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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2016-000665

Decidora Lazaro, on behalf of the Estate of
Antonio Lazaro, Employee, Appellant/Petitioner,

v.

Burris Electrical, Employer, and
South Carolina Guaranty Association,
Carrier, Defendants/Respondents.

PETITION FOR REHEARING

RECEIVED
AUG 20 2018
SC Court of Appeals

PREAMBLE

Our Courts are committed to a liberal interpretation of the Act in favor of benefits to the injured worker. Put another way and paraphrasing, the Legislative in 1936 and 1937 and the Supreme Court ever since and specifically since 1941, the benevolent purposes of the Workers' Compensation Act is to partially compensate the injured workers and their families for industrial injuries and to prevent them from becoming charges on society. Does the Court's decision and interpretation achieve that purpose under the Award, the law and benefits available to the Lazaros and

every injured electrician?

Pursuant to 221(a), SCACR, the Appellant hereby petitions the Court for rehearing on the following points that the Appellant would respectfully submit to the Court that the Court overlooked or misapprehended in its decision in this matter as set forth hereinafter:

1. That in its analysis, the Court misapprehended and overlooked the fact that the Legislature completely flipped the standard and applicability from the old lump sum payment statute 1942 Code §7035-47, 1952 Code §72-181, 1962 Code §72-181 codified in 1976 as §42-9-300 and completely changed the burden from the injured worker and his dependents to the insurance carrier when a request for a partial lump sum is made. The Ashley vs. Ware Shoals Manufacturing Co., 210 S.C. 273, 42 S.E.2d 390 (1946) which is the centerpiece of the analysis is totally inapplicable to the standard and is part of the reason that the Legislature, as every practitioner in the area of workers' compensation knows, for the Legislature's intent to flip the burden of denying the lump sum request to the defendants.

Old §42-9-300 which was replaced by §301 reads in pertinent part:

"Whenever any weekly payment has been continued for not less than six weeks, the liability therefore, in unusual cases, when the employee so requests ..." (emp. added).

In S.C. Code §42-9-301 which replaced §300, the Legislature specifically because of past decisions restricting the payment of

lump sums to the injured worker specifically struck the language, "in unusual cases". In addition to striking this language, the Legislature saw fit to add additional language clearly establishing the Legislative intent in favor of lump sums to the injured worker when the injured worker makes a request. Paramount to any argument that is made in this Court and is at the root of this situation and the purpose the workers' compensation and Legislative intent is that this is the injured worker's money, not the insurance carrier's once it has been AWARDED by the Commission as it has been in this case. To make it clear that it was the Legislative intent in favor of lump sums to the injured worker, the Legislature added the following language:

"Upon a finding by the Commission that a lump sum payment should be made, the burden of proof as to the abuse of discretion in such finding shall be upon the employer or carrier in any appeal proceedings." (emp. added).

The legal standard and essential issue that must be addressed in detailed findings of fact and conclusions of law is simply and purely in accordance with the beneficial purposes of the Act:

1. Did the injured worker make a request?
 2. Is it contrary to the best interests of the worker or the worker's dependents?
2. That the Court grossly misunderstood, misapprehended and misapplied its decision in Haselden vs. Davis, 341 S.C. 486, 534 S.E.2d 295 (S.C. App. 2000) affirmed on other issues 353 S.C. 481, 579 S.E.2d 293 (2003) in reference to the Mortality Table and its purpose; and grossly misunderstood the argument that is being

made by the Defendants in this case which was also made in Haselden. In this case, the Defendants are arguing and argued that they should have the benefit of the injury in establishing how long the Claimant will live. That is totally contrary to this Court's decision and every Supreme Court decision and the very purpose of the Mortality Table, S.C. Code §19-1-150. Quoting from the jury charge that this Court specifically sanctioned as being a proper rendition of the law in reference to the very purpose of the Mortality Table, the Court in Haselden charged:

"In determining how long the decedent would have lived had the decedent lived a normal life, you may consider her life expectancy at the time of her death. The Mortality Table received in evidence may be considered in your determining how long the Plaintiff may be expected to live. Such tables are not binding on you but may be considered together with other evidence in the case bearing on the Plaintiff's health, age and physical condition before the injury and death in determining the probable length of the Plaintiff's life." (emp. added).

The Court's analysis and decision is based on these two-fundamental misunderstanding and based on this fundamental flawed analysis, the Court cannot sanction allowing the Defendants in any case to take the benefit of the effects of the injury on the life expectancy of the injured worker. The very reason that the life expectancy tables came into existence is so that the Defendants could not take advantage of the injury in limiting the injured person's damages caused by the injury. Actually, the Appellant finds it ironic that the Appellant would have to note this to the Court. The same argument was made and was not countenanced and was rebuked by the Supreme Court in Glover by Cauthen vs. Suitt

Construction Co., 318 S.C. 465, 458 S.E.2d 535 (1995). Glover was an attempt by insurance industry to limit the benefits payable to an injured worker's attorney who obtained a lifetime benefits Award for the Claimant. The Court will note in that case specifically that the Defendants tried to limit the Award of any partial lump sum to no more than the 500-weeks. The same argument that was made in this case concerning the request for a second lump sum that they get the benefit of his life expectancy, AFTER the injury could have been made the day after Mr. Lazaro became a vegetable. Oh, we should not have to pay off his family's mortgage because he is going to die tomorrow, or we can put up the evidence right now that normally people in a vegetative state with a dead brain do not live more than five years. This decision allowed to remain by the Court undercuts the very fabric and reason the Legislature passed the Mortality Table to start with.

3. That in section No. 2 of the Court's decision the Court found that the Commission did not abuse its discretion in denying Claimant's request for a second partial lump sum because evidence supports the Commission's finding that this second lump sum payment was not in Claimant's or Dependents best interests and further that this request was tantamount to a total lump sum request. In reference to this section, the Court overlooked or misapprehended several errors of law and also errors of fact in the Commission's decision.

When the Workers' Compensation Act was created and the right to trial by jury was taken away from the injured worker, in

addition to a liberal construction being mandated by the Courts which by history was applied by and the Commission, the Legislature and the Supreme Court mandated that the Commission must make detailed findings of fact and conclusions of law on every essential issue presented to it for decision so that the one man or woman jury decision could be reviewed to make sure there is compliance with the law and that it is based on the facts in the Record. Drake vs. Reybestos Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962); Hill vs. Jones, 255 S.C. 219, 178 S.E.2d 142 (1970). There are simply no findings of fact setting forth how a partial lump sum is not in the best interest of the Claimant and/or his Dependents. More importantly, the Court must have overlooked the fact that there is absolutely no conclusion of law setting forth the standard or the actual requirements or the actual code section, S.C. Code §42-9-301 as a basis for its decision. There is nothing to establish the correct legal standard and the laws were applied to avoid an abuse of discretion, there must be findings of fact and there must be an application of the law which is again: that where the Claimant makes the request for a partial lump sum, there must be findings that it is contrary to the best interest of the Claimant to receive a partial lump sum. There are none. Further and more importantly, there is not even, and the Appellant reiterates not even one conclusion of law addressing or even citing §42-9-301. The closest is conclusion of law No. 8 which refers to and quotes from Ashley vs. Ware Shoals, supra. The Court must recognize that

that decision was not decided under S.C. Code §42-9-301 but was decided under its predecessor, §42-9-300 which allowed for a partial lump sum in only unusual cases. A decision that does not recognize and address the lack of findings of fact and conclusions of law eviscerates numerous decisions and the very purpose and intent of the Legislature's recodification in favor of partial lump sums to the injured worker. S.C. Constitution Article V. §9.

4. That in addition as to subsection No. 2 of the Court's opinion concerning this request being, "tantamount" of a total lump sum request is simply not true and in addition, it is contrary to the law of the case based on Commissioner Beck's original partial lump sum Order. Commissioner Beck's Order specifically makes detailed findings of fact and in his Statement of the Case, he specifically states:

"While I agree with the Claimant that under the South Carolina Supreme Court decisions and the statutory law that the Mortality Tables are to be used for determining the total value of a claim and the granting of a lump sum and while I agree that the law provides that I must provide and order a lump sum where it is in the best interest of the Claimant and/or his dependents, at this point, I find the information and evidence submitted for granting a partial lump sum more than to pay off the home, grant money to buy one car and to pay off the debts as listed in the Financial Declaration to be not convincing to transfer Mr. Lazaro's benefits from the insurance company to his guardian ...

... Again when more definitive information is provided concerning looking for college and expenses in that regard and the expenses of college and the needs of the children, then the family may come back and request additional money through an additional partial lump sum payment ...

... Findings of Fact

... 5. That in making the partial lump sum award in this case, I find that all the other information and basis for requesting an additional award is speculative at this point but that the dependents and/or the Claimant may request a further lump sum or lump sums at any time in the future pursuant to a determination at that time as to what is in the best interest of the Claimant and/or his dependents ...

... CONCLUSIONS OF LAW

... 1. ... Under S.C. Code §42-9-10, ... and under S.C. Code §42-9-301, the decision is made as to the granting of a partial lump sum in this matter." (R. p. 8, 14, 16).

Commissioner Beck meticulously went through the appropriate issues to be considered and the requests that had been made for a partial lump sum at that time. He found that the boys were not in college at that point. He found that the Claimant had not put into evidence any specific information as to an annuity and how it would be in the best interest of the family and he addressed all of the issues in reference to and made findings of fact and conclusions of law addressing all of those issues and essential issues presented to him for decision. There is an absolute void in the subsequent decision of the Commissioner that is the subject of this appeal of any analysis or any findings of fact as to how it is not in the best interest of the Claimant and/or his dependents. Instead, there are references that one son dropped out of college because of student loan debt and is in the military serving our country. The other son is putting off going to college to help his mother pay the bills and is working and because Ms. Lazaro is having to work three jobs. Where is the substantial evidence in the Record that it is not in the best

interest of or any analysis of the best interest of the Claimant and/or his dependents in reference to the partial lump sum request made.

5. That it appears the Court overlooked the application of the fundamental principle of law that has been applied to the Workers' Compensation Act since the inception of the Act that the Act is to be construed liberally in favor of benefits to the injured worker and the injured worker's dependents concerning the second prong of the basis for denial. The second prong under No. 2 in the Court's decision was that this request is, "tantamount" of a total lump sum request. The Appellant would respectfully submit that that is no basis under law to deny this family benefits and it is absolutely not a liberal interpretation of the statute. This insured worker has been receiving benefits since the date of the accident, July 6, 2006. This Court approved a previous partial lump sum request made many years after receiving those weekly benefits. The Commission told this family to come back when it had evidence and the Commission would consider an additional partial lump sum when they submitted annuity evidence that a further partial lump sum that would guarantee income to the family and would be in their best interest. It must be noted by the Court that the present additional lump sum request was for those very same reasons that the first partial lump sum was requested in this matter and for which they were told by the Commission to provide evidence. This Court affirmed that decision.

This Court should look at its reasoning in reference to the issues raised at that time which is found at page 22 of the Record in reference to the sufficiency of the Commission's findings and conclusions. This Court did an analysis at that time under law and quoted §42-9-301 as the guiding principle. Again, there is no conclusion of law concerning that section in this Order and again, quoting this Court from its first Order on the first request under section 2 from the case of Thompson vs. S.C. Steel Erectors, 369 S.C. 606, 632 S.E.2d 874 (S.C. App. 2006):

"An abuse of discretion occurs if the [Appellate Panel's] findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law."

In that decision, two of the members of this current panel of the Court concurred in the following which is black letter law and has been black letter law (ironically one of the cases cited, for the principle was an average weekly wage case which will be addressed later as to the Court's decision in this regard in this, "electrician's" case) since the inception of the Act.

"Case vs. Hermitage Cotton Mills, 236 S.C. 515, 531, 115 S.E.2d 57, 66 (1960). The courts of this country have without exception viewed the workman's compensation law as intended primarily for the benefit of the injured employee and it is to be construed liberally for his protection." (; Booth vs. Midland Trane Heating and Air Conditioning, 298 S.C. 251, 254, 379 S.E.2d 730, 731 (Court App. 1989). ("The primary purpose of the Workers' Compensation Act is to protect the worker, "and" any reasonable doubt as to its construction should be resolved in favor of the Claimants.") (emp. added).

Where in the law and how is it a liberal construction that an injured worker is to be denied a partial lump sum request because

the residual partial lump sum request that is made which is what is involved in this case would be, "tantamount" of a payment of a residual value of the remaining award. This Court's decision is not based on law or fact and appears to be based on the fact that this Court considers the money under the Award (to the Claimant) to be the money of the insurance company not the injured worker. There are no findings of fact. There are no conclusions of law. There is not one shred of evidence that the payment of this partial lump sum requested is not in the best interest of the injured worker. If this Court does not apply a liberal construction under the prior reasoning of this Court in its own words and based on review of this Record, at a minimum, this Court should grant rehearing and face to face tell the parties the substantial evidence in the Record that it finds exists under a liberal construction of the Act in the favor of benefits to the injured worker for the denial of this request under law. Many times, this Court and the Supreme Court where they are forced to make a decision that they do not want to will make that decision under the facts and law but will implore the Legislature or tell the Legislature that if a different result is desired, then they need to change the law. If this Court believes that an injured worker and/or the worker's family should not receive a partial lump sum in any amount or in a lifetime benefits case beyond a certain amount, then that is a function for the Legislature to perform, not this Court.

Finally, Appellant presumes that the Court overlooked the

fact in the criticism of the request being tantamount of a total lump sum request that the value that the partial lump sum requested is less than 94% of the residual value. In other words, under law, which is what this is supposed to be about, S.C. Code §42-9-301, it is less than the maximum cap, a 6% commutation of the residual value that can be awarded as a partial lump sum.

6. That the Court overlooked or misapprehended the substantial evidence in the Record as to the increase in the average weekly wage and also overlooked or misapprehended the law as to the application of exceptional circumstances under paragraph 2 of S.C. Code §42-1-40.

First, there is no substantial evidence in the Record contrary to that placed into the Record by the Appellant in reference to Mr. Lazaro's wages prior to the accident. The Appellant submitted his W-2 showing wages of \$33,601.02 and assuming that he worked the entire 52 weeks, that would result in an average weekly wage of \$646.17 with a resulting compensation rate of \$430.80. The Defendants knew that the average weekly wage and compensation rate was at issue at the hearing. See Form 50, p. 54 and 55 and the Claimant's Pre-Hearing Brief p. 67-70. In fact, the Form 20 is not in the Record and see p. 61 and 62 and specifically No. 10 of the Form 51 found at p. 61. Further, there is no challenge to the wage calculation as to the Claimant's wages prior to the accident in the Defendant's Pre-Hearing Brief but only as to the application of exceptional circumstances and the application of the statutory maximum due to exceptional

circumstances. Therefore, there is no substantial evidence in the Record as submitted to the Commissioner that the compensation rate should not at a minimum have been raised to an average weekly wage of \$646.17 with a resulting compensation rate of \$430.80.

Since the average weekly wage and compensation rate was contested, the key word is, "evidence". S.C. Code §42-17-10 specifically provides in reference to an agreement to pay compensation which is what occurred in this case that, "all such agreements shall be subject to adjustment and correction as to the compensable rate if subsequent to filing with the Commission, it is determined that such rate does not reflect the correct average weekly wage of the Claimant." The Claimant challenged the average weekly wage and there is no evidence in the Record contrary to the evidence of the Claimant. The average weekly wage should at a minimum be increased based on his pre-injury earnings. In fact, this is in exact accord under the factual situation in Pilgrim vs. Eaton, 391 S.C. 38, 703 S.E.2d 241 (S.C. App. 2010). In Pilgrim what this Court actually did was it reversed the decision of the Commission on the compensation rate based on there being no substantial evidence in the Record under law for the determination of the compensation rate by the Commission.

On the exceptional circumstances, the Court misapprehended and misapplied the law in reference to exceptional circumstances under S.C. Code §42-1-40. This Court in the case of Booth vs. Midland Trane Heating and Air Conditioning and the Supreme Court subsequent to that has specifically held that whether or not under

the facts exceptional circumstances exist is a, "question of law for the Courts," Elliott vs. South Carolina Department of Transportation, 362 S.C. 234, 607 S.E.2d 90 (2005). Note, the Court first misapprehended that the Appellant in no way ever requested the application of exceptional circumstances based on post-injury step-raises. In Elliott, the Supreme Court found exceptional circumstances based on the pre-injury rate increases not the post-injury rate increases. In Booth, this Court found exceptional circumstances based on the number of pre-injury raises and the amount of wage increases Mr. Booth had in a short period of time. The Court will note from the Record that those are two of the reasons that the Claimant had asked the Commission and then this Court to consider as exceptional circumstances. Mr. Lazaro had had a wage increase of 45% over a three-year period and an average 12.86% per year rate increase. That is pre-injury not post-injury. Those facts call for the application of exceptional circumstances as a matter of law just as they did in Elliott and just as they did in Booth. The Court must at least address as to why those cases do not apply not simply those. S.C. Constitution V. §9.

The other basis which is the only basis involving a post-injury analysis and facts was that recognized by this Court (under a liberal interpretation of the Act as the Supreme Court and this Court have always applied in favor of benefits to the injured and the injured worker's dependents) in Sellers vs. Pinedale Residential Center, 350 S.C. 183, 564 S.E.2d 694 (S.C. App. 2002).

This Court has repeatedly applied Sellers, supra, post-injury factors to make a determination at the time that the request for an increase in the average weekly wage and compensation rate is made to increase the compensation rate to properly reflect the loss of earning capacity of the Claimant and to offset the effect that it has on the injured worker and the injured worker's family/dependents into the future. The uncontradicted evidence is again that at the time a request for the review of the average weekly wage and compensation rate was made that the Claimant, Mr. Lazaro would have been making a lot more money as an electrician with the company, as compared even to the other non-English speaking and Hispanic workers even considering the xenophobic and racist evidence in the Record relied on by the Commissioner.

Therefore, as matter of fact and law, the Court misapprehended the substantial evidence in the Record and misapplied the law. Again, the determination of whether or not exceptional circumstances exist is not based on the standard APA review of substantial evidence but is based on this Court's determination, note again this Court's determination, as a matter of law as to whether or not exceptional circumstances exist. (emp. added).

7. That as to whether or not the Court in its decision should have reached the other issues raised by the Appellant, the Appellant would only ask for the Court to review issues raised in II and V under the dictates of the Appellate Court Rules and specifically Rule 220, SCACR.

8. That the Appellant would respectfully request consideration of recaptioning of the case by the Court. Under workers' compensation law at the time of his death, any Award would pass to his dependents. See: S.C. Code §42-9-110 thru 140.

CONCLUSION

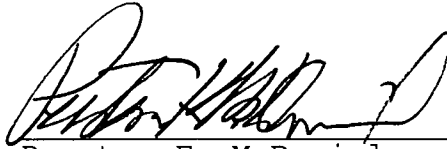
For the foregoing reasons, the Appellant would specifically ask that the Court reconsider and grant rehearing on this appeal and its decision and specifically would ask the Court to grant further oral argument unlimited so that a full discussion in the best interest of this injured worker and the injured worker's dependents can be had. Most of the questions that are raised by the Court's opinion were not asked or addressed to the parties at oral argument. The Court will recall based upon review of the oral argument that the focus was entirely different and if the Court's decision is going to be based on these issues, further oral argument as a matter of justice is required.

Further, there is no question that the Court misapprehended or overlooked the substantial evidence in the Record or the lack of substantial evidence in the Record in its decision. The Court also overlooked or misapprehended the Commission's compliance with its fundamental statutory requirement that it make detailed findings of fact and conclusions of law that are sufficiently definite and detailed enough on every essential issue presented to the Commission for decision so that this Court may properly review those. There are none in this case in reference to particularly whether or not it was in the best interest of the Claimant and/or

the Claimant's dependents to grant a partial lump sum and there was no findings of fact or conclusions of law as to the amount of the lump sum requested.

Finally, the Appellant would request consideration of the recaptioning of the case by the Court and verily believes that it should be at a minimum Decidora Lazaro, Dependent and on behalf of the Dependents of Antonio Lazaro, Employee, Deceased.

Respectfully submitted,



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Attorney for Appellant/Petitioner

August 20, 2018

**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
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Decidora Lazaro, on behalf of the Estate of Antonio
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v.

Burriss Electrical, Employer, and South Carolina
Guaranty Association, Carrier, Respondents.

Appellate Case No. 2016-000665

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2018-UP-352
Heard May 17, 2018 – Filed August 8, 2018

AFFIRMED

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

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

PER CURIAM: Antonio Lazaro (Claimant) appeals the order of the Appellate Panel of the South Carolina Workers' Compensation Commission (the Commission) denying his request for a partial lump sum payment and adjustment of his average weekly wage and compensation rate. Claimant argues the

Commission erred in denying his request for a partial lump sum payment by finding the award was not in his or his dependents' best interests, finding he was entitled to only 500 weeks of benefits, and considering evidence of his life expectancy following his injury. Claimant further argues the record shows he was entitled to an increase in his average weekly wage and compensation rate, and the Commission erred by comparing him to his employer's non-English speaking, Hispanic employees in determining his average weekly wage. We affirm.

1. We find the Commission did not err in considering medical evidence in determining Claimant's life expectancy. *See Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (recognizing that the Administrative Procedures Act (APA) establishes this court's standard of review of the Commission's decisions); S.C. Code Ann. §1-23-380(5) (Supp. 2017) (stating that under the APA, this court may reverse or modify the decision of the Commission when the substantial rights of the appellant have been prejudiced because the Commission's decision is "affected by other error of law" or "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record"); *Ashley v. Ware Shoals Mfg. Co.*, 210 S.C. 273, 286, 42 S.E.2d 390, 396 (1947) ("It would seem clear that the . . . Commission is not at liberty to guess at the present value of future payments without regard to the contingencies that may arise."); *id.* at 287, 42 S.E.2d at 396 ("[I]f the total disability is such that there may be a change of condition or if a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the installment payments, the allowance of a lump sum settlement over the objection of the employer or carrier would constitute an abuse of discretion which the appellate courts are empowered to review."); *Glover by Cauthen v. Suitt Constr. Co.*, 318 S.C. 465, 467 n.3, 458 S.E.2d 535, 537 n.3 (1995) (recognizing the South Carolina mortality table may be considered in determining a claimant's life expectancy for the purposes of calculating the present day value of his benefits); S.C. Code Ann. § 19-1-150 (2014) ("When necessary, in a civil action or other litigation, to establish the life expectancy of a person from any period in his life, whether he is living at the time or not, the [mortality table] must be received in all courts and by all persons having power to determine litigation as evidence, *along with other evidence* as to his health, constitution, and habits, of the life expectancy of the person." (emphasis added)); *Haselden v. Davis*, 341 S.C. 486, 506, 534 S.E.2d 295, 306 (Ct. App. 2000) (stating a factfinder is not bound by the life expectancy as indicated in the mortality table), *aff'd*, 353 S.C. 481, 579 S.E.2d 293 (2003).¹

¹ Claimant passed away during the pendency of this appeal, on June 8, 2017. He was forty-seven years old.

2. We find the Commission did not abuse its discretion in denying Claimant's request for a second partial lump sum payment because evidence supports the Commission's finding that this second lump sum payment was not in Claimant's or his dependents' best interests, and this request was tantamount to a total lump sum request.² See S.C. Code Ann. § 42-9-301 (2015) (stating appellate courts review the Commission's award of a lump sum payment for an abuse of discretion); *Thompson v. S.C. Steel Erectors*, 369 S.C. 606, 612, 632 S.E.2d 874, 878 (Ct. App. 2006) ("An abuse of discretion occurs if the Commission's findings are wholly unsupported by the evidence or the conclusions reached are controlled by an error of law."); § 42-9-301 ("Whenever any weekly payment has been continued for not less than six weeks, the liability therefor[e] may, when the employee so requests and the [C]ommission deems it not to be contrary to the best interest of the employee or his dependents, or when it will prevent undue hardship on the employer or his insurance carrier, without prejudicing the interest of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the [C]ommission" (emphasis added)); *Ashley*, 210 S.C. at 287, 42 S.E.2d at 396 ("[I]f a serious question is presented regarding the likelihood of the employee's living the length of time required to complete the installment payments, the allowance of a lump sum settlement over the objection of the employer or carrier would constitute an abuse of discretion."); S.C. Code Ann. § 42-9-10 (2015) (prohibiting total lump sum payments in cases where a claimant has been awarded lifetime benefits).

3. We find the Commission did not err in refusing to increase Claimant's compensation rate. See *Pilgrim v. Eaton*, 391 S.C. 38, 44, 703 S.E.2d 241, 243–44 (Ct. App. 2010) (recognizing that an appellate court may not reverse the Commission's calculation of a claimant's average weekly wage "unless substantial rights of the appellant have been prejudiced because the decision is affected by an error of law, or because the factual findings are clearly erroneous in view of the reliable, probative, and substantial evidence" (citing S.C. Code Ann. §1-23-

² Claimant previously requested a partial lump sum payment of his lifetime benefits to cover his debts and to purchase a new automobile for his family. On October 14, 2010, the single commissioner awarded Claimant and his dependents a partial lump sum payment of \$152,568.75. The Commission affirmed the single commissioner on April 20, 2011, and the court of appeals affirmed the Commission by unpublished opinion 2014-UP-064 (filed February 6, 2014). On February 19, 2014, Claimant requested an additional partial lump sum of approximately \$325,000; the denial of this second request is at issue in this case.

380(5)); S.C. Code Ann. § 42-9-10(A) ("When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages"); S.C. Code Ann. § 42-1-40 (2015) (defining a claimant's average weekly wage as his earnings "in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury"); *id.* (stating a claimant's average weekly wage is calculated by "the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred as reported on the Department of Employment and Workforce's Employer Contribution Reports divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less"); *id.* ("When for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury."); *Roberts v. McNair Law Firm*, 366 S.C. 50, 54, 619 S.E.2d 453, 456 (Ct. App. 2005) (holding a post-injury salary increase based on merit was not an "extraordinary circumstance" to support deviation from the statutory method of calculating a claimant's average weekly wage); *Elliott v. S.C. Dep't of Transp.*, 362 S.C. 234, 238, 607 S.E.2d 90, 92 (Ct. App. 2004) (holding a raise claimant received less than two weeks before her injury was an "exceptional reason" to increase her compensation rate because she earned the merit-based raise by pursuing special certification and licensing, it was not "merely a standard cost-of-living increase or step increase based on longevity of service," and she earned the raise before the accident); *Bazen v. Badger R. Bazen Co.*, 388 S.C. 58, 65, 693 S.E.2d 436, 440 (Ct. App. 2010) (holding the Commission did not err in failing to consider claimant's earnings as reported for tax purposes in calculating his average weekly wage).

4. Because our resolution of these issues is dispositive, we decline to address Claimant's remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (finding the appellate court need not address appellant's remaining issue when its resolution of a prior issue is dispositive).

AFFIRMED.

HUFF, GEATHERS, and MCDONALD, JJ., concur.

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Antonio Lazaro, Employee, Appellant/Petitioner,

v.

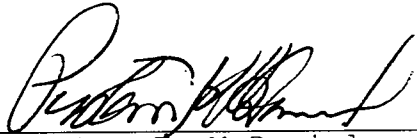
Burris Electrical, Employer, and
South Carolina Guaranty Association,
Carrier, Defendants/Respondents.

PROOF OF SERVICE

I certify that I have served the **PETITION FOR REHEARING**
on the Defendants/Respondents by depositing a copy of it in
the United States Mail, postage prepaid, on **August 20, 2018**,
addressed to its attorneys of record:

Brett H. Bayne, Esquire
MANGUS, GOUDELOCK & COURIE
Post Office Box 12519
Columbia, South Carolina 29221

Dated: August 20, 2018


Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

Attorney for Appellant/Petitioner

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
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Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

August 20, 2018

HAND DELIVERED

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1205 Pendleton Street
Columbia, South Carolina 29201

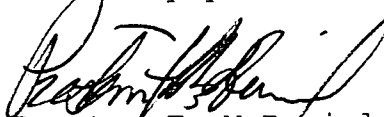
**RE: Decidora Lazaro, on behalf of the Estate of Antonio
Lazaro, Employee, Appellant v. Burris Electrical,
Employer, and South Carolina Guaranty Association,
Carrier, Respondents.
Appellate Case No. 2016-000665**

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Appellant's **PETITION FOR REHEARING** in the above-referenced matter, along with the required filing fee of \$25.00. Please file the original and return a clocked-in copy to me in the enclosed, self-addressed, stamped envelope.

By copy of this letter, I am serving Counsel of Record with a copy of same.

Sincerely yours,


Preston F. McDaniel

PFM/abh
Enclosures

cc: John E. Duncan, Esquire
Brett H. Bayne, Esquire

RECEIVED
AUG 20 2018
SC Court of Appeals