this matter to be supported by substantial evidence. Further, any questions regarding the logical consistency of the doctors' conclusions are simply matters concerning the weight of the evidence, which—as we have noted—is exclusively within the province of the Appellate Panel. *See Hargrove*, 360 S.C. at 289, 599 S.E.2d at 611 ("The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel.").

XIV. CONCLUSION

For the foregoing reasons, the Appellate Panel's decision and order is

AFFIRMED.

LOCKEMY, C.J., and WILLIAMS and THOMAS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

Appellant Case No. 2014-001788

RECEIVED

AUG 17 2017

SC Court of Appeals

Clarence Winfrey, Employee, Respondent Respondent,

v.

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

APPELLANT'S PETITION FOR REHEARING OF
THIS COURT'S UNPUBLISHED OPINION NO. 2017-CP-336

TO: PRESTON F. MCDANIEL, ESQUIRE, ATTORNEY FOR RESPONDENT

YOU WILL PLEASE TAKE NOTICE that Appellants hereby petition this Court
for a Rehearing pursuant to the South Carolina Appellate Court Rules 221(a) and 240.
The subject Order (2017-UP-336) was filed by this Court on August 2, 2017.

This Court, like the Commission, misapprehended or failed to consider the full
record and actual testimony of the medical doctors—not just the written opinions created
by Respondent—and apply that testimony to the facts as a whole. As discussed below,
each and every doctor, when deposed, equivocated and backed off the written opinions

issued prior to the deposition. Despite this, this Court, like the Commission, relied almost entirely on the written opinions of the doctors.

For these reasons, as explained more fully below, this Court should grant rehearing, reverse the Opinion, and reverse the underlying Commission Decision and Order.

Medical/Factual Background

Respondent notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (R. pp. 200-201). Employment records of Respondent indicate that he continued working the remainder of the day and the entire following day. (R. pp. 203-204). An email from Respondent to Employer indicates that he was experiencing only neck pain on May 27, 2013 (5 days post-accident). (R. p. 201). Respondent first presented to Doctor's Care on May 28, 2013 (6 days post-accident) complaining that he woke up sweating that morning (6 days post-accident) (R. p. 188). Respondent was treated by Dr. Greenfield at Doctors' Care. Dr. Greenfield noted that Respondent had some tenderness in his shoulder and neck area. Id. Further, Dr. Greenfield noted that Respondent did not complain of any chest pressure. Id.

Dr. Greenfield testified in her deposition that the testing she conducted could not give any indication as to when Respondent suffered the myocardial infarction. Specifically, Dr. Greenfield stated that the myocardial infarction "...could have been 5 days ago..." and further admitted that the acute myocardial infarction could have occurred the evening of May 27 or the morning of May 28. (R. p. 355, line 10-p. 356, line 8). Further, Dr. Greenfield indicated that she based portions of her opinion on articles that she read relating to electrocution from lightning strikes. When asked about these

articles, Dr. Greenfield admitted the voltage involved in those articles was 10,000,000 volts—an amount that is 20,000-40,000 times higher than the voltage involved in this claim. (R. p. 371, line 19-p. 372, line 4). Additionally, Dr. Greenfield stated that Respondent presented without any chest pain. (R. p. 359, lines 5-9, p. 367, lines 3-8). Dr. Greenfield also noted the pain in Respondent's arm and shoulder was not indicative of having sustained a myocardial infarction. (R. p. 359, lines 13-25). Dr. Greenfield's deposition testimony directly contradicts her prior written opinion obtained by Respondent's counsel stating Respondent's heart condition was caused by the electrical shock.

Respondent was then referred to and saw Dr. Dasgupta at the South Carolina Heart Center on May 28. Dr. Dasgupta also noted sweating and noted that Respondent denied chest pain but did have minimal left shoulder pain. (R. pp. 190-192). Dr. Dasgupta diagnosed Respondent with an acute myocardial infarction. Id. Dr. Dasgupta indicated that Respondent had a prior history of hypertension, tobacco abuse (one pack a day smoker), as well as a significant family history for heart disease (Respondent's father passed away from coronary disease and myocardial infarction). Id. Dr. Dasgupta also noted that Respondent appeared to have a ventricular septal defect as a possible completion of his acute myocardial infarction. Id. Dr. Dasgupta referred Respondent to Lexington Medical Center where Dr. Travis performed surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (R. pp. 194-196).

Dr. Travis described the mechanism of Respondent's injury as being a plaque rupture that caused a myocardial infarction that caused the ventricular septal defect. (R. p.

411, line 24-p. 412, line 2). Dr. Travis indicated that plaque ruptures can be caused by many things including getting up the wrong way from a couch, strenuous activity, stressful events in your personal life, emotional stresses, and many other things. (R. p. 412, lines 3-11). Further, Dr. Travis was asked "...other than the timing of the heart attack...there's no way to know for certain the plaque rupture was caused by the electrical shock, is that correct?" (R. p. 412, lines 12-15). Dr. Travis response was that "[i]s there a definitive way to—collate one to another absolutely not." (R. p. 412, lines 16-18) (emphasis added). Dr. Travis also stated that "the [electrical shock] could of started the whole domino effect." (R. p. 427, line 23-24) (emphasis added). Finally, Dr. Travis indicated that the neck pain Respondent experienced "could be just neck pain." (R. p. 428, lines 12-16).

Dr. Travis indicated that part of his opinion formed because of the presence of a plaque on Respondent's heart. However, Dr. Travis stated that this was his first open heart surgery on a patient who had received an electrical shock. (R. p. 427, lines 2-5). Further, Dr. Travis stated that he had never "read about or seen anything" related to whether or not the plaque he observed is related to electrical shock or whether or not the plaque he observed is common in electrical shock. (R. p. 427, lines 6-12). Dr. Travis' deposition testimony directly contradicts the prior written opinion requested by Respondent's counsel stating Respondent's heart condition was caused by the electrical shock.

After the surgery, Respondent began treating with Dr. Lide on an outpatient basis for his heart condition. In his deposition, Dr. Lide stated that no one knows what causes a plaque rupture in the heart. (R. p. 360, lines 13-15). Dr. Lide agreed with

the statement that "...we don't really know what causes plaque rupture." (R. p. 360, line 22). Dr. Lide also testified that "I don't know whether the electrical shock caused the plaque rupture... ." (R. p. 361, lines 14-15)¹. Further, Dr. Lide testified that he is not familiar with any research and he has not conducted any research on whether an electrical shock can cause a myocardial infarction or a ventricular septal defect. (R. p. 365, line 13-p. 366, line 1). Dr. Lide also indicated that the longer in time the heart condition develops from the precipitating event (in this case an electrical shock), the less likely it is the heart condition is related to the electrical shock. (R. p. 366, lines 2-6). Finally, Dr. Lide stated his overwhelming evidence that the electrical shock caused Respondent's condition was "proximity in time." (R. p. 367, lines 20-21). Dr. Lide's deposition testimony directly contradicts the prior written opinion requested by Respondent's counsel stating Respondent's heart condition was caused by the electrical shock.

Legal Analysis

The mere fact an injury occurs due to heart attack during employment will not, by itself, support a compensation award. *See, for example, Lorick v. S.C. Elec. & Gas Co.*, 245 S.C. 513, 141 S.E.2d 662 (1965); *Rivers v. V.P. Loftis Co.*, 214 S.C. 162, 51 S.E.2d 510 (1949); *Price v. B.F. Shaw Co.*, 224 S.C. 89, 77 S.E.2d 491 (1953). The injury must be proximately caused by an accident which arose out of the employment. The burden is on the Respondent to establish causation for the heart attack injury. In heart attack and

¹ Note that Dr. Travis' statements, and the uncontested medicals, indicate the sequence of events is a plaque rupture/myocardial infarction which resulted in the ventricular septal defect. Dr. Lide therefore readily admits he has no idea if the chain of events alleged by Respondent was caused by the alleged electrical shock.

stroke cases, the Respondent must present competent and reliable evidence of a causal connection between the work he performed and the heart condition/injury.

In Lorick, the court held causation is a medical question which only experts can establish. *See also Wynn v. Peoples Natural Gas Co.*, 238 S.C. 1, 118 S.E.2d 812 (1961). Specifically, the Supreme Court stated:

“It is our conclusion that the medical testimony here falls far short of that required to prove causation. The Commission could not make a determination of causal connection between an accident and death by coronary occlusion independent of supporting medical testimony where assessment of the precipitating cause requires expert knowledge...”

Lorick at 527, 141 S.E.2d at 669.

When expert testimony is relied on to establish a causal connection between an accident and subsequent injury, the Respondent must present an expert opinion at least to the effect that the accidental injury “most probably” caused the disability or death. Id. at 525, 141 S.E.2d at 669 (quoting Cross v. Concrete Materials, Inc., 236 S.C. 440, 114 S.E.2d 828 (1960)). In heart attack cases, the medical expert must testify accident or conditions of employment “most probably induced or precipitated the heart attack or other coronary condition which caused the Respondent’s injury.” Id. at 525, 141 S.E.2d at 668. It is not sufficient to show that the malady in question “possibly” or “could have” or “might have” resulted from the injury. Bridges v. Housing Authority, 278 S.C. 342, 345, 295 S.E.2d 872, 874 (1982) (quoting Gambrell v. Burleson, 252 S.C. 98, 165 S.E.2d 622 (1969)).

In this case, Respondent seeks to rely almost exclusively on the written questionnaires issued by Drs. Greenfield, Travis, and Lide. However, each and every

doctor in this case gave the above contradictory deposition testimony after they issued a written opinion proctored by Respondent's counsel. Respondent seeks to have this court disregard the deposition testimony which directly contradicts the written opinions. The written opinions cannot be viewed in a static vacuum—rather they must be viewed in conjunction with the deposition testimony and the deposition testimony must be understood to enhance and/or clarify the limited written opinions previously issued. When the written opinions and the deposition testimony are read in tandem, it is clear that the doctors' opinions do not meet the standards for compensability. Each and every doctor gives expert medical deposition testimony in which they indicate (1) they do not actually know when the heart attack occurred, (2) there is no way to say with any certainty what causes plaque rupture (the specific mechanism of Respondent's heart attack), (3) the electrical shock could have caused the heart condition (which clearly insufficient under current law to establish causation), and (4) the only causal link between the shock and the heart attack is "sequence in time" (e.g. the heart attack likely occurred sometime after the shock occurred). It is further clear from the record, including the Full Commission Decision and Order; that the Full Commission wholesale disregarded the deposition testimony of the medical experts and instead only considered the initial questionnaires of the same medical experts—this was error and requires a reversal or a remand for specific consideration of the deposition testimony.

As set out in underlying briefs, this tenuous connection with no definitive medical evidence to support the electrical shock-heart attack link is insufficient to sustain a finding of compensability. Each doctor, as set out above, can only say definitively that the shock "could" or "may" or "might" have caused the heart injury. Further, the two

heart doctors indicated they cannot tell anyone what causes a plaque rupture in the first place and that it may be caused by stress, coughing, exertion, sneezing, or nothing at all. The heart doctors further admitted they have done no research and have no knowledge of electrical shocks causing plaque ruptures, myocardial infarctions, or ventricular septal defects.

For the foregoing reasons, the doctors' opinions under the current laws of this state are clearly insufficient to sustain a finding of compensability and this court should grant rehearing, reverse the Opinion, and reverse the underlying Commission Decision and Order.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2014-001788

Clarence Winfrey, Employee, Respondent Respondent,

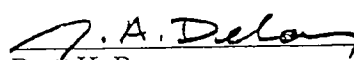
v.

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

PROOF OF SERVICE

I certify that I have caused to be served Appellants' Petition for Rehearing on the attorney of record for Clarence Winfrey, by hand delivery, on the 16th day of August, 2017 addressed to Preston F. McDaniel, Esquire, The McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina 29201.

McANGUS GOUDELOCK & COURIE, L.L.C.

 *B.H.B.* for BHB

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RECEIVED

Appellate Case No. 2014-001788

AUG 28 2017

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.

RESPONSE TO APPELLANTS'
PETITION FOR REHEARING

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.

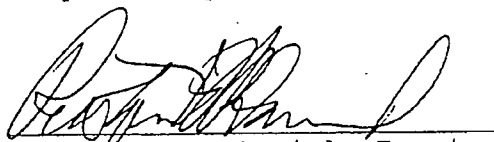
2. That, "the purpose of the Petition for Rehearing is not ... to have the case retried in the Appellate Court a second time." Herron v. Century BMW, 395 S.C. 461, 466 719 S.E.2d 640, 643 (2011). In reference to the basis for the Petition, overlooked/misapprehended conflicting evidence, and as to evidence 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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Attorney for Employee/Claimant

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

RECEIVED

FEB 25 2016

SC Court of Appeals

Appellant Case No. 2014-001788

Clarence Winfrey Respondent,

v.

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

APPELLANTS' FINAL BRIEF

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Full Commission err by failing to vacate the Single Commissioner Decision and Order because the Single Commissioner erred in holding the original hearing over Defendants-Appellants' objections because, by conducting the hearing and ruling on material compensability issues, the Single Commissioner operated in an appellate capacity without proper jurisdiction?
- II. Did the Full Commission err in failing to find a date on which Claimant suffered a plaque rupture in Claimant's heart?
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- VIII. Did the Full Commission err in Finding of Fact #7 by finding that Claimant began sweating the night of the electrical shock when Claimant's own testimony refutes that finding?
- IX. Did the Full Commission err in Finding of Fact #9 that three physicians have opined the electrical shock resulted in Claimant's heart attack regardless of the date on which the heart attack occurred?

STATEMENT OF THE CASE

This claim arises out of an alleged accident on May 22, 2013. On that date, Claimant contends he was momentarily shocked by a rotisserie oven he was working on. Following the accident, Claimant continued to work for the remainder of the day and the following day. Claimant had scheduled time off after May 23, 2013. On May 28, 2013—six days after the accident—Claimant presented to Doctor's Care and Lexington Medical Center with severe three vessel coronary disease, an occluded coronary artery, and an acute myocardial infarction caused by a plaque rupture which caused an acute ventricular septal defect. At Doctor's Care, Claimant reported he was having no chest pressure and had started sweating that morning (on May 28th). At Lexington Medical Center, Claimant indicated he was not having chest pain but had been sweating. Following the diagnosis, Claimant underwent surgery to repair the ventricular septal defect caused by the plaque rupture and subsequent myocardial infarction. The medical records in the case revealed that Claimant has a distinct family history of coronary disease with his father passing away at a similar age from coronary disease and a myocardial infarction. Further, the medical records indicated that Claimant was a 35 year pack-a-day smoker and drank a case of beer per week. Based on all of the medical records available to Carrier, this claim was ultimately denied by verbal communication to Claimant on September 13, 2013.

Immediately following the denial of benefits, Claimant filed a Form 15, Section III requesting a hearing as well as a Summons and Complaint in Richland County Circuit Court alleging a bad faith denial of benefits, alleging that S.C. Code Ann. § 42-9-260 is unconstitutional, seeking a temporary restraining order to stop Defendants from denying the claim, and seeking an Order from Judge Lee finding the claim compensable and

awarding benefits. Judge Lee issued and then rescinded the temporary restraining order sought by Claimant. A hearing on the merits of Claimant's Complaint has not been set by the Court. After the temporary restraining order was rescinded, the Commission set Claimant's Form 15, Section III for a hearing before Commissioner Beck. In addition, Defendants filed several motions with the Commission including a Motion to Quash the deposition of the adjuster, a Motion to Quash discovery of the adjuster's claim file, and a Motion to Postpone the Hearing.

A hearing on all of the motions and on Claimant's Form 15, Section III was set on September 30, 2013 for November 11, 2013. Prior to the hearing, Commissioner Beck conducted a standard pre-hearing conference as well as a Motions Hearing wherein Commissioner Beck ruled on all outstanding issues raised by the motions including Defendants' Motion to Postpone. Each of these motions affected the ability to conduct the Form 15 hearing and were necessary to have prior to the hearing. Commissioner Beck gave Claimant the opportunity to postpone the Form 15 hearing in order to spend time preparing for each of the motions that were timely served. Claimant turned down that opportunity. At the hearing, all parties agreed that the only issue for Commissioner Beck was to determine whether or not Defendants had conducted a good faith investigation. In order to make that determination, Commissioner Beck limited the review of evidence to only those documents produced prior to the date of denial – September 13, 2013. Following the hearing, Commissioner Beck issued a Decision and Order on December 5, 2013 finding that Defendants had conducted a good faith investigation. The subject of that hearing is currently on appeal before this Court in a separate appeal filed by Plaintiff.

On October 22, 2013, after the Form 15 hearing was set by the Commission but before that hearing was held, Claimant filed a Form 50 requesting a hearing on compensability for alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other organs, members, and bodily parts. A hearing notice for the Form 50 hearing was sent by the Commission on December 6, 2013 with explicit instructions that the hearing would be to determine compensability of Claimant's alleged injuries to his head, brain, left hand, left arm, chest, heart, and all other organs, members, and bodily parts. The Form 50 hearing was held before the Single Commissioner on January 13, 2014. Following the hearing, the Single Commissioner issued a Decision and Order on February 27, 2014. Defendants-Appellants timely filed a Form 30 based on legal errors contained in the Single Commissioner's Decision and Order. The Full Commission conducted a review hearing on May 19, 2014. The Full Commission issued its Decision and Order on July 25, 2014. Defendant-Appellants filed a Notice of Appeal on August 20, 2014. Thereafter, the parties entered into the voluntary pilot mediation program in an attempt to resolve this matter. Due to certain issues with obtaining records and opinions, as well as scheduling issues, this mediation did not occur until May 1, 2015. Unfortunately, the parties reached an impasse and this matter is now back before this Court on the original appeals.

ARGUMENT

Claimant notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (R. pp. 200-201). Employment records of Claimant indicate that he continued working the remainder of the day and the entire following day. (R. pp. 203-204). An email from Claimant to Employer indicates that he was experiencing only neck

pain on May 27, 2013 (5 days post-accident). (R. p. 201). Claimant first presented to Doctor's Care on May 28, 2013 (6 days post-accident) complaining that he woke up sweating that morning (6 days post-accident) (R. p. 188). Claimant was treated by Dr. Greenfield at Doctors' Care. Dr. Greenfield noted that Claimant had some tenderness in his shoulder and neck area. Id. Further, Dr. Greenfield noted that Claimant did not complain of any chest pressure. Id.

Dr. Greenfield testified in her deposition that the testing she conducted could not give any indication as to when Claimant suffered the myocardial infarction. Specifically, Dr. Greenfield stated that the myocardial infarction "...could have been 5 days ago..." and further admitted that the acute myocardial infarction could have occurred the evening of May 27 or the morning of May 28. (R. p. 355, line 10-p. 356, line 8). Further, Dr. Greenfield indicated that she based portions of her opinion on articles that she read relating to electrocution from lightning strikes. When asked about these articles, Dr. Greenfield admitted the voltage involved in those articles was 10,000,000 volts—an amount that is 20,000-40,000 times higher than the voltage involved in this claim. (R. p. 371, line 19-p. 372, line 4). Additionally, Dr. Greenfield stated that Claimant presented without any chest pain. (R. p. 359, lines 5-9, p. 367, lines 3-8). Dr. Greenfield also noted the pain in Claimant's arm and shoulder was not indicative of having sustained a myocardial infarction. (R. p. 359, lines 13-25). Dr. Greenfield issued a written opinion stating Claimant's heart condition was caused by the electrical shock.

Claimant was then referred to and saw Dr. Dasgupta at the South Carolina Heart Center on May 28. Dr. Dasgupta also noted sweating and noted that Claimant denied chest pain but did have minimal left shoulder pain. (R. pp. 190-192). Dr. Dasgupta

diagnosed Claimant with an acute myocardial infarction. Id. Dr. Dasgupta indicated that Claimant had a prior history of hypertension, tobacco abuse (one pack a day smoker), as well as a significant family history for heart disease (Claimant's father passed away from coronary disease and myocardial infarction). Id. Dr. Dasgupta also noted that Claimant appeared to have a ventricular septal defect as a possible completion of his acute myocardial infarction. Id. Dr. Dasgupta referred Claimant to Lexington Medical Center where Dr. Travis performed surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (R. pp. 194-196).

Dr. Travis described the mechanism of Claimant's injury as being a plaque rupture that caused a myocardial infarction that caused the ventricular septal defect. (R. p. 411, line 24-p. 412, line 2). Dr. Travis indicated that plaque ruptures can be caused by many things including getting up the wrong way from a couch, strenuous activity, stressful events in your personal life, emotional stresses, and many other things. (R. p. 412, lines 3-11). Further, Dr. Travis was asked "...other than the timing of the heart attack...there's no way to know for certain the plaque rupture was caused by the electrical shock, is that correct?" (R. p. 412, lines 12-15). Dr. Travis response was that "[i]s there a definitive way to—collate one to another **absolutely not.**" (R. p. 412, lines 16-18). (emphasis added). Dr. Travis also stated that "the [electrical shock] *could* of started the whole domino effect." (R. p. 427, line 23-24). (emphasis added). Finally, Dr. Travis indicated that the neck pain Claimant experienced "could be just neck pain." (R. p. 428, lines 12-16).

Dr. Travis indicated that part of his opinion formed because of the presence of a plaque on Claimant's heart. However, Dr. Travis stated that this was his first open heart

surgery on a patient who had received an electrical shock. (R. p. 427, lines 2-5). Further, Dr. Travis stated that he had never "read about or seen anything" related to whether or not the plaque he observed is related to electrical shock or whether or not the plaque he observed is common in electrical shock. (R. p. 427, lines 6-12). Following the care provided to Claimant, Dr. Travis issued a written opinion stating Claimant's heart condition was caused by the electrical shock.

After the surgery, Claimant began treating with Dr. Lide on an outpatient basis for his heart condition. In his deposition, Dr. Lide stated that no one knows what causes a plaque rupture in the heart. (R. p. 360, lines 13-15). Dr. Lide agreed with the statement that "...we don't really know what causes plaque rupture." (R. p. 360, line 22). Dr. Lide also testified that "I don't know whether the electrical shock caused the plaque rupture..." (R. p. 361, lines 14-15). Further, Dr. Lide testified that he is not familiar with any research and he has not conducted any research on whether an electrical shock can cause a myocardial infarction or a ventricular septal defect. (R. p. 365, line 13-p. 366, line 1). Dr. Lide also indicated that the longer in time the heart condition develops from the precipitating event (in this case an electrical shock), the less likely it is the heart condition is related to the electrical shock. (R. p. 366, lines 2-6). Finally, Dr. Lide stated his overwhelming evidence that the electrical shock caused Claimant's condition was "proximity in time." (R. p. 367, lines 20-21). Dr. Lide issued a written opinion stating Claimant's heart condition was caused by the electrical shock.

I. THE FULL COMMISSION ERRED BY FAILING TO VACATE THE SINGLE COMMISSIONER'S DECISION AND ORDER BECAUSE THE SINGLE COMMISSIONER ERRED BY HOLDING THE HEARING OVER DEFENDANT-APPELLANTS' OBJECTIONS BECAUSE, BY CONDUCTING THE HEARING AND RULING ON MATERIAL COMPENSABILITY ISSUES, THE SINGLE COMMISSIONER OPERATED IN AN APPELLATE CAPACITY WITHOUT PROPER JURISDICTION.

Claimant has alleged an injury arising out of an electrical shock accident on May 22, 2013. Prior to the hearing held by the Single Commissioner, Commissioner Beck issued a Decision and Order on December 5, 2013 finding that Defendants had conducted a good faith investigation. In addition, in that Decision and Order, Commissioner Beck made a factually correct finding based on the medical evidence submitted that Claimant suffered a myocardial infarction on May 28, 2013 (6 days post-accident). That finding, along with many others from that order, was appealed by Claimant in a properly filed Form 30. At the time of this underlying hearing before the Single Commissioner, the Full Commission had not yet conducted a hearing on Commissioner Beck's Decision and Order and, therefore, each of the exceptions to his order were on appeal—including the May 28, 2013 date of the myocardial infarction.

A review of the medical evidence and deposition testimony reveals that Claimant's ventricular septal defect was caused by his acute myocardial infarction/plaque rupture¹. In other words, the medical evidence is clear that the electrical shock did not

¹ The medical records and testimony indicate the plaque rupture was contemporaneous with the acute myocardial infarction and that it was either caused by the acute myocardial infarction or the acute myocardial infarction was caused by the plaque rupture. The doctors' testimony indicates that it is not possible to know which occurred first. For continuity and clarity throughout, acute myocardial infarction will be used in this brief.

directly cause the ventricular septal defect. Rather, the acute myocardial infarction caused the ventricular septal defect. Further, there is no dispute between the parties that the cause of the ventricular septal defect is the acute myocardial infarction. The question of compensability before the Single Commissioner for Claimant's chest and/or heart condition therefore was simply "what caused Claimant's acute myocardial infarction?"

In order to make that determination and answer that question, the Single Commissioner was required to make findings related to when (i.e. the date) the acute myocardial infarction occurred. The Single Commissioner expressly refused to make that finding². It was Defendant-Appellants' position that an acute myocardial infarction occurring 6 days post-accident cannot be causally related to the work-accident itself because it is too attenuated in time. Defendant-Appellants' position is that Claimant's pre-existing conditions, family history, lifestyle choices, and mere coincidence in time, as affirmed by each authorized treating physician, are the causative factors of the acute myocardial infarction occurring 6 days post-accident. When all of Claimant's conditions are viewed together, the evidence clearly supports a finding that the acute myocardial infarction in relation to the work-accident is nothing more than an unfortunately timed coincidence.

However, Defendants' position as to compensability aside, the Single Commissioner was required to make a finding indicating when Claimant suffered an acute myocardial infarction in order for there to be legal support for a finding of a causal

² See both Single Commissioner Decision and Order and Single Commissioner Hearing Transcript 5:23-8:9 wherein the Single Commissioner sets out her "procedural wiggle room" to go forward despite the prior Commission findings.

connection between the acute ventricular septal defect and the electrical shock³. Absent a requirement to make a finding of when the causative injury occurred (in this case the acute myocardial infarction), the door would be opened to find compensability for injuries that occur 1 month, 6 months, 1 year or more from the date of an alleged accident.

In the Decision and Order, the Single Commissioner, by choosing to expressly refuse to find the date on which the acute myocardial infarction occurred, implicitly made findings that result in one of two things: (1) an affirmation of Commissioner Beck's finding of the May 28, 2013 date of acute myocardial infarction or (2) a reversal of Commissioner Beck's finding of the May 28, 2013 date of acute myocardial infarction⁴. Either way, the Single Commissioner sat in an unlawful appellate capacity when she both heard this claim and rendered her Decision and Order by either implicitly affirming or reversing Commissioner Beck's findings as compensability of the acute ventricular septal defect cannot be determined absent a finding of when the acute myocardial infarction occurred.

For the foregoing reasons, the Full Commission's Decision and Order should be vacated in its entirety as the underlying Single Commissioner Hearing could not have

³ As noted throughout, the causative chain at issue is whether the (1) Electrical Shock caused the (2) Acute Myocardial Infarction/Plaque Rupture which then caused the (3) Ventricular Septal Defect. If the acute myocardial infarction was not caused by the electrical shock then the ventricular septal defect is not compensable.

⁴ In other words, the Single Commissioner, by not ruling on the timing of the acute myocardial infarction, either acknowledges the acute myocardial infarction occurred May 28 (6 days post-accident) and finds that it is still causally related to the electrical shock (which is addressed below) OR the Single Commissioner determined the acute myocardial infarction occurred earlier in time and simply refused to enumerate that finding of fact so as to avoid inherent conflict with Commissioner Beck's prior Decision and Order that is on appeal.

been held because the Single Commissioner sat in an unlawful appellate capacity. Further, this claim should be remanded for a new hearing at the Single Commissioner level with instructions that the hearing cannot be conducted until the first appeal of Commissioner Beck's Decision and Order has been allowed to run its course and the issues related to the date of the acute myocardial infarction are resolved.

II. THE FULL COMMISSION ERRED BY FAILING TO FIND A DATE ON WHICH CLAIMANT SUFFERED A PLAQUE RUPTURE IN CLAIMANT'S HEART.

As discussed above, there has been no finding of *when* Claimant actually suffered any injury⁵. The sequence of medical events in this claim is not disputed. Claimant suffered an electrical shock at work on May 22, 2013. Sometime between May 23, 2013 and May 28, 2013 Claimant suffered an acute myocardial infarction/plaque rupture⁶. The acute myocardial infarction/plaque rupture led to Claimant developing an acute ventricular septal defect. The ventricular septal defect developed as a result of the acute myocardial infarction/plaque rupture required surgical intervention on May 29, 2013.

As previously noted, the key to determining whether or not Claimant's ventricular septal defect is compensable is determining whether or not the plaque rupture was caused by the electrical shock. If the electrical shock did not cause the plaque rupture then the ventricular septal defect cannot be found to be compensable as it was directly caused by the plaque rupture. In order to find that the plaque rupture was caused by the electrical shock, the Full Commission must find the date on which the plaque rupture occurred. Absent a finding of when Claimant suffered the injury (the plaque rupture) that led to his

⁵ With the exception of Commissioner Beck's original order which is also on appeal.

ventricular septal defect, the Full Commission's Decision and Order is speculative, conjecture, and without any support in the evidence.

In Cross v. Concrete Materials, 236 S.C. 440, 114 S.E.2d 828 (1960), the Supreme Court stated that "Under other authority, the rule of liberal construction of the compensation acts in favor of the employee...does not dispense with the necessity of evidence to support the award, or of making proof prerequisite to recovery, **does not permit a court to award compensation where the requisite proof is lacking**, and...does not to apply to the evidence offered, or required, to establish the claim, or to the function of the commission in hearing evidence or in resolving conflicts in the testimony, and does not operate to distort the proofs or to make the facts other than as they are. A liberal construction of the evidence cannot be substituted for failure of proof of any essential element of the claim..." (emphasis added). The Supreme Court went on to state "It has been mistakenly said in one or more of our decisions...that doubt of causal connection between injury and death or disability should be resolved in favor of compensability. That is error because it would found a conclusion of fact upon doubt whereas **such finding must be upon evidence, not doubt**...There is no sound reason for the translation of the rule of liberal construction of the law to the finding of the facts to the end that doubt with respect to the latter shall be resolved in favor of the claimant. Doubt, as the foundation of a factual finding, can hardly be distinguished from surmise, speculation and conjecture which countless cases have condemned as a substitute for

⁶ Defendant-Appellants' position, consistent with the medical records and Commissioner Beck's original Decision and Order is that the acute myocardial infarction/plaque rupture occurred on May 28, 2013.

facts and legitimate inferences. **Conviction, not doubt, is the proper basis of a conclusion of fact.**" (emphasis added).

A finding of compensability for the ventricular septal defect without first finding when the plaque rupture occurred in relation to the electrical shock constitutes a finding that is based on surmise, conjecture, and speculation. Pursuant to Cross, the Full Commission is required to make findings based upon "evidence, not doubt." The Full Commission was required to make findings of fact based on the medical evidence of (1) when the plaque rupture occurred and (2) that the plaque rupture was caused by the electrical shock. Absent these findings, the Full Commission cannot make a finding that the ventricular septal defect is a compensable injury.

Therefore, the Full Commission's Decision and Order should be reversed. This Court should either enter a finding that the ventricular septal defect is not compensable based on the evidence presented or this claim should be remanded for a new hearing with instructions that the Single Commissioner shall enter findings not inconsistent with a finding that the ventricular septal defect is not compensable. Alternatively, this claim should be remanded for a new hearing on the merits of compensability related to the alleged heart injury..

III. THE FULL COMMISSION ERRED BY FAILING TO MAKE A FINDING OF FACT AS TO WHAT CAUSED THE PLAQUE RUPTURE IN CLAIMANT'S HEART.

As noted above, the sequence of medical events in this claim is not disputed. Claimant suffered an electrical shock at work on May 22, 2013. Sometime between May 23, 2013 and May 28, 2013 Claimant suffered an acute myocardial infarction/plaque

rupture⁷. The acute myocardial infarction/plaque rupture led to Claimant developing a ventricular septal defect. The ventricular septal defect developed as a result of the acute myocardial infarction/ plaque rupture required surgical intervention on May 29, 2013.

As previously stated, the key to determining whether or not Claimant's ventricular septal defect is compensable is determining whether or not the plaque rupture was caused by the electrical shock. If the electrical shock did not cause the plaque rupture then the ventricular septal defect cannot be found to be compensable as it was directly caused by the acute myocardial infarction and plaque rupture. The Full Commission failed to make a finding related to what caused the plaque rupture in Claimant's heart. Absent a finding of what caused Claimant's plaque rupture that led to his ventricular septal defect, the Full Commission's Decision and Order is speculative, conjecture, and without any support in the evidence.

In Cross v. Concrete Materials, 236 S.C. 440, 114 S.E.2d 828 (1960), the Supreme Court stated that "Under other authority, the rule of liberal construction of the compensation acts in favor of the employee...does not dispense with the necessity of evidence to support the award, or of making proof prerequisite to recovery, **does not permit a court to award compensation where the requisite proof is lacking**, and...does not to apply to the evidence offered, or required, to establish the claim, or to the function of the commission in hearing evidence or in resolving conflicts in the testimony, and does not operate to distort the proofs or to make the facts other than as they are. A liberal construction of the evidence cannot be substituted for failure of proof

⁷ Defendants position, consistent with the medical records and Commissioner Beck's Decision and Order is that the acute myocardial infarction occurred on May 28, 2013.

of any essential element of the claim..." (emphasis added). The Supreme Court went on to state "It has been mistakenly said in one or more of our decisions...that doubt of causal connection between injury and death or disability should be resolved in favor of compensability. That is error because it would found a conclusion of fact upon doubt whereas **such finding must be upon evidence, not doubt**...There is no sound reason for the translation of the rule of liberal construction of the law to the finding of the facts to the end that doubt with respect to the latter shall be resolved in favor of the claimant. Doubt, as the foundation of a factual finding, can hardly be distinguished from surmise, speculation and conjecture which countless cases have condemned as a substitute for facts and legitimate inferences. **Conviction, not doubt, is the proper basis of a conclusion of fact.**" (emphasis added).

A finding of compensability for the ventricular septal defect without first finding what caused the plaque rupture in relation to the electrical shock constitutes a finding that is based on surmise, conjecture, and speculation. Pursuant to Cross, the Full Commission must make findings based upon "evidence, not doubt." The Full Commission was required to make findings of fact based on the evidence of what caused the plaque rupture and that the plaque rupture was caused by the electrical shock. Absent these findings, the Full Commission cannot make a finding that the ventricular septal defect is a compensable injury.

Therefore, the Full Commission's Decision and Order should be reversed. This Court should either enter a finding that the ventricular septal defect is not compensable based on the evidence presented or this claim should be remanded for a new hearing with instructions that the Single Commissioner shall enter findings not inconsistent with a

finding that the ventricular septal defect is not compensable. Alternatively, this claim should be remanded for a new hearing on the merits of compensability.

IV. THE FULL COMMISSION ERRED BY FAILING TO FIND A DATE ON WHICH CLAIMANT SUFFERED A MYOCARDIAL INFARCTION.

As noted throughout, the sequence of medical events in this claim is not disputed. Claimant suffered an electrical shock at work on May 22, 2013. Sometime between May 23, 2013 and May 28, 2013 Claimant suffered an acute myocardial infarction/ plaque rupture⁸. The acute myocardial infarction/plaque rupture led to Claimant developing a ventricular septal defect. The ventricular septal defect developed as a result of the acute myocardial infarction required surgical intervention on May 29, 2013.

As previously noted, the key to determining whether or not Claimant's ventricular septal defect is compensable is determining whether or not the acute myocardial infarction was caused by the electrical shock. If the electrical shock did not cause the acute myocardial infarction then the ventricular septal defect cannot be found to be compensable as it was directly caused by the acute myocardial infarction and resulting plaque rupture. The Full Commission failed to make a finding related to Claimant actually suffered the myocardial infarction. Absent a finding of when Claimant's acute myocardial infarction that led to his ventricular septal defect occurred, the Full Commission's Decision and Order is speculative, conjecture, and without any support in the evidence.

In Cross v. Concrete Materials, 236 S.C. 440, 114 S.E.2d 828 (1960), the Supreme Court stated that "Under other authority, the rule of liberal construction of the

⁸ Defendants position, consistent with the medical records and Commissioner Beck's Decision and Order is that the acute myocardial infarction occurred on May 28, 2013.

compensation acts in favor of the employee...does not dispense with the necessity of evidence to support the award, or of making proof prerequisite to recovery, **does not permit a court to award compensation where the requisite proof is lacking,** and...does not to apply to the evidence offered, or required, to establish the claim, or to the function of the commission in hearing evidence or in resolving conflicts in the testimony, and does not operate to distort the proofs or to make the facts other than as they are. A liberal construction of the evidence cannot be substituted for failure of proof of any essential element of the claim..." (emphasis added). The Supreme Court went on to state "It has been mistakenly said in one or more of our decisions...that doubt of causal connection between injury and death or disability should be resolved in favor of compensability. That is error because it would found a conclusion of fact upon doubt whereas **such finding must be upon evidence, not doubt...** There is no sound reason for the translation of the rule of liberal construction of the law to the finding of the facts to the end that doubt with respect to the latter shall be resolved in favor of the claimant. Doubt, as the foundation of a factual finding, can hardly be distinguished from surmise, speculation and conjecture which countless cases have condemned as a substitute for facts and legitimate inferences. **Conviction, not doubt, is the proper basis of a conclusion of fact.**" (emphasis added).

A finding of compensability for the ventricular septal defect without first finding when the acute myocardial infarction occurred in relation to the electrical shock constitutes a finding that is based on surmise, conjecture, and speculation. Pursuant to Cross, the Full Commission must make findings based upon "evidence, not doubt." The Full Commission was required to make findings of fact based on the evidence of when

the acute myocardial infarction occurred and that the acute myocardial infarction was caused by the electrical shock. Absent these findings, the Full Commission cannot make a finding that the ventricular septal defect is a compensable injury. Put simply, if the Full Commission cannot determine when an injury occurred based on the medical evidence presented—as is the case here—then the injury, by default, cannot be compensable.

Therefore, the Full Commission's Decision and Order should be reversed. This Court should either enter a finding that the ventricular septal defect is not compensable based on the evidence presented or this claim should be remanded for a new hearing with instructions that the Single Commissioner shall enter findings not inconsistent with a finding that the ventricular septal defect is not compensable. Alternatively, this claim should be remanded for a new hearing on the merits of compensability.

V. THE FULL COMMISSION ERRED BY RELYING SOLELY ON DR. TRAVIS' WRITTEN MEDICAL OPINION WHEN THE EVIDENCE PRESENTED AT THE HEARING AND HIS OWN SUBSEQUENT DEPOSITION TESTIMONY DIRECTLY CONTRADICTS HIS WRITTEN MEDICAL OPINION.

The Full Commission erred in relying on Dr. Travis' written medical opinion for two reasons: (1) Dr. Travis' opinion that the electrical shock caused Claimant's heart condition is based solely on the sequence of events between the shock and the acute myocardial infarction as well as the presence of a plaque on Claimant's heart; and (2) Dr. Travis' opinion is based on the fact that Claimant was shocked by 480 volts of electricity which is clearly contradicted by the evidence.

First, the extent of Dr. Travis opinion is grounded solely in the relationship in time between the electrical shock and the heart condition as well as a plaque on Claimant's heart. Dr. Travis described the mechanism of Claimant's injury as being a

plaque rupture that caused a myocardial infarction that caused the ventricular septal defect. (R. p. 411, line 24-p. 412, line 2). However, Dr. Travis indicated that plaque ruptures can be caused by many things including getting up the wrong way from a couch, strenuous activity, stressful events in your personal life, emotional stresses, and many other things. (R. p. 412, lines 3-11). Further, Dr. Travis was asked "...other than the timing of the heart attack...there's no way to know for certain the plaque rupture was caused by the electrical shock, is that correct?" (R. p. 412, lines 12-15). Dr. Travis response was that "[i]s there a definitive way to—collate one to another **absolutely not.**" (R. p. 412, lines 16-18). (emphasis added). Dr. Travis also stated that "the [electrical shock] **could**⁹ of started the whole domino effect." (R. p. 427, lines 23-24). Finally, Dr. Travis indicated that the neck pain Claimant experienced—and that Claimant's deposition testimony reveals was the **only** pain he experienced through at least two days post-accident—"could be just neck pain [unrelated to a heart condition]. (R. p. 428, lines 12-16).

Dr. Travis also indicated that part of his opinion formed because of the presence of a plaque on Claimant's heart. However, Dr. Travis stated in his deposition that this was his first open heart surgery on a patient who had received an electrical shock. (R. p. 427, lines 2-5). Further, Dr. Travis stated that **he had never "read about or seen anything" related to whether or not the plaque he observed is related to electrical shock** or whether or not the plaque he observed is common in electrical shock. (R. p. 427, lines 6-12). The testimony indicates that Dr. Travis essentially guessed that the plaque he observed was related to an electrical shock based solely on the fact that Claimant

⁹ "Could" is insufficient to support a finding of medical causation under the Act.

allegedly suffered an electrical shock a week prior. This is clearly an insufficient basis on which to ground a medical opinion as it related to causation under the Act.

Second, Dr. Travis' written medical opinion should not be given weight because the specific underlying causation (e.g. 480 volts of electricity) in his written medical statement is clearly contradicted by the evidence. Dr. Travis' written statement indicates that Claimant's condition was caused by 480 volts of electricity. In his deposition, Dr. Travis was asked to confirm his written opinion about whether he believed that Claimant's "...condition was brought about by electrical shock of 480 volts..." (R. p. 406, lines 20-22). Dr. Travis answered "I believe it, absolutely, had cause (sic) the defect on presentation." (R. p. 406, lines 23-24). However, **Dr. Travis admitted that he does not have any idea what amount of voltage actually shocked Claimant.** (R. p. 407, lines 3-4). Further, Dr. Travis admitted that the entire basis of his opinion related to voltage of the shock causing Claimant's condition came from Claimant himself. (R. p. 407, lines 5-8).

At the Hearing, Claimant could not testify to the exact voltage of the machine. Claimant stated that the voltage into the machine "...was at 240. I mean, it's 240 or above..." (R. p. 492, line 25). Further, Claimant could only state the machine was "at least 240 volts." (R. p. 522, lines 16-24). Mark Warren also testified at the hearing. His testimony revealed that the machine Claimant was using was rated for a maximum 480 volts but that it could run on 208 volt. (R. p. 526, lines 24-25). Further, Mr. Warren testified that the machine should be running at 208 volts per leg. (R. p. 527, lines 2-4).

The evidence in the record clearly establishes that there is no basis for a finding by Dr. Travis, any other doctor, or the Commission that Claimant suffered a shock of 480

volts. Because Dr. Travis' written opinion is based upon a shock of 480 volts, which is clearly contradicted by the evidence, weight cannot be given to his written medical opinion.

Defendant-Appellants assert they do not ask this Court necessarily to weigh conflicting evidence from this witness. Rather, Defendant-Appellants' contend the Full Commission erred by not properly considering all evidence and by reaching an incorrect conclusion in light of the full evidence—specifically Dr. Travis' deposition. Dr. Travis' deposition serves to clarify the rationale behind his written opinions. His written opinions, on their face, state that this is a compensable injury. However, when one reviews his subsequent deposition testimony, it becomes clear that his opinions are anything but clear. And in fact, it becomes clear that the only causal connection Dr. Travis can actually make between the alleged electrical shock and the myocardial infarction is that the myocardial infarction happened *sometime* after the alleged electrical shock. The Commission erred by simply reading and relying only on Dr. Travis' written opinion but discarding or otherwise discounting his subsequent deposition testimony wherein he clarifies his prior written opinion.

For the foregoing reasons, the Full Commission erred in giving any weight to Dr. Travis' written medical opinions. It is clear from the evidence that Dr. Travis' opinion is based on speculation, conjecture, surmise, and incorrect information. Dr. Travis' opinion is based solely on a time relationship inasmuch as Claimant suffered an electrical shock and 6 days later presented with an acute myocardial infarction. Put another way, Dr. Travis's opinion is that because B occurred after A, then B was caused by A. This is wholly insufficient to support a finding of causation. Additionally, Dr. Travis' opinion

related to plaque on Claimant's heart amount to, at best, a guess and Dr. Travis readily indicated he had no idea whether or not the plaque he observed was caused by electrical shock.

Because the Full Commission clearly relied on Dr. Travis' pre-deposition written report in finding this claim to be compensable and ignored the subsequent clarifying information contained in his deposition, this Court must remand this claim to the Single Commissioner with instructions that Dr. Travis' written opinion is to be given no weight and to enter findings of fact consistent with the testimony and medical evidence—namely that Claimant did not suffer a compensable injury to his chest and/or heart.

VI. THE FULL COMMISSION ERRED BY RELYING ON DR. LIDE'S WRITTEN MEDICAL OPINION WHEN THE EVIDENCE PRESENTED AT THE HEARING AND HIS OWN SUBSEQUENT DEPOSITION TESTIMONY DIRECTLY CONTRADICTS HIS WRITTEN MEDICAL OPINION.

The Full Commission erred in relying on Dr. Lide's written medical opinion for two reasons: (1) Dr. Lide's opinion that the electrical shock caused Claimant's heart condition is based solely on the sequence of events between the shock and the acute myocardial infarction as well as the presence of a plaque on Claimant's heart; and (2) Dr. Lide's opinion is based on the fact that Claimant was shocked by 480 volts of electricity which is clearly contradicted by the evidence.

First Dr. Lide bases his opinion on the relationship in time inasmuch as Claimant suffered an electrical shock and 6 days later presented with an acute myocardial infarction. In his deposition, Dr. Lide stated that no one knows what causes a plaque rupture in the heart. (R. p. 360, lines 13-15). Dr. Lide agreed with the statement that "...we don't really know what causes plaque rupture." (R. p. 360, line 22). Dr. Lide also

testified that **"I don't know whether the electrical shock caused the plaque rupture¹⁰..."** (R. p. 361, lines 14-15). Further, Dr. Lide testified that **he is not familiar with any research and he has not conducted any research on whether an electrical shock can cause a myocardial infarction or a ventricular septal defect.** (R. p. 365, line 13-p. 366, line 1). Dr. Lide also indicated that the longer in time the heart condition develops from the precipitating event (in this case an electrical shock), the less likely it is the heart condition is related to the electrical shock. (R. p. 366, lines 2-6). Finally, **Dr. Lide stated his overwhelming evidence that the electrical shock caused Claimant's condition was "proximity in time."** (R. p. 367, lines 20-21). Essentially, Dr. Lide readily admits (1) he has no idea what started the causal chain for the ventricular septal defect, (2) he has no idea if an electrical shock can even cause a VSD, and (3) his only basis for his opinion is the sequence of events (e.g. A then B, therefore A caused B).

Second, Dr. Lide bases his opinion on the fact that Claimant was shocked by 480 volts of electricity. However, at his deposition, Dr. Lide stated "[t]he details of the shock are beyond me..." and "...I did not investigate the scene. I do not know what equipment he was working on...and **I certainly have no data to indicate to me whether 480 volts would be strong enough to cause the problem that 120 volts wouldn't cause...I have done no research on this.**" (R. p. 357, line 16-p. 358, line 9).

¹⁰ Note that Dr. Travis' statements, and the uncontested medicals, indicate the sequence of events is a plaque rupture/myocardial infarction which resulted in the ventricular septal defect. Dr. Lide therefore readily admits he has no idea if the chain of events alleged by Claimant was caused by the alleged electrical shock.

At the Hearing, Claimant could not testify to the exact voltage of the machine. Claimant stated that the voltage into the machine "...was at 240. I mean, it's 240 or above..." (R. p. 492, line 25). Further, Claimant could only state the machine was "high voltage" and "at least 240 volts." (R. p. 522, lines 16-24). Mark Warren also testified at the hearing. His testimony revealed that the machine Claimant was using was rated for a maximum 480 volts but that it could run on 208 volt. (R. p. 526, lines 24-25). Further, Mr. Warren testified that the machine should be running at 208 volts per leg. (R. p. 527, lines 2-4). The evidence in the record clearly establishes that there is no basis for a finding by Dr. Lide, any other doctor, or the Commission that Claimant suffered a shock of 480 volts. Because Dr. Lide's written opinion is based upon a shock of 480 volts, which is clearly contradicted by the evidence, weight cannot be given to his written medical opinion.

Defendant-Appellants assert they do not ask this Court necessarily to weigh conflicting evidence from this witness. Rather, Defendant-Appellants' contend the Full Commission erred by not properly considering all evidence and by reaching an incorrect conclusion in light of the full evidence—specifically Dr. Lide's deposition. Dr. Lide's deposition serves to clarify his rationale behind his written opinions. His written opinions, on their face, state that this is a compensable injury. However, when one reviews his subsequent deposition testimony, it becomes clear that his opinions are anything but clear. And in fact, it becomes clear that the only causal connection Dr. Lide can actually make between the alleged electrical shock and the myocardial infarction is that the myocardial infarction happened *sometime* after the alleged electrical shock. Dr. Lide even goes so far as to say, in his deposition, that he has no idea whether the alleged

shock caused the heart condition. The Commission erred by simply reading and relying only on Dr. Lide's written opinion but discarding or otherwise discounting his subsequent deposition testimony wherein he clarifies his prior written opinion.

For the foregoing reasons, the Full Commission erred in giving any weight to Dr. Lide's written medical opinions. It is clear from the evidence that Dr. Lide's opinion is based on speculation, conjecture, surmise, and incorrect information. Dr. Lide indicated in his testimony that there is no known way to determine what causes a plaque rupture. Further, Dr. Lide indicated that he knows of no research connecting an electrical shock to a myocardial infarction or a ventricular septal defect. Finally, Dr. Lide admitted that he based his opinion on proximity in time. Because the Full Commission clearly relied on this report in finding this claim to be compensable, this Court must remand this claim to the Single Commissioner with instructions that Dr. Lide's written opinion is to be given no weight and to enter findings of fact consistent with the testimony and medical evidence—namely that Claimant did not suffer a compensable injury to his chest and/or heart.

VII. THE FULL COMMISSION ERRED BY RELYING ON DR. GREENFIELD'S WRITTEN MEDICAL OPINION WHEN THE EVIDENCE PRESENTED AT THE HEARING AND HER OWN SUBSEQUENT DEPOSITION TESTIMONY DIRECTLY CONTRADICTS HER WRITTEN MEDICAL OPINION.

The Full Commissioner erred in relying on Dr. Greenfield's written medical opinion for two reasons: (1) Dr. Greenfield's opinion that the electrical shock caused Claimant's heart condition is based solely on the relationship in time between the shock and the myocardial infarction; and (2) Dr. Greenfield's opinion is based on the fact that

Claimant was shocked by 480 volts of electricity which is clearly contradicted by the evidence.

Dr. Greenfield testified in her deposition that the testing she conducted could not give any indication as to when Claimant suffered the myocardial infarction. Specifically, Dr. Greenfield stated that the myocardial infarction "...could have been 5 days ago..." and further **admitted that the acute myocardial infarction could have occurred the evening of May 27 or the morning of May 28.** (R. p. 315, line 10-p. 316, line 8). Further, Dr. Greenfield indicated that she based portions of her opinion on articles that she read relating to electrocution from lightning strikes. When asked about these articles, Dr. Greenfield admitted the voltage involved in those articles was 10,000,000 volts—an amount that is 20,000-40,000 times higher than the voltage involved in this claim. (R. p. 331, line 19-p. 332, line 4). Additionally, Dr. Greenfield stated that Claimant presented without any chest pain. (R. p. 319, lines 5-9, p. 327, lines 3-8). Dr. Greenfield also noted the pain in Claimant's arm and shoulder was not indicative of having sustained a myocardial infarction. (R. p. 319, lines 13-25).

Second, Dr. Greenfield bases her written opinion on the fact that Claimant was shocked by 480 volts of electricity. However, in her deposition, Dr. Greenfield was asked about this opinion and she stated "[Claimant] told me it was 480." (R. p. 310, line 11). Dr. Greenfield admitted that she did not run any tests to determine voltage and when asked if she had any personal knowledge of the actual voltage of the machine, she responded "I would not have the foggiest [idea]." (R. p. 310, lines 12-23).

At the Hearing, Claimant could not testify to the exact voltage of the machine. Claimant stated that the voltage into the machine "...was at 240. I mean, it's 240 or

above..." (R. p. 492, line 25). Further, Claimant could only state the machine was "high voltage" and "at least 240 volts." (R. p. 522, lines 16-24). Mark Warren also testified at the hearing. His testimony revealed that the machine Claimant was using was rated for a maximum 480 volts but that it could run on 208 volt. (R. p. 526, lines 24-25). Further, Mr. Warren testified that the machine should be running at 208 volts per leg. (R. p. 527, lines 2-4).

The evidence in the record clearly establishes that there is no basis for a finding by Dr. Greenfield, any other doctor, or the Commission that Claimant suffered a shock of 480 volts. Because Dr. Greenfield's opinion is based upon a shock of 480 volts, which is clearly contradicted by the evidence, weight cannot be given to her written medical opinion.

Defendant-Appellants assert they do not ask this Court necessarily to weigh conflicting evidence from this witness. Rather, Defendant-Appellants' contend the Full Commission erred by not properly considering all evidence and reaching an incorrect conclusion in light of the full evidence—specifically Dr. Greenfield's deposition. Dr. Greenfield's deposition serves to clarify the rationale behind her written opinions. Her written opinions, on their face, state that this is a compensable injury. However, when one reviews her subsequent deposition testimony, it becomes clear that her opinions are anything but clear. And in fact, it becomes clear that the only causal connection Dr. Greenfield can actually make between the alleged electrical shock and the myocardial infarction is that the myocardial infarction happened *sometime* after the alleged electrical shock. The Commission erred by simply reading and relying only on Dr. Greenfield's

written opinion but discarding or otherwise discounting her subsequent deposition testimony wherein she clarifies her prior written opinion.

For the foregoing reasons, the Full Commission erred in giving any weight to Dr. Greenfield's written medical opinions. It is clear from the evidence that Dr. Greenfield's opinion is based on speculation, conjecture, surmise, and incorrect information. She stated in her deposition that there was no way for her determine when the myocardial infarction occurred and that it was possible it occurred on the night of May 27—5 days post-accident—or the morning of May 28—6 days post-accident. Further, Dr. Greenfield based her opinion on articles that have no relevance to the claim at hand (namely an article about lightning strikes containing voltage over 20,000-40,000 times higher than the voltage in this claim). In addition, Dr. Greenfield's written opinion related to the electrical shock is invalid based on the clear evidence presented by Claimant and Mr. Warren that the voltage of the machine was less than 480 volts. Because the Full Commission clearly relied on this report in finding this claim to be compensable, this Court must remand this claim to the Single Commissioner with instructions that Dr. Greenfield's written opinion is to be given no weight and to enter findings of fact consistent with the testimony and medical evidence—namely that Claimant did not suffer a compensable injury to his chest and/or heart.

VIII. THE FULL COMMISSION ERRED IN FINDING OF FACT #7 BY FINDING THAT CLAIMANT BEGAN SWEATING THE NIGHT OF THE ELECTRICAL SHOCK WHEN CLAIMANT'S OWN TESTIMONY AND THE MEDICAL EVIDENCE REFUTES THAT FINDING.

The medical and testimonial evidence clearly do not support a finding that Claimant began sweating the night of the electrical shock.

Claimant notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (R. pp. 200-201). Employment records of Claimant indicate that he continued working the remainder of the day and the entire following day. (R. pp. 203-204). An email from Claimant to Employer indicates that he was experiencing only neck pain on May 27, 2013 (5 days post-accident). (R. p. 201). Claimant first presented to Doctor's Care on May 28, 2013 (6 days post-accident) complaining that **he woke up sweating that morning (6 days post-accident)**. (Def. R. p. 188). Doctor's Care noted that Claimant had some tenderness in his shoulder and neck area. *Id.* Further, Doctor's Care noted that Claimant did not complain of any chest pressure. *Id.* Claimant was referred to and saw Dr. Dasgupta at the South Carolina Heart Center. Dr. Dasgupta also noted sweating and noted that Claimant denied chest pain but did have minimal left shoulder pain. (R. p. 190-192). Dr. Dasgupta diagnosed Claimant with an acute myocardial infarction. *Id.* Dr. Dasgupta indicated that Claimant had a prior history of hypertension, tobacco abuse, as well as a significant family history for heart disease (Claimant's father passed away from coronary disease and myocardial infarction). *Id.* Dr. Dasgupta also noted that Claimant appeared to have a ventricular septal defect as a possible completion of his myocardial infarction. *Id.* Dr. Dasgupta referred Claimant to Lexington Medical Center where he underwent surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (R. pp. 194-196). Further, even in light of the medical records, Claimant testified at the hearing that he actually began sweating the morning after the electrical shock. (R. p. 517, lines 21-24).

The testimony and medical records are clear that Claimant did not begin sweating the night of the electrical shock. The Full Commission clearly relied on this fact in

forming its Decision and Order related to compensability of the chest and/or heart condition. Because this basis of its Decision and Order is clearly erroneous in light of the evidence and testimony, this Court should remand this claim to the Single Commissioner for findings not inconsistent with this evidence and entry of a denial of compensability for the chest and/or heart condition.

IX. THE FULL COMMISSION ERRED IN FINDING OF FACT #9 THAT THREE PHYSICIANS HAVE OPINED THE ELECTRICAL SHOCK RESULTED IN CLAIMANT'S HEART ATTACK REGARDLESS OF THE DATE ON WHICH THE HEART ATTACK OCCURRED.

The Full Commission erred by ignoring the issue of when the acute myocardial infarction occurred and, instead, relied solely on a portion of the written opinions in finding this claim to be compensable. The date and/or timing of the acute myocardial infarction is paramount to the compensability of the acute myocardial infarction. If the timing of an injury can be ignored and otherwise considered not relevant to the inquiry of compensability, then the door is open to allow any injury from any time following a work-related accident to be found compensable simply because the injury happened after the work-related accident. Each of the doctors' opinions as set out previously in this brief—and the Full Commission's Finding of Fact—can be boiled down as follows: B happened after A, therefore A caused B. The Workers' Compensation Act requires more than just a sequence of events or coincidence in time for a claim to be found compensable. The Act specifically requires a distinct causal relationship between events. Absent that causal relationship, there can be no compensable claim. The doctors' written opinions all follow the formula laid out above. Each of their deposition transcripts reveal that their main basis for determining compensability is that an electrical shock (A) happened and, sometime after the electrical shock happened, an acute myocardial

infarction (B) happened, therefore the electrical shock (A) caused the acute myocardial infarction (B)—that is simply insufficient to support a finding of compensability under the Act. It is particularly insufficient when there is no evidence to determine, and no medical testimony to support, when the acute myocardial infarction even occurred¹¹.

To make a finding that the alleged injuries are compensable regardless of when the alleged injuries occurred in relation to the alleged causative event is improper and grounds for reversal. Therefore, this Court should remand this claim to the Single Commissioner for additional findings not inconsistent with this evidence and an order to deny compensability for the chest and/or heart conditions.

CONCLUSION

For all the foregoing reasons, the Full Commissioner's Decision and Order should be reversed and remanded for a new hearing with instructions for the Commission to issue a new Decision and Order not inconsistent with the medical evidence.

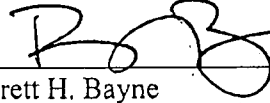
Additionally, the Decision and Order should be vacated in its entirety because the Single Commissioner lacked jurisdiction to sit and hear the claim while key compensability issues were on appeal to the Full Commission.

[Signature Page to Follow]

¹¹ With the exception of the hospital admittance records on May 28 showing Claimant was admitted with an acute myocardial infarction. In other words, the most likely date of the myocardial infarction is the May 28 date of admittance.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, L.L.C.

A handwritten signature in black ink, appearing to read 'B. Bayne', written over a horizontal line.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

FEB 25 2016
SC Court of Appeals

Appellate Case No.: 2014-001788

Clarence Winfrey, Employee, Claimant Respondent,

v.

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

CERTIFICATE OF COUNSEL

The undersigned certified that the Final Brief of Appellants contained all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the April 15, 2014, revised order concerning personal identifying information and other sensitive information in appeal court findings from the South Carolina Supreme Court.

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February 25, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2014-001788

RECEIVED

FEB 25 2016

SC Court of Appeals

Clarence Winfrey, Employee, Claimant Respondent,

v.

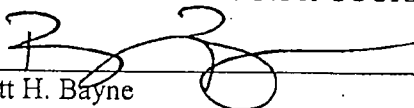
Archway Services Inc, Employer, and
American Fire & Casualty Insurance Company c/o
Liberty Mutual Group, Carrier, ... Appellants,

PROOF OF SERVICE

I certify that I have caused to be served Appellants' Final Brief on the attorney of record for Clarence Winfrey, by depositing a copy of it in the United States Mail, postage prepaid, on the 25th day of February, 2016 addressed to his attorney of record,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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SC Court of Appeals

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

v.

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

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001788

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STATEMENT OF ISSUES ON APPEAL.

- I. WHETHER THE FULL COMMISSION ERRED BY AFFIRMING THE HEARING COMMISSIONER'S DECISION TO HOLD THE HEARING AND RULE ON THE ISSUES BEFORE HER FOR DECISION AND BY SO DOING SHE DID NOT ACT IN AN APPELLATE CAPACITY.
- II. WHETHER THE COMMISSION ERRED BY FAILING TO MAKE A FINDING ON THE NON-ESSENTIAL ISSUE AS TO THE DATE THAT THE CLAIMANT SUFFERED A PLAQUE RUPTURE.
- III. WHETHER THE COMMISSION ERRED BY FAILING TO MAKE A FINDING ON THE NON-ESSENTIAL ISSUE OF WHAT CAUSED THE PLAQUE RUPTURE IN THE CLAIMANT'S HEART.
- IV. WHETHER THE COMMISSION ERRED BY FAILING TO MAKE A FINDING ON THE NON-ESSENTIAL ISSUE AS TO A DATE ON WHICH THE CLAIMANT SUFFERED A MYOCARDIAL INFARCTION.
- V. WHETHER THE COMMISSION ERRED BY RELYING ON DR. TRAVIS' MEDICAL OPINIONS AS EXPRESSED BOTH IN WRITTEN DOCUMENTS AND IN HIS DEPOSITION TESTIMONY.
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- VIII. WHETHER THE COMMISSION ERRED IN FINDING OF FACT #7 BY FINDING THAT THE CLAIMANT BEGAN SWEATING THE NIGHT OF THE ELECTRICAL SHOCK.
- IX. WHETHER THE COMMISSION ERRED IN MAKING FINDING OF FACT #9 THAT ALL THREE (3) TREATING PHYSICIANS HAD OPINED THE ELECTRICAL SHOCK RESULTED IN CLAIMANT'S HEART ATTACK (ACTUALLY HEART RELATED INJURIES) AND NOT INCLUDING A DATE ON WHICH THE, "HEART ATTACK" OCCURRED.

STATEMENT OF THE CASE

[The Appellants' Statement of the Case and the section captioned "Argument" contain references to parts of the Record below not contained in the Appellants' Designation of Matter. Therefore, a proper Statement of the Case is set forth hereinafter.]

After the Claimant's (Respondent to this appeal) electrical shock accident which occurred on May 22, 2013, it was immediately reported and the case was accepted by the insurance carrier and compensation benefits were started and paid and medical care was authorized and provided. Subsequently on September 12, 2013, the Claimant received a SCWCC Form 15(II) in the mail notifying him that the case was being denied based on an alleged, "good faith investigation" which Form further stated the basis was that the Claimant had failed to prove a compensable injury. (R., pp. 68-69). The Claimant immediately filed a Form 15(III) Request for Hearing to reinstate benefits for improper stop payment. (R., p. 70). In addition, due to the basis of the denial being that based on a good faith investigation the Appellants (Defendants below) were denying the claim because the Claimant had not sustained compensable injury under the Act, a separate WCC Form 50 Request for Hearing was filed requesting a determination that the Claimant had

sustained injury by accident with reinstatement of medical care and temporary total disability benefits from the date that those benefits had been stopped. (R., p. 71). A responsive Form 51 was filed denying the Claimant had sustained compensable injury and having failed to establish compensable injury, denied entitlement to medical care and to temporary total disability benefits. (R., p. 75). A hearing was set on January 13, 2014 on the Form 50 and Form 51 (R., p. 77). The Claimant's Pre-Hearing Brief and APA Submissions were filed on December 23, 2013 and the Appellants' Pre-Hearing Brief and APA Submissions were filed on January 2, 2014. (R., pp. 78-182; pp. 183-214). A hearing was held on January 13th before Commissioner Susan S. Barden. (R., pp. 469-529). At the hearing, the Appellants admitted Claimant had sustained compensable injury due to the electrical shock but denied injury to the heart and other body parts. (R., p. 477, ll. 9-13).

On February 27, 2014 the Commissioner issued her Order finding that although the Appellants (Defendants) initially in their Form 51 had denied that Mr. Winfrey (Claimant/ Respondent herein) had sustained compensable injury that based on their position at the hearing the Appellants admitted that the Claimant had sustained compensable injury and they agreed that it included injury to the neck and

left shoulder but denied that it resulted in the need for medical care to the Appellant's heart and certain other body parts as listed in the Form 50 as being affected by the injury. By Award filed February 27, 2014, the Commissioner found that Mr. Winfrey had sustained injury and had established a need for medical care specifically as to the heart and all related problems as being related to the injury. She awarded the reinstatement of temporary total disability benefits and ongoing medical treatment until the Claimant reached maximum medical improvement. (R., pp. 28-49). She also found that the Claimant was not at maximum medical improvement and placed the Claimant under his previously authorized treating physicians, Dr. Jeffrey Travis, M.D. and Dr. Lanneau Lide, M.D., for treatment of the Claimant's heart and all causally related problems. (R., p. 43).

The Appellants filed a Form 30 Request for Review. (R., pp. 215-220). The Appellants filed their Appellants' Brief to the Full Commission on April 23, 2014 and the Claimant filed his Claimant/Respondent's Brief to the Full Commission on May 8, 2014. (R., pp. 221-261; pp. 262-302). A hearing was held on the appeal on May 19, 2014 (R., pp. 558-581). A request for proposed Order was emailed on June 6, 2014 requesting Appellants' Counsel draft the proposed

Order (R., p. 303). The Order of the Full Commission Panel was filed on July 25, 2014 wherein the Commission as to the subject of this appeal affirmed the findings and Decision of the Hearing Commissioner finding compensable injury, finding that the Claimant was not at maximum medical improvement and awarding medical care and temporary total disability benefits until further Order of the Commission. From the Decision of the Full Commission affirming the Hearing Commissioner's Decision except as to the head and/or brain, this appeal followed. (R., p. 1-27). Note: the Claimant has filed a cross-appeal as to the Full Commission's denial of any treatment for the head and/or brain.

STATEMENT OF FACTS

As is set out in the Form 50 filed October 21, 2013, the Form 50 was filed due to the fact that the Appellants after having accepted the claim and having provided temporary total disability benefits and medical care had filed a Form 15(II) stopping benefits based on an alleged good faith investigation and stating as the basis that the Appellant had failed to establish compensable injury by accident. A Form 15III Reinstatement Request was filed and due to the alleged basis in the Form 15II, a Form 50 was

filed and in the attachment to the Form 50, under #11

further grounds or unusual aspects of claim:

"The Form 50 was being filed due to this denial and the denial of the claim for failure to prove a compensable injury by accident."

The Form 50 requested three things: 1) a finding that the Claimant had sustained compensable injury under the Act and based on that Finding 2) that he was entitled to; the reinstatement of medical care that had previously been, "authorized and provided"; and 3) the reinstatement of temporary total disability benefits from the date that those had been stopped. (R., pp. 71-73, specifically #7, #8 and #11). As required by the Act under #1 on WCC Form 50, Claimant listed as, "body parts affected: heart, left hand/arm/ shoulder, neck, head (brain), chest. The system [sic, systemic] is electrical shock (all organs, members and bodily parts) determined to be related."

In their responsive Form 51, which is the Appellants' pleading placing the parties on notice of the issues for decision, the Appellants stated:

"Denied the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are:

Claimant has failed to meet his burden of proving that he sustained a compensable injury or illness pursuant to the Act."
(R., p. 75)

In reference to the request for medical care, the Appellants checked that it was "Denied" that the employee needed:

"medical care as a result of injury or illness."
The reasons for denial are:

Claimant has failed to meet his burden of proving a compensable injury by accident within the course and scope of his employment.

Defendants do not deny that if this claim is found compensable, claimant is in need of additional medical care." (Emphasis added).
(R., p. 75).

Appellants also denied that the Claimant was entitled to temporary total disability benefits. In their responsive Form 58 Pre-Hearing Brief, under #4 "Facts in controversy", the Appellants listed the following:

"Defendants have denied this claim pursuant to SC Code §42-9-260. The issue for this hearing is whether or not claimant can meet his burden of proving a compensable claim pursuant to the Act."

Under #5. "Legal issues involved", the Appellants listed the following legal issues:

"§42-9-10, §42-9-20, §42-9-30, and §42-9-260."

(Note: there is no reference to the denial of compensable injury under §42-1-160, definition of injury by accident, and there is no issue raised under §42-15-60, the medical provision section of the Act).

Additionally, under #3 "Type of injury and body part(s)", the Appellants in their Pre-Hearing Brief listed:

"Claimant alleges injury to his neck, left shoulder and heart. Defendants have denied this claim as failing to meet the standards for being a compensable claim."

At the hearing on January 13, 2014, after a Pre-Hearing conference off the Record, the Hearing Commissioner recited the positions of the parties and the purpose of the hearing and stated:

"The purpose of today's hearing is to determine issues raised in Forms 50 and 51."
(R., p. 472, ll. 17-19).

While in the Form 51, the Appellants denied injury by accident and compensable injury; at the Hearing they admitted both. [R., p. 477, l. 1 and l. 9: "his left shoulder and arm, which are admitted body parts . . . (and) - so he seeks a finding of compensability of not only the neck and the left shoulder, which the Defendants admit . . ."]

As to the accident that occurred on May 22nd and the body parts affected, from the Hearing Transcript:

By the witness: (the Claimant Clarence Winfrey)

"And when I was moving the wires, that wire moved, and I mean it blew up. I mean not no pow, it went kaboom. And that is when I snatched back real hard, but I would feel it from here (indicated) my neck."

By Commissioner: (Commissioner Barden)

So you're use - - you are indicating your left arm all the way up?

Witness:

Yeah, I got a scar right there."
(R. p. 494, ll. 8-17).

"And it went up my arm and from my ears down
through my shoulder.

Commissioner:

Is that your middle finger the scar was on?

Witness:

Yes, ma'am.

Commissioner:

Ok. So it went up your arm into your neck?

Witness:

Right through here and run down through here.

Commissioner:

Ok. And you are indicating your chest and up
into your head a little bit?

Witness:

Yeah.

Commissioner:

All right.

Witness:

And that's how - - when I called Bobby Ruppe
and explained to him they got more problems
than a - -

* * *

- - well, first I had to go outside and get my composure back. Then I called Bobby Ruppe."

(R. p. 495, l. 9 - p. 496, l. 1 and ll. 5-6).

"By Mr. McDaniel: (hereinafter McDaniel)

- - - Both the Defendants and we have put in Mr. Ruppe's statement confirming Mr. Winfrey's testimony about that - - that he called Mr. Ruppe.

Commissioner:

OK.

McDaniel:

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Commissioner:

And that's R-U-P-P-E. "

(R. p. 496, ll. 15-24).

"Q: Did you tell him about the shock?

A: Oh yeah. I told him I was hurt.

Q: Ok.

A: I told him I was hurt. I said, 'I've never been hit this hard before in my life.'

(R. p. 497; ll. 8-12). (Emph. added).

After leaving the Publix, Mr. Winfrey tried to continue working but had to leave work after several hours at which time he called Bobby Ruppe and told him,

Witness:

"and told Bobby 'I can't - - I'm done' I couldn't do nothing else, and it was getting worse and worse."
(R. p. 517, ll. 13-15).

"Witness:

Yeah. And the next morning when I got up I was just dripping sweat and I tried to work. I went to the Walmart on - - -

Commissioner:

When did the sweating occur, the next morning?

Witness:

I mean, I was dripping."
(R. p. 499, ll. 10-17).

"Commissioner:

That's ok.

Witness:

And I was laying on my back because that is the - - you know what I mean? It hurt if I stood up and then on my head so I laid down. I had to go to Whaley's to get some fuses. I drove to Whaley's. It's down the road, came back, put the fuses in. That's when I called Bobby Ruppe, and said, 'man, I can't do it. I am sorry.' I even apologized to the people in the Deli, but I was in too much pain and when I left that Walmart, Bobby had Peggy Duncan call me. She works for the company and said that they just called - - Walmart just called and said all the fryers are down. And I said, 'well, Peggy, I am severely hurt but I will go back because I just left there.' So I went back and they lost power to all the fryers. That's when I called Bobby back and said 'they lost power, and they need an electrician' and I told him 'I can't do nothing else. I have got to go home.' And that is what I did.

McDaniel:

Q: And then what did you do between then and - - we're going to talk about the 27th in just a minute, but between that - - the day that you called Bobby and said 'I can't do it anymore; I am going home' did you - - what did you do between then and when you finally went to I believe we are going to talk about the Minute Clinic in the second?

A: Yeah, that was a Monday. 'That was a holiday.'

Q: So what did you do - - over the weekend?

A: Oh, I had - - I went by Walgreen's and bought Motrin and Tylenol, you know, anything to what I thought would help."
(R. p. 499, l. 25 - p. 501, l. 8).

"McDaniel:

Q: And it was - - it - - it was in the same place as it was from the - - from the minute of the shock?

A: Yes.

Q: Is that correct?

A: Yes, it was in my arm. It went up to my ear and it dropped like that (indicating). But I just ate Motrin and Tylenol and things like that. Ibuprofen. I was trying to get the pain to go away."
(R. p. 501, ll. 18-25).

Finally, in reference to the voltage, the Claimant testified repeatedly that the voltage was at least 240 and as much as 480 volts. (R. p. 492, ll. 1-25; p. 522, ll. 14-24). Mr. Wesley Mark Warren who testified on behalf of the Defendants confirmed the Claimant's testimony about the

voltage and stated that, "without checking with a meter, I couldn't tell you the actual voltage, but the machine is rated for 480 volt, - - -". (R. p. 526, ll. 23-25).

In a report dated September 30th, Dr. Jeffrey A. Travis, M.D., Board Certified Cardiovascular Surgeon (not just a cardiologist and as he testified, the only doctor in this case that actually held the Claimant's heart in his hands), stated:

"Mr. Winfrey is a patient who presented with a very unusual cardiac lesion after suffering a large electrical shock. The lesion, a ventricle septal defect, and normally only seen very rarely in a setting of an acute myocardial infarction. I believe that Mr. Winfrey's electrical shock caused his heart attack and his ventral septal defect.

* * *

Operative photographs confirm a large white patch on both sides of his heart that were almost certainly entrance and exit wounds of the electricity. I have never seen anything like these patches in my 15 years of surgery. I have a photo of the anterior surface of the heart that demonstrates either the entrance or exit site.

* * *

I find it quite unbelievable that his surgery and postoperative course have been considered separate from his electrical injury at work. I see almost no plausible explanation other than a direct cause and effect."
(R., p. 92).

In his deposition, Dr. Travis reaffirmed this opinion and also how the electrical shock in his opinion caused a plaque rupture that caused the myocardial infarction that lead to the ventral septal defect. (R., pp. 410-412; pp. 414-415; and pp. 421-423). Dr. Lanneau Lide, the Claimant's Board Certified treating cardiologist stated his opinion to a reasonable degree of medical certainty that the symptoms and injuries to his heart stemmed from the electrical shock that he sustained to his left hand and arm on May 22, 2013. He unequivocally reaffirmed that opinion in his deposition. (R., p. 382, ll. 6-20),

Dr. Karen Greenfield, Board Certified in family medicine and the initial treating physician at Doctor's Care, after referral from the Minute Clinic Nurse at Walgreen's, stated that it was her opinion to a reasonable degree of medical certainty that the injuries and problems for which she treated him specifically in reference to the heart were caused by the electrical shock. She reaffirmed that opinion in her deposition. (R., p. 324, ll. 2-6).

The Hearing Commissioner as affirmed by the Full Commission made detailed Findings of Fact with specific detailed citations to the evidence relied on in making those Findings. (R., pp. 38-49).

STANDARD OF REVIEW

The Administrative Procedures Act provides the standard for judicial review of decisions of the SC Workers' Compensation Commission and this Court may reverse or modify the Commission's decision only if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, substantial evidence in the whole Record. Under the Administrative Procedures Act, this Court's review is limited to deciding whether the Commission Decision is unsupported by substantial evidence or is controlled by some other error of law and if the Commission's Decision is supported by substantial evidence in the Record, the Decision of the Commission must be affirmed. Substantial evidence is not a mere scintilla of the evidence, nor is it evidence viewed blindly from one side or the other of the case but it is evidence which after considering the Record as a whole would allow reasonable minds to reach the conclusion that the Commission reached in order to make its Decision. The possibility of drawing two different conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d, 753 (SC App. 2007).

It is for the Commission to decide the factual issues and where there are conflicts in the evidence, over a factual issue, the findings of the Commission are conclusive if there is substantial evidence in the Record to support those. The decision on the conflicts in the evidence and on the weight and credibility to be given evidence from various witnesses, is a factual determination to be made by the Commission and its final determination on those issues is final and conclusive. Hall v. United Rentals, Inc., 371 S.C. 69, 636 S.E.2d 876 (SC App. 2006). The conclusiveness of the Commission's Findings of Fact if supported by the evidence extends to any conflicts in the evidence, and to all witness credibility and the weight to be given all evidence and the Commission's determination specifically includes the resolution of conflicts in medical evidence and the Commission's decision on those and the weight to be given medical evidence is conclusive as the ultimate fact finder. Mullinax v. Winn Dixie, Inc., 318 S.C. 431, 458 S.E.2d (SC App. 1995).

ARGUMENTS

- I. THE FULL COMMISSION DID NOT ERR BY AFFIRMING THE HEARING COMMISSIONER'S DECISION TO HOLD THE HEARING AND RULE ON THE ISSUES BEFORE HER FOR DECISION AND IN SO DOING SHE DID NOT AGT IN AN APPELLATE CAPACITY.

The Appellants arguments under Argument I are very confusing and are contradictory. The Appellants on the one hand argue that Commissioner Beck's prior Order concerning a Form 15 Hearing (wherein the sole issue before him was reinstatement of benefits for improper stop payment, and although it was on appeal and while admitting any findings in that Order were not the law of the case), in some way precluded a Hearing and decision on a Form 50 claim for a determination of compensability and proof of the essential factual issues necessary to such an Award, (i.e., injury by accident, compensability and entitlement to benefits) with which Commissioner Barden was charged with deciding. On the other hand or in some way connected, they argue she should have addressed certain issues that they wanted addressed (ex., when the myocardial infarction occurred) as part of her Decision which were not part of the essential factual and legal issues before her for decision. Commissioner Barden properly heard the evidence before her and ruled on those "essential factual issues" making detailed Findings of Fact and Conclusions of Law on

those "essential factual issues" in reaching her Decision to support her factual and legal conclusions on the essential issues that the Respondent had proved by a preponderance of the evidence under the provisions of the Act and under the law as defined by our Appellate Court decisions: that he had sustained injury by accident; that his injury/problems with his heart stemmed from the accident; and that he was entitled to medical care and temporary total disability compensation. Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962).

After the Appellants denied injury by accident and compensability in the Form 15 dated September 12, 2013, the Respondent filed a Form 50 Claim and Request for Hearing requesting that the claim be determined to be compensable and awarding him temporary compensation benefits and medical benefits for the injuries which needed treatment at the time of the hearing as stemming from the accident. The Appellants filed a Form 51 and the issues were joined and those were the issues before Commissioner Barden for decision. It was the Claimant's position that the severe injuries to the Claimant's heart for which he was being treated were caused by the electrocution injury that he sustained. Specifically in his Pre-Hearing Brief he

delineated the factual issues and his request for benefits under the Act as follows:

"b. The Claimant would submit that the evidence establishes that he sustained a compensable injury and is entitled to reinstatement of temporary compensation benefits . . . ;

c. Medical care from the date that medical care was stopped being authorized and continuing until the Claimant reaches maximum medical improvement"

Therefore the issues before the Commissioner were whether the Respondent had sustained compensable injury; whether in reference to this appeal his heart related problems were causally related to the injury; whether he was entitled to temporary total disability benefits; and whether he was entitled to medical care for all injuries resulting from the accident. Appropriately the Commissioner entered a decision on those, "essential factual issues". (See Footnote 2).

When a claimant files a request for benefits which is denied and is the moving party before the Commission, the claimant has the burden of proof and must establish by a preponderance of the evidence (facts) that he is entitled to an Award under the Workers' Compensation Act. Walsh v. US Rubber Co., 238 S.C. 411, 120 S.S.E.2d 685 (1961). Further the Decision of the Commissioner must be based on the facts and cannot be based upon surmise, conjecture or speculation.

Solar v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321

(1964). In making its decision, the Commission may rely on lay/witness evidence, circumstantial evidence and/or medical opinion evidence. Rollins v. Wunda Weve Carpet Co., 255

S.C. 1, 177 S.E.2d 5 (1970). (lay testimony sufficient to establish compensable injury and disability); Grice v.

Dickerson, Inc., 241 S.C. 225, 127 S.E.2d 722 (1962)

(circumstantial evidence sufficient to support award);

Tiller v. National Home Healthcare, 334 S.C. 333, 513 S.E.2d 843 (1999) (expert opinion alone sufficient to support award).

In this case it was the Claimant's burden of proof to prove by a preponderance of the evidence that the injuries to the Claimant's heart stemmed from the electrocution injury thus entitling him to compensation. The Claimant testified to the facts of the electrocution injury and that from the very minute of that electrocution, he had severe pain in his neck, arm and shoulder that ran as far up as into his head and ear and into the front part of his chest over his collarbone area. (R., p. 501, ll. 18-25). His three (3) treating physicians (all treating physicians in fact) testified that in their opinions the injuries to his heart stemmed from the electrocution injury. (R., pp. 410-412; 414-415; 421-423; 89; R., p. 382, ll. 6-20; R., p. 21).

Clearly there is a preponderance of the evidence to support the Commissioner's Decision finding that the Claimant has sustained compensable injury.

Further, the Hearing Commissioner's Decision had to be based on the evidence before her, and emphasis is placed on "before her", and based on the evidence before her, the Hearing Commissioner found that the Claimant had established a compensable injury stemming from the May 22nd electrocution injury.

In reference to the argument that the Commissioner in some way was acting in an appellate capacity, that is simply wrong. She was charged with the responsibility of hearing the "essential issues" and making a decision on the issues raised by the Forms 50 and 51 which she did; she based that decision on the evidence before her and her analysis of the evidence and made detailed Findings of Fact as required. See Drake v. Raybestos-Manhattan, Inc., supra, and also Fox v. Newberry County, 319 S.C. 278, 461 S.E.2d 392 (1995).

Finally, there is no requirement that the Commissioner make a decision as to when the myocardial infarction occurred. The essential factual issue upon which she had to make a decision and which was submitted to her for decision was whether the Claimant's heart related problems stemmed from the accident; i.e., the electrocution injury that

occurred on May 22nd. She appropriately made her Findings of Fact based on the law addressed to that issue. See for example: Ricker v. Village Management Corp., 231 S.C. 47, 97 S.E.2d 83 (1957) (Claimant felt sharp pain and continued to work with recurring pain for three days and on third day, pain so intense hospitalized); Randolph v. Fiske-Carter Construction Co., 240 S.C. 182, 125 S.E.2d 267 (1962); (accident 5/20/60; heart attack 11/6/60 - 6 months later).

Finally besides the fact that as to when the myocardial infarction specifically occurred was not paramount to the decision on the issues before the Commissioner and while trying to bootstrap Commissioner Beck's dicta decision, which they admit was not the law of the case, into establishing as a fact as to when the myocardial infarction occurred, the Defendants did not ask any one of the treating doctors as to when in their opinion the myocardial infarction occurred; and also did not specifically ask the question "Doctor, in your opinion did the myocardial infarction occur on the 28th?" There was simply no evidence before Commissioner Barden on that specific issue and for her to make a decision in that regard, specifically as to the position of the Defendants,

would make her decision the subject of and based on surmise, conjecture or speculation.¹ The issue is without merit.

II. THE COMMISSION DID NOT ERR BY FAILING TO MAKE A FINDING ON THE NON-ESSENTIAL ISSUE AS TO THE DATE THAT THE CLAIMANT SUFFERED A PLAQUE RUPTURE.

As is set out in Argument I, there is simply no requirement that the Commissioner make a Finding of Fact as to the time of the plaque rupture. The Commissioner was charged with making Findings of Fact as to whether or not the Claimant's injuries to his heart stemmed from the work-related accident and as to whether he had sustained compensable injury by accident.

Quoting from Commissioner's Finding of Fact No. 9:

"three physicians have all opined to a reasonable degree of medical certainty that the electric shock ultimately resulted in Claimant's heart attack, regardless of the date on which the infarction occurred . . .".

She goes on to quote explicitly from all the doctors' depositions supporting that Finding.

It is somewhat ironic that the Defendants would cite the case of Cross v. Concrete Materials, 236 S.C. 440, 114 S.E.2d 828 (1960) in support of this argument in that in the Cross case benefits were denied because there was simply a lack of medical opinion evidence stated to a reasonable

¹ Without citation, the Appellants state that the plaque rupture was "contemporaneous" with the myocardial infarction which is simply not accurate. See R., pp. 360-362.

Greenfield Dep?
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degree of certainty that the Claimant's condition stemmed from the accident. The Cross case simply stated black letter law which is that, "when testimony of medical experts is relied upon to establish causal connection between an accident and subsequent disability or death, in order to establish such, the opinion of the experts must be at least that the disability or death 'most probably' resulted from accidental injury." (Emp. add.) In this case, not only one (1) but three (3) different doctors all testified that in their opinion to a reasonable degree of medical certainty the Claimant's injuries to his heart stemmed from the work-related electrocution injury. There is simply no requirement that the Commissioner make a Finding as to the time when the plaque rupture occurred. The Respondent would also point out that the Court's review of the evidence before Commissioner Barden will establish that plaque rupturing resulting in a blockage and myocardial infarction which led to the septal defect is only one of the scenarios that the doctors opined could have resulted from the electrical shock. (See Footnote 1). However there is no question or difference of opinion in any of the three (3) doctors who treated the Respondent (and particularly Dr. Travis who did the heart surgery, held the Claimant's heart in his hand, and who witnessed the entrance and exit wounds

in his heart), that the electrical shock caused the injuries to his heart. The issue is without merit.

III. THE COMMISSION DID NOT ERR BY FAILING TO MAKE A FINDING ON THE NON-ESSENTIAL ISSUE OF WHAT CAUSED THE PLAQUE RUPTURE IN THE CLAIMANT'S HEART.

As set out in Argument I and II, the essential factual issue before the Commission for decision was whether or not the Claimant proved by a preponderance of the evidence that he had sustained compensable injury by accident and that that injury resulted in the injuries to his heart. The issue is without merit.

IV. THE COMMISSION DID NOT ERR BY FAILING TO FIND A DATE ON WHICH THE CLAIMANT SUFFERED A MYOCARDIAL INFARCTION.

For all the reasons as set forth in Argument I, II, and III and without again quoting Finding of Fact #9 quoted in Argument II, the same legal arguments and factual arguments apply and the issue is without merit.

V. THE COMMISSION DID NOT ERR BY RELYING ON DR. TRAVIS' MEDICAL OPINIONS AS EXPRESSED BOTH IN WRITTEN DOCUMENTS AND IN HIS DEPOSITION TESTIMONY.

This argument made by the Appellants by pulling "piece-mill" out of Dr. Travis' deposition does not reflect his opinions as expressed in the deposition and as previously expressed in his written report. The doctor specifically reiterated that his opinions as expressed in his letter of September 30th represented his opinions.

concerning the causation of the Claimant's problems. (R., p. 420, ll. 20-25). The doctor then went through and specifically detailed the sequence of events that occurred and the problems that resulted from the electrical shock leading to all of the injuries to the heart and to his need for treatment (R., p. 421, l. 1 - p. 423, l. 9), at the end of which the doctor again stated his opinion specifically:

"But that electrical shock was the thing that pushed the first domino over and everything that we saw after that followed it. That's just my opinion."
(R., p. 423, ll. 6-9).

Then again the doctor reiterated:

"Q: Doctor, this is a report that was issued on September 30th. I believe you dictated that, does that represent your opinions in reference to the causation issue and your opinions about what caused Mr. Winfrey's condition?

A: That is correct.

Q: Is that your opinion to a reasonable degree of medical certainty?

A: It is."
(R., p. 424, ll. 6-20).

The issue is without merit and is a total misstatement of the doctor's testimony.

VI. THE COMMISSION DID NOT ERR IN RELYING ON THE WRITTEN MEDICAL OPINION AND THE TESTIMONY OF DR. LIDE IN MAKING ITS FINDINGS AND RULING.

Quoting from Dr. Lide's deposition:

Q: "But in your opinion, based on this history and everything you observed and your conversations with Mr. Winfrey and this history and development of his problems, is it your opinion that - - that this electrical shock, is it still your opinion that this electrical shock caused all the problems that lead to him coming to see you?

A: That is my opinion.

Q: Ok.

A: - - that - - that the electrical shock was the approximate cause of - of all this illness.

Q: Ok and that is stated to a reasonable degree of medical certainty?

A: As certain as I can be."
(R., p. 382, ll. 6-14).

The issue is without merit.

VII. THE COMMISSION DID NOT ERR BY RELYING ON THE WRITTEN AND TESTIMONIAL OPINIONS EXPRESSED BY DR. GREENFIELD IN MAKING HER FINDINGS OF FACT THAT THE CLAIMANT HAD SUSTAINED COMPENSABLE INJURY.

Dr. Karen Greenfield testified:

"Q: Ok. Alright. And the opinion that you were kind enough to write to us, you - - that still remains your opinion to a reasonable degree of medical certainty?

A: Right."
(R., p. 324, ll. 2-6).

The Hearing Commissioner did not err by relying on the opinions of Dr. Greenfield. The issue is without merit.

VIII. THE COMMISSION DID NOT ERR IN FINDING OF FACT #7 BY FINDING THAT THE CLAIMANT BEGAN SWEATING THE NIGHT OF THE ELECTRICAL SHOCK.

While as set forth below the evidence supports the Commissioner's Finding, before addressing this issue by setting out the evidence that supports the Finding, according to the medical expert testimony whether or not, and when the Respondent sweated is totally irrelevant and is absolutely unimportant in reference to the issues before the Commissioner for decision or in reference to a myocardial infarction. Therefore, this issue was nothing but the Appellants trying to get the Commission to chase rabbits, which is an old saying that comes from fox hunting. When your dogs are on the scent of the fox and you are on the, "hunt", you don't want your dogs to start chasing rabbits and want them to keep their eye on the prize, the fox.

Dr. Lanneau Lide testified answering Defense Counsel:

"Q: And that is a symptom of suffering from a myocardial infarction; is that right?

A: That is a symptom of suffering from illness. Period.

Q: Okay.

A: That is so non-specific a symptom that it doesn't tell you. It doesn't lead you in any - - any specific direction."

* * *

"Q: His sweating didn't start until 24 hours after the electrical shock, would that be indicative of when the myocardial infarction occurred?

A: I don't think that - - I don't think you can time anything by the onset of sweating."
(R., p. 363, l. 25 - p. 364, l. 7; p. 364, ll. 19-24).

With that point made, in reference to the Commissioner's Finding, Dr. Karen Greenfield gave the following answer:

"A: The only thing that I wrote down there was - - I guess it was on Thursday when he was shocked. And he said he had some sweating issues that evening - - ."
(R., p. 311, ll. 15-18).

In her report she recorded:

"Rotisserie shock on Thursday, sweated Thursday PM."
(R., p. 156).

The testimony of the Claimant on sweating was to being dripping wet sweating on Friday morning. (R., p. 499, ll. 10-17). The issue is without merit.

IX. THE COMMISSION DID NOT ERR IN MAKING FINDING OF FACT #9 THAT ALL THREE (3) TREATING PHYSICIANS HAD OPINED THE ELECTRICAL SHOCK RESULTED IN CLAIMANT'S HEART ATTACK (ACTUALLY HEART RELATED INJURIES) AND NOT INCLUDING A DATE ON WHICH THE, "HEART ATTACK" OCCURRED.

In this argument, the Appellants make another attempt to change the issue that was before Commissioner Barden and the Full Commission. The issue was and is did the Respondent sustain compensable injury to his heart as a result of the admitted electrocution injury by accident. The Commission properly addressed that in Finding of Fact #9. The Hearing Commissioner made very copious and detailed reference to the testimony and evidence upon which she relied in making her Findings. The issues before her and her Finding are best summed up from the Commissioner's Order:

"After due and proper consideration of the testimony and evidence presented, I find that Mr. Winfrey has sustained his burden of proof by proving by a preponderance of the evidence that he sustained compensable injury to include specifically injury to his heart as a result of the electrical shock that occurred on May 22, 2013, and specifically including that the electrical shock resulted in the Claimant's heart attack, myocardial infarction, and ventricular septal defect (VSD), and including the specific entrance and exit wounds and damage to the heart as described by Dr. Travis all being physical injuries to the heart stemming from this accident."

The Appellants again are simply trying to have this

Court force the Commission into making a decision and a Finding that is not necessary or required by law and in fact ignoring much of the damage done to the Claimant's heart as a result of the electrocution. Further, Finding of Fact #9 must be read in conjunction with all the other Findings and particularly Finding of Fact #10 where the Commissioner gave great weight to the opinions of Dr. Travis and Dr. Lide who, "both opined that the heart condition is causally related." (R., p. 41). The issue is patently without merit.

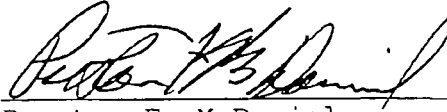
CONCLUSION

For all the foregoing reasons, the Decision of the Commission should be affirmed by this Court. Further, based on a review of this appeal under the substantial evidence standard and the Appellants' failure to submit legal authority for any proposition of law to support any statements or argument made², the Respondent would request

² The Appellants make nine (9) Arguments in their Brief to the Court encompassing twenty-one (21) pages of argument and cite and quote one case, Cross v. Concrete Materials, supra, quoted identically three (3) different times. The Appellants then distort and misapply the Cross quote which in pertinent part is that there must be "proof of any essential element of the claim." The Appellants after the quote (again identically/repeatedly quoted at pages 10, 12 and 14) state that, "A finding of compensability for the ventricular septal defect . . ." is required. The Appellants then cite no authority for this proposition that this is an "essential element of the claim". Cross, supra, simply applied the time honored "most probable" standard to medical opinion evidence and its actual holding establishes the frivolous nature of the Appellants' quotation. Quoting the holding in Cross, supra, "Our rule is different and has been many times applied. It is that the Court will affirm a factual finding of the Commission if there is any competent evidence in the Record to sustain it, and reverse only if there is not." The essential element is simply causal relationship between the accident and injury to the heart. The Commission has spoken. Any question about the lack of merit of this date/time argument is taken away by the Supreme Court decision in Randolph v. Fiske-Carter Construction Co., supra, especially as to time.

a decision as to each argument made as to whether it has any merit or a general statement by the Court as to whether the appeal has any merit.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Preston F. McDaniel", is written over a horizontal line.

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Attorneys for Respondent

February 17, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

RECEIVED

MAR 30 2016

SC Court of Appeals

Appellant Case No. 2014-001788

Clarence Winfrey, Employee, Claimant Respondent,

v.

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

APPELLANT'S FINAL REPLY BRIEF

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Medical Background

Claimant notified Employer he was shocked while working on a rotisserie oven on May 22, 2013. (R. pp. 200-201). Employment records of Claimant indicate that he continued working the remainder of the day and the entire following day. (R. pp. 203-204). An email from Claimant to Employer indicates that he was experiencing only neck pain on May 27, 2013 (5 days post-accident). (R. p. 201). Claimant first presented to Doctor's Care on May 28, 2013 (6 days post-accident) complaining that he woke up sweating that morning (6 days post-accident) (R. p. 188). Claimant was treated by Dr. Greenfield at Doctors' Care. Dr. Greenfield noted that Claimant had some tenderness in his shoulder and neck area. Id. Further, Dr. Greenfield noted that Claimant did not complain of any chest pressure. Id.

Dr. Greenfield testified in her deposition that the testing she conducted could not give any indication as to when Claimant suffered the myocardial infarction. Specifically, **Dr. Greenfield stated that the myocardial infarction "...could have been 5 days ago..." and further admitted that the acute myocardial infarction could have occurred the evening of May 27 or the morning of May 28.** (R. p. 355, line 10-p. 356, line 8). Further, Dr. Greenfield indicated that she based portions of her opinion on articles that she read relating to electrocution from lightning strikes. When asked about these articles, Dr. Greenfield admitted the voltage involved in those articles was 10,000,000 volts—an amount that is 20,000-40,000 times higher than the voltage involved in this claim. (R. p. 371, line 19-p. 372, line 4). Additionally, Dr. Greenfield stated that Claimant presented without any chest pain. (R. p. 359, lines 5-9, p. 367, lines 3-8). **Dr. Greenfield also noted the pain in Claimant's arm and shoulder was not indicative of**

having sustained a myocardial infarction. (R. p. 359, lines 13-25). Dr. Greenfield's deposition testimony directly contradicts her prior written opinion obtained by Claimant's counsel stating Claimant's heart condition was caused by the electrical shock.

Claimant was then referred to and saw Dr. Dasgupta at the South Carolina Heart Center on May 28. Dr. Dasgupta also noted sweating and noted that Claimant denied chest pain but did have minimal left shoulder pain. (R. pp. 190-192). Dr. Dasgupta diagnosed Claimant with an acute myocardial infarction. Id. Dr. Dasgupta indicated that Claimant had a prior history of hypertension, tobacco abuse (one pack a day smoker), as well as a significant family history for heart disease (Claimant's father passed away from coronary disease and myocardial infarction). Id. Dr. Dasgupta also noted that Claimant appeared to have a ventricular septal defect as a possible completion of his acute myocardial infarction. Id. Dr. Dasgupta referred Claimant to Lexington Medical Center where Dr. Travis performed surgery to repair an acute ventricular septal defect that formed following the myocardial infarction. (R. pp. 194-196).

Dr. Travis described the mechanism of Claimant's injury as being a plaque rupture that caused a myocardial infarction that caused the ventricular septal defect. (R. p. 411, line 24-p. 412, line 2). Dr. Travis indicated that plaque ruptures can be caused by many things including getting up the wrong way from a couch, strenuous activity, stressful events in your personal life, emotional stresses, and many other things. (R. p. 412, lines 3-11). Further, Dr. Travis was asked "...other than the timing of the heart attack...there's no way to know for certain the plaque rupture was caused by the electrical shock, is that correct?" (R. p. 412, lines 12-15). Dr. Travis response was that "[i]s there a definitive way to—collate one to another absolutely

not." (R. p. 412, lines 16-18) (emphasis added). Dr. Travis also stated that "the [electrical shock] could of started the whole domino effect." (R. p. 427, line 23-24) (emphasis added). Finally, Dr. Travis indicated that the neck pain Claimant experienced "could be just neck pain." (R. p. 428, lines 12-16).

Dr. Travis indicated that part of his opinion formed because of the presence of a plaque on Claimant's heart. However, Dr. Travis stated that this was his first open heart surgery on a patient who had received an electrical shock. (R. p. 427, lines 2-5). Further, Dr. Travis stated that he had never "read about or seen anything" related to whether or not the plaque he observed is related to electrical shock or whether or not the plaque he observed is common in electrical shock. (R. p. 427, lines 6-12). Dr. Travis' deposition testimony directly contradicts the prior written opinion requested by Claimant's counsel stating Claimant's heart condition was caused by the electrical shock.

After the surgery, Claimant began treating with Dr. Lide on an outpatient basis for his heart condition. In his deposition, Dr. Lide stated that no one knows what causes a plaque rupture in the heart. (R. p. 360, lines 13-15). Dr. Lide agreed with the statement that "...we don't really know what causes plaque rupture." (R. p. 360, line 22). Dr. Lide also testified that "I don't know whether the electrical shock caused the plaque rupture... ." (R. p. 361, lines 14-15). Further, Dr. Lide testified that he is not familiar with any research and he has not conducted any research on whether an electrical shock can cause a myocardial infarction or a ventricular septal defect. (R. p. 365, line 13-p. 366, line 1). Dr. Lide also indicated that the longer in time the heart condition develops from the precipitating event (in this case an electrical shock), the less likely it is the heart condition is related to the electrical shock. (R. p. 366, lines 2-6).

Finally, Dr. Lide stated his overwhelming evidence that the electrical shock caused Claimant's condition was "proximity in time." (R. p. 367, lines 20-21). Dr. Lide's deposition testimony directly contradicts the prior written opinion requested by Claimant's counsel stating Claimant's heart condition was caused by the electrical shock.

Legal Analysis

The mere fact an injury occurs due to heart attack during employment will not, by itself, support a compensation award. *See, for example, Lorick v. S.C. Elec. & Gas Co.*, 245 S.C. 513, 141 S.E.2d 662 (1965); *Rivers v. V.P. Loftis Co.*, 214 S.C. 162, 51 S.E.2d 510 (1949); *Price v. B.F. Shaw Co.*, 224 S.C. 89, 77 S.E.2d 491 (1953). The injury must be proximately caused by an accident which arose out of the employment. The burden is on the claimant to establish causation for the heart attack injury. In heart attack and stroke cases, the claimant must present competent and reliable evidence of a causal connection between the work he performed and the heart condition/injury.

In *Lorick*, the court held causation is a medical question which only experts can establish. *See also Wynn v. Peoples Natural Gas Co.*, 238 S.C. 1, 118 S.E.2d 812 (1961).

Specifically, the Supreme Court stated:

"It is our conclusion that the medical testimony here falls far short of that required to prove causation. The Commission could not make a determination of causal connection between an accident and death by coronary occlusion independent of supporting medical testimony where assessment of the precipitating cause requires expert knowledge..."

Lorick at 527, 141 S.E.2d at 669.

When expert testimony is relied on to establish a causal connection between an accident and subsequent injury, the claimant must present an expert opinion at least to the

effect that the accidental injury “most probably” caused the disability or death. *Id.* at 525, 141 S.E.2d at 669 (quoting Cross v. Concrete Materials, Inc., 236 S.C. 440, 114 S.E.2d 828 (1960)). In heart attack cases, the medical expert must testify accident or conditions of employment “most probably induced or precipitated the heart attack or other coronary condition which caused the claimant’s injury.” *Id.* at 525, 141 S.E.2d at 668. **It is not sufficient to show that the malady in question “possibly” or “could have” or “might have” resulted from the injury.** Bridges v. Housing Authority, 278 S.C. 342, 345, 295 S.E.2d 872, 874 (1982) (quoting Gambrell v. Burleson, 252 S.C. 98, 165 S.E.2d 622 (1969)).

In this case, and his brief, Claimant seeks to rely exclusively on the written questionnaires issued by Drs. Greenfield, Travis, and Lide. However, each and every doctor in this case gave the above contradictory deposition testimony after they issued a written opinion proctored by Claimant’s counsel. Claimant seeks to have this court disregard the deposition testimony which directly contradicts the written opinions. The written opinions cannot be viewed in a static vacuum—rather they must be viewed in conjunction with the deposition testimony and the deposition testimony must be understood to enhance and/or clarify the limited written opinions previously issued. When the written opinions and the deposition testimony are read in tandem, it is clear that the doctors’ opinions do not meet the standards for compensability. Each and every doctor gives expert medical deposition testimony in which they indicate (1) they do not actually know when the heart attack occurred, (2) there is no way to say with any certainty what causes plaque rupture (the specific mechanism of Claimant’s heart attack), (3) the electrical shock could have caused the heart condition (which clearly insufficient

under current law to establish causation), and (4) the only causal link between the shock and the heart attack is "sequence in time" (e.g. the heart attack likely occurred sometime after the shock occurred). It is further clear from the record, including the Full Commission Decision and Order, that the Full Commission wholesale disregarded the deposition testimony of the medical experts and instead only considered the initial questionnaires of the same medical experts—this was error and requires a reversal or a remand for specific consideration of the deposition testimony.

As set out in the Final Appellant's Brief and reiterated here, this tenuous connection with no definitive medical evidence to support the electrical shock-heart attack link is insufficient to sustain a finding of compensability. Each doctor, as set out above, can only say definitively that the shock "could" or "may" or "might" have caused the heart injury. Further, the two heart doctors indicated they cannot tell anyone what causes a plaque rupture in the first place and that it may be caused by stress, coughing, exertion, sneezing, or nothing at all. The heart doctors further admitted they have done no research and have no knowledge of electrical shocks causing plaque ruptures, myocardial infarctions, or ventricular septal defects. For that reason, the doctors' opinions under the current laws of this state are clearly insufficient to sustain a finding of compensability and this court should reverse the Full Commission Decision and Order in its entirety.

(Signature Page to Follow)

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March 29, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA
COURT OF APPEALS

Unpub. Op. No. 2017-UP-336
(filed August 2, 2017)

Clarence Winfrey, Employee, Respondent Respondent,

v.

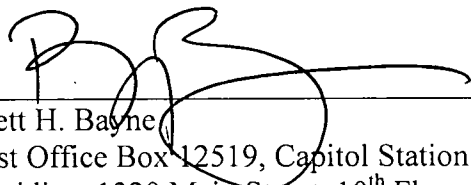
Archway Services, Inc., Employer, and
American Fire & Casualty Insurance Company c/o
Liberty Mutual Group, Carrier, ... Petitioners.

CERTIFICATE OF COUNSEL

The undersigned certifies that this **Appendix** complies with Rule 242(e), SCACR.
The undersigned also certifies that this **Appendix** complies with the South Carolina
Supreme Court's April 16, 2014 Order re: Revised Order Concerning Personal
Identifying Information and Other Sensitive Information in Appellate Court Filings.

October 30, 2017

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S.C. SUPREME COURT

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Liberty Mutual Group, Carrier,..... Petitioners.

PROOF OF SERVICE

I certify that I have caused to be served the Appendix on the attorney of record for Clarence Winfrey, by hand delivery, on the 30th day of October, 2017 addressed to Preston F. McDaniel, Esquire, The McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina 29201.

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