STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG RAQUEL MARTINEZ, Employee, Claimant/Petitioner, –vs.– SPARTANBURG COUNTY SHERIFF'S OFFICE, Employer, and SOUTH CAROLINA ASSOCIATION OF COUNTIES SELF INSURANCE FUND, Carrier, Defendants/Respondents.	)	COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT CASE NO.: 2015–CP–42–1015 ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT

This appeal from the South Carolina Workers' Compensation Commission was heard on June 26, 2015. An Order was issued reversing the decision of the Appellate Panel on December 3, 2015. The Respondents filed a Motion to Alter or Amend the Court's Order under Rule 59(e), S.C.R.C.P., on December 11, 2015. The Petitioner filed a Return to the Motion and Memorandum in Opposition on February 9, 2016. The Respondents filed a Memorandum in Support of the Motion on February 16, 2016.

The facts and procedural history related to this claim are fully set forth in the Court's Order dated December 3, 2015. A Rule 59 motion can be used when a party contends a court failed to rule on an issue that was raised and presented. *See:* Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton, 311 S.C. 56, 427 S.E.2d 673 (1993); Alex Sanders and John S. Nichols, Trial Handbook for South Carolina Lawyers, Section 36:5. The Respondents' Motion alleges 26 grounds challenging the

Court's findings and rulings but does not allege the Court failed to consider or rule upon any ground that had been raised. A Rule 59 motion may also be used when a party simply requests a court to reconsider issues and arguments that were raised and ruled on adversely to them. *See*: Elam v. South Carolina Dept. of Transportation., 361 S.C. 9, 602 S.E.2d 772 (2004); Trial Handbook for South Carolina Lawyers, *supra.* at Section 36:5. The Respondents ask the Court to reconsider issues the Court already decided. Under Rule 7 (b), S.C.R.C.P., a Rule 59 motion, like all motions, must state the grounds with particularity. A Rule 59 motion may be determined on briefs without oral argument in the discretion of the court. *See*: Rule 59(f), S.C.R.C.P.; Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994).

The first ground raised by the Respondents' motion is whether the Court exceeded the scope of judicial review allowed under § 1-23-380, S.C. Code Anno., 1976 as amended, the Administrative Procedures Act. (Respondent's Ground No. 1). The Respondents would improperly limit the scope of judicial review to reviewing findings of fact to determine whether they are supported by substantial evidence on the whole record. Judicial review is guaranteed by S.C. Constitution, Art. 1, § 22 as a constitutional check on administrative adjudication of private rights. § 1-23-380(5), S.C. Code Anno., 1976, provides a court may reverse or modify the decision of the Commission if the appellant's substantial rights have been prejudiced because the administrative findings, inferences, conclusions, or decision are:

(a) in violation of constitutional or statutory provisions;
(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;
(d) affected by other error of law;
(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (S.C. 1981). This issue was fully raised, briefed, and argued before the Court and the statutory reasons for reversing the Appellate Panel are set forth in the Court's Order filed on December 3, 2015. No further hearing is necessary and the motion on these grounds is denied.

The second ground raised by the Respondents' motion is that the Court did not have the statutory authority to reverse the Appellate Panel because it failed to conduct further proceedings consistent with the Court's Order remanding the case. (Respondent's Grounds Nos.: 2, 3, 14, 15, 20, 25, and 26). The Court's Order remanding the claim required the Commission to do more than just make new findings of fact in an attempt to circumvent the Court's rulings. The case was remanded to conduct further proceeding consistent with this Court's remand Order dated February 26, 2009. An administrative agency is not permitted to ignore the remand Order of an Appellate Court. "After a remittitur is sent down from an appellate court, the [agency] acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling." Ackerman v. McMillan, 324 S.C. 440, 477 S.E.2d 167 (Ct. App. 1996); Mullen v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 438 S.E.2d 248 (1993); Christy v. Christy, 317 S.C. 145, 452 S.E.2d 1 (S.C. App. 1994). "Matters decided by the appellate court cannot be

reheard, reconsidered, or relitigated [by the administrative agency], even under the guise of a different form." 5 C.J.S., Appeal and Error, § 975 (a) (1993). The Appellate Panel misinterpreted the Court's Order remanding the claim as nothing more than an invitation for a "do over." The Appellate Panel impermissibly reheard, reconsidered, and reversed matters that had been decided by the Court.

The Court never found the Appellate Panel did not consider the testimony of the Petitioner and Officer Johnson as alleged in Respondents' ground 15. Nor did the Court order that the Appellate Panel to consider only the evidence quoted at length in the Court's Order as alleged in Respondents' grounds 25 and 26. What the Court found disturbing was the Appellate Panel, in making its new findings, ignored and did not include any of the undisputed testimony of the only witnesses who testified and the unanimous opinions of the medical experts that had been quoted extensively in the Court's remand Order. Furthermore, the Appellate Panel ignored and did not include any of the case law cited in the Court's remand Order for the reasons the cases were cited by the Court. Ignoring and not including any of the undisputed testimony, the unanimous opinions of the medical experts, and the case law cited by the Court is not conducting further proceedings consistent with this Court's remand Order. Rather, it is arbitrary or capricious or characterized by abuse of discretion. This issue was fully raised, briefed, and argued before the Court and addressed in detail in the Court's Order filed on December 3, 2015. This Court had the statutory authority to reverse the Appellate Panel for failing to conduct proceeding consistent with its remand Order under § 1-

23-380 (5) (a), (b), (c), (d), and (f). No further hearing is necessary and the motion on these grounds is denied.

The third ground raised by the Respondents' motion is that the Court did not have the statutory authority to reverse the decision of the Appellate Panel because the issue of causation had been decided by the Court as a matter of law. (Respondent's Grounds Nos.: 4, 5, 11, 12, 13, 21, 22, and 23). It was not based on the Petitioner's testimony that the Court found the issue of causation was established as alleged in Respondents' ground 22. The Court relied upon the unanimous opinions of medical experts, including the medical expert retained by the Respondents, in deciding the issue of causation as a matter of law. The Court ruled, "all of the qualified medical experts agreed the crime scene investigation performed by Deputy Martinez was a contributing proximate cause of Martinez's mental break down." This Court could hardly have been clearer when it stated, "[t]his Court strains to infer the analysis used by the Commission in its Order to find the burden of proof as to causation was not met by [the Petitioner]. The medical testimony overwhelmingly establishes the causative link to the work environment even when considering her pre-existing mental issues and the death of her husband's cousin." (Sup. Ct. Appendix, Vol. I, page 27). This Court ruled, "[t]he only conclusion that can be drawn from the record is that [the Petitioner] established her burden of proof that her mental injuries were proximately caused by the stress from the accident investigation." This Court emphatically stated, "all of the doctors, psychiatrist, and counselors who submitted medical opinion, including

the defense expert, state the investigation of the tragic death of Officer Johnson's daughter on April 4, 2005, caused aggravate, or contributed to the Petitioner's mental injury... All of the medical opinions in this case, establish that the Petitioner's mental injury was proximately caused by the investigation into the tragic death of Officer Johnson's infant daughter on April 4, 2005 as a matter of law." (*Emphasis added*) (Sup. Ct. Appendix, Vol. 1, p. 30). When the evidence gives rise to only one reasonable inference or is undisputed, the question becomes one of law for the court to decide. Smith v. Union Bleachery/Cone Mills, 276 S.C. 454, 280 S.E.2d 52 (1881); Lorrick v. S.C. Electric & Gas Co., 245 S.C. 513, 141 S.E.2d 662 (1965); Kinsey v. Champion American Service Center, 268 S.C. 177, 232 S.E.2d 720 (1977). This Court had statutory authority to reverse the Appellate Panel's relitigating the issue of causation that had been decided as a matter of law under § 1-23-380 (5) (a), (b), (c), (d), and (f). This issue was fully raised, briefed, and argued before the Court and addressed in detail in the Court's Order filed on December 3, 2015. No further hearing is necessary and the motion on this ground is denied.

The fourth ground raised by the Respondents' motion is that the Court did not have the statutory authority to reverse the finding of the Appellate Panel that the Petitioner and Officer Johnson did not have a law enforcement relationship because it was not supported by substantial evidence on the whole record. (Respondents' Ground Nos.: 6 and 16). This Court never ruled the investigation conducted by Petitioner was unusual or extraordinary as alleged in Respondents'

ground 6. This Court ruled that the Appellate Panel's finding the Petitioner did not have a law enforcement relationship with Officer Johnson is not supported by substantial evidence. While courts may not substitute their judgment for that of the Commission on questions of fact, they may reverse the Commission when its decision is not supported by substantial evidence "on the whole record." *See*: Sturkie v. Ballenger, 268 S.C. 536, 235 S.E.2d 120 (S.C. 1977); Etheredge v. Monsanto Co., 349 S.C. 452, 562 S.E2d 679 (S.C. App. 2002); Muir v. C. R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (S.C. App. 1999); Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 SE2d 599 (S.C. App. 1999). The substantial evidence required to support a finding is not a mere scintilla of evidence, nor 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 the administrative agency reached in order to justify its action. (*Emphasis added*) Etheredge v. Monsanto Co., *supra*.; Gibson v. Spartanburg School District #3, 338 S.C. 510, 526, S.E.2d 725 (S.C. App. 2000). The undisputed testimony that the Appellate Panel ignored and did not include in its new findings, the very same testimony that was quoted at length by this Court in its remand Order, established the crime scene investigation performed on April 4, 2005 was unlike any investigation the Petitioner or her captain had ever performed before. The Petitioner and her supervisor, Captain Denton, the only witnesses who testified, both testified two conditions made this particular investigation unusual and extraordinary: first, the investigation involved the death of an innocent two year old infant who was "smashed like a watermelon"

and, second, the infant was crushed when a fellow police officer they knew and served with backed over his daughter with his patrol car. With regard to the first condition, that the investigation involved the death of an innocent two year old infant who was "smashed like a watermelon," even the Appellate Panel conceded the death was "tragic and horrific." (Appellate Panel Order dated 2/24/15, p. 7, finding no. 3). By any definition the word "horrific" means emotionally disturbing. Putting aside the Appellate Panel opinion the horrific death of a two year old is not unusual or extraordinary enough, the Appellate Panel went further and found the fact the infant was crushed by a fellow police office they knew, considered a friend, and served with in the line of duty was not unusual or extraordinary because, according to the Appellate Panel's new findings, the Petitioner's relationship with the father was, at most, an acquaintance (or a loosely defined "friend") of a fellow law enforcement officer. The Appellate Panel supported this finding by noting the father (a) had never worked alongside [Petitioner] (they worked in different zones), (b) was working for another employer on the date of the toddler's death, (c) had never socialized with the [Petitioner], and (d) the officer was not the dead victim. For these reasons, the Appellate Panel found the fellow law enforcement relationship was "insufficient." (Appellate Panel Order dated 2/24/15, p. 18, finding no. 26(a)(vii)). These findings by the Appellate Panel for some unexplained reason later morphed into the Petitioner and Officer Johnson only saw each other "in passing" during shift changes. (Appellate Panel Order dated 2/24/15, p. 15, finding no. 28). It is significant that the Appellate Panel acknowledged the importance of

this finding when it said, "[a]lthough a friendship (something more abiding or meaningful than simply seeing/exchanging pleasantries with someone at work) or a present – or perhaps even former – law enforcement partnership might produce a different outcome with regard to compensability, those circumstances are not applicable in the case before us." (Appellate Panel Order dated 2/24/15, p. 14, finding no. 26 (a)(vii)(a)). It is this finding that the Court reversed because it is not supported by substantial evidence on the whole record. The undisputed testimony of the only witnesses who testified about this law enforcement relationship was quoted in the Court's remand Order, quoted at length in the briefs submitted on appeal, discussed at oral argument, and set forth in the Court's decision dated December 3, 2015. It was the Petitioner's relationship with Officer Johnson that changed everything and made it impossible for the Petitioner to turn the crushed infant into an "object" as she had been able to do in her other investigations and that made it impossible for her to distance herself emotionally from the horrific tragedy. By ignoring and not including this undisputed testimony, the very same testimony quoted at length in the Court's remand Order, the Appellate Panel did not consider the substantial evidence on the whole record. Rather, it blindly viewed the evidence from only one side of the case. The Court has statutory authority to reverse a decision of the Commission when it is not supported by substantial evidence on the whole record under § 1-23-380(5) (c). No hearing is required and the Respondents' motion on this ground is denied.

The fifth ground raised by the Respondents' motion is that the Court failed to apply the proper legal standard for compensability in a mental/mental workers' compensation injury claim. (Respondents' Ground No.: 24). The unusual and extraordinary standard was originally developed by the Court for application in heart attack cases. It was later applied by the Court and statutory amendments to mental/mental workmen's compensation claims. Respondents' ground 24 incorrectly assumes, if an injured worker is performing his or her usual job duties, then the conditions of the employment can never be unusual and extraordinary. This is not a correct interpretation of the unusual and extraordinary standard.

Heart attacks were held compensable when they were induced by unexpected strain or overexertion in the employment or by unusual and extraordinary conditions in the employment. (*Emphasis added*) *See*: McWhorter v. SC Dept. of Insurance, 252 S.C. 90, 95, 165 S.E.2d 365 (1969); Walker v. Columbia, 247 S.C. 241, 146 S.E.2d 856 (1966); Walsh v. U.S.Rubber Co., 238 S.C. 411, 120 S.E.2d 685 (1961); Wynn v. Peoples Natural Gas Co., 238 S.C. 1, 118 S.E.2d 812 (1960); Kearse v. S.C. Wildlife Resources Dept., 236 S.C. 540, 115 S.E.2d 183 (1960). While unexpected strain or overexertion were often discussed in the context of physical exertion in heart attack cases, it was recognized that emotional and/or mental strain resulting from great mental stress, emotional involvement, lack of sleep, time pressure and worry could also cause heart attacks. *See*: McWhorter, supra. 356 S.E.2d at 368 – 69. In determining whether the conditions of the employment were unusual or extraordinary, the question is whether the work conditions at the time

in question were unusual and extraordinary when compared to the employee's normal employment. *See*: Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000) (a mental injury case) *citing* Larson's Workers' Compensation Law §44.05(4)(d)(1). The right to compensation is barred because the employee was performing work of the same general type as that in which he was regularly engaged. *See*: McWhorter, *supra*. 356 S.E.2d at 367 *citing* Sweatt v. Marlboro Cotton Mills, 206 S.C. 476, 334 S.E.2d 762 (1945); Ricker v. Village Management Corporation, 231 S.C. 47, 97 S.E.2d 83 (1957). Our Supreme Court has recognized that, "[a]lthough stress may be inherent in a given job, a combination of stressful events may still be unusual and extraordinary and, therefore, compensable." *See*: Doe v. S.C. Department of Disabilities, 377 S.C. 346, 660 S.E.2d 260 (2008) (a mental injury case). The case of SC Second injury Fund v. Liberty Mutual, 353 SC 117, 576 S.E.2d 199 (Ct. App. 2003), illustrates that an injured worker can be performing his usual and normal duties, but the condition of his employment on the date in question can still be unusual and extraordinary. In that case a farm worker was performing his usual and normal job burning off harvested fields when the fire escaped threatening unharvested fields. The Commission awarded compensation for the heart attack the farm worker suffered after fighting the fire. The Court of Appeals affirmed the award noting, "[a]lthough the record here discloses that... what was a usual task for farm employees– the burning of harvested fields– turned into the extraordinary task of managing an out-of-control fire threatening fifty-five acres of unharvested wheat." Our Supreme Court has indicated it is a "fatal flaw"

for the Commission to focus on the normal job duties to the exclusion of the unusual and extraordinary conditions of the employment at the time in question as the Respondents' ground 24 suggests. Doe, *supra*.600 S.E.2d at 262. Although the Petitioner was performing her usual job as a crime scene investigator, the conditions of her employment at the time in question were unusual and extraordinary because they involved the death of a two year infant crushed like a watermelon by a fellow police officer she knew, worked alongside with, and considered a friend.

The Court was mindful of the decision in Bentley v. Spartanburg County, 398 S.C. 418, 730 S.E.2d 296 (2012) when it issued its decision. In distinguishing *Bentley* the Court did equate the rarity of the investigations described by the Petitioner and Captain Denton with usual or extraordinary as alleged in Respondents' ground 24. The Court considered several factors which distinguish the *Bentley* decision. Unlike the officer in *Bentley*, the Appellant was not trained how to investigate violent deaths involving fellow officers or their families. The Court also considered that there was no departmental policy that requiring the Petitioner to conduct the investigation on the date in question. And the Court considered that the officer in *Bentley* shot a suspect not an innocent child or fellow police officer. The Court did note, however, that, unlike police officers having to discharge their firearms in the line of duty which fortunately happens only rarely, this was only time in the combined 48 years of law enforcement experience of the only witnesses who testified that an investigation like the one involved in this case had ever happened. The Court understands *Bentley* to mean the mere fact something happens infrequently does not make the occurrence unusual and

extraordinary. The Court does not understand *Bentley* to mean that the rarity of something happening cannot be considered together with other factors. This issue was fully raised, briefed, and argued before the Court and addressed in detail in the Court's Order filed on December 3, 2015. No further hearing is necessary and the motion on this ground is denied.

Finally, the Respondents raised numerous other grounds but failed to state the grounds with particularity as required under Rule 7 (b) (1), S.C.R.C.P. (Respondents' Grounds Nos.: 7, 8, 9, 10, 15, 17, 18, and 19). The Respondents' motion alleges the Court erred in reweighing evidence or invading the Commission province to determine the credibility or weight to be given the evidence without indicating with particularity what evidence they are referring to. The Respondents' motion further alleged the Court's finding that "law enforcement relationship" could constitute an unusual and extraordinary condition of employment is contrary to applicable case law without indicating with particularity what case law they are referring to. As set forth above, it was the Appellate Panel, not the Court, that said, "...a present – or perhaps even former – law enforcement partnership might produce a different outcome with regard to compensability..." The Respondents' motion lacks particularity on these grounds. No hearing is necessary and the Respondents' motion on these grounds is denied.

IT IS HEREBY ORDERED that the Respondents' Motion to Alter or Amend the Court's Order dated December 3, 2015 is denied.

AND IT IS SO ORDERED.

J. Mark Hayes, II, Presiding Judge
Court of Common Pleas

Spartanburg, South Carolina
2nd day of ~~April~~ May, 2016.