

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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Case Number 2018-001516

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Johnnie Bias, Employee, Appellant,

v.

SCANA Corporation, Self-Insured Employer, Respondent.

**RECEIVED**

SEP 17 2018

SC Court of Appeals

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INITIAL BRIEF OF APPELLANT

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**STATEMENT OF ISSUES ON APPEAL**

- I. DID THE COMMISSION ERR IN FAILING TO FIND THAT BIAS SUSTAINED A COMPENSABLE WORK-RELATED INJURY WHERE THE COMMISSION'S FINDING THAT BIAS DID NOT SUSTAIN A COMPENSABLE WORK-RELATED INJURY IS NOT SUPPORTED BY THE EVIDENCE?
  
- II. DID THE COMMISSION IMPROPERLY CONSIDER (i) THAT BIAS WAS RECEIVING SOCIAL SECURITY DISABILITY BENEFITS AND (ii) THAT BIAS'S MEDICAL TREATMENT HAD BEEN PAID BY HIS HEALTH INSURANCE PROVIDER IN DECIDING BIAS DID NOT SUSTAIN A COMPENSABLE WORK-RELATED INJURY?

## STATEMENT OF THE CASE

This matter arises from a work-related injury sustained by Appellant/Claimant, Johnnie Bias ("Bias"), on October 14, 2014. The Respondent/Defendant, SCANA Corporation ("SCANA"), denied the claim.

Bias filed a Form 50, Request for a Hearing, on January 24, 2017, seeking benefits for an injury by accident and/or aggravation of a pre-existing condition to his left hip, left leg, left ankle, left hand, left wrist, left arm, buttocks, back, right hip, right leg, right ankle, right foot, nervous system, bladder, urological system, penis and psychological overlay. On February 23, 2017, SCANA filed a Form 51, denying Bias sustained an injury by accident arising out of and in the course of his employment.

A hearing was held on September 19, 2017, in front of Commissioner Avery B. Wilkerson, Jr. ("Single Commissioner"). At the hearing, Bias contended that (1) he suffered an injury by accident and/or aggravation of a pre-existing condition to his back, left leg, right leg, bladder, urological system, penis, and resultant psychological as affirmatively found by Dr. Poletti, Dr. Rames, Dr. Gunter, Dr. Lind, and Dr. Hutcheson; (2) he was entitled to past, present and future medical treatment and care due to his work-related injuries, as affirmatively found by Dr. Poletti, Dr. Rames, Dr. Gunter, Dr. Lind, and Dr. Hutcheson; (3) he was entitled to additional medical treatment, as he had not reached maximum medical improvement for all work-related injuries; (4) he was entitled to back TTD, as he did not return to work following his October 14, 2014 work-related injury as he was written out of work by Dr. Poletti, and was subsequently terminated; and (5) if deemed to be at maximum medical improvement, Bias contended he was permanently and totally disabled under S.C. Code §42-9-10, as a combination of his work-related injuries

resulted in the complete destruction of his earning capacity and alternatively under S.C. Code §42-9-30, as he was permanently and totally disabled after suffering greater than fifty-percent (50%) loss of use to his back.

On January 18, 2018, the Single Commissioner issued his Order finding that Bias did not sustain a compensable injury by accident on October 14, 2014. Furthermore, while the Single Commissioner found that not all of Bias's issues preexisted the date of his injury, the Single Commissioner concluded that Bias did not sustain a compensable aggravation of a pre-existing condition on October 14, 2014, and that he was not entitled to any benefits under the South Carolina Workers' Compensation Act.

On January 29, 2018, Bias filed a Form 30, Request for Commission Review. Oral arguments were held before the South Carolina Workers' Compensation Commission ("Commission") on April 16, 2018. On July 19, 2018, the Commission affirmed the Order of the Single Commissioner, without making any additional Findings of Fact or Conclusions of Law. Bias timely filed a Notice of Appeal with the South Carolina Court of Appeals on August 13, 2018.

## STATEMENT OF FACTS

Bias, a 61-year-old military veteran, was employed with SCANA for a period of seventeen years. (Hearing Transcript p. 60, lines 7-8; p. 62, lines 4-8). Bias admittedly had a pre-existing lower back condition. (Hearing Transcript p. 64, lines 18-23). In 1983, Bias underwent surgery on his lower back due to a herniated disc. (Hearing Transcript p. 65, lines 3-5). In 2001, Bias began treating with Dr. Steven Poletti at Southeastern Spine Institute for low back and left leg pain. (Claimant's APA #7, p. 76) Bias continued to intermittently treat with Dr. Poletti in the years leading up to his work accident. (Hearing Transcript p. 65, lines 9-19). Prior to his injury at work on October 14, 2014, Bias's lower back and radicular symptoms were predominantly left-sided. (Claimant's APA #7, p. 135). Bias did complain of some right leg pain to Dr. Poletti's office in February of 2010; however, his right leg symptoms resolved following an injection. (Hearing Transcript p. 66, lines 17-25 – p. 67, lines 1-25; p. 68, lines 1-6; Claimant's APA #7, p. 88-89, 93-94).

On October 12, 2012, Bias returned to Dr. Poletti's office with complaints of back and left leg radicular symptoms. (Claimant's APA #7, p. 94). After a period of conservative treatment, Bias continued to complain of back and left leg symptoms. (Claimant's APA #7, p. 108). As a result, Dr. Poletti ultimately recommended and performed a redo laminectomy/disectomy at L5-S1 and laminectomy/disectomy at L4-L5 on March 7, 2014. (Claimant's APA #7, p. 108; p. 113-117). Following that surgery, Bias's symptoms and pain significantly improved, and he ultimately returned to work with SCANA. (Deposition of Dr. Poletti p. 28, lines 6-11; Hearing Transcript p. 69, lines 19-25; p. 175, lines 8-14; p. 88, lines 23-25; p. 89, lines 1-9; Claimant's APA #7, p. 118, 122, 123-124). In fact, at his deposition, Dr. Poletti confirmed Bias's condition improved after his surgery

in March 2014, and that Bias returned to work with minimal pain complaints. (Deposition of Dr. Poletti, p. 17, lines 11-15; Claimant's APA #7, p. 125).

While working for SCANA on October 14, 2014, Bias was walking down a flight of concrete stairs to check on a problem at a pond, when he slipped on some rocks and fell on his backside. (Hearing Transcript p. 64, lines 2-17). Bias immediately notified his supervisor, Anthony Miles, of his accident, and Bias informed his supervisor that he was having pain in his buttocks, both hands and left ankle. (Hearing Transcript p. 64, lines 2-17; Hearing Transcript p. 71, lines 9-12; Claimant's Exhibit A, p. 596). On the same date, Bias's supervisor sent an email detailing Bias's fall and injuries. (Claimant's Exhibit A, p. 596; Deposition of Terry Seagle p. 11, lines 3-9).

On October 15, 2014, the day after his fall at work, Bias presented to Dr. Poletti's Physician Assistant Lane Tuggle for a previously scheduled follow-up appointment. (Hearing Transcript p. 72, line – p. 73, line 2). Admittedly, at this appointment, Bias did not mention his documented fall at work from the day before, as he was not having any significant new symptoms at that time. (Hearing Transcript p. 72, lines 3-8; p. 72, lines 18-20; Deposition of Dr. Poletti p. 17, lines 16-18). Dr. Poletti testified it was not inconsistent or unusual for a patient to not complain of symptoms immediately after an accident. (Deposition of Dr. Poletti p. 22, lines 12-21; p. 37, line 12 – p. 38, line 3; p. 38, line 17 – p. 39, line 10). Dr. Poletti noted pain can increase over a few days following an injury and this would not be an abnormal occurrence. Id. Dr. LaMotta also testified it was not unusual to not experience the full effect of a fall or accident right away and noted it may take up to 48 hours for pain to materialize. (Deposition of Dr. LaMotta p. 33, lines 7-19; p. 33, lines 21-23).

A few days following his accident, Bias began experiencing low back pain radiating into his right leg, increased weakness, difficulty ambulating and left leg coldness and numbness. (Hearing Transcript p. 155, lines 2-8; Claimant's APA #7, p. 127-128; Deposition of Dr. Poletti p. 19, lines 10-12). As a result of his new and increasing symptoms, Bias contacted SCANA and requested medical treatment. (Hearing Transcript p. 73, line 12 – p. 74, line 10). SCANA scheduled Bias for an appointment with Dr. Weisglass; however, SCANA subsequently cancelled the appointment with Dr. Weisglass and instructed Bias to seek treatment with his personal physician. Id.

On October 22, 2014, eight days after his work accident, Bias was seen by Dr. Poletti's Physician's Assistant as a work-in appointment. (Claimant's APA #7, p. 127-128). At that visit, Bias described his work accident and complained of increased weakness, difficulty ambulating, and numbness and a cold feeling in his left leg. Id. Notably, Bias also reported that since the fall, he was experiencing increasing back pain and a new complaint of radiating pain down his right leg. Id. During examination, Bias was noted to have antalgic gait, positive straight leg raise, diminished reflexes on the left, difficulty with heel and toe raise on the left and slightly diminished range of motion of the lumbar spine. Id. Due to concerns that Bias had suffered a re-herniation in his back, a lumbar MRI was ordered. (Claimant's APA #7, p. 128).

On October 29, 2014, Bias underwent an MRI of his lumbar spine and returned for a follow up appointment with Dr. Poletti. (Claimant's APA #7, p. 129-131). At this time, Dr. Poletti noted Bias had increasing right-sided pain following the fall. Id. Dr. Poletti also reviewed the lumbar MRI and opined that it revealed a recurrent herniation. (Claimant's APA #7, p. 129). Dr. Poletti discussed surgical intervention at that time and opined Bias

was unable to return to work. (Claimant's APA #7, p. 129; Deposition of Dr. Poletti p. 28, lines 15-25).

On January 7, 2015, Dr. Poletti opined that Bias's L4-5 disc reherniation and his worsening back and leg pain were caused by his fall at work on October 14, 2014. (Claimant's APA #7, p. 135). Bias continued to treat with Dr. Poletti, and throughout his treatment, Dr. Poletti noted Bias's ongoing back pain, buttocks pain, hip pain, positive straight leg raise, bilateral leg weakness, difficulty with ambulation, urological dysfunction, including increased urinary urgency, numbness, cold sensations in the left leg, nerve damage, and increasing pain levels, which led him to change and increase Bias's medications. (Claimant's APA #7, p. 137, 139-141, 147, 149-151). Dr. Poletti opined Bias was a candidate for a lumbar fusion, but he was unsure if it would improve Bias's condition. (Deposition of Dr. Poletti, p. 29, lines 14-16).

On March 16, 2016, Bias was seen by Dr. Nicholas Lind, PsyD, a clinical psychologist with Post Trauma Resources, for an independent psychological evaluation. (Claimant's APA #6, p. 54-57). Dr. Lind diagnosed Bias with Adjustment Disorder with Depressed Mood, and he opined Bias's psychological condition was aggravated as a result of his October 14, 2014 work injuries. (Claimant's APA #6, p. 56 and 58; Deposition of Dr. Lind p. 37, lines 21-25; p. 38, lines 1-5; p. 40, lines -15; p. 47, lines 14-16; p. 49, lines 2-7; p. 54, lines 8-15; p. 55, lines 5-9; p. 58, lines 7-11; p. 61, lines 13-16). Dr. Lind recommended routine psychological and psychiatric treatment for as long as his pain persisted, medication to control his sleep disorder and an antidepressant for mood disorder. (Claimant's APA #6, p. 56 and 58; Deposition of Dr. Lind p. 45, line 17 – p. 46, line 3; p.

52, lines 7-11; p. 54, line 16 – p. 55, line 4). Dr. Lind indicated Bias was not at maximum medical improvement for his psychological injuries. (Claimant's APA #6, p. 56 and 58).

On March 22, 2016, Bias was seen by Dr. Justin Hutcheson with Carolina Center for Advanced Management of Pain for a pain management evaluation. (Claimant's APA #4, p. 22-25). Dr. Hutcheson noted Bias experienced left leg numbness, right leg pain, worsening foot drop, significant depressive symptoms and urological incontinence since his fall at work on October 14, 2014. (Claimant's APA #4, p. 24; Deposition of Dr. Hutcheson p. 14, lines 5-11; p. 28, line 23 – p. 30, line 5). Dr. Hutcheson opined Bias's fall at work aggravated his pre-existing condition. (Claimant's APA #4, p. 24-25; Deposition of Dr. Hutcheson p. 38, lines 14-20; p. 72, lines 18-20; p. 76, lines 22 – p. 77, line 5). He further opined that Bias would need lifetime pain management care to include ongoing medications, injections, physical therapy, imaging, durable medical equipment (for leg weakness, incontinence, back pain) and a spinal cord stimulator. (Claimant's APA #4, p. 24-25; Deposition of Dr. Hutcheson p. 72, lines 8-12). Dr. Hutcheson also indicated that Bias would need additional psychological care and urological treatment as a result of his work injury. (Claimant's APA #4, p. 24, 27). Dr. Hutcheson subsequently completed a Form 14B noting Bias sustained 26% whole person impairment for the lumbar spine as a result of his work injury. (Claimant's APA #4, p. 27).

On May 27, 2016, Bias was seen by Dr. Ross Rames, a urologist with MUSC, for an independent medical evaluation. (Claimant's APA #3, p. 17-20). Dr. Rames diagnosed Bias with urinary urgency, fecal urgency, urge incontinence and erectile dysfunction as a result of his October 14, 2014 work accident. Id. Dr. Rames noted evidence of sacral nerve

dysfunction with absent bulbocavernosal reflex. Id. Dr. Rames opined Bias would require further treatment. Id.

Bias presented to Dr. Ivan LaMotta with Midlands Orthopaedics and Neurosurgery for an evaluation on September 8, 2016. (Claimant's APA #2, p. 12-16). Dr. LaMotta opined that Bias sustained an aggravation of his pre-existing condition due to his October 14, 2014 work-related accident. (Claimant's APA #2, p. 15). However, in his deposition, while Dr. LaMotta testified that Bias's symptoms worsened after his fall at work, he was unable to testify to a reasonable degree of medical certainty as to the cause of the worsening. (Deposition of Dr. LaMotta p.68, line 16 – p. 69, line 7).

On December 20, 2016, over two years after Bias's fall at work, the deposition of Mr. Terry Seagle, the Safety and Training Coordinator at SCANA, was conducted. (Deposition of Terry Seagle p. 7, lines 3-4). During that deposition, and for the first time, it was revealed that there was an email between Bias's direct supervisor, Anthony Miles, and Mr. Seagle documenting Bias's fall and injuries on October 14, 2014. (Deposition of Terry Seagle p. 10, line 25; p. 11, lines 1-9; Claimant's Exhibit A, p. 596).

On January 18, 2017, SCANA sent Bias to Dr. Brett Gunter for an independent medical evaluation. (Claimant's APA #9, p. 162-165). Dr. Gunter's assessment was complex clinical syndrome, and he opined that Bias's back pain was more severe and his right leg pain was a new symptom since his work accident on October 14, 2014. Id. Dr. Gunter recommended an updated MRI in order to determine Bias's further treatment options. Id.

## STANDARD OF REVIEW

The South Carolina Administrative Procedures Act establishes the standard for judicial review of decisions by the Appellate Panel of the Workers' Compensation Commission. Fredrick v. Wellman, Inc., 385 S.C. 8, 682 S.E.2d 516 (Ct. App. 2009). Under the scope of review established in the Administrative Procedures Act, an appellate court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse or modify the Commission's decision if the appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." *See* Stone v. Traylor Bros., Inc., 360 S.C. 271, 600 S.E.2d 551 (Ct. App. 2004).

Section 1-23-380(A)(5) of the South Carolina Code specifically provides:

**The Court may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are . . . (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. . . .**

S.C. Code Ann. § 1-23-380(A)(5) (2007)(Emphasis added).

Thus, "review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law." Rodriguez v. Romero, 363 S.C. 80, 610 S.E.2d 488 (2005)(citing Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (Ct. App. 1999)). The "substantial evidence" required to support the factual findings of the Commission is not a mere scintilla of evidence, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the

conclusion the Commission reached in order to justify its action. *See Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995); *Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 519 S.E.2d 102 (1999).

Additionally, an award from the Commission cannot be based upon mere possibilities, probabilities, surmise or conjectures. *Broughton v. South Carolina Game & Fish Dept.*, 219 S.C. 50, 64 S.E.2d 152 (1951). If the findings of the Commission are based on surmise, speculation or conjecture, then the issue becomes one of law for the court and not of fact for the Commission. *Herndon v. Morgan Mills, Inc.*, 246 S.C. 201, 143 S.E.2d 376 (1965).

## ARGUMENT

### I.

**The Commission erred in failing to find that Bias sustained a compensable injury by accident arising out of and in the course of his employment with SCANA on October 14, 2014.**

The South Carolina Workers' Compensation Act allows a claimant who has a pre-existing condition to receive benefits for a subsequent work-related disability if he establishes by a preponderance of the evidence that the subsequent injury aggravated the pre-existing condition. *See* S.C. Code §42-9-35 (2007); Burnette v. City of Greenville, 401 S.C. 417, 737 S.E.2d 200 (Ct. App. 2012). Pursuant to S.C. Code §42-9-35, an employee is entitled to compensation benefits if the employee can "establish by a preponderance of the evidence, including medical evidence, that: (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or (2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury."

In the present case, substantial evidence in the record does not support the Commission's finding that Bias failed to meet his burden of proving he sustained a compensable injury or aggravation of his pre-existing back condition on October 14, 2014. Instead, the overwhelming evidence in this case, including Bias's physical complaints, the objective findings and the medical testimony, clearly establishes that Bias sustained a compensable injury.

Bias had a pre-existing lower back condition, which required him to undergo surgery on March 7, 2014. (Claimant's APA #7, p. 108, 113-117) While Bias admittedly had some continued back pain and radicular pain down his left leg, his pain had significantly improved following surgery. (Hearing Transcript p. 69, lines 19-25; p. 70,

lines 1-2). On August 6, 2014, Dr. Poletti's Physician's Assistant confirmed Bias had great improvement in his overall strength and mobility and had minimal pain complaints, with some residual weakness and numbness in his left foot that was greatly improved and was continuing to get better. (Claimant's APA #7, p. 123; Deposition of Dr. Poletti p. 25, line 24 – p.26, line 9). Bias was able to return to work and perform his job duties at SCANA. (Hearing Transcript p. 69, lines 19-25). Additionally, Dr. Poletti, who performed the surgery in March 2014, confirmed Bias had a significant improvement with his pain following his surgery and leading up to his work accident. (Deposition of Dr. Poletti, p. 17, lines 11-15; Claimant's APA #7, p. 125).

On October 14, 2014, Bias was walking down a flight of concrete steps at SCANA in order to check a problem at a pond, when he slipped on some rocks, fell and landed on his backside. (Hearing Transcript p. 63, lines 24-25; p. 64, lines 1-17). Bias immediately notified his supervisor, Anthony Miles, of his accident, and Bias informed his supervisor that he was having pain in his buttocks, both hands and left ankle. (Hearing Transcript p. 64, lines 2-17; Hearing Transcript p. 71, lines 9-12; Claimant's Exhibit A, p. 596). Mr. Miles sent an email to Mr. Terry Seagle, the Safety and Training Coordinator at SCANA, documenting Bias's accident and injuries. (Claimant's Exhibit A, p. 596).

On October 15, 2014, the day after his injury, Bias presented for a routine, scheduled follow-up appointment with Dr. Poletti's office. (Hearing Transcript; p. 72, lines 22-24; p. 73, lines 1-2; p. 145, lines 10-15). Bias admittedly did not report the fall to Dr. Poletti's Physician's Assistant during his appointment on October 15, 2014, because his problems from the fall had not manifested, and he was just experiencing soreness in his buttocks at that time. (Hearing Transcript p. 145, lines 10-15; p. 147, lines 6-8; p. 151, lines

15-20; p. 152, lines 1-7; p. 73, lines 12-22). Bias testified that the soreness continued, and a few days later, he began experiencing pain on his right side and his entire left leg felt cold. (Hearing Transcript p. 73, lines 12-22). At that time, Bias requested medical treatment from SCANA. (Hearing Transcript p. 73, line 12.– p. 74, line 10). While SCANA initially scheduled Bias for an appointment with Dr. Weisglass in Charleston, SCANA ultimately cancelled this appointment and Bias had to seek treatment on his own. *Id.* Bias immediately called and scheduled an appointment and followed up with Dr. Poletti's office. (Hearing Transcript p. 74, line 19 – p. 75, line 11). On October 22, 2014, just eight days after his work accident, Bias presented to Dr. Poletti's Physician's Assistant with complaints of low back pain lateralizing to the right side, increased weakness on his left side, and difficulty ambulating. (Claimant's APA #7, p. 127-128). Not only was Bias having worsening symptoms in his back and left leg, he was also having new symptoms in his right leg. *Id.* Even though these symptoms had not manifested at the time of the October 15, 2014 visit, Dr. Poletti testified it was not inconsistent or unusual for a patient to have a delay in symptomology and that pain can increase over a few days following an injury. (Deposition of Dr. Poletti p. 22, lines 12-21; p. 37, line 11 – p. 38, line 3; p. 38, line 17 – p. 39, line 10). Additionally, Dr. LaMotta testified it was not unusual for a patient to not experience the full effect of a fall or accident right away and it may take up to 48 hours for a pain to materialize. (Deposition of Dr. LaMotta p. 33, lines 7-23).

The medical records and testimony clearly shows that the work accident caused Bias to develop increased back and left leg symptoms and new symptoms in his right leg. Bias underwent an MRI on October 29, 2014, that revealed a recurrent disc herniation. (Claimant's APA #7, p. 129). There were new findings revealed by that MRI, including a

downward migration of the disk that was not present prior to the March 7, 2014 surgery. (Deposition of Dr. Poletti p. 21, lines 9-14; APA #7, p. 130-131). Dr. Poletti testified that Bias's back pain was worse when he was evaluated on October 22, 2014. (Deposition of Dr. Poletti p. 27, lines 15-18). Dr. Poletti noted that Bias's right-sided complaints were new symptoms following his October 14, 2014 fall. (Deposition of Dr. Poletti, p. 40, lines 8-13). On January 7, 2015, Bias followed up with Dr. Poletti, and in his report from that day, Dr. Poletti stated:

Mr. Bias is somebody I've known for some time. He's had decompressive laminectomy in February of 2014 and was doing well and had returned to work. On 10/14/2014 he slipped and fell while at work and *after this* began having severe right-sided leg pain. I should note that his preoperative symptoms were of back and left leg pain, and these left leg symptoms had improved. **After the fall he began having some increasing weakness into the left leg and some pain into the right leg, which he had not had before.** When I saw him on 10/29/2014, we recommended that he have an MRI scan; and **this MRI scan demonstrated a worsening of his disc at the L4-5 level lateralizing to the right. This is consistent with injuries sustained in a slip and fall. I believe to a reasonable degree of medical certainty most probably that his fall of 10/14/2014 caused his L4-5 disc to re-herniate and is contributing to the worsening of his back and leg pain.** He is unable to work at this point.

(Claimant's APA #7, p. 135) (emphasis added). Dr. Poletti, who treated Bias both before and after his work injury, confirmed in his deposition that Bias's work accident aggravated his preexisting condition.

**Q: [Mr. Smith] And I know that you've stated this in your note, but just for the record, is it still your opinion today that Mr. Bias' current condition is more likely than not a work-related aggravation of a preexisting condition?**

**A: Yes, that's my opinion.**

(Deposition of Dr. Poletti, p. 42:23 – 43:3)(Emphasis Added).

Dr. Hutcheson also opined Bias's fall at work aggravated his pre-existing condition. (Claimant's APA #4, p. 24-25; Deposition of Dr. Hutcheson p. 38, lines 14-20; p. 72, lines 18-20; p. 76, line 22 – p. 77, line 5). He further opined that Bias would need lifetime pain management care to include ongoing medications, injections, physical therapy, imaging, durable medical equipment (for leg weakness, incontinence, back pain), and a spinal cord stimulator. (Claimant's APA #4, p. 24-25; Deposition of Dr. Hutcheson p. 72, lines 8-12). Dr. Hutcheson also indicated that Bias would need additional psychological care and urological treatment as a result of his work injury. (Claimant's APA #4, p. 24, 27).

Over two years after the work accident, during the December 20, 2016 deposition of Mr. Terry Seagle, an interoffice email documenting Bias's accident and injuries was turned over to Bias's attorney. (Deposition of Terry Seagle p. 10, line 25 – p. 11, line 9). In fact, this email was not turned over until questions were asked about any interoffice correspondence documenting Bias's work accident. (Deposition of Terry Seagle p. 10, line 25 – p. 12, line 6). Mr. Seagle then admitted the email should have been something that was turned over with the employment file. *Id.* However, a year and a half prior to Mr. Seagle's deposition, on April 13, 2015, Bias's counsel did subpoena the employment file, and this email was not turned over. (Claimant's Exhibit A., p. 517-522). Prior to this deposition, defense counsel asked questions to Dr. Poletti in his deposition indicating Bias's October 14, 2014 work accident was undocumented. (Deposition of Dr. Poletti p. 23, lines 10-17).

On January 18, 2017, after Mr. Seagle's deposition, SCANA sent Bias to Dr. Brett Gunter for an independent medical evaluation. (Claimant's APA #9, p. 162-165). Dr.

Gunter opined that Bias's back pain was more severe and his right leg pain was a new symptom since his work accident on October 14, 2014.

Assessment: Complex clinical syndrome. His LEFT hip and leg pain was present prior to the injury. **His back pain is more severe since the injury and his RIGHT leg pain is new since the injury.** Dr. Rames has addressed the issues related to incontinence. In order to make a determination about whether there are any further options with regard to this patient we would need to determine whether [or] not he has a mechanically stable spine and whether or not he has nerve root entrapment. Once that information is [k]now[n] we can make a determination about whether any additional treatment might be useful.

(Claimant's APA #9, p. 165)(Emphasis added).

In addition, Dr. Lind diagnosed Bias with Adjustment Disorder with Depressed Mood following his work accident, and he opined Bias's psychological condition was aggravated as a result of his October 14, 2014 work injuries. (Claimant's APA #6, p. 56 and 58; Deposition of Dr. Lind p. 37, line 21 – p. 38, line 5; p. 40, lines 8-15; p. 47, lines 14-16; p. 49, lines 2-7; p. 54, lines 8-15; p. 55, lines 5-9; p. 58, lines 7-11; p. 61, lines 13-16).

Furthermore, Dr. Rames, a urologist with MUSC, diagnosed Bias with urinary urgency, fecal urgency, urge incontinence and erectile dysfunction as a result of his October 14, 2014 work accident. (Claimant's APA #3, p. 17-20).

The only physician that did not affirmatively state that Bias's work accident aggravated his pre-existing condition was Dr. LaMotta. While Dr. LaMotta originally indicated that Bias sustained an aggravation of his pre-existing condition, he was unable to state that in his deposition. Instead, he acknowledged that Bias's symptoms worsened after his fall at work, but he could not testify to a reasonable degree of medical certainty as to

the cause of the worsening. (Deposition of Dr. LaMotta p.68, line 16 – p. 69, line 7). It is important to note that Dr. LaMotta did not deny that the work accident was the cause of Bias's increasing symptoms. Id.

The medical evidence and testimony proves that Bias sustained an injury by accident arising out of and in the course of his employment due to his October 14, 2014 work accident. Dr. Poletti, the doctor who treated Bias before and after his work accident, unequivocally stated that there were changes on the MRI film and new corresponding symptomology that he causally related to the work accident to a reasonable degree of medical certainty. Also, Dr. Hutcheson opined that Bias sustained an aggravation of his pre-existing condition. SCANA's own IME expert, Dr. Gunter, noted Bias's increasing and new symptoms since his work accident. Furthermore, Dr. Lind testified that Bias sustained an aggravation of his pre-existing psychological condition, and Dr. Rames diagnosed Bias with urinary urgency, fecal urgency, urge incontinence and erectile dysfunction as a result of his October 14, 2014 work accident. Despite the overwhelming evidence in this case, the Commission found Bias did not sustain an aggravation of a pre-existing condition. The Commission correctly noted that not all of Bias's issues pre-existed the date of injury; however, the Commission went on to find that Bias's symptoms were the natural progression of his pre-existing symptomology. This finding is wholly not supported by the evidence, as no doctor opined that Bias's symptomology was the natural progression of his pre-existing condition.

The substantial evidence does not support the Commission's finding in this case that Bias did not suffer a compensable injury by accident to his back, left leg, right leg, urological system, bladder, penis and resultant psychological on or about October 14, 2014,

while in the course and scope of his employment. Instead, when viewing the record as a whole, it is clear that Bias sustained a compensable work-related injury.

## II.

**The Commission improperly considered (i) that Bias was receiving Social Security Disability benefits and (ii) that Bias's medical treatment had been paid by his health insurance provider in deciding Appellant did not sustain a compensable work-related injury.**

In Solomon v. W.B. Easton, Inc., 307 S.C. 518, 415 S.E.2d 841 (Ct. App. 1992), the Court of Appeals noted that “additionally, awards and records of the Social Security Administration ordinarily cannot be relied upon to support or deny a workers’ compensation claim.” citing 2B Arthur Larson, *The Law of Workmen’s Compensation*, Section 79.71(B) (1989).

The Single Commissioner erred in considering Bias’s receipt of Social Security Disability and Long Term Disability benefits as well as his medical insurance payments when rendering the decision that Bias did not sustain a compensable injury. Immediately following the testimony by Bias, the Single Commissioner asked a question regarding whether Bias was receiving Long Term Disability and Social Security Disability benefits. (Hearing Transcript p. 182, lines 4-7). The Single Commissioner followed up that question by asking Bias whether or not he received those benefits because he told “them you cannot work,” to which Bias responded in the affirmative. (Hearing Transcript p. 183, lines 21-24). The Single Commissioner then pointed out that:

“we can’t get workers’ comp and we can’t get long – it’s either – it’s either or, okay? And with those reports, if he’s filed them and he’s getting them, there’s something in those reports; I don’t know what it is. It may be good, it might be bad; I don’t know. I don’t know what’s in the reports. But if you’re getting long term disability, I’m fine with that. You’re getting Social Security Disability; I’m fine with that, okay? The long term concerns me a little bit in that I don’t know how you get both.”

(Hearing Transcript, p. 186, lines 6-18). The Single Commissioner also stated that if he were to find the claim compensable, then Bias would have to reimburse the Long Term Disability carrier for all the money that he received for the prior two and a half years. (Hearing Transcript p. 188, lines 5-17). Whether or not Bias would have to reimburse benefits he received from Long Term Disability or Social Security Disability has no bearing on his workers' compensation claim; however, the Single Commissioner clearly put weight into Bias's receipt of those benefits, in noting in the Order Instructions that Bias was getting Long Term Disability and Social Security Disability. (*Order Instructions from the Single Commissioner; Single Commissioner Order*, p. 32). Similarly, the Single Commissioner also noted that all of Bias's medical treatment was paid by his health insurance provider. (*Order Instructions from the Single Commissioner; Single Commissioner Order*, p. 32).

It is clear that the Single Commissioner improperly considered that Bias was receiving Long Term Disability and Social Security Disability since the work accident in finding that Bias did not sustain a compensable work-related injury on October 14, 2014. As pointed out above, the Single Commissioner's first question following the testimony of Bias was in regard to his receipt of Long Term Disability benefits. Based on the questions and comments by the Single Commissioner, it is also clear that he considered the fact that Bias would have to pay some benefits back if he were to receive workers' compensation benefits, in stating that Bias would not be allowed to get both workers' compensation and his outside benefits. In a similar fashion, the Single Commissioner points out that his health insurance carrier has paid for his medical treatment since the date of the alleged injury.

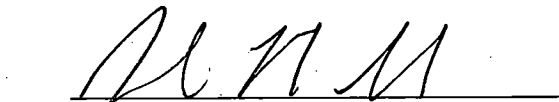
Bias contends that the Commission erred in considering his receipt of Social Security Disability, Long Term Disability and health insurance benefits in determining that he did not sustain a compensable injury.

**CONCLUSION**

Based on the foregoing, the only reasonable inference to be drawn from the substantial evidence in the record is that Bias sustained a compensable injury by accident arising out of and in the course of his employment on October 14, 2014. Furthermore, it is clear that the Commission improperly considered Bias's receipt of Long Term Disability, Social Security Disability and health insurance benefits when reaching the decision to deny this claim. Accordingly, Appellant Bias respectfully requests that this Court issue an Order reversing the Commission's decision that Bias did not sustain a compensable injury by accident arising out of and in the course of his employment on October 14, 2014, and remand the case back to the Commission for a determination of Bias's entitlement to benefits under the Act.

Respectfully Submitted,

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September 17, 2018

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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Case Number 2018-001516

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Johnnie Bias, Employee, Appellant,

v.

SCANA Corporation, Self-Insured Employer, Respondent.

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SEP 17 2018  
SC Court of Appeals

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**PROOF OF SERVICE**

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I certify that I have served the Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal by depositing a copy of it in the United States Mail on September 17, 2018, addressed to Respondents' attorneys of record, Nicolas Haigler, Esq. and Grady Beard, Esq., Robinson Gray Stepp & Laffitte, LLC, Post Office Box 11449, Columbia, SC 29211.

  
\_\_\_\_\_  
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September 17, 2018



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September 17, 2018

The Honorable Jenny Abbott Kitchings  
CLERK OF THE COURT OF APPEALS  
P.O. Box 11629  
Columbia, SC 29211

RE: Johnnie Bias v. SCANA Corporation  
Case No.: 2018-001516

**RECEIVED**

SEP 17 2018

SC Court of Appeals

Dear Ms. Kitchings,

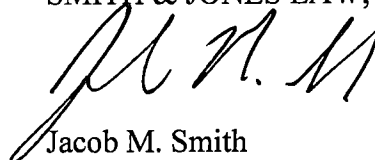
Enclosed for filing, you will find the Initial Brief of Appellant and the Designation of Matter to be Included in the Record on Appeal, along with our Affidavit of Mailing.

Thank you for your assistance in this matter and if you have any questions, please do not hesitate to contact me.

With kind regards,

Very truly yours,

SMITH & JONES LAW, LLC



Jacob M. Smith

Enclosures

cc: Nicolas Haigler, Esq.  
Grady Beard, Esq.  
Johnnie Bias