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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Unpublished Opinion No. 2018—UP—280 (S.C. Ct. App. Filed June 27, 2018)

Scott Ledford, (Employee/Claimant),.....Petitioner,
v.
Department of Public Safety, (Employer) and
State Accident Fund, (Carrier),..... Respondents.

RESPONDENTS' RETURN TO PETITIONER'S WRIT OF CERTIORARI

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INDEX

Questions Presented..... 1

Statement of the Case..... 2

Arguments..... 6

 I. The Court of Appeals correctly determined the Single Commissioner was not required to recuse herself..... 10

 II. The Court of Appeals did not adopt a novel rule permitting administrative bodies to defeat review of judicial misconduct..... 14

 III. The Court of Appeals correctly affirmed the findings of the Appellate Panel because those finding are supported by the substantial evidence..... 18

 IV. This Court need not reverse judicial precedent regarding the standard for determining when judicial recusal is required 20

Conclusion..... 22

QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly found the Single Commissioner was not required to recuse herself despite the claims of prejudice presented by Petitioner?
2. Whether the Court of Appeals correctly affirmed the findings of the Appellate Panel as any alleged prejudice on the part of the Single Commissioner was cured by the review conducted by the Appellate Panel and Petitioner failed to attribute prejudice to the Decision of the Appellate Panel?
3. Whether the Court of Appeals correctly found the findings of the Appellate Panel, specifically findings regarding Petitioners credibility, were supported by the substantial evidence in the record?
4. Whether this Court should reverse precedent and institute a standard of de novo review when determining whether judicial recusal was required under the Code of Judicial Conduct?

Appellants have filed a Petition for Certiorari to the Court of Appeals pursuant to Rule 242, SCARC, seeking a discretionary review of the unpublished Opinion of the Court of Appeals, No. 2018-UP 280 (S.C. Ct. App. Filed June 27, 2018). This Court should deny the Petition.

Respondents would first point out that despite Petitioner's allegations of novel issues law and due process concerns, the focus of Petitioner's arguments are not directed at why this case is appropriate before this Court, but instead simply serves as a myriad of Petitioner's grievances against a specific judicial officer, who is not a party to this case, regarding a result Petitioner finds to be unfavorable. This places Respondents in a difficult position, since the judicial officer with whom the Petitioner focuses his attention is not a party to this case and is therefore not present to defend herself. While Respondents have great respect for the judicial officer named in the Petition, the Respondents do not represent the named Commissioner and cannot speak on her behalf. Respondents in this matter

defend the integrity and the decisions of the Commission in this case, and Respondents maintain that Petitioner received ample due process.

Petitioner has not identified a justiciable issue for this Court to entertain. As best Respondents can tell, Petitioner is seeking an Order from this Court publically rebuking a Workers' Compensation Commissioner, but the specific relief sought is largely unclear or unexplained in his Petition. Petitioner admits that the monetary award he ultimately received following adjudication of the matter by the Appellate Panel was appropriate and no longer the subject of this appeal. Instead, Petitioner's arguments are rooted in his dissatisfaction and disagreement over the credibility findings made by the Single Commissioner, and Petitioner's desire to alter the well-established law controlling judicial misconduct and recusal.

Respondents submit that this is not the proper forum to air his complaints involving the Single Commissioner, and for the reasons set forth below, Respondents respectfully request this Court deny the petition and affirm the Court of Appeals decision that substantial evidence supported the Commission's findings on credibility.

STATEMENT OF THE CASE

Since Petitioner abandoned his arguments involving the monetary award in this case, Respondents will address the relevant facts pertinent to issues currently before this Court.

Petitioner was involved in (2) two workers' compensation claims while working for Respondent-Employer. The first claim involved an injury to the spine arising out of an accident with a taser on July 15, 2010. (Appendix p. 182). The 2010 claim ultimately settled on a Form 16A for 25% to the spine or 75 weeks in permanent partial disability benefits

(Appendix p. 321). Petitioner was then involved in a second accident on March 10, 2012, wherein he sustained injuries to his right leg, cervical spine, and lumbar spine as a result of a motor vehicle accident. (Appendix pp. 171-182). On August 15, 2014, a hearing was held before the Single Commissioner to determine permanent disability as a result of the March 10, 2012 work accident. (Appendix. pp. 202-274). At that hearing, Petitioner argued that he was permanently and totally disabled as a result of injuries to his right leg and back resulting from the 2012 accident. (Appendix pp. 171-182). Respondents denied that Petitioner was permanently and totally disabled and argued that any permanent partial disability should be limited to the impairment ratings of the authorized treating physicians, or in the alternative, any increase in the percentage of disability there is any partial disability would be *de minimis*. (Appendix p. 207).

In addition, Respondents also argued for credit of 75 weeks of credit against an award due to compensation previously paid as permanent partial disability on the Petitioner's 2010 claim with the same Respondents. (Appendix pp. 208-209). Petitioner argued that no credit for the permanent partial disability payment made in the 2010 claim should apply because that 2010 accident affected Petitioner's thoracic spine only and the thoracic spine was not alleged in this 2012 accident. (Appendix p. 213). Leaving aside the disputed validity of such an argument, Petitioner's assertion highlighted the nature and extent of the 2010 alleged injuries at issue in the hearing on permanency in the 2012 claim. Also, because Petitioner was asserting he was permanently and totally disabled, his ability to earn an income through gainful employment was a primary issue at the hearing.

Following the hearing, the Single Commissioner held a telephone conference with the parties of to discuss her tentative ruling on the matter. (Appendix pp. 160-169). After

the Single Commissioner expressed her concerns regarding the inaccuracies in Petitioner's testimony, Petitioner moved to recuse the Single Commissioner and have the claim reassigned to a new Commissioner for a new hearing. (Appendix pp. 302). The Single Commissioner denied the Motion on November 3, 2014. (Appendix pp. 160-169). The Single Commissioner stated:

[Petitioner] made no motion for recusal prior to the hearing, or even after the hearing, until he was dissatisfied with [Respondents'] settlement offer, and decided he instead would attempt to obtain a new hearing with a different commissioner (which would have the effect of enabling his client to "qualify" and "explain" his testimony at the hearing before the undersigned). Under the Judicial Canons, the undersigned cannot allow [Petitioner] to utilize a recusal mechanism to change the outcome of his case (*i.e.*, to obtain a "second bite at the apple") solely because he is dissatisfied. His remedy is to appeal.

(Appendix p. 106).

The Single Commissioner also issued a December 17, 2014 Order, wherein she found that Petitioner was not permanently and totally disabled. (Appendix. pp. 119-157). The Single Commissioner awarded Petitioner 10% permanent partial disability to the right leg. The Single Commissioner further found there was no additional permanent partial disability beyond the 25% to the spine already paid to Petitioner by Respondents. (Appendix p. 151).

Petitioner appealed the Single Commissioner's decision to the Full Commission Appellate Panel, seeking a reversal of the Single Commissioner's Order of the Hearing Commissioner and reassignment of the case to another Commissioner for a hearing *de novo*. (Appendix pp. 284-289). The Appellate Panel heard the appeal on March 17, 2015. (Appendix. pp. 202-274). On January 21, 2016, the Appellate Panel (1) affirmed the Single Commissioner's Order on Petitioner's motion to recuse and (2) affirmed in part and reversed in part the Single Commissioner's Decision and Order from the August 15, 2014

Hearing. (Appendix pp. 69-116). Specifically, the Appellate Panel reversed the Single Commissioner's award of no additional permanent disability to the back beyond the 25% already paid and awarded Petitioner 15% additional permanent disability to his back for the 2012 accident. (Appendix p. 116).

On March 21, 2016, Petitioner filed his Notice of Appeal to the South Carolina Court of Appeals. In short, Petitioner argued to the Court of Appeals that the Appellate Panel erred (1) in failing to find the Single Commissioner should have recused herself, (2) in failing to find the Single Commissioner improperly overruled unappealed findings of a prior Single Commissioner, and (3) by adopting factual findings unsupported by substantial evidence. (Unpublished Opinion No. 2018-UP-280). The Court of Appeals affirmed the Appellate Panel, stating the Single Commissioner was not required to recuse herself and Petitioner failed to attribute prejudice to the decision of the Appellate Panel. *Id.* The Court of Appeals found that the Appellate Panel's findings were supported by the substantial evidence in the claim. The Court specifically stated, "we find substantial evidence supports the Appellate Panel's findings that Claimant was not credible and his landscaping business remained lucrative following the injury." *Id.* The Court cited Hargrove to note that the Appellate Panel is the ultimate finder of fact in Workers' Compensation cases such that they are not bound by the Single Commissioner's findings of fact, and the final determination of witness credibility was reserved to the Appellate Panel. Hargrove v. Titan Textile Co., 360 S.C. 276, 289, 599 S.E.2d 604, 611 (Ct. App. 2004). There was no dissenting opinion.

ARGUMENTS

Pursuant to Rule 242 of the South Carolina Appellate Court Rules, “a writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242 provides a list indicating the character of reasons that will normally be considered, but the list is neither controlling nor fully measuring the Supreme Court’s discretion or power to grant review. The list of the general character of reasons the Court will consider in Rule 242 SCACR includes the following:

1. Where there are novel questions of law.
2. Where there is a dissent in the decision of the Court of Appeals.
3. Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
4. Where substantial constitutional issues are directly involved.
5. Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Appellant’s Petition for Writ of Certiorari fails to meet reasons 2, 3, and 5 of the character of reasons set forth in Rule 242, SCACR. There was no dissent in the opinion, the decision of the Court of Appeals does not conflict with any prior Supreme Court decision, and there are no federal questions included. Petitioner argues the case should be accepted to address a novel question of law and because his due process concerns implicate constitutional issues.

There is no question presented that warrants a full analysis by this Court. This appeal is requested not due to the necessity that this Court address novel issues of law or constitutional issues, but rather because the Petitioner is dissatisfied with the results he received from the prior courts hearing his case. Because the Petitioner is displeased with

the results he received, specifically the findings regarding his credibility and inaccuracies in the testimony he provided, he seeks to attribute the unsatisfactory result to prejudice and judicial misconduct rather than to his conduct of providing inaccurate testimony. There is no meritorious evidence of bias or prejudice on the part of the Single Commissioner. Instead, the Petitioner argues that the award she assigned was so low, it must evidence prejudice.

However, the Petitioner's claim was subsequently heard by the Appellate Panel of the South Carolina Workers' Compensation Commission. This panel is comprised of three Commissioners, none of whom were involved in Petitioner's hearing before the Single Commissioner. S.C. Code Ann § 42-17-50 gives the Appellate Panel the authority to reconsider evidence, accept additional evidence, rehear the parties, and amend the award. The Appellate Panel may make its own findings of fact and reach its own conclusions of law either consistent or inconsistent with those of the Single Commissioner. Lowe v. Am-Can Transp. Serv. Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). The Appellate Panel is not bound by the Single Commissioner's findings of fact and has the authority to issue new findings based on their review of the evidence. This broad review would act as a cure to any of the alleged prejudice the Claimant attributes to the Single Commissioner. In Petitioner's case, the Appellate Panel did in fact reverse the Single Commissioner in part and increased the Petitioner's award. Petitioner no longer contests the amount of the award. (Appendix p. 2).

Petitioner vaguely states that this Court should grant review based on due process concerns regarding the expectation of a fair and impartial tribunal. His contention appears to be that the Hearing before the Single Commissioner did not constitute a hearing before

a fair and impartial tribunal. The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. (See Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 656 S.E.2d 346 (2008); Harbit v. City of Charleston, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009). However, this does not require notice and opportunity to be heard at each level of the administrative process, rather there must be an opportunity to be heard sometime prior to the agency's final decision. Majors v. S.C. Sec. Comm'n, 373 S.C. 153, 644 S.E.2d 710 (2007).

Petitioner has now had his case heard by the Appellate Panel and the Court of Appeals, both fair and impartial tribunals. Petitioner has had the opportunity to have his claim heard in a meaningful way before the Appellate Panel prior to the Appellate Panel issuing its final decision. The Court of Appeals provided judicial review. To the extent that Petitioner argues that this case merits review by this Court on the basis of constitutional due process concerns, Respondents argue that once the Appellate Panel conducted its review of the claim, to include reconsidering the evidence, receiving additional evidence, rehearing the parties and issuing new findings of fact and amending the award as it deemed necessary, any alleged due process violation resulting from the Hearing before the Single Commissioner was remedied. In Ross, MUSC failed to provide the plaintiff with a pre-termination hearing complying with minimum due process standards; however, the Court held that the error was remedied by the subsequent committee hearing, which did comport with due process requirements. Ross v. MUSC, 328 S.C. 51, 492 S.E.2d 62 (1997). See also McKinney v. Pate, 20 F.3d 1550 (11th Cir. 1994) (finding that the state could cure a procedural deprivation of due process rights by providing later procedural remedies).

Petitioner also argues to this Court that this case involves an issue of novel law because the Court of Appeals has held that any “cursory administrative review” would be allowed to fix the Single Commissioner’s misconduct, preclude meaningful judicial review of that conduct, and leave no remedy for judicial misconduct. Of note, this argument conflates an issue of adjudicating judicial misconduct allegations with a review of judicial recusal decisions. In seeking to frame a novel issue of law, this argument mischaracterizes the opinion provided by the Court of Appeals. The Court of Appeals did not find that a “cursory administrative review” precludes further judicial review. Petitioner calls the review of the Appellate Panel “cursory”, not the Court of Appeals. Of course the review was administrative in nature, the Workers’ Compensation Commission is an administrative body. It is unclear why Petitioner refers to this “administrative” review in a belittling manner. Nonetheless, the Court of Appeals did not conclude that a cursory administrative review precludes other review of judicial misconduct. There are separate processes and forums open to attorney and judicial misconduct allegations.

The Court of Appeals affirmatively found that the Single Commissioner was not required to recuse herself. There is not an indication in the Court of Appeals opinion that it gave deference to the administrative agency in making the assessment regarding the recusal itself. The Court of Appeals did find that the Petitioner had not demonstrated that the prejudice he alleged to have affected the Single Commissioner was transmuted to the Appellate Panel or affected the Appellate Panel in any way. Thus, because his claim was meaningfully heard by a fair and impartial tribunal, his due process allegations were cured.

The Court of Appeals affirmed the Appellate Panel’s findings. The Court of Appeals found that the Single Commissioner was not required to recuse herself and that

the Petitioner had failed to attribute prejudice to the decision of the Appellate Panel. The Court of Appeals found that the Appellate Panel's findings were supported by the substantial evidence in the claim. Therefore, no due process concerns or novel issue of law which necessitate this Court's review exist. There are separate avenues for prosecuting allegations of judicial misconduct. An appeal of a workers' compensation claim is not the proper forum to pursue a grievance against a judicial officer.

I. The Court of Appeals correctly determined the Single Commissioner was not required to recuse herself.

Petitioner raises a question for this Court's review alleging that the Court of Appeals erred in failing to find there was evidence of prejudice on the part of the Single Commissioner in addition to the "shockingly inadequate award." (Petition p. 2). He argues that the "shockingly inadequate award was not the only unfounded, speculative, or improper finding providing evidence of bias and prejudice." Again, this argument misconstrues the findings of the Court of Appeals. The Court of Appeals did not make a finding that the award was "shockingly inadequate" as could be read in the phrasing of Petitioner's questions. The actual finding of the Court of Appeals is that the Single Commissioner was not required to recuse herself. Petitioner's argument itself reveals that Petitioner is still relying on the Single Commissioner's award, with which he disagrees, to argue evidence of bias. Despite some mischaracterizations of the wording and tone of the Decision and Order issued by the Single Commissioner, Petitioner does not identify any evidence of bias or prejudice. Petitioner remains unable to identify a source of the alleged bias.

The Single Commissioner has a duty to hear and decide matters assigned to her except those in which disqualification is required because her 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. Petitioner admits that the "recusal never involved any claim Commissioner Barden or member of her family had any personal prejudice against the Appellant, any relationship with the State Fund, any knowledge of the facts of case [sic], or any financial interest in the outcome of the case." (Appendix p. 25).

Petitioner's counsel alleges that during a phone call between the Single Commissioner and the parties to discuss a tentative ruling in the matter, the Single Commissioner threatened criminal proceedings against his client to coerce an unfavorable settlement. Petitioner fails to identify the source of the Single Commissioner's bias that would motivate her to make such an alleged threat. Nonetheless, Petitioner identifies this call as the onset of the alleged prejudice.

Notably, Petitioner did not allege a bias existed on the part of the Single Commissioner until after she revealed her ruling would be unfavorable to Petitioner. There is no evidence or allegation that the Single Commissioner held any bias or prejudice while listening to Petitioner's testimony, and her actions did not prevent Petitioner from fully litigating his claim. No assertion by Petitioner was made prior to, during, or after the Hearing that the Hearing had been conducted in any unfair manner or that the Single

Commissioner demonstrated any evidence of prejudice toward Petitioner at that Hearing. Instead, Petitioner's counsel alleges that during a phone call between the Single Commissioner and the parties to discuss the ruling in the matter, the Single Commissioner threatened criminal proceedings against his client to coerce an unfavorable settlement. Petitioner does not explain what would motivate the Single Commissioner to threaten him or why she would have been prejudiced against him at that time. The Single Commissioner drafted a nine page Order Denying Motion to Recuse setting forth in meticulous detail the reasons she denied his Motion to Recuse, including her staunch denial that she ever made a threat as alleged by Petitioner. (Petition pp. 160-169).

In finding that the Single Commissioner was not required to recuse herself, the Court of Appeals relied in part on Mallet v. Mallet, which holds that it is not enough for the party to simply allege bias, rather the party must show some evidence of bias or prejudice. 323 S.C. 141 at 146 - 47, 473 S.E.2d 804 at 807 (Ct. App. 1996). Moreover, “[t]he fact a trial judge ultimately rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge committed error in his rulings.” Id. at 147, 473 S.E.2d at 808 (citation omitted). Appellant has not introduced any cogent evidence of bias or prejudice as none exists.

Petitioner argues that the amount of the award assigned by the Single Commissioner is evidence of prejudice. This award was overturned by the Appellate Panel. However, as Mallet explains, the fact that a judge ultimately rules against a party is not proof of prejudice even if it is later determined that the ruling was in error. Id. The Mallet case also holds that such bias to require recusal must stem from an extrajudicial source and result in decisions based on information other than what the judge learned from his

participation in the case. Id. at 145, 473 S.E.2d 804, 807. There is no evidence that the Single Commissioner was influenced by an extrajudicial source or had information about the Petitioner other than what she learned from participation in the case.

The Single Commissioner judged Petitioner's testimony, determined his credibility, and accordingly weighed it against other evidence. The Single Commissioner's Decision and Order contains sixty-seven separate findings of fact, each of which were supported by citations to the record. (Appendix 119-157). These findings of fact contain vast amounts of detail regarding the Single Commissioner's reasoning when weighing the evidence and specifically name and describe the inconsistencies in Petitioner's testimony with citations to the contrasting evidence in the record, including prior hearing and deposition testimony and medical records. The Hearing testimony, medical records, and prior testimony were evidence the Single Commissioner reviewed and obtained within her role and participation in the case, and there is no evidence she was influenced by an extrajudicial source.

Petitioner repeatedly makes arguments that as a law enforcement officer and family man, he deserves better than to have his character and reputation destroyed on the basis of unfounded and improper findings that he lied under oath. (Petition pp. 13, 14, 17). A theme of the Petition is an assertion the Single Commissioner has called him a liar, attacked him, and demeaned him in the findings of fact contained in her Decision and Order. Petitioner cites this as additional evidence of her malice and bias. Though the Single Commissioner's Order thoroughly exposes a multitude of inconsistencies and contradictions in Petitioner's testimony, Petitioner's characterization of malicious or demeaning language is completely unjustifiable when compared to the tone and tenor of the Decision and Order issued by the Single Commissioner. Respondents would submit that the Order is thorough, solemn,

professional, and exceedingly detailed. The Single Commissioner did not generalize her credibility questions but identified the specific portions of Petitioner's testimony raising credibility concerns and explained specifically the evidence with which each statement conflicted.

Petitioner further claims that the Single Commissioner made speculative finding about his credibility and argues this is evidence of prejudice. This inherently misstates and misunderstands the impact of the credibility assessment which was performed. After noting a multitude of inconsistencies in Petitioner's testimony, the Single Commissioner took into account the credibility questions regarding the Petitioner's sworn testimony when assessing the weight to provide that testimony on other matters. The Single Commissioner's breakdown of inaccurate or false testimony is not evidence of prejudice, it is evidence she performed her duty as a judicial officer. Petitioner's attorney also states that the Single Commissioner called him an "unethical liar." (Petition p. 14). Respondents are unsure of the source or supporting documentation for this accusation against a judicial officer as no record citation is provided for this assertion. As there is no evidence in the record that the Single Commissioner called Petitioner's attorney an "unethical liar", this would not serve as additional evidence of bias against the Single Commissioner.

II. The Court of Appeals did not adopt a novel rule permitting administrative bodies to defeat review of judicial misconduct.

Though Petitioner's allegation of misconduct and bias has been consistently aimed at the Single Commissioner, Petitioner vaguely asserts some allegation of insufficiency or bias directed at the review provided by the Appellate Panel, which Petitioner now deems as a "cursory administrative review." (Petition p. 17). This inference also necessarily stems

from Petitioner's argument that the review by the Appellate Panel did not cure the alleged prejudice suffered at the hand of the Single Commissioner.

Petitioner's characterization of the review performed by the Appellate Panel as "cursory" fundamentally misunderstands the broad fact-finding power given the Appellate Panel. When a party disagrees with a Commissioner's finding, that party's remedy is to appeal to the Full Commission for consideration of the Appellate Panel. S.C. Code Ann. § 42-17-50. The Appellate Panel has the power to "reconsider the evidence, receive further evidence, rehear the parties . . . and amended the award." *Id.* The Appellate Panel may make its own findings of fact and reach its own conclusions of law either consistent or inconsistent with those of the Single Commissioner. *Lowe v. Am-Can Transp. Serv. Inc.*, 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). The Appellate Panel is not bound by the Single Commissioner's findings of fact and could have issued new findings based on their review of the evidence. The Appellate Panel may also disagree with the findings based on the credibility of witnesses and are not bound by the credibility findings of the Single Commissioner. *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 156 S.E.2d 318. Where the issue is not jurisdictional, the Appellate Panel's determination, being adequately supported by the evidence, is conclusive. *Addison v. Dixie Chevrolet Co.*, 246 S.C. 86, 142 S.E.2d 442 (1965).

No evidence of bias or prejudice has been presented regarding any of the three Commissioners who comprised the Appellate Panel. In fact, the Appellate Panel reversed the Single Commissioner in part, and increased the amount of Petitioner's award. Petitioner does not argue that the Appellate Panel's review was cursory with regard to this favorable finding. Petitioner included language in his Petition that he was "sincerely grateful" for the

alterations in his award made by the Appellate Panel as it saved him from financial bankruptcy. (Petition p. 9 citing R. Vol. 1, pp. 212-213). Petitioner has explained no reason he believes the Appellate Panel gave a sufficient and thorough review to the findings that benefited him, but contrastingly gave insufficient thought to the findings with which he disagrees.

As best Respondents can tell, Petitioner asserts that the Appellate Panel's review of the recusal issue was cursory because he believes it assigned little weight to an affidavit submitted by Petitioner's attorney asserting the Single Commissioner conducted a phone conference to threaten the Petitioner with criminal proceedings. Setting aside the self-serving nature of such an affidavit made by the attorney representing the Petitioner in this case, which notably seems to have a potentially bizarre impact of making the attorney a witness in his own case, the affidavit was not the only evidence available on this issue for the Appellate Panel's review. The Single Commissioner issued a nine page Order Denying the Motion to Recuse, not only setting forth the reasons she denied the Motion, but also vehemently denying that she had made the threats as alleged by Petitioner. Despite Petitioner's assertion that the Appellate Panel's review on this subject was cursory, Petition cites no evidence of the substance of the review that was performed on this issue. Petitioner has no valid grounds to label the review as superficial on this issue and he does not appear to maintain the Appellate Panel's review was perfunctory on issues decided in his favor.

Regardless, Petitioner's allegation that the Court of Appeals enunciated a novel rule allowing a cursory administrative review to essentially block higher courts from reviewing recusal decisions, allowing an administrative agency to absolve misconduct by a judicial officer, conflates issues and misinterprets the Court of Appeals opinion. Petitioner

consistently refers to “misconduct” and allowing judicial misconduct to go unchecked, yet there has been no finding of judicial misconduct. The question in this case was whether the Single Commissioner was required to recuse herself due to the presence of some prejudice or bias she held toward Petitioner. The Court of Appeals stated “As to the first issue, we find the single commissioner was not required to recuse herself.” This is an affirmative finding and the Court of Appeals does not state it based this finding on a substantial evidence standard. The Court then makes a separate finding, stating “[w]e further find the Claimant has not attributed prejudice to the decision of the Appellate Panel.” Based on this opinion, it appears the Court of Appeals affirmatively found that the Single Commissioner was not required to recuse herself.

Though Petitioner has argued the opinion of the Court of Appeals creates some sort of veiled pathway of cursory administrative review of judicial recusals by the Appellate Panel that prevents an in depth review by the Court of Appeals so long as prejudice cannot be attributed to the Appellate Panel’s decision, Petitioner’s argument ignores the additional sustaining ground that the Court of Appeals found the Single Commissioner was not required to recuse herself. This is separate from the Court’s finding that no prejudice had been attributed to the Appellate Panel. Regardless of whether she was required to recuse herself, Petitioner had an opportunity to have his claim meaningfully heard before the fair and impartial tribunal when he was heard by the Appellate Panel.

To the extent that the Petitioner raises to this Court an argument this claim is deserving of this Court’s review because it involves a “substantial constitutional issue concerning the expectation of a fair and impartial tribunal that is fundamental to due process”, he must necessarily assert that the Appellate Panel of the Workers’ Compensation

Commission is not a fair and impartial tribunal. Because there is no evidence supporting a contention that the Appellate Panel is not fair and impartial, there is no overriding issue fundamental to due process at play in this claim. As further evidence that the Petitioner has received ample due process, the South Carolina Court of Appeals has reviewed the findings of the Appellate Panel and determined that those findings are supported by the substantial evidence of the claim.

III. The Court of appeals correctly affirmed the findings of the Appellate Panel because those findings are supported by the substantial evidence.

The Court of Appeals correctly found the findings of the Appellate Panel were supported by the substantial evidence, including the findings regarding credibility that are now disputed by Petitioner. In worker's compensation cases, the South Carolina Worker's Compensation Commission is the trier of fact. Hunter v. Patrick Constr. Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The South Carolina Administrative Procedures Act, S.C. Code Ann. §1-23-380(A)(6)(1976), establishes the "substantial evidence rule" as the standard for judicial review of a decision of the Commission. That rule states that the Court "shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Id. An appellate court, in workers' compensation appeals, may 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).

Petitioner testified under oath at the August 15, 2014 Hearing. While the Appellate Panel provided an extensive and detailed assessment of issues pertaining to Petitioner's credibility, for which there is not space to reproduce here, Respondents will highlight the following as representative of the credibility issues raised by Petitioner's Hearing testimony. Petitioner denied that he received an impairment rating to his cervical spine as a result of his 2010 workers' compensation claim. (Appendix p. 251). Appellant testified that as a result of his 2010 workers' compensation claim he only received treatment to his thoracic spine and that he did not complain of neck pain. (Appendix p. 269). Petitioner denied that he had any neck injury or neck pain prior to his 2012 accident. Id. Petitioner was specifically asked whether he complained of any neck pain after his 2010 accident, to which he testified "no." Id. However, after being confronted by a medical report from his 2010 workers' compensation claim on cross-examination, Petitioner acknowledged he received a 5% impairment rating to his neck as a result of his 2010 workers' compensation claim. Id.

Despite Petitioner's denial of neck injury or pain before his 2012 accident, a prior Order of the Commission proves that not only did Petitioner allege an injury to his neck and complain of neck pain after his 2010 accident, he actually sought a change of condition for the worse based on neck pain. (Appendix pp. 171-182). The presence of prior neck issues was relevant to the arguments Petitioner was asserting at the hearing because Petitioner argued that Respondents should not receive credit for prior benefits paid. (Appendix p. 213).

In regards to the issue of his ability to maintain gainful employment, Petitioner claimed that he was permanently and totally disabled as a result of this 2012 accident but

Petitioner testified he continued to own and operate a landscaping and lawn company called ProCutters. (Appendix p. 264). Petitioner denied knowing how much income ProCutters makes, but he agreed that his tax returns for the year after his accident indicate gross receipts and sales of \$334,906. *Id.* In fact, ProCutters' gross receipts increased from \$243,658 in 2012 to \$334,906 in 2013. (Appendix p. 663). Among the deductions claimed by Petitioner in those tax returns for his small landscaping company were claimed deductions for a boat, \$6,000 in uniforms, \$11,000 in utilities, and \$3,000 in telephone expenses. (Appendix 675-678). Petitioner testified that he is "somewhat of a hustler" and that he "work[s] a lot," (Appendix p. 226), but later tried to clarify that he tries "from time to time to get involved" with the landscaping business. (Appendix 247-248). Because Petitioner's ability to hold gainful employment was at issue in the claim, a key aspect of Petitioner's testimony was whether he was actively working.

Additionally, the Court of Appeals reviewed the findings of the Appellate Panel and found that substantial evidence supports those findings. The Court of Appeals specifically found the substantial evidence supported the Appellate Panel's findings that Claimant was not credible and his landscaping business remained lucrative following the injury.

IV. This Court need not reverse judicial precedent regarding the standard for determining when judicial recusal is required.

Pursuant to South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed upon appeal. Roche v. Young Bros., Inc., 332 S.C. 75, 504 S.E. 2d 311 (1998). Great weight is given to a trial judge's assurance of his own impartiality. Ellis v. Procter & Gamble Dist. Co., 315 S.C. 283, 433 S.E.2d 856 (1993). However, a judge's impartiality can reasonably be questioned if his

factual findings are not supported by the record. Id. The Single Commissioner's findings were supported by the record. The Single Commissioner's Decision and Order contains sixty-seven separate findings of fact, each supported by citations to the record. (Appendix pp. 119-157). These findings provide specific detail explaining the Single Commissioner's reasoning when weighing the evidence and cite to evidence in the record supporting her conclusions. The Appellate Panel reversed the Single Commissioner with regard to the amount of the award. However, "[t]he fact a trial judge ultimately rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge committed error in his rulings." Mallet v. Mallet, 147, 473 S.E.2d at 808 (citation omitted). The Appellate Panel reviewed and adopted the credibility findings at issue. The Court of Appeals found substantial evidence supports the Appellate Panel's findings that Petitioner was not credible. Petitioner may disagree with the result, but the record supports that he lacked credibility.

Petitioner makes policy arguments regarding the current law allowing judicial misconduct to go unchecked. Again, though Petitioner repeatedly refers to judicial misconduct, Respondents are unaware of any finding that the Single Commissioner engaged in misconduct. There is a separate system to adjudicate allegations of attorney and judicial misconduct. The context of a workers' compensation appeal is not the correct forum to prosecute these accusations.

Petitioner's arguments are rooted in his dissatisfaction and disagreement with the credibility findings made by the Single Commissioner and a desire to alter the law surrounding allegations of judicial misconduct and recusal. The Court of Appeals has determined substantial evidence supports the findings challenged by Petitioner. At this

point, Petitioner requests an advisory opinion regarding the applicable standard for judicial recusal.

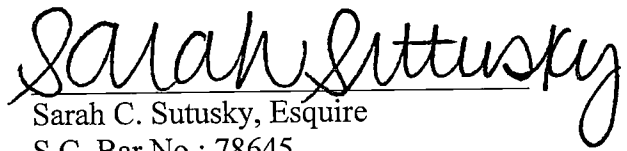
Conclusion

This case has now been reviewed by both the Appellate Panel of the South Carolina Workers' Compensation Commission and by the South Carolina Court of Appeals. Petitioner attempts to frame his Petition as perceived, but not demonstrated prejudice, as a novel question of law for your review by labeling the review performed by the Appellate Panel as a "cursory administrative review" and implying whether the Appellate Panel's review is fair, impartial, and adequate. There is neither a substantive novel question of law nor a due process concern in this case. Petitioner has failed to show any meritorious evidence of bias or prejudice on the part of the Single Commissioner or the Appellate Panel. Petitioner's contention remains merely an allegation based on the Petitioner's indignation that he was found to have provided incorrect or false testimony under oath. Yet, the substantial evidence in this case supports that finding.

This workers' compensation appeal is not the place for Petitioner to litigate his grievances against a judicial officer. Respondents would respectfully request that this Court deny Petitioner's Writ of Certiorari.

(signature page follows)

Respectfully submitted,

A handwritten signature in black ink that reads "Sarah C. 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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Attorney for the Respondents

October 17, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SOUTH CAROLINA
Court of Appeals

Appellate Case No. 2018-001677

Scott Ledford, (Employee/Claimant),.....Appellant,
v.
Department of Public Safety (Employer) and
State Accident Fund (Carrier),.....Respondents.

PROOF OF SERVICE

I certify that I, Sarah C. Sutusky, have properly served **Respondents' Return to Petition for Writ of Certiorari**, 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 October 17, 2018:

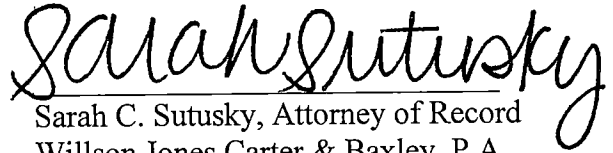
The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
Post Office Box 11330
1231 Gervais Street
Columbia, SC 29211

The undersigned certifies that on the date indicated below he served counsel for Appellant with a copy of **Respondents' Return to Petition for Writ of Certiorari** by mailing copies of the same by United States Mail postage prepaid on October 17, 2018 to the following addresses:

E. Hood Temple, Esquire
The Hyman Law Firm, LLP
170 Courthouse Square, P.O. Box 1770
Florence, SC 29503-1770
Attorney for the Petitioner

RECEIVED
OCT 19 2018
S.C. SUPREME COURT

J. Kevin Holmes, Esquire
The Steinberg Law Firm
61 Broad Street
P.O. Box 9
Charleston, SC 29402
Attorney for Petitioner

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

Sarah C. Sutusky, Attorney of Record
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October 17, 2018
Columbia, South Carolina