

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE SOUTH  
CAROLINA WORKERS' COMPENSATION COMMISSION

**RECEIVED**

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Appellate Case No. 2016-000601  
\_\_\_\_\_

JUL 23 2018

SC Court of Appeals

SCOTT LEDFORD, Employee, ..... Appellant,

—vs.—

DEPARTMENT OF PUBLIC SAFETY, Employer,  
and STATE ACCIDENT FUND, Carrier, ..... Respondents.

\_\_\_\_\_  
**RESPONDENTS' RETURN TO APPELLANT'S  
PETITION FOR REHEARING**  
\_\_\_\_\_

Respondents, by and through the undersigned attorney, hereby file this return to Appellant's July 10, 2018 Petition for Rehearing. A Petition for Rehearing must state with particularity the points that have been overlooked or misapprehended by the court. (Rule 221(a), SCACR). The purpose of a petition for rehearing is not to present points which lawyers for the non-prevailing party have overlooked or misapprehended, nor is the purpose of a petition for rehearing to have the case tried in the appellate court a second time. Kennedy v. South Carolina Retirement System, 564 S.E.2d 322, 349 S.C. 531 (S.C. 2001).

Appellant argues that this Court overlooked or misapprehended the evidence, law, and arguments raised on the following issues:

1. The Court's denial of Appellant's request to argue against precedent.

2. The Court's failure to find Appellant was prejudiced by the single commissioner's ruling.
3. The Court's failure to find the single commissioner's award was evidence of prejudice.
4. The Court's failure to apply substantial evidence standard to the single commissioners' order denying recusal.

The Court in this case did not misapprehend or overlook any material fact or principle of law, and the Court appropriately affirmed the January 21, 2016 Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel ("Full Commission"). For the reasons set forth below, the Court should deny Appellant's Petition for Rehearing.

**I. The Court properly denied Appellant's Motion to Argue Against Precedent.**

Appellant fails to argue or cite any alleged misapprehension or overlooking of any material fact or principle of law in raising the denial of his request to argue against precedent. In Patel v. Patel, 359 S.C. 515, 599 S.E.2d 114 (2004), our Supreme Court entertained arguments identical to Appellant's motion and declined to accept the argument that an objective test should be used to assess judicial bias and that evidence of judicial prejudice is not necessary to warrant disqualification. The Supreme Court noted the importance of requiring evidence since, a judge's impartiality might reasonably be questioned when his factual findings are not supported by the record. Id.

Appellant does not state any alleged misapprehension of material fact or principal of law related to the denial of Appellant's Motion to Argue Against Precedent. Instead,

Appellant merely states that grounds for arguing against precedent were set forth in his Motion requesting the same. Without any assertion of misapprehension of material fact or principal of law, Respondents assert rehearing of this issue should be denied.

**II. The Court did not overlook or misapprehend any material fact or principle of law related to Appellant's alleged prejudice.**

Appellant argues the Court misapprehended his appeal by finding that the alleged prejudice was about money. However, Appellant fails to cite any evidence that the Court based its ruling on money. In fact, the Court merely states that discussion of the single commissioner's ruling is not warranted as the Court'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." Bass v. Isochem, 365 S.C. 454, 467, 617 S.E.2d 369, 376 (Ct. App. 2005).

Furthermore, an appellate court may only overturn a conclusion of the Workers' Compensation Commission if that conclusion is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).

The test is whether the decision of the Commission is supported by substantial evidence. Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action.

Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995). The Appellate Panel's findings are supporting by the substantial evidence. The Appellate Panel

is the ultimate finder of fact, and the “final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel.” Hargrove v. Titan Textile Co., 360 S.C. 276, 289, 599 S.E.2d 604, 611 (Ct. App. 2004).

The Court properly found the substantial evidence supported the Appellate Panel’s findings that Claimant was not credible and that his landscaping business continued to be lucrative following his work injury. As such, Respondents contend this Court did not overlook or misapprehend any material fact or principal of law, and Appellant’s petition for rehearing should be denied.

**III. The Court did not overlook or misapprehend any material fact or law pertaining to the single commissioner’s ruling.**

Appellant argues the Court overlooked the single commissioner’s award and that the award itself was evidence of bias. As Appellant’s own argument admits, the only allegation of prejudice or bias is against the single commissioner. Appellant fails to allege or attribute any prejudice or judicial bias to the decision of the Appellate Panel. The single commissioner’s decision was appealed to the Full Commission, and the Appellate Panel reviewed the same. The Appellate Panel has *de novo* review power to may make its own findings of fact and reach its own conclusions of law either consistent or inconsistent with those of the hearing commissioner. Lowe v. Ani-Can Transp. Serv. Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). Given that Appellant received *de novo* review by the Appellate Panel, Appellant received a fair review of the evidence, regardless of any alleged bias against the single commissioner.

The Court did not overlook the single commissioner’s award as alleged by Appellant. The Court properly concluded that review of the single commissioner’s ruling

is not appropriate as their review is limited to whether the Appellate Panel's findings are supported by substantial evidence.

**IV. The Court did not overlook or misapprehend any material fact or law pertaining to the alleged bias of the single commissioner.**

A hearing commissioner has a duty to hear and decide matters assigned to him or her except those in which disqualification is required because the commissioner's impartiality might reasonably be questioned. Canon 3B(1), 3E, Rule 501, SCACR. Canon 3(E) provides that recusal may be necessary when: (1) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding; (2) the judge served as a lawyer in the matter in controversy; (3) the judge or his family member has more than a *de minimis* interest that could be affected by the proceeding; or (4) the judge or someone within the third degree in relationship to her is a party to the proceeding or acting as a lawyer in the proceeding. Canon 3(E)(1)(a)-(d), Rule 501, SCACR.

A party seeking disqualification must show some evidence of bias or prejudice. Mallet v. Mallet, 323 S.C. 141 at 146 - 47, 473 S.E.2d 804 at 807 (S.C. App. 1996). Appellant readily admits that the recusal never involved any claim of personal prejudice against the Appellant, any relationship with any of the parties, any knowledge of the facts of case, or any financial interest in the outcome of the case. Instead, Appellant accuses the single commissioner of bias merely because she ruled against him. "It is not enough for a party seeking disqualification to simply alleged bias. The party must show some evidence of bias of prejudice." Id. at 147, 473 S.E.2d at 808. Appellant has not introduced any evidence of bias or prejudice as none exists.

Undeterred by the lack of bias evidence, Appellant attempts to draw the Court's attention to a telephone conference held by the single commissioner with the parties. Appellant repeatedly states that he has supplied the only evidence in the record of what was said on the phone call<sup>1</sup> and argues Respondents did not challenge this. However, Respondent's lack of response to Appellant's allegation is a general denial of all allegations. S.C. Reg. 67-215(F).

The Court has not misapprehended or overlooked any material fact or law pertaining to alleged judicial bias. Appellant has offered no evidence of the alleged judicial bias and has alleged no bias against the Appellate Panel, the ultimate fact finder in workers' compensation cases. Therefore, Respondents respectfully contend Appellant's Motion should be denied.

### **Conclusion**

For the reasons set for above, Respondents respectfully request the Court deny Appellant's Petition for Rehearing. Appellant has failed to demonstrate any material facts or principals of law which were overlooking or misapprehended by the Court and instead simply restates previous arguments made to this court.

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<sup>1</sup> It is important to note, the evidence the Appellant refers to is self-serving as it is an affidavit from his attorney, a memorandum written by his attorney, and an affidavit by his certified public accountant.

Respectfully submitted,

A handwritten signature in black ink that reads "Sarah Sutusky". The signature is written in a cursive style with a horizontal line underneath the name.

Sarah C. Sutusky, Esquire  
S.C. Bar No.: 78645  
Willson, Jones, Carter, & Baxley, P.A.  
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(803) 227-2885  
Attorney for the Respondents

July 20, 2018

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
APPELLATE PANEL

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Appellate Case No.: 2016-000601

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Scott Ledford, (Employee).....Appellant,

v.

Department of Public Safety, (Employer), and  
State Accident Fund, (Carrier).....Respondents.

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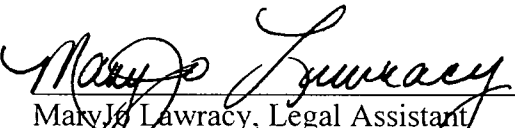
I certify that I, MaryJo Lawracy, have properly served **Respondents' Return Appellant's Petition for Rehearing**, by mailing an original and six (6) copies of the same by United States Mail with first class postage prepaid to the following address on July 20, 2018:

The Honorable Jenny Abbott Kitchings  
The South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

and a copy of the same by United States Mail with first class postage prepaid to the following addresses on July 20, 2018:

E. Hood Temple, Esquire  
Hatfield Temple, LLP  
Post Office Box 1770  
Florence, SC 29503-1770

J. Kevin Holmes, Esquire  
The Steinberg Law Firm, LLP  
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July 20, 2018  
Columbia, South Carolina

# WILLSON JONES CARTER & BAXLEY, P.A.

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July 20, 2018

Ms. Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

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JUL 23 2018

SC Court of Appeals

Re: Scott Ledford vs. Department of Public Safety  
WCC File No.: 1202545 DOI: 3/10/2012  
Carrier: State Accident Fund - Claim No.: 2012-000722  
WJC&B File No.: 0385.00804  
**Appellate Case No. 2016-000601**

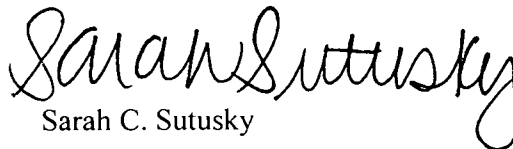
Dear Ms. Kitchings:

Pursuant to Rule 240(e), SCACR, please find enclosed for filing the original and six (6) copies of **Respondents' Return to Appellant's Petition for Rehearing**, along with proof of service for the same.

In addition, I have also enclosed an additional copy that I would respectfully request that you have your staff clock in and return to me in the enclosed self-addressed stamped envelope. If you have any questions or concerns, please do not hesitate to contact my office.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

  
Sarah C. Sutusky

Enclosure(s)

cc: J. Kevin Holmes, Esquire (w/enclosure)  
E. Hood Temple, Esquire (w/enclosure)  
Shannon Bedell (via email & w/enclosure)

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SC Court of Appeals

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