

**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**

Michelle Davis, Employee, Claimant, Appellant,

v.

Fraenkische USA, LP, Employer, and Maryland Casualty
Company c/o Zurich North America, Carrier,
Respondents.

Appellate Case No. 2016-001788

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2018-UP-134
Submitted November 1, 2017 – Filed April 4, 2018

AFFIRMED

Michael F. Mullinax, of Mullinax Law Firm, P.A., of
Anderson, for Appellant.

Mark Andrew Allison, of McAngus Goudelock &
Courie, LLC, of Greenville, and Helen F. Hiser, of
McAngus Goudelock & Courie, LLC, of Mount Pleasant,
both for Respondents.

PER CURIAM: Michelle Davis appeals the order of the Appellate Panel of
Workers' Compensation Commission (the Appellate Panel), arguing the Appellate

Panel erred in holding (1) her average weekly wage was \$487.56 with a corresponding weekly compensation rate of \$325.05 and (2) Respondent Fraenkische USA, LP (Employer) was entitled to a credit for the amount of overpayment of temporary total disability benefits based on excess dollars paid rather than weeks of payments made. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Davis's average weekly wage and corresponding compensation rate: *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981) (finding the Administrative Procedures Act establishes the standard of review of decisions by the Appellate Panel); *Hutson v. S.C. State Ports Auth.*, 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012) ("Under this standard, [this court] can reverse or modify the decision only if the claimant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record."); *Shealy v. Aiken Cty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) ("Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the [Appellate Panel] reached."); *Hill v. Eagle Motor Lines*, 373 S.C. 422, 436, 645 S.E.2d 424, 431 (2007) ("The possibility of drawing two inconsistent conclusions from the evidence does not prevent the [Appellate Panel]'s finding from being supported by substantial evidence."); S.C. Code Ann § 42-1-40 (2015) ("'[A]verage weekly wage' must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred . . . divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less."); *Pilgrim v. Eaton*, 391 S.C. 38, 44-45, 703 S.E.2d 241, 244 (Ct. App. 2010) ("The [Appellate Panel] must use this method unless 'the employment, prior to the injury, extended over a period of less than fifty-two weeks,' or unless 'for exceptional reasons' it would be unfair to do so." (quoting § 42-1-40)); § 42-1-40 ("When the employment, prior to the injury, extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, as long as results fair and just to both parties will be obtained."); *Roberts v. McNair Law Firm*, 366 S.C. 50, 53-54, 619 S.E.2d 453, 455-56 (Ct. App. 2005) (holding a full-time employee who received post-injury wage increases did not justify a deviation from the primary statutory method of average weekly wage computation).

2. As to whether Employer was entitled to a credit for the amount of overpayment of temporary total disability benefits: *Brunson v. Am. Koyo Bearings*, 367 S.C.

161, 165-66, 623 S.E.2d 870, 872 (Ct. App. 2005) (abrogated in part on other grounds) ("The findings of fact and law by the [single] commissioner become and are the law of the case, unless within the scope of the appellant's exception to the [Appellate Panel] Only issues within the application for review under S.C. Code Ann. § 42-17-50 (1976) are preserved for appeal to the [Appellate Panel]."); S.C. Code Ann. Regs. 67-701 (2012) ("Either party . . . may request [Appellate Panel] review of the [single c]ommissioner's decision by filing the original and three copies of a Form 30 . . . within fourteen days of the day the [single c]ommissioner's order is received.").

AFFIRMED.¹

LOCKEMY, C.J., and HUFF and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.