

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2011-CP-23-898

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SC Court of Appeals

Michael Jarrard, Respondent,

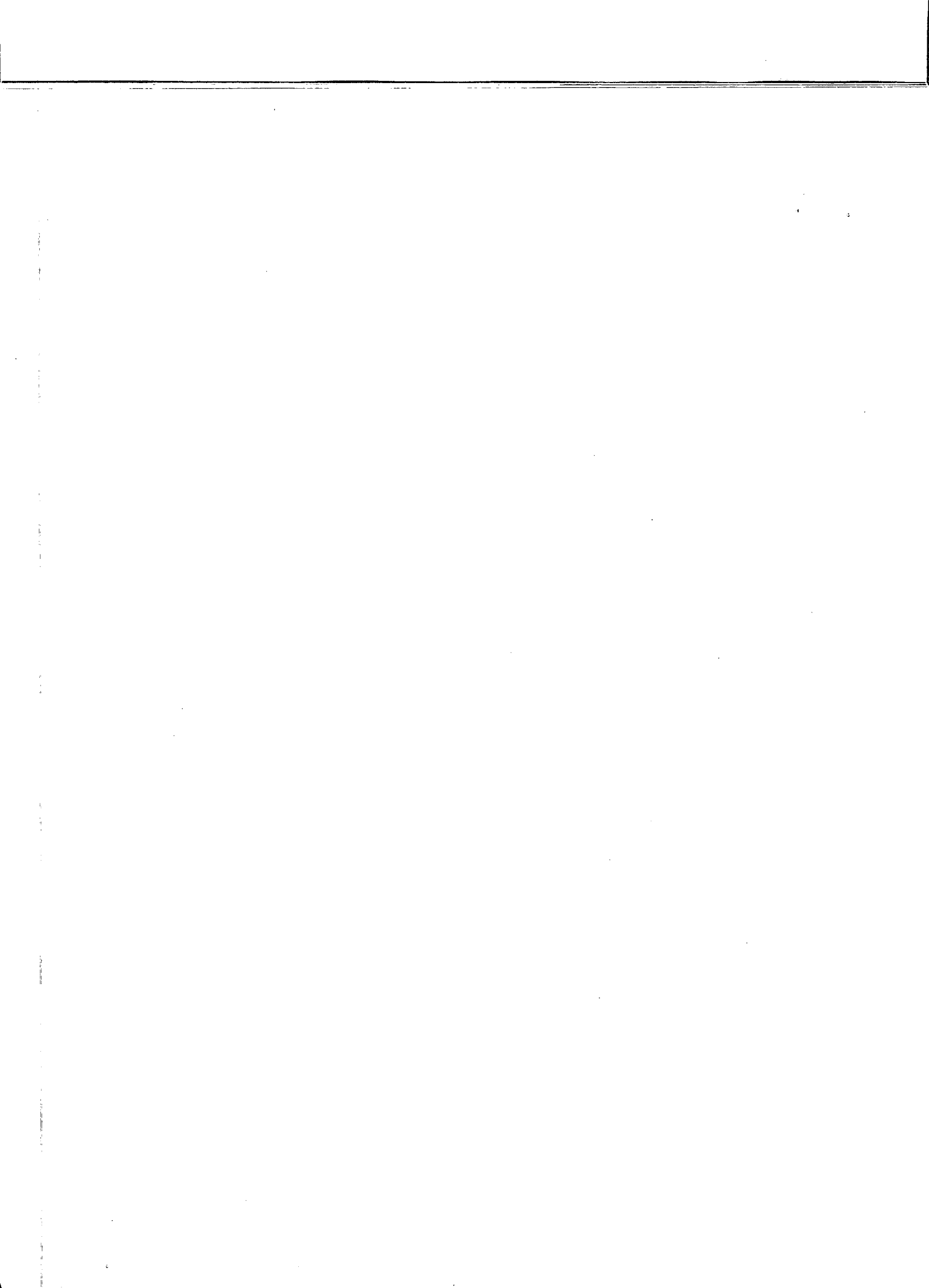
v.

Federal Express Corporation, Appellant.

**RETURN TO THE MOTION FOR LEAVE
TO FILE AN AMENDED NOTICE OF APPEAL**

This return is filed pursuant to Rule 240(e) of the South Carolina Appellate Court Rules. As the motion under consideration states, this is a workers' compensation case in which the Appellant asks to amend its notice of appeal to specify that it is appealing not one, but two orders of the circuit court.

The argument goes that the Respondent will not be prejudiced by this amendment and that the failure to attach the previously un-attached order is a clerical error, but this argument should not be persuasive. This involves more than attaching a new order — the notice of appeal did not reference this order at all. The circuit court heard not one, but two workers' compensation appeals, and because the notice of appeal pertained to only one of them, the Court only has jurisdiction over one of them. The Court should deny the motion to amend.



FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Michael Jarrard,

Claimant/Respondent,

vs.

Federal Express,

Employer and Self-Insured/Petitioners.

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IN THE CIRCUIT COURT

Case No. 11-CP-23-898

ORDER

(Non-Jury Appeal from Workers' Compensation Commission)

INTRODUCTION

In this non-jury appeal from an Order of the Full Commission of the Workers' Compensation Commission, this matter comes before this Court on Petitioner's appeal concerning the Respondent's entitlement to a partial lump sum award as part of his Workers' Compensation claim.

Counsel for the Employer & Petitioner, Federal Express, and the Claimant & Respondent, Michael Jarrard, submitted memoranda of law related to the present appeal, which the court has considered.

A hearing was held on July 25, 2011. At the hearing, the Claimant & Respondent was represented by C. Daniel Vega. The Petitioner & Employer was represented by Russell T. Infinger.

STATEMENT OF THE CASE

This non-jury appeal is in regard to the Workers' Compensation case of Michael Jarrard (hereinafter, "Respondent"), WCC No.: 0217907. The Respondent sustained injuries due to exposure to chemical products on the job resulting in damage to his pulmonary system and brain;

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and damage due to the aggravation of a pre-existing brain tumor. The Respondent was awarded lifetime medical care and treatment pursuant to § 42-9-10 for his physical brain injury, including full-time attendant care to be provided by his wife. The Respondent requested a partial lump sum payment in order to pay his attorney's fees and make repairs and additions to his home.

In an Order dated April 22, 2010, Commissioner Barden found that the Respondent's home is in need of repair after the Respondent submitted contractor bids detailing this repair and its cost. Commissioner Barden granted the fee petition for the Respondent's legal fees in this same Order. Ultimately, Commissioner Barden awarded \$9,900.00 for roof repair; replacement of the storage attachment, and replacement of windows at the Respondent's house; \$908.00 for the removal and replacement of the lavatory at the Respondent's house; \$5,500.00 for the installation of an HVAC unit at the Respondent's house; and \$169, 253.27 for payment of the Respondent's legal fees. The Full Commission affirmed the Single Commissioner's decision and sustained the Order of the Single Commissioner in its entirety in its own Order, dated January 7, 2011.

The Petitioners, pursuant to S.C. Code Ann. § 1-23-380 and § 42-17-60, petitioned this court for judicial review of the Orders of the South Carolina Workers' Compensation Commission dated April 22, 2010 and January 7, 2011. The Petitioners allege the Commission made errors of law in finding the partial lump sum payment was in the best interest of the Respondent and not prejudicial to the defendant, the evidence did not support a finding that Petitioner must make a partial lump sum payment to cover the Respondent's legal costs, and the legal requirements for lump sum attorney fees were not supported by the Order.

STANDARD OF REVIEW

The Administrative Procedures Act ("APA") provides the standard for judicial review of workers' compensation decisions. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981).

Under the APA, this Court can reverse or modify the decision of the Workers' Compensation Commission if the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *Transp. Ins. Co. v. South Carolina Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689-90 (2010) (citing S.C. Code Ann. § 1-23-380(5)(d), (e) (Supp. 2009)).

The Commission is the ultimate fact finder in workers' compensation cases. *Jordan v. Kelly Co.*, 381 S.C. 483, 674 S.E.2d 166 (2009); *Shealy v. Aiken County*, 341 S.C. 448, 535 S.E.2d 438 (2000). As a general rule, this Court must affirm the findings of fact made by the Commission if they are supported by substantial evidence. *Pierre* at 541, 689 S.E.2d at 618. "Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission 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 Commission's finding from being supported by substantial evidence." *Id.*

FINDINGS

After due deliberation, review of the memoranda, case law, exhibits, and arguments of counsel, the Court makes the following findings of law:

In Workers' Compensation cases the Claimant is entitled to recover a lump sum payment from the Defendant following an order of the Commission. South Carolina Code § 42-9-301 provides that lump sum benefits can be ordered by the Commission when it is deemed "not to be contrary to the best interest of the employee or his dependents." S.C. Code Ann. § 42-9-301 (2011). Illustrative of this principle is the ruling of the Court of Appeals in *Cox v. Mills*. *Cox v. Mills*, 286 S.C. 226, 332 S.E.2d 562 (Ct. App. 1985). In that case, the Court of Appeals found

that where the Claimant needed a lump sum payment to conduct repairs on his house and showed an ability to handle large sums of money in a prudent fashion, the Commission acted properly in granting his lump sum award request. Furthermore, the court held it had a limited scope of review in this situation, requiring only an analysis as to whether “there is substantial evidence of record to support the award.” *Id.* at 227, 332 S.E.2d at 562 (citing *Lark v. Bi-Lo*, 276 S.C. 130, 276 S.E.2d 304 (1981)). While S.C. Code § 42-9-10 states “no total lump sum payment may be ordered by the commission in any case under this section where the injured person is entitled to lifetime benefits,” the Claimant only requests the funds needed to make repairs, not a total lump sum award for his lifetime benefits. S.C. Code Ann. § 42-9-10 (2011).

In the present case, the Respondent submitted substantial evidence regarding his home repairs to the Commission, including plans and specific costs pertaining to the anticipated repairs. The Respondent only requests a partial lump sum payment for these needs, and has clearly and specifically outlined the specific reasons for his request. Like the Claimant in *Cox*, the Respondent needs a partial lump sum payment in order to make repairs to his house, which he otherwise would have made, but for his condition. In order to prevent the house from falling further into disrepair, the Respondent has shown that the award of this partial lump sum is in accordance with his best interest.

S.C. Regulation 67-1207 permits the Claimant’s attorney to recover fees if the award is more than 100 weeks and there are not sufficient accrued weeks to pay the attorney’s fee. S.C. Code Ann. Regs. 67-1207 (2011). The Claimant in *Glover by Cauthen v. Suitt Construction Company*, who was also receiving lifetime benefits, requested lump sum attorney’s fees pursuant to S.C. Regulation 67-1207 and S.C. Code § 42-9-10. *Glover by Cauthen v. Suitt Constr. Co.*, 318 S.C. 465, 468, 458 S.E.2d 535, 537 (1995). The court ruled “[t]he statute and regulation, when read together, clearly evince a legislative intent to permit recovery of lump sum attorney’s

fee to any claimant who receives benefits in excess of one hundred weeks.” *Id.* at 469, 458 S.E.2d at 538. The court noted the profound policy implications of refusing to allow claimants access to the funds with which to pay their attorney’s fees, finding “this result would have a tremendous chilling effect on the ability of the most severely injured employees to obtain the services of adequate counsel.” *Id.* at 470, 458 S.E.2d at 538 (citing *Corson v. Brown Products*, 120 N.H. 665, 421 A.2d 1005 (N.H. 1980)).

In the present case, the Order of the Commission is entirely in accordance with the relevant regulations, statutes, and case law. The Respondent has received a lifetime benefit award and the accrued benefits of the Respondent are not enough to cover his legal costs. The Petitioners have offered no other reason as to why the attorney fee award should be overturned upon judicial review.

CONCLUSION

After due deliberation, review of the memoranda, case law, exhibits, and argument of counsel, the Court makes the following rulings:

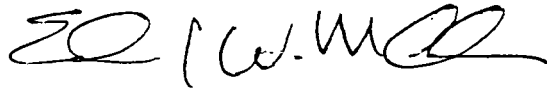
Because the Respondent submitted substantial evidence detailing the need for significant home repairs that will both help his home from falling into further disrepair and help in the aid of his medical care, the Petitioner’s appeal to overturn the partial lump sum award for the Respondent’s home repairs is DENIED;

Because the Respondent received a lifetime benefit award and the accrued benefits of the Respondent are not enough to cover his legal fees, the Petitioner’s appeal to overturn the partial lump sum award for the Respondent’s home repairs is DENIED;

The Order of Commissioner Barden, dated April 22, 2010, and the Order of the Full Commission, dated January 7, 2011, affirming the prior Order of Commissioner Barden, are hereby AFFIRMED by this Court, and the Respondent is entitled to a partial lump sum payment

from the Petitioner for the costs as specified in the April 22, 2010 Order of Commissioner Barden.

AND IT IS SO ORDERED!

A handwritten signature in black ink, appearing to read 'E.W. Miller', written in a cursive style.

The Honorable Edward W. Miller
Circuit Court Judge

Greenville, SC

Date: November 3, 2011

EXHIBIT B

STATE OF SOUTH CAROLINA

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IN THE CIRCUIT COURT

COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKES

Case No. 10-CP-23-7077

Michael Jarrard,

Claimant/Respondent,

vs.

Federal Express,

Employer and Self-Insured/Petitioner.

ORDER

(Non-Jury Appeal from Workers' Compensation Commission)

INTRODUCTION

In this non-jury appeal from an Order of the Full Commission of the Workers' Compensation Commission, this matter comes before this Court on Petitioner's appeal concerning the Respondent's entitlement to ongoing medical care and other treatment and whether the 3-member panel of the Workers' Compensation Commission properly affirmed the decision of the Single Commissioner.

Counsel for the Employer & Petitioner, Federal Express, and the Claimant & Respondent, Michael Jarrard, submitted memoranda of law related to the present appeal, which the court has considered.

A hearing was held on July 25, 2011. At the hearing, the Claimant & Respondent was represented by C. Daniel Vega. The Petitioner & Employer was represented by Russell T. Infinger.

STATEMENT OF THE CASE

This non-jury appeal is in regard to the Workers' Compensation case of Michael Jarrard (hereinafter, "Respondent"), WCC No.: 0217907. The Respondent sustained work-related

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injuries due to exposure to chemical products resulting in damage to his pulmonary system and brain damage due to the aggravation of a pre-existing brain tumor. In a July 14, 2006 Order, Commissioner Childs found that the Respondent was entitled to full-time attendant care pursuant to a Life Care Plan. The Full Commission affirmed this Order in its entirety on January 8, 2007. In an Order dated October 3, 2008, Judge James R. Barber, III found that the "Full Commission rightly determined Claimant suffered injury by accident in the course of scope of employment." After the Petitioner failed to appeal that Order to the court of appeals, Commissioner Childs' initial Order became the controlling law of the claim.

A hearing was held on August 27, 2009, to determine the rate at which the Respondent's wife should be compensated for the attendant care Respondent's wife had been providing since November 2002 and whether the Respondent was entitled to bathroom repairs to better accommodate his disability. In his January 4, 2010 Order, Commissioner Wilkerson found Respondent's wife was entitled to payment for attendant care administered from November 14, 2002, to the present and continuing for the rest of the Respondent's life (affirming the July 14, 2006 Order). Respondent's wife was awarded payment at a rate of \$12.00 per hour, 20 hours per day, 7 days per week in order to compensate her for the full-time attendant care she provides for her husband. Commissioner Wilkerson also found Respondent was entitled to have his bathroom remodeled in order to accommodate the special needs that are the result of his disability. The Petitioner appealed the decision of the Commissioner Wilkerson to the Full Commission, where it was affirmed in its entirety in an order dated July 21, 2010.

Now, Petitioner, pursuant to S.C. Code Ann. § 1-23-380 and § 42-17-60, petitions this court for judicial review of the Order of the South Carolina Workers' Compensation Commission dated July 21, 2010, and by reference the Order of July 14, 2006. Petitioner alleges the Commission made errors of law in finding Respondent was entitled to compensation for the

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attendant care his wife provides and that Respondent was entitled to repairs to his bathroom to suit his needs in light of his disability. Respondent contends the Commission's order was entirely in compliance with the Act and, therefore, Respondent is entitled to back payment of attendant care and payment for bathroom repairs.

STANDARD OF REVIEW

The Administrative Procedures Act ("APA") provides the standard for judicial review of workers' compensation decisions. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). Under the APA, this Court can reverse or modify the decision of the Workers' Compensation Commission if the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *Transp. Ins. Co. v. South Carolina Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689-90 (2010) (citing S.C. Code Ann. § 1-23-380(5)(d), (e) (Supp. 2009)).

The Commission is the ultimate fact finder in workers' compensation cases. *Jordan v. Kelly Co.*, 381 S.C. 483, 674 S.E.2d 166 (2009); *Shealy v. Aiken County*, 341 S.C. 448, 535 S.E.2d 438 (2000). As a general rule, this Court must affirm the findings of fact made by the Commission if they are supported by substantial evidence. *Pierre* at 541, 689 S.E.2d at 618. "Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission 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 Commission's finding from being supported by substantial evidence." *Id.*

FINDINGS

After due deliberation, review of the memoranda, case law, exhibits, and arguments of counsel, the Court makes the following findings of law:

The totally disabling brain injury suffered by the Respondent entitles him to lifetime compensation and medical care, pursuant to S.C. Code Ann. § 42-15-60 (C). In coming to the decision to allow the attendant care in his January 4, 2010 Order, Commissioner Wilkerson reviewed a Life Care Plan prepared by Sarah Lustig, a Registered Nurse and Certified Life Care Planner. Nurse Lustig collaborated with the Respondent's treating physician, Dr. Edwin Scott, in forming this plan. Nurse Lustig and Dr. Scott agreed after extensive observation and collaboration that the Respondent was in need of full-time attendant care and that his wife was well-qualified to provide it. Upon a review of the cost of attendant care services in the surrounding area, Nurse Lustig concluded these services would cost \$12.00 per hour. Finally, Respondent's wife testified at the hearing she used all of her waking time to provide care for her husband, sleeping 4.5 interrupted hours per night. Defendants offered no contradicting evidence and the Full Commission found the witnesses to be credible and the plans of the medical professionals to be in accordance with substantial evidence. Therefore, Respondent was awarded attendant medical care to be provided by his wife at the rate of \$12.00 per hour for 20 hours per day and 7 days per week from November 14, 2002 to the present and continuing for the rest of the Respondent's life.

Additionally, in her Life Care Plan, Nurse Lustig testified Respondent would need remodeling work done on his bathroom in order to make it functional in light of his disabilities. Petitioner offered no contradicting evidence on this point. Like the award of the attendant care,

Commissioner Wilkerson found this award to be entirely reasonable and in accordance with substantial evidence.

Section 42-15-60 (C) of the South Carolina Code provides “[i]n cases in which total and permanent disability results, reasonable and necessary nursing services . . . and other treatment . . . shall be paid during the life of the injured employee, without regard to any limitation in this title including the maximum compensation limit.” S.C. Code Ann. § 42-15-60. Therefore, unlike other types of medical care where the Defendants have the right to control the medical provider, attendant care gives the employer less control. Additionally, the medical professionals in charge of the Respondent’s case determined that the attendant care to be provided by his wife was entirely reasonable and necessary. The Full Commission reviewed this award and determined that it was in compliance with the statute in its July 21, 2010 Order.

In its appeal, Petitioner also alleges Respondent is not entitled to an award of attendant medical care from November 14, 2002, because the Respondent did not request this care until 2009. Petitioner contends an employee cannot receive back payment for medical care unless the employee has requested this care and the employer has notice of that request. The claimant contends, and a review of the Commission file demonstrates, claimant alleged entitlement to attendant care on multiple Form 58 pre-hearing briefs dated March 9, 2004 and May 18, 2004. The Order of Commissioner Childs issued July 14, 2006 included an award for attendant care with which defendants refused to comply. For this reason, the Claimant sought a hearing before Commissioner Wilkerson, who issued his Order granting the Claimant attendant care on January 4, 2010. This Order was later affirmed in its entirety by the Full Commission.

The Claimant also contends § 42-15-60 of the South Carolina Code requires employer to provide medical care “as reasonably may be required” once a compensable injury has occurred. S.C. Code Ann. § 42-15-60. The court of appeals has determined the commission is “not outside

its discretion in ordering the [employer] to pay for [medical treatment], once it determined the treatment was medically necessary.” *Clark v. Aiken County Gov’t*, 366 S.C. 102, 114, 620 S.E.2d 99, 100 (Ct. App. 2005). This is regardless of whether employer had notice of the treatment or the employee has requested that treatment. *Id.*

Neither the Workers’ Compensation Act nor the case law reveals any interpretation in accordance with the Petitioner’s reading of the requirements for notice in order for Claimant to receive compensable medical care. Once the employer has notice that the accident occurs, pursuant to § 42-15-20, it is obligated to provide reasonably necessary medical care to the employee, if the injury is a compensable one. S.C. Code Ann. § 42-15-20. In *Clark*, the employee received medical care without requesting it from his employer or giving his employer notice that he was to receive the care. *Clark* at 106-107, 620 S.E.2d at 101. However, because the treatment was determined to be medically necessary, neither prior notice nor a prior request was required in order for the Commission to order the employer to pay for the care. *Id.* at 114, 620 S.E.2d at 100. In the present case, the Commission found, as an uncontroverted fact, the attendant care is reasonably and medically necessary.

While South Carolina appellate courts have never decided a case regarding the payment of back benefits for attendant care, the Court of Appeals of North Carolina has upheld the retroactive payment of attendant care benefits. Like South Carolina, North Carolina does not require pre-approval of attendant care performed by a family member in a Workers’ Compensation case. The court stated “N.C.G.S. § 97-90(a) does not require pre-approval of fees charged by health care providers, except for physicians, hospitals, or other medical facilities. Plaintiff’s brother does not fit into the exceptions for N.C.G.S. § 97-90(a). This interpretation is consistent with our case law, which has allowed compensation to health care providers similar to plaintiff’s brother, without the Commission’s pre-approval.” *Boylan v. Verizon Wireless*, 201

N.C. App. 81, 86, 685 S.E.2d 155, 159 (Ct. App. 2009) (quoting *Ruiz v. Belk Masonry Co.*, 559 S.E.2d 249, 253-54 (Ct. App. 2002)).

Boylan and its line of reasoning was favorably adopted in a case in the Court of Common Pleas of South Carolina, *McDaniel v. Hans Lenger, LLC*, 2011-CP-46-0464 (2011). In *McDaniel*, the Commissioner found Claimant required 24-hour attendant care since the date of the injury in 2006, but failed to award attendant care benefits until they were requested in 2009. *Id.* The court found that because Claimant was entitled to treatment and care between 2006 and 2009, the Commission committed an error of law in failing to award those benefits during that time. *Id.*

The final argument of Petitioner is that the Full Commission improperly affirmed the Order of the Single Commissioner because it did not come to a majority opinion in making this determination. Section 42-3-20 of the South Carolina Code allows three-member panels to review decisions of the Single Commissioner. S.C. Code Ann. § 42-3-20. It also states that “[t]he decisions of three-member panels have the same force and effect as full commission reviews.” *Id.* The process by which these appeals take place is laid out in Regulation 67-709. S.C. Code Ann. Regs. 67-709. (2010). Subsection (E) allows for the Commission to modify the findings of the Single Commissioner but notes that “a vote to affirm and modify is deemed a vote to affirm.” *Id.*

In the Full Commission’s 2010 Order, Commissioner Huffstetler voted to affirm, Commissioner Williams voted to provide the benefits from 2005, and Commissioner Beck voted to provide the benefits from 2009. While the Commissioners noted their position on these issues, the Full Commission nevertheless affirmed the Single Commissioner’s decision *in its entirety*. These other opinions did not affect the Commission’s decision to affirm the award of attendant care benefits from 2002, and Commissioners Williams and Beck voted to affirm and

modify. Regardless of this fact, the rulings of Commissioners Beck and Williams to award benefits only from the date of the request for that medical care is not in accordance with the previously discussed case law.

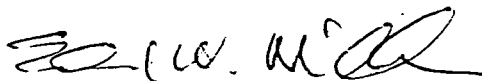
CONCLUSION

After due deliberation, review of the memoranda, case law, exhibits, and argument of counsel, the Court makes the following rulings:

Because the decision of the Full Commission in affirming Commissioner Wilkerson's 2010 Order was made in accordance with substantial evidence and without error of law, the Petitioner's appeal to overturn the award of Claimant's bathroom repairs and attendant care is DENIED;

The Order of the Full Commission, dated July 21, 2010, and by reference the Order of July 14, 2006, is hereby AFFIRMED by this Court, and the Claimant is entitled to bathroom repairs and attendant care; the attendant care is to be provided by his wife in accordance with the July 21, 2010 Order of Commissioner Wilkerson;

AND IT IS SO ORDERED!



The Honorable Edward W. Miller
Circuit Court Judge

Greenville, SC

Date: November 3, 2011

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF ~~RICHLAND~~ *Greenville*

IN THE CIRCUIT COURT

2010-CP-23-7077

MICHAEL JARRARD,

Case No. ~~10-CP-40-~~ _____

Claimant,
Respondent

vs.

PETITION FOR JUDICIAL REVIEW

FEDERAL EXPRESS CORPORATION,

(Non-Jury Appeal from Workers'
Compensation Commission)

Employer and Self-Insured,
Petitioners.

FILED
CLERK OF COURT
GREENVILLE CO., S.C.
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The Petitioners, pursuant to S.C. Code Ann. §1-23-380 and S.C. Code Ann. § 42-17-60, hereby petition this Court for judicial review of the Order of the South Carolina Workers' Compensation Commission dated July 21, 2010, and by reference the Order of July 14, 2006.

1. Federal Express Corporation, Employer, seeks judicial review of a decision of an administrative agency, the South Carolina Workers' Compensation Commission. This Court has jurisdiction to hear this appeal pursuant to S.C. Code Ann. § 42-17-60 and Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E. 2d 598 (1994).

2. Michael Jarrard, Respondent, was employed by Federal Express Corporation in Richland County, South Carolina.

3. Respondent by order of the Commission sustained injuries due to exposure to chemical products on the job resulting in damage to his pulmonary system and brain damage due to the aggravation of a pre-existing brain tumor.

4. A hearing was held on August 27, 2009, in Columbia, South Carolina, before Commissioner Wilkerson. The issues before the Commissioner were whether the claimant's wife was entitled to attendant care for the claimant and whether additional home additions were required to be made by the defendants.

5. The Single Commissioner found that the claimant's wife was entitled to attendant care and continuing for the rest of the claimant's life as outlined in a life care plan. The wife was given \$12.00 per hour for 20 hours per day 7 days a week beginning November 14, 2002 until the present and continuing and the claimant was entitled to an adequate bathroom..

6. The matter was appealed to the Full Commission. The Full Commission affirmed the Single Commissioner's decision. However, two of the three commissioners dissented to the affirmation of the order of the Single Commissioner:

7. The grounds for appeal and the exceptions to the Order of the Commission are as follows:

Did the Commission err in finding that the defendants should pay for the amount quoted for the bathroom repair when competitive quotes were not allowed and if the defendants are to control the medical the defendants have the right to select the proper vendor?

Did the Commission err in finding that the claimant was entitled to the newly added life care plan with the Commission and Court had already approved and ordered a life care plan?

Did the Commission err in finding that Mrs. Jarrard is entitled to \$12.00 per hour when the finding is based on similar care that would be provided by a health care professional and Mrs. Jarrard admitted she has no training in that area?

Did the Commission err in finding that Mrs. Jarrard is entitled to payment for 20 hours a day when it is unreasonable and in error to believe that Mrs. Jarrard is involved in active care of the claimant for 20 hours a day, 7 days a week?

Did the Commission err in finding that Mrs. Jarrard is entitled to payment dating back to November 14, 2002, in that the payment of the same has never been requested and would be barred pursuant to the statutory and common law including the WC Act, statute of limitations and laches?

Did the Commission err in finding that Mrs. Jarrard is entitled to payment \$12 per hour, 20 hours per day, 7 days per week when it is unreasonable to find that the wife is engaged in attendant care at that level every day of the year and has been doing so since November 2, 2002?

Did the Commission err in finding that Mrs. Jarrard is entitled to back payment of attendant care when such a retro active award is unreasonable and not supported by the facts, common law and statutory law and further represents a prejudice to the defendants since the payment and benefits were not requested until 2009?

Did the Commission err in finding that Mrs. Jarrard is entitled to provide nursing services to the claimant when she has no education and training in that matter and her errors and omissions could impose liability on the defendant since they have no control over the treatment or care she will provide?

Did the Commission err in awarding every item in Ms. Lutswig's plan when items in the plan are unnecessary, redundant and not the responsibility of the WC defendant?

Did the Commission err in awarding every item in Ms. Lutswig's plan when the Court has already ordered the care due to the claimant from a different plan so that the current order is unreasonable and unnecessary under the facts of the case and the WC Act?

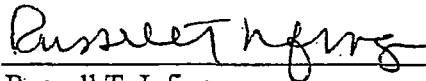
Did the Commission err in affirming in total the award of the Single Commissioner when the Full Commission panel did not reach an majority opinion regarding the order of the Single Commissioner?

Did the Full Commission err as a matter of law affirming the award of the Single Commissioner when the appellate panel did reach a majority opinion regarding the facts, law and order of the claim?

m. The Commission erred in that its findings and decision are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

WHEREFORE, the Petitioners pray that this Court review the record and issue its Order affording one or more of the following forms of relief: (a) reversing the Order of the Full Commission; or, alternatively, (b) ordering such further relief as the Court should determine to be reasonable and necessary.



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Attorneys for Petitioners

August 25, 2010
Greenville, South Carolina

STATE OF SOUTH CAROLINA

2011 FEB -7 PM 3:16

IN THE CIRCUIT COURT

COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENBARGER

Case No. 11-CP-23 -

898

MICHAEL JARRARD,

Claimant,
Respondent

vs.

PETITION FOR JUDICIAL REVIEW

(Non-Jury Appeal from Workers'
Compensation Commission)

FEDERAL EXPRESS CORPORATION,

Employer and Self-Insured,
Petitioners.

The Petitioners, pursuant to S.C. Code Ann. §1-23-380 and S.C. Code Ann. § 42-17-60, hereby petition this Court for judicial review of the Order of the South Carolina Workers' Compensation Commission dated April 22, 2010, and January 7, 2011.

1. Federal Express Corporation, Employer, seeks judicial review of a decision of an administrative agency, the South Carolina Workers' Compensation Commission. This Court has jurisdiction to hear this appeal pursuant to S.C. Code Ann. § 42-17-60 and Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E. 2d 598 (1994).

2. Michael Jarrard, Respondent, was employed by Federal Express Corporation.

3. Respondent by order of the Commission sustained injuries due to exposure to chemical products on the job resulting in damage to his pulmonary system and brain damage due to the aggravation of a pre-existing brain tumor.

4. A hearing was held on March 10, 2010, in Columbia, South Carolina, before Commissioner Barden. The issues before the Commissioner were whether additional home repairs were required to be made by the defendants and whether claimant's legal fees and costs should be paid by the defendants.

5. The Single Commissioner found that the claimant was entitled to partial lump sum payments for repair of the home and legal fees and costs incurred by claimant. The Order of the Single Commissioner is attached as Exhibit A.

6. The matter was appealed to the Full Commission. The Full Commission affirmed the Single Commissioner's decision. The Full Commission Order is attached as Exhibit B.

7. The grounds for appeal and the exceptions to the Order of the Commission are as follows:

a. Did the Commission err in finding that the defendants must make a partial lump sum payment to the claimant when the claimant failed to prove that making such a lump sum was in his best interest and not prejudicial to the defendant?

b. Did the Commission err in finding that the defendant must pay up front legal fees of the claimant's attorney when the evidence does not support such a finding?

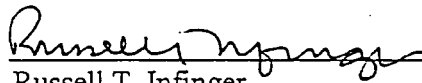
c. Did the Commission err in finding that the defendant must pay up front legal fees of the claimant's attorney when the common law and statutory requirements are not supported in the claim or order?

d. The Commission erred in that its findings and decision are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

WHEREFORE, the Petitioners pray that this Court review the record and issue its Order affording one or more of the following forms of relief: (a) reversing the Order of the Full Commission; or, alternatively, (b) ordering such further relief as the Court should determine to be reasonable and necessary.



Russell T. Infinger
NEXSEN PRUET, LLC
Post Office Drawer 10648
Greenville, SC 29601
(864) 370-2211

Attorneys for Petitioners

February 7, 2011
Greenville, South Carolina

EXHIBIT D

Russell T. Infinger
Member

December 2, 2011

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Michael Jarrard, Respondent v. Federal Express Corp., Appellant

Dear Ms. Gee:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the Respondent and on the South Carolina Workers' Compensation Commission.
- (2) A copy of the Order which is being challenged on appeal.
- (3) A filing fee of \$100.00

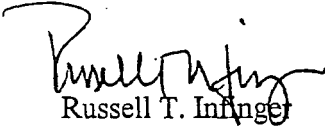
Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach

Please return one clocked copy of the Notice of Appeal in the enclosed self-addressed, stamped envelope. By way of a copy of this letter, the South Carolina Workers' Compensation Commission and respondent's counsel is being served.

Thank you for your assistance in this matter. Please call with any questions.

Very truly yours,

Nexsen Pruet, LLC



Russell T. Infinger

RTI/jws
Enclosures
cc: ✓ C. Daniel Vega, Esq.
South Carolina Workers' Compensation Commission

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2011-CP-23-898

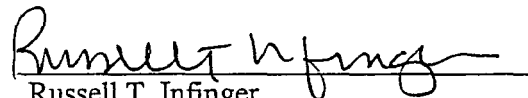
Michael Jarrard.....Respondent,

v.

Federal Express Corporation.....Appellants.

NOTICE OF APPEAL

Federal Express Corporation appeals the Order of The Honorable Edward W. Miller dated November 3, 2011. Appellants received a copy of this Order on November 9, 2011.



Russell T. Infinger
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Greenville, South Carolina 29603
Tel: 864-282-1122
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rinfinger@nexsenpruet.com

Attorney for Appellants

December 2, 2011

Other Counsel of Record:

C. Daniel Vega, Esquire
Chappell Smith & Arden
P.O. Box 12330
Columbia, SC 29611

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2011-CP-23-898

RECEIVED
MAY 21 2012
SC Court of Appeals

Michael Jarrard, Respondent,

v.

Federal Express Corporation, Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellant with a copy of the *Return to the Motion for Leave to File and Amended Notice of Appeal* by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

Russell T. Infinger
NEXSEN PRUET, LLC
P.O. Drawer 10648
Greenville, SC 29603

May 21, 2012



Erin Bridges
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC



Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

May 21, 2012

OF COUNSEL

O. Eugene Powell, Jr.

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

MAY 21 2012

SC Court of Appeals

Re: Jarrard v. Federal Express
Case Tracking No.: 2011-204646

Dear Ms. Kitchings:

Attorney Daniel Vega has retained John Nichols and me as counsel for the Respondent, Michael Jarrard, in this case. If a letter is sufficient for a notice of appearance, please notice our appearance for the Court's records.

I have also enclosed for filing the original and seven (7) copies of our *Return to the Motion for Leave to File an Amended Notice of Appeal*, as well as a proof of service on counsel for the Appellant. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you need any additional information, please do not hesitate to contact me.

Yours sincerely,

Blake Hewitt by EMB with permission

Blake A. Hewitt
BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC

BAH:emb
Enclosures

cc: C. Daniel Vega, Esquire
Russell T. Infinger, Esquire