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





On June 26, 2015, this matter was heard before me in Spartanburg, South Carolina. Present at the hearing were David T. Pearlman and J. Kevin Holmes of the Steinberg Law Firm, L.L.P., Charleston, South Carolina, and Chadwick D. Pye, of Chadwick D. Pye, L.L.C., Spartanburg, South Carolina, attorneys for the Petitioner, as well as Richard B. Kale, Jr., Wilson, Jones, Carter & Baxley, Greenville, South Carolina, attorney for the Respondents. The purpose of the hearing was to consider the Petition for Judicial Review from the decision of the Appellate Panel of the Workers' Compensation Commission dated February 24, 2015. After carefully considering the record, the memoranda submitted by the parties, and the oral arguments of counsel, the Court issues this Order reversing the decision of the Appellate Panel for the reasons stated herein. This claim is remanded to the Workers' Compensation Commission for enforcement of and for further proceedings consistent with this Order.

The Court file contains the Petition for Judicial Review filed by the Petitioner on March 11, 2015. The Petitioner filed the record of the proceedings consisting of the Appendix filed with the Petition for Writ of Certiorari to the South Carolina Supreme Court[1], a copy of the Supreme Court decision dated January 8, 2014, a transcript of the oral arguments before the Appellate Panel on December 15, 2014, and a copy of the remand decision of the Appellate Panel dated February 24, 2015. The Court file also contains memoranda of law submitted by both parties. At the hearing, a copying error was discovered and the Petitioner supplemented the record with a complete copy of the Petition for Judicial Review on June 29, 2015.



A review of the procedural history of this claim is important to understanding the questions presented for judicial review. On February 26, 2009, this Court issued its Order ruling that the Commission's prior Order failed to perform an analysis enabling this Court to determine whether the proper legal standards for compensability in a mental injury claim under the Workers' Compensation Act had been applied and further ruling that Deputy Martinez had established causation of her mental injury claim as a matter of law. After reviewing the undisputed testimony of the only witnesses who testified and the legal standard for compensability in a mental injury claim, this Court remanded the claim to the Commission for "further review consistent with this Order." (Sup. Ct. Appendix, Vol. I, pp. 13–33). Thereafter, on March 16, 2009, the Respondents filed a Notice of

[1] All references to the record cited herein are to the Supreme Court Appendix unless otherwise indicated.

Appeal to the Court of Appeals. (Sup. Ct. Appendix, Vol. I, p. 476). On June 15, 2011, the Court of Appeals issued its decision reversing this Court on the grounds that the Commission's findings on compensability were supported by substantial evidence. (Sup. Ct. Appendix, Vol. I, pp. 1–10). The Court of Appeals majority decision did not address the issue of causation. On October 6, 2011, a Petition for Rehearing was denied by the Court of Appeals. (Sup. Ct. Appendix, Vol. I, p. 11). On November 2, 2011, Deputy Martinez filed a Petition for Writ of Certiorari to the Supreme Court. On February 7, 2013, the Supreme Court granted the Petition. On January 8, 2014, the Supreme Court issued an Order vacating the decision of the Court of Appeals on the grounds that the appeal was interlocutory under the holding in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013) and remanded the claim to the Commission for further proceedings consistent with this Court's Order. (Sup. Ct. Order dated 1/8/14). On December 15, 2014, the Appellate Panel heard oral arguments.[2] On February 24, 2015, the Appellate Panel issued a new forty-six page remand Decision stating, "the Commission withdraws its previous Findings of Fact and hereby substitutes the following Findings of Fact for the Court's consideration." (App. Panel Decision dated 2/24/15, p. 5). On March 11, 2015, Deputy Martinez filed the Petition for Judicial Review that is the subject of this Order.

[2] During oral arguments before the panel, one commissioner stated that the parties were free to argue the parameters of the remand. (S.C. Workers' Compensation Commission Hr'g Tr. 3:17–20, Dec. 15, 2014). Despite having prepared a nineteen page order outlining the direction of the remand, the remand order was described to the commission as the remanding court "having its cake and eating it too." (S.C. WCC Hr'g Tr. 16:1–2). Instead of encouraging the commission to look at the entire order, the commission was told to isolate one part to the exclusion of the whole order. (S.C. WCC Hr'g Tr. 15:8–11).

Deputy Martinez again seeks judicial review of the Appellate Panel's remand decision. Judicial review of administrative agency decisions are governed by § 1-23-380(5) of the South Carolina Code, which is part of the South Carolina Administrative Procedures Act and provides:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant 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). The Appellate Panel's new findings of fact submitted for this Court's consideration addressed both the issue of compensability and the issue of causation.

The first issue presented for judicial review is whether the findings by the Appellate Panel on causation were in violation of constitutional provisions, in excess of the statutory authority of the agency, made upon an unlawful procedure, or affected by other error of law. This claim was remanded to the Commission by this Court and the Supreme Court to conduct further proceedings consistent with this

Court's Order dated February 26, 2009. When a claim is remanded to an administrative agency following judicial review, the administrative agency is granted only limited jurisdiction. "After a remittitur is sent down from an appellate court, the [lower tribunal] acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court ruling." 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 (Ct. 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). "It is the duty of the trial court to follow the decision of the appellate court." Ackerman v. McMillian, 324 S.C. 440, 477 S.E.2d 267 (Ct. App. 1996).[3] The Appellate Panel exceeded its jurisdiction on remand by reconsidering and, in effect, reversing this Court's prior ruling on causation.

This Court is troubled by the discussion between the Appellate Panel and Respondent's counsel when oral arguments were heard by the Appellate Panel on December 15, 2014:

> MR. KALE: Okay. May it please the panel. First, let me address Judge Hayes' order and what it requires or implies. And I would cite you to the very bottom sentence of page nine. He says, this court is left to speculate if the proper analysis was applied by the commission and whether the factual conclusions upon which the law was applied has a substantial base in the record. If he says



[3] See also 5 C.J.S. Appeal and Error § 1137 (2015) ("On the remand of the cause after appeal, it is the duty of the lower court to comply with the mandate of the appellate court and to obey the directions therein, even though the mandate is, or may be, erroneous. . . . Where a trial court is told to proceed in conformity with the reviewing court's mandate, the trial court should consult the opinion to determine what the mandate requires.") (citations omitted).

> that the record is not sufficient findings of fact that would allow him to do a judicial review, then how can we [accept] all of this other analysis as being a proper judicial review when he says he can't make it. And that's what I have a problem with, with Judge Hayes. Judge Hayes, I think, is clear from his order what he wanted to do in this case.
> COMMISSIONER BARDEN: Right, right.
> MR. KALE: And the fact is he's having his cake and eating it too.
> COMMISSIONER BARDEN: By saying he has to speculate or he can only speculate, but then ---
> MR. KALE: And then he tells us – he's supposedly telling the commission where they went wrong. So I think it's very clear from his order that the remand is to get sufficient findings of fact that would support judicial review. And is not any kind of mandate that you have follow his – anything else that's in his order. But let me also, if I may –
> COMMISSIONER BARDEN: Do you think that we are bound by his – they're a couple of things in here I don't ---
> MR. KALE: I do not think you're bound by anything he puts in the order, because he has already prefaced that he's remanding it because are insufficient findings of fact, and he would have to speculate as to what findings of the commission were and what the conclusions of the commissioner were. So I don't think that you're bound by anything that is in his order.



(Tr. of Oral Argument on Remand, pp. 15–16) (emphasis added). The mandate from this Court and the Supreme Court required the Commission to enforce this Court's prior ruling that Deputy Martinez had established causation as a matter of law.

This Court decided the issue of causation as a matter of law. 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).

A trial court on remand may not exceed the remand, the appellate court's instructions in the mandate circumscribe the trial court's authority on remand, and it is the trial court's duty to follow the instructions the trial court received from the appellate court. Price v. Beaufort Mem'l Hosp., 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011). This Court ruled that the crime scene investigation performed by Deputy Martinez on April 4, 2005, was "a" proximate cause of her mental injury as a matter of law. This 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 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 [Deputy Martinez]. 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, p. 27). This Court ruled, "[t]he only conclusion that can be drawn from the record is that [Deputy Martinez] established her burden of proof that her mental injuries were proximately caused by the stress from the accident investigation." This Court could not have been more emphatic when it ruled, "all of the doctors, psychiatrists, 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, aggravated, or contributed to the Appellant's

mental injury. All of the medical opinions in this case establish that the Appellant'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." (Sup. Ct. Appendix, Vol. I, p. 30) (emphasis added).

Again, all of the medical opinions supported the causation to her investigation. Even the doctor hired by the respondent to perform an independent psychological evaluation supported causation to the investigation. This doctor noted that the claimant was a victim of sexual molestation as a child and was raped at age nineteen (19) by a family friend. The doctor noted:

> The above testimony would seem to support a diagnosis of Post Traumatic Stress Disorder by history. There is a recognized connection in the field of psychiatry between prior episodes of abuse or trauma and he development or redevelopment of Post Traumatic Stress Disorder. Claimant's early life experience with sexual molestation could have predisposed her to develop Post Traumatic Stress Disorder. Her description of how her behavior changed after she was raped is strongly suggestive of developing a Post Traumatic Stress Disorder at that time. This first episode of Post Traumatic Stress Disorder could have made her more vulnerable to future traumatic events.
>
> The work event of having to investigate the death of a young child, having to move that child and having to face the reality of how the child suffered and died would certainly qualify as meeting the criteria of a legitimate traumatic event for Post Traumatic Stress Disorder. The traumatic event may have had special meaning to the Claimant in light of her having been abused as a young girl, and in light of her having worked with the father of the victim.

(Sup. Ct. Appendix, Vol. I, p. 331). The doctor went on to note:

> The patient herself was treated about 12 years prior to her work related trauma for depression. She was treated by her primary care physician with the antidepressant Luvox. She took this for 1-2 years and was able to stop it. The patient has one brother that has been diagnosed and treated for depression. This would seem to indicate there exists a genetic loading toward some type of affective disorder. Bipolar Disorder is one type of Affective Disorder.

(Sup. Ct. Appendix, Vol. I, p. 332). In response to questions from the Respondent, the doctor answered in the following manner:

> 1) WHAT IS YOUR DIAGNOSIS OF MS. MARTINEZ'S PSYCHIATRIC CONDITION?
>
> Her primary psychiatric diagnoses are:
> Post Traumatic Stress Disorder, Recurrent Episode, Chronic Bipolar I Affective Disorder
>
> 2) IN YOUR OPINION, DID SHE HAVE ANY OF THESE CONDITIONS PRIOR TO 4 APRIL, 2005?
>
> Claimant has evidence of a Bipolar Mood Disorder existing prior to her work related trauma although the diagnosis was not officially recognized. This includes rebelliousness toward authority in her childhood, difficulty managing her anger by her own admission, and treatment for depression with the anti-depressant Luvox approximately 12 years prior to her work related trauma.
>
> Claimant has evidence of a Post Traumatic Stress Disorder existing prior to her work related trauma. The Claimant indicates she was raped at age 19. She developed symptoms consistent with Post Traumatic Stress Disorder at that time which included dropping out of school for one year, not wanting to relate to males, not wanting to go out of her house, and feeling "gun shy" of men.

> 3) IN YOUR OPINION, WAS ANY OF MS. MARTINEZ'S PSYCHIATRIC CONDITIONS CAUSED OR AGGRAVATED BY THE ACCIDENT INVESTIGATION CONDUCTED BY MS. MARTINEZ ON 4 APRIL, 2005?
>
> Yes. Both Bipolar and Post Traumatic Stress Disorders were aggravated by the trauma experienced during the accident investigation she conducted on 4 April, 2005.
>
> ...
>
> Post Traumatic Stress Disorder occurs more frequently in individuals where there exists a prior history of abuse. Claimant described sexual abuse for about 18 months around the age of 7-8 while living in Puerto Rico. She clearly developed symptoms of Post Traumatic Stress Disorder after being raped at age 19. Once an individual develops Post Traumatic Stress Disorder, they are more at risk for redeveloping it than are others who never experienced abuse or who never previously suffered from Post Traumatic Stress Disorder. Certainly the accident investigation would qualify as the type of event that could trigger a Post Traumatic Stress Disorder. In Claimant's case, this event led to a recurrence of a previously experienced Post Traumatic Stress Disorder.



(Sup. Ct. Appendix, Vol. I, p. 333–35).

On remand, the Appellate Panel did not have jurisdiction to rehear, reconsider, or relitigate the issue of causation under the guise of making new findings of fact. Deputy Martinez's substantial rights were prejudiced by the Appellate Panel reconsidering the issue of causation and, in effect reversing, rather than enforcing this Court's prior Order. Reconsidering the issue of causation was in violation of constitutional provisions, in excess of the statutory authority of the agency, made upon an unlawful procedure, or affected by an error of law. The Appellate Panel's new findings of fact on causation are reversed under § 1-23-380(5)(a), (b), (c), and (d)

because they are in excess of the statutory authority of the agency, made upon an unlawful procedure, and affected by other error of law.

The second question presented for judicial review is whether the Appellate Panel conducted further proceedings on compensability consistent with this Court's prior Order. This Court did not have a problem determining what the facts were, it had a problem determining whether the proper legal standards for compensability had been applied to the facts. The facts have not changed since this claim was before this Court in 2009. No additional testimony was taken. This Court reviewed the evidence on compensability in its prior Order and began by noting, "all of the witnesses gave testimony supportive of [Deputy Martinez's] claim of unusual and extraordinary condition of employment." (Sup. Ct. Appendix, Vol. 1, p. 14). This Court summarized the evidence:

> The Appellant, Raquel Martinez, had been in law enforcement for twenty-four (24) years as a probation officer and police officer before she became a forensic investigator for the Spartanburg County Sheriff's Department in 2001. On April 4, 2005, she was dispatched to investigate a fatal motor vehicle accident involving an infant child whose body burst like a watermelon when her father's patrol car rolled over her. The father of the child was a fellow police officer and friend of the Appellant. Within approximately four months after the Appellant's investigation, she had a nervous breakdown and was found hiding in bushes after doing substantial physical damage to her patrol car and home. When she was found, she was ranting about an unidentified little girl. The Appellant was hospitalized for psychiatric treatment and eventually, through counseling sessions, began to address the issues involving her investigation into the death of her fellow police officer's young daughter.

(Sup. Ct. Appendix, Vol. 1, p. 16). This Court reviewed the uncontested testimony of the only witnesses who testified:

> The Respondent called no witnesses to testify before the Commission. The facts surrounding the investigation were uncontested. (Hearing Tr. p. 88).
>
> The Appellant described what she saw when she arrived on the scene:
>
> > I saw the Sheriff, our Sheriff, Sheriff Wright ... squatting down in the corner of the garage with a man who was scrunched up, rocking like this. I couldn't see who it was... and they told me that it was Anthony Johnson, who used to work for the Spartanburg County Sheriff's Office... And the Sheriff spent, I'd say 20 or 30 minutes tying to talk Anthony down because A.J. was wanting to die, understandably, he'd just killed his child. (Hearing Tr., pp. 19 -20). When the Appellant realized she knew Officer Johnson, she asked to be allowed to leave the scene for the first time in her career. (Hearing Tr., pp. 20 – 21, 82). Captain Denton denied her request but later regretted his decision and testified at the hearing, "knowing what I know now, I probably would have let somebody else more experienced come out there and listened to the employee instead of deciding that regardless we're gonna do our job." (Hearing Tr., p. 107).

During the investigation the Appellant was required to move the infant child's crushed body so measurements and photographs could be taken. She recalled, "when moving the child – it was like a broken doll – when you moved her, it sounded like you were tumbling over some blocks." (Hearing Tr., pp. 34 – 35). The image that appears in her recurring nightmares is:

> I had to get underneath [the car] to take – to see if any evidence of where the child was

> underneath the vehicle, and there were clumps of her hair and skin on the tire and on the asphalt, and then on the part of the – I don't know the undercarriage of the car very well, but the biggest part, I guess is going to be the gasoline tank. There were fingerprints, and there was the impression of a hand, I should say, not the whole hand, just the little-bitty fingerprints dragging across the gasoline tank. (Hearing Tr., p. 24).

The Appellant explained that even though investigating violent deaths were part of her job, this present crime scene was different because she had never been called upon to investigate a violent death that involved a person she knew personally and considered a friend. The Appellant explained the difference her prior relationship with Officer Johnson made:

> I think the difference is that when you go to a burn scene, this is – sounds cold, but you get through it the way you get through it. This is no longer a person; this is an object. To keep a distance when you do these. I think A.J.'s case, or the child's case, was different because I had never seen it with anyone that I knew or that I couldn't turn her into an object. I couldn't just say that's just a little girl over there. I couldn't do that. You can't do that." (Hearing Tr., pp. 39 – 40).



Her feelings were shared by Captain Denton who responded to questions at the Hearing by the Respondent's attorney:

> Q: As far as the grisliness or gruesomeness of the April 4th scene, where does it rank in all the death scenes you've seen?
> A: Well, first of all, having known the officer and having a child run over by a vehicle or the person you know causing the death of that, I've never encountered that. As far as ranking the grotesqueness of it, it's a child.

It was run over by a police car. It was an accident. If I had to rank it as far as my feeling, my emotions, it would be the worst.
Q: That was my next question, as far as the emotional part of the investigating a crime scene, how did the April 4th investigation rank emotionally?
A: Emotionally, it was the worst. I mean we knew him. It was an infant child. For everybody it was hard. (Hearing Tr., p. 81).

Captain Denton testified the investigation in this case was unusual and extraordinary:

Q: All right. Well, let me ask you this: as a 20-plus year veteran of the Sheriff's Office with 70 to 75 percent of your time spent in death investigations, and as Raquel's supervisor, would you say that the April 4th, 2005 investigation involving your former employee, A.J., killing his two-year-old daughter would have been an extreme situation in her employment?
A: Yes.
Q: Was this a scene that was out of the ordinary?
A: Yes. (Hearing Tr., pp. 93 – 94).



Even though the Appellant and Officer Johnson may not have seen each other daily when he was with the Spartanburg Sheriff's Department, she testified:

... The county was cut into eight ... zones. I was assigned to one zone; he was assigned to another zone. So, a lot of times if you were in this zone here and there as a call in this zone that you're not sure about, it might be a bad call or whatever or just sounds suspicious, you go that way to go back up the officer that responds to the call... So that's why I said we backed each other up. Did we work in the same area? I don't think we ever worked the same area, but we worked side by side, and if got into fights or if I got into

fights, we would respond. He would be there and I would be there. (Hearing Tr., p. 57).

She explained the close friendship that developed as a result of their being fellow police officers:

> It's hard to believe – that I can recall in 28 years, I have never had to deal with someone in a violent situation or in which violent death – I have never had to deal with someone that I actually knew, that I considered a friend, not to mention a co-police officer. We kind of stick together like a thin blue line, if y'all have ever heard of that expression. We deal with things all the time regular people don't see, so you get very close to your workers. (Hearing Tr., p. 29).



This Court emphasized, "the only witnesses who testified whether the investigation conducted on April 4, 2005, into the tragic death of Officer Johnson's infant daughter was usual or unusual, ordinary or extraordinary, were Deputy Martinez and her supervisor, Captain Denton." They both testified that the April 4, 2005, investigation was unusual and extraordinary based on their combined forty-eight (48) years of law enforcement experience. This Court quoted Captain Denton's testimony:

> Q: So the fact that she was investigating a child doesn't take it out of her ordinary investigation, does it?
> A: I don't think the whole – you get the whole story until you add the conditions that existed, and the whole truth is that, that condition existed that day, and I think it was extraordinary because of that.
> Q: Because...
> A: I don't think it was ordinary that day.
> Q: Pardon?
> A: I don't think it was an ordinary job for anybody that day, and I think...

> Q: But what she did was ordinary in her job, was it not?
> A: What she did was her job. Ordinary, if you're talking about, you know, had it been anywhere else that day, it would have been ordinary. But it wasn't anywhere else, and that's ...
> Q: Well, as far as the child is concerned – let's take the father out of it. If some other child had been run over, would you consider that to extraordinary?
> A: That's not what happened.
> Q: Well, I'm not asking you – I'm saying assume if it was some other person's child that had been run over, then would that – and she investigated the child, would there be anything unusual or extraordinary about that?
> A: No.
> Q: So it boils down to the fact that this child was a former employee of the Spartanburg Sheriff's Department?
> COMMISSIONER: The child's father.
> Q: I'm sorry the child's father.
> A: It boils down to this – that's half of the fact. The other half of the fact is, again, it's an infant that was over by a police car that was driven by a former employee who we were friends with. That's the whole fact. (Hearing Tr., pp. 98 – 99).



(Sup. Ct. Appendix, Vol. I, pp. 25 – 26).

It was out of deference to the Commission that this Court remanded the claim for further proceedings consistent with its Order. While this Court did not intend to substitute its judgment for that of the Commission as to the weight of the evidence or to substitute its findings of fact for those of the Commission, it did intend for the Commission to consider the testimony of the only witnesses who testified, quoted by this Court in its prior Order and set forth above. Brown v. R. L. Jordan Oil Company, 291 S.C. 272, 353 S.E.2d 280 (1987); Crisp v. Southco, Inc., 390 S.C. 340, 701 S.E.2d 762 (Ct. App. 2010).

Under the guise of making findings of fact, however, the Appellate Panel did not include any of the quoted testimony supporting compensability. Not only did the Commission ignore the testimony quoted by this Court, it ignored the case law on compensability cited by this Court. This Court cited six cases addressing compensability of mental injuries under the Workers' Compensation Act.[4] Only three of the cases were cited in the Appellate Panel's remand Order and none of them were cited for the reasons they were cited by this Court. Ignoring the evidence quoted by this Court and the case law cited by this Court on the issue of compensability is not conducting further proceedings consistent with this Court's Order; but, rather, constitutes an arbitrary or capricious disregard of the mandate from this Court. The Appellate Panel's findings of fact on the issue of compensability are reversed because Deputy Martinez's substantial rights were prejudiced by the Appellate Panel's arbitrary and capricious ignoring of the undisputed testimony quoted by this Court and case law cited by this Court and the Appellate Panel's findings of fact on compensability are reversed under § 1-23-380(5)(f) because they are arbitrary or capricious or characterized by abuse of discretion or clearly an unwarranted exercise of discretion.



The third question presented for judicial review is whether the Appellate Panel's findings of fact on compensability are clearly erroneous in light of the reliable, probative, and substantial evidence on the whole record. To determine

[4] Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000); Dickert v. Metropolitan Life Ins. Co., 306 S.C. 311, 411 S.E.2d 672 (Ct. App. 1991); Doe v. S.C. Department of Disabilities, 377 S.C. 346, 660 S.E.2d 260 (2008); Frame v. Resort Services, Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); Kearse v. S.C. Wildlife Resource Dept., 236 S.C. 540, 115 S.E.2d 183 (1960); and Stokes v. First Nat'l Bank, 298 S.C. 13, 377 S.E.2d 922 (Ct. App. 1988).

whether the Appellate Panel's findings on compensability are supported by substantial evidence requires this Court to review the whole record, including a review of the evidence contrary to the Appellate Panel's findings. The evidence contrary to the Appellate Panel's new findings is the very same testimony quoted by this Court that was ignored by the Appellate Panel.

A review of history of the "substantial evidence on the whole record" standard of review is helpful in understanding this issue. There was little dispute historically that courts had jurisdiction to interpret the statutes that administrative agencies are charged with enforcing and to insure that fundamental due process is followed in the administrative process. The courts, however, had a more difficult time deciding what scope of review to apply to an administrative agency's findings of fact. The deference to administrative expertise and to the many considerations that can enter into an administrative agency's decision-making process made it difficult for the courts to precisely define the appropriate scope of judicial review of an administrative agency's findings of fact. The scope of judicial review that generally developed was called the "substantial evidence rule" and it was incorporated into various statutes. For example, the Federal Wagner Act, predecessor to the Taft-Hartley Act, expressly adopted the substantial evidence rule for review of Labor Board decisions by providing, "The findings of the Board as to facts, if supported by substantial evidence, shall be conclusive." The U.S. Supreme Court interpreted the Wagner Act and held substantial evidence meant "such relevant evidence as a

reasonable mind might accept to support a conclusion." Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938).

The scope of judicial review was revisited by the U.S. Supreme Court in Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951), because of what Justice Frankfurter described as a "want of certainty" in judicial review of Labor Board decisions prior to the enactment of the Federal Administrative Procedures Act and the Taft-Hartly Act. It was the failure of the courts to consider the whole record, including the evidence contrary to the agency's findings of fact that led to the criticism of the substantial evidence rule.

Justice Frankfurter discussed what led to the adoption of the substantial evidence on the whole record standard for judicial review. He noted that "variant applications" of the substantial evidence standard bred criticism by suggesting that the standard was satisfied as long as "the evidence supporting the Board's result was 'substantial' when considered by itself." Universal, 340 U.S. at 477. This criticism led to the formation of a U.S. Attorney General's Committee to consider the scope of review when it was enacting the Federal Administrative Procedures Act and the Taft-Hartley Act. The majority report of the Commission issued in January of 1941 recommended that standard remain the substantial evidence rule. Three members of the Committee, however, filed a dissenting report described by Justice Frankfurter:

> Their view was that the 'present system or lack of a system of judicial review' led to inconsistency and uncertainty. They reported that under a 'prevalent' interpretation of the 'substantial evidence' rule' if what is called 'substantial evidence' is found anywhere in the record to support conclusions of fact, the courts are said to

> be obligated to sustain the decision without reference to how heavily the countervailing evidence may preponderate – unless indeed the stage of arbitrary decision is reached. Under this interpretation, the courts need to read only one side of the case and, if they find any evidence there, the administrative action is to be sustained and the record to the contrary is to be ignored.

Id. at 481. Justice Frankfurter found the use of the phrase "substantial evidence on the whole record" first appeared in the minority report. The criticism made by the minority report was noted by Congress, and the new "substantial evidence on the whole record" standard was included in both the Federal Administrative Procedure Act and the Taft-Hartley Act.

The unanimous Supreme Court[5] discussed the significance of the new scope of review and held:

> Whether or not it was ever permissible for courts to determine the substantiality of evidence supporting a Labor Board decision merely on the basis of the evidence which in and of itself justified it, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn, the new legislation definitely precludes such a theory of review and bars its practice. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. This is clearly the significance of the requirement in both statutes that courts consider the whole record.



Id. at 487–88 (emphasis added). The Supreme Court ruled, "Congress has merely made it clear that a reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view." Id. at 488

[5] Justice Black and Justice Douglas dissented but not from this part of the Supreme Court's decision.

(emphasis added). Justice Frankfurter concluded this part of the Supreme Court's decision with the statement, "It cannot be too often repeated that judges are not automata." Id.

South Carolina's Administrative Procedures Act expressly adopted the substantial evidence on the whole record standard of review. Section 1-23-380(5)(e) 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 decision are:
>
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record...



The "whole record" requirement has found expression in this State's decisional law interpreting the Administrative Procedures Act. Our appellate courts have observed in numerous cases that "[t]he 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." Port Oil Company v. Kenneth E. Allen, 282 S.C. 430, 319 S.E.2d 695 (1984) (emphasis added); Etheredge v. Monsanto Co., 349 S.C. 452, 562 S.E.2d 679 (Ct. App. 2002); Gibson v. Spartanburg School District #3, 338 S.C. 510, 526, S.E.2d 725 (Ct. App. 2000). "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 (1977); Etheredge v. Monsanto Co., 349 S.C. 452, 562 S.E.2d 679; Muir v. C. R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999); Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 S.E.2d 599 (Ct. App. 1999).

The only witnesses who testified in this case were Deputy Martinez and Captain Denton, both of whom were law enforcement officers who were found to be credible. They offered the testimony quoted at length by this Court that was left out of the Appellate Panel's findings of fact. Both Deputy Martinez and Captain Denton testified that the crime scene investigation performed on April 4, 2005, was unusual or extraordinary for two reasons. First, because the investigation involved the death of an innocent two year old infant that was smashed like a watermelon. Second, the infant was crushed when a fellow police officer, who Petitioner knew, accidentally backed over the infant with his patrol car.



As to the first condition of Deputy Martinez's employment on the day in question, that the investigation involved the death of an innocent infant child smashed like a watermelon, even the Appellate Panel conceded the infant's 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 and implies something far beyond usual and ordinary experience. For some unexplained reason, however, the Appellate Panel did not find "horrific" was enough to make the investigation unusual and extraordinary. Although we expect law enforcement

officers to encounter circumstances that are grisly and tragic, the testimony plainly establishes that not all crime scenes are created equal.

As to the second condition of Deputy Martinez's employment on the day in question, that the infant was crushed when a fellow police officer, with whom Deputy Martinez and Captain Denton had previously served, backed over her with his patrol car, the Appellate Panel's new findings are that:

> The greater weight of the evidence shows that Claimant's relationship with the toddler's father on the date of the toddler's death, was, at most, as an acquaintance (or a loosely defined "friend") of a fellow law enforcement officer. Claimant in her testimony emphasized the "thin blue line" relationship, as evidence to establish extraordinary and unusual condition of employment. However, as the toddler's father (a) had never worked alongside Claimant (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 Claimant, and (d) was not the dead victim, we find this fellow enforcement relationship insufficient."



(Appellate Panel Order dated 2/24/15, p. 13, finding no. 26(a)(vii)). The Appellate Panel's finding that Deputy Martinez never worked alongside Officer Johnson later morphed into that they only saw each other "in passing" and "exchanged pleasantries" during shift changes. (Appellate Panel Order dated 2/24/15, p. 15, finding no. 28). That is clearly not what the substantial evidence on the whole records says.

The finding that Deputy Martinez did not have a law enforcement relationship with Officer Johnson is unsupported by the substantial evidence on the whole record. The undisputed testimony is that this prior relationship with Officer Johnson is what

made it impossible for Deputy Martinez to turn the crushed infant into an "object" and to emotionally distance herself from the horrific tragedy of a fellow police officer backing over his infant daughter and crushing her like a watermelon. Deputy Martinez never claimed Officer Johnson was her best friend or even a "close personal friend." She never claimed she had met his wife or daughter, visited their home, or socialized with them. What Martinez claimed was:

> I considered [him] a friend, not to mention a co-police officer. We kind of stick together like a thin blue line, if y'all have ever heard that expression. We deal with things all the time that regular people don't see, so you get very close to your workers.

(Sup. Ct. Appendix, Vol. 1, p. 29). When questioned further by the Commissioner what she meant by this "special bond" of friendship, Martinez explained:

> It's really us against them and – ... this is the way I feel, anyway as a police officer. I can be in the middle of a park full of people, and if somebody jumps me to hurt me, then I've got to defend myself, but if there's somebody in uniform near me, I know that I'm not going to die because somebody's gonna be there to back me up. That person. I don't know about all the other 99 behind me, but that police officer has a bond that's going to make them help a fellow officer. That's just it. If you ever hear a bunch of lights and sirens going in one direction and more than one or two patrol cars, you know it's a fight that an officer has got and they're trying to get help to him as fast as they can.



(Sup. Ct. Appendix, Vol. 1, pp. 115 - 116).

The Appellate Panel's findings—that Deputy Martinez and Officer Johnson were not social friends, were no longer employed by the same police department, and, when they did work for the same police department, they often worked different shifts and were assigned to different zones—may all be supported by substantial

evidence, but that is not the whole record. The whole record established that Deputy Martinez not only knew Officer Johnson but served side by side with him:

> The county was cut into like eight pieces, and each one was a zone; [Officer Johnson] was assigned another zone. Sometimes we had two to a zone. Sometimes we didn't have but one person working two zones. So, a lot of times if you were in this zone here and there was call in this this zone that you're not sure about it, it might be a bad call or whatever or just sounds suspicious, you go that way to go back up the officer that responds to the call. That way you don't have 20 minutes, you know, when they get into a fight or whatever to get there; you're already close to them. So, that's why I said that we backed each other up. Did we work in the same area? I don't think we ever worked the same area, but we worked side by side, and if he got into fights or if I got into fights, we would respond. He would be there and I would be there.

(Sup. Ct. Appendix, Vol. 1, p. 111).

Deputy Martinez explained how this prior relationship with Officer Johnson changed everything that day she was called to investigate the gruesome tragedy at his home when he ran over his infant daughter:

> I think the difference is that like when you go to a burn scene, this is – and it sounds cold, but you get through it the way you get through it this is no longer a person; this is an object. And you have to keep a distance when you do these. I think [Officer Johnson's] case, or the child's case, was different because I have never seen it with anyone that I knew or that I couldn't turn her into an object. I couldn't just say that's just a little girl over there. I couldn't do that. You can't do that.



(A. Vol. 1, pp. 93–94).

By ignoring the uncontested testimony from the only witnesses who testified, the Appellate Panel blindly viewed the evidence from only one side of the case. The

substantial evidence on the whole record established that these officers did in fact know each other, served together, and backed each other up in the line of duty. When this Court considers all the testimony, including the testimony quoted above that was ignored by the Appellate Panel, it cannot conscientiously find the Appellate Panel's findings on compensability are supported by substantial evidence on the whole record. The Appellate Panel's findings that Deputy Martinez did not have a law enforcement relationship with Officer Johnson are reversed under § 1-23-380(5)(e) because they are not supported by substantial evidence on the whole record.

This Court is mindful that the Supreme Court has decided the case of Bentley v. Spartanburg Cnty., 398 S.C. 418, 730 S.E.2d 296 (2012), since this case was last before this Court. In Bentley, a divided Court held evidence that a police officer, who alleged he suffered a mental injury when he shot and killed a suspect, knew he would sometimes be required to use deadly force, was trained on the use of deadly force, and authorized by departmental policy to use deadly force, constituted substantial evidence supporting the Commission's finding the use of deadly force resulting in the death of a suspect was not unusual or extraordinary. This Court believes the facts in the present case are distinguishable. There is no evidence Deputy Martinez was trained how to investigate violent crimes involving fellow officers or their families. There was no departmental policy requiring forensic investigators to investigate violent crimes involving fellow police officers they knew and had served with. The investigation in this case was more than just

a rare occurrence. In Captain Benton's and Deputy Martinez's combined 48 years of law enforcement experience, it was the only time it had ever happened. And, most importantly, Deputy Bentley shot an unknown suspect, not a friend and fellow police officer.

IT IS HEREBY ORDERED that the Appellate Panel's new findings of fact on causation are reversed and the claim is remanded to the Commission with the specific instruction that the Appellate Panel is not to reconsider the issue of causation and to enforce this Court's previous Order ruling that causation was established as a matter of law based upon the unanimous opinions of the medical experts; and

IT IS HEREBY ORDERED that the Appellate Panel's new findings on compensability are reversed and the claim is remanded to the Commission with the specific instruction that ignoring the undisputed testimony quoted by this Court and the case law supporting compensability cited by the Court is not conducting further proceedings consistent with this Court's prior Order and constitutes an arbitrary and capricious abuse of discretion under § 1-23-380(5)(f); and

IT IS HEREBY ORDERED that the Appellate Panel's new findings of fact on compensability that Deputy Martinez and Officer Johnson did not have a law enforcement relationship are reversed because they are not supported by the substantial evidence on the whole record under § 1-23-380(5)(e).

AND IT IS SO ORDERED.

J. Mark Hayes, II, Circuit Court Judge
Court of Common Pleas, Seventh Judicial Circuit

Spartanburg, South Carolina
3rd day of December, 2015.