2007-CP-42-1966

STATE OF SOUTH CAROLINA)
) **IN THE COURT OF COMMON PLEAS**
COUNTY OF SPARTANBURG) **SEVENTH JUDICIAL CIRCUIT**
) **CASE NO.: 2007-CP-42-1966**
RAQUEL MARTINEZ, Employee,)
)
Claimant-Appellant,)
)
-vs-) **ORDER**
)
SPARTANBURG COUNTY, Employer, and **S.C. ASSOCIATION OF COUNTIES SELF-INSURANCE FUND**, Carrier,)
)
Defendants-Respondents.)

This matter came to be heard before the Court for the purpose considering the Petition for Judicial Review from the final Decision and Order of the South Carolina Workers' Compensation Commission filed by the Appellant pursuant to § 1-23-380, S.C. Code Anno., 1976 as amended, the Administrative Procedures Act, and § 42-17-60, S.C. Code Anno., 1976 as amended, the South Carolina Workers' Compensation Act. As will be explained herein, the Commission's Order is reversed and the matter remanded back to the Commission for further determination consistent with this Order.

The Appellant filed a claim for benefits alleging a mental injury by accident caused by unusual and extraordinary conditions of her employment. A hearing was held on September 6, 2006. The purpose of the hearing was to consider the issues raised on Forms 50 and 51. All of the witnesses who appeared at the hearing testified on behalf of

the Appellant including one of the Appellant's supervisors.[1] All of the witnesses gave testimony supportive of the Appellant's claim of unusual and extraordinary condition of employment.

Medical information and evaluations were submitted through the APA's. The APA's included, among other information, an independent evaluation performed by an expert hired by the Respondent. The record establishes that earlier in life, the Appellant has been sexually assaulted for 18 months as a young girl, raped at age 19, and was bipolar. All of these factors, the medical evidence established, predisposed her to suffering a mental breakdown. The Respondent's own medical expert opined that the strong emotions associated with the April 4, 2005 investigation were a factor in exacerbating her pre-existing bipolar condition.[2]

By Decision and Order filed on November 20, 2006, the Single Commissioner denied the claim. In the Findings of Fact, the Single Commissioner concluded (1) the Claimant had failed to prove that she encountered an unusual and extraordinary condition of her employment on April 5, 2005, while employed by the Spartanburg County Sheriff's Department; and (2) that the Claimant failed to prove the accident investigation on April 5, 2005 was the proximate cause of her mental breakdown. Both of these Findings of Fact were supported only by the statement, "[T]his finding is based on all the evidence in the record." A third relevant Finding of Fact was that "investigating the

[1] Appellant's supervisor was second only to the Sheriff in command of the department. The order on review contains no reference to a lack of witness credibility. Thus, this witness, as well as the others' credibility of appearance, is not at issue.

[2] A second factor which Respondent's expert noted that exacerbated the Appellant's illness was the death of Appellant's ex-husband's cousin which occurred shortly after the accident investigation of April 4, 2005.

death of a former Sheriff's deputy's child was not unusual or extraordinary." This particular Finding of Fact contained no language stating the basis of its support.

The Appellant timely filed a WCC Form No. 30, Request for Commission Review, and on April 23, 2007, a hearing was held before the Appellate Panel of the Workers' Compensation Commission. By Decision and Order filed May 22, 2008, the Appellate Panel affirmed the Decision and Order of the Single Commissioner and incorporated his findings. The Petition for Judicial Review alleges the Appellant's substantial rights were prejudiced because the findings, conclusions, and decision of the Commission were in violation of statutory provisions, affected by error of law, and clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record as provided in S.C. Code Anno., §1-23-380(g).

As will be briefly discussed herein, the decision by the Full Commission is reversed and remanded for further action consistent with this Order. The Findings of Fact made by an administrative agency must be sufficiently detailed to enable the reviewing Court to determine whether the evidence supports the findings. A reviewing Court may not make findings of fact as to basic issues of liability for compensation, where to do so, would impose upon the Court the function of determining such facts from conflicting evidence. See *Infra*, Frame v. Resort Services, Inc., and Parsons v. Georgetown Steel.

Additionally, the decision of this Court is that the Order from the Full Commission should be reversed because the analysis, as much as can be determined from the Orders in their present form, is flawed by misapplying, as a matter of law, the

"unusual or extraordinary conditions of employment" test for determining compensability of mental injuries (see, *Infra*, Doe v. SCDDSN, and Stokes v. First Nat'l Bank) and also due to the misapplication, as a matter of law, of the "proximate cause" standard for relatedness of the work stressors to the mental injuries for compensation purposes. (*Infra*, pgs. 13-17).

Therefore, the Order is reversed and the case remanded back to the Commission.

STATEMENT OF THE FACTS

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.[3]

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[3] The Respondent called no witness to testify before the Commissioner. 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 trying 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 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 – see if I see 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 but, 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 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 – 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. 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 child 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 like eight ... zones. I was assigned to one zone; he was assigned another zone. Sometimes we had two to a zone. Sometimes we didn't have but one to a zone. So, a lot of times if you were in this zone here and there was 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 he 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 all 28 years, I have never had to deal with someone in a violent situation or in a 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 that regular people don't see, so you get very close to your workers.

(Hearing Tr. p. 29).

Captain Denton testified about an immediate change in the Appellant after the investigation into officer Johnson's daughter:

Q: After April 4, 2005, did you begin to notice any changes in Raquel?
A: Yes.
Q: when did you first notice a change in Raquel?
A: That day. Specifically that day.

(Hearing Tr. p. 83). The Appellant began having nightmares and testified, "it kept bothering me. I couldn't sleep at night. It would always be about the little girl, about the fingerprints under the tank." (Hearing Tr. pp. 24, 50). She became vulnerable to other emotional events in her life. Her family physician, Dr. Wieder, noted on April 19, 2005 the Appellant was upset and crying following the death of her cousin who suffered a prolonged illness. He prescribed Xanax medication and he took her out of work for "a few days." Her job performance began to suffer and Captain Denton asked two chaplains to counsel her. (Hearing Tr. p. 87). On April 24, 2005 she passed out at work for thirty minutes and had to be admitted to the hospital for uncontrollable high blood pressure. On May 26, 2005 Dr. Wieder suspected something was significantly amiss in his medical observation of the Appellant and noted:

> But I am really at a loss as to explain why this girl's blood pressure is running so high. There has got to be either we are missing the boat somewhere or she is not taking her medicine. It has got to be one or the other, and I have a feeling I am missing the boat on something.

The Appellant returned to work on June 7, 2005 but Dr. Welder noted continued panic attacks.

As previously mentioned, on August 7, 2005, the Appellant suffered a severe mental breakdown. She destroyed her home, kicked the windows out of her police cruiser, and was found by her father hiding in the neighbor's bushes. She was admitted to Spartanburg Medical Center for psychotic delusions including a hallucination she was traveling on a steamboat down the Mississippi River with an imaginary little girl. She was discharged to out-patient care but again had to be "stepped up" to in-patient care on August 22, 2005. During her hospitalization she was reluctant to open up in group counseling but in individual counseling with her treating psychiatrist, Dr. Ralph Castiotta, the Appellant revealed:

Appellant's claim is based upon a showing that the accident investigation of April 4, 2005 was an extraordinary and unusual condition of her employment that proximately caused her to suffer her mental breakdown.

Medically, it was not contested that the Appellant's life history predisposed her to being someone who may experience a mental breakdown. The Respondent's expert opinioned that:

> 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 this 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.

Also uncontested was the Appellant's history of depression and bipolar disorder. From family history, the Respondent's expert stated "[T]his would seem to indicate there

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When I asked her why she was overtaking her medicines she returns to discussing a case she had several months back when a 2 year old was run over inadvertently by a police officer who ran over his own child. The would have been distressing but she knew the police officer ...

On September 6, 2005, her treating clinical psychologist, Luther A. Diehl, Ph.D., reported:

> In discussing primary issues at this point, Ms. Martinez did function in a crime scene investigation with a two year old child who was accidently killed when run over by her father who was a Greenville County Deputy. Ms. Martinez knew this officer and indicated that this event took place in April of 2005. She was extensively involved in the investigation and understood the reaction quite vividly from the father. She began having problems after this death and a week later her cousin died of AIDS.

exists a genetic loading toward some type of disorder. Bipolar is one type of Affective Disorder."

Respondent's expert was asked:

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?

His response was:

Yes. Both bipolar and Post Traumatic Stress Disorders were aggravated by The trauma experienced during the accident investigation on 4 April 2005.

THE ORDER

In his Order, the Single Commissioner made three Findings of Fact which were relevant to the decision. Finding of Fact 14 was "investigating the death of a child, even the child of a former Sheriff's deputy, was not an unusual or extraordinary condition of Claimant's employment"; 15 was Claimant failed to prove she encountered an unusual or extraordinary condition in her employment on April 4, 2005; and 16 was Claimant failed to prove the accident investigation of April 4, 2005 was the proximate cause of her mental breakdown. The Single Commissioner gave no basis for his factual conclusion in Finding of Fact 14, and as to Findings of Fact 15 and 16, he simply stated to each of these two Findings of Fact that "[T]his finding is based on all the evident in the record."

The Findings of Fact made by the Commission must be sufficiently detailed to enable a reviewing Court to determine whether the evidence supports the finding. Frame v. Resort Services, Inc., 357 S.C. 520, 593 S.E. 2d 49 (S.C. App. 2004); citing Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E. 2d 366 (1995). The Order issued by the

Commission lacks the "concise and explicit" statement of facts. As referenced in Able Communications, Inc. v. SCPSC, 290 S.C. 409, 351 S.E. 2d 151 (1986), the Findings of Fact of an administrative body must be sufficiently detailed to enable the reviewing Court to determine whether the findings are supported by the evidence and whether the law was properly applied. Implicit findings of fact are not sufficient. Where material facts are in dispute, the administrative body must make specific, expressed findings of fact. Id. citing Aristizabal v. Woodside-Division of Dan River, 268 S.C. 366, 234 S.E. 2d 21 (1977). A recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing Court to address the issues. Id. Also, see Grant v. Grant Textiles, 372 S.C. 196, 641 S.E. 2d 869 (2007), where the Court held a final Order shall include findings of fact and conclusions of law separately stated. Findings of Fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying fact supporting the finding. Id. citing S.C. Code Ann., section 1-23-350. It is impossible for a reviewing Court to examine an Order for error if the reasons for the decision are left to speculation. Grant citing Able. Here, even though the orders from the Commission give a summary of some of the testimony presented during the hearing, no basis for the Finding of Facts 14, 15, and 16 is provided and, thus, 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 basis in the record.[4]

When an administrative agency acts without first making proper factual findings as required by law, the proper procedure is to remand the case and allow the agency the opportunity to make these findings. Frame, *supra*.

MENTAL AND EMOTIONAL INJURIES

In determining whether a work-related injury is compensable, the Workers' Compensation Act is liberally construed toward the end of providing coverage rather than non-coverage to further the beneficial purposes for which it was designed. Shealy v. Aiken County, 535 S.E.2d 438 (S.C. 2000); *citing* Dickert v. Metropolitan Life Ins. Co., 306 S.C. 311, 411 S.E.2d 672 (341 S.C. 448, Ct. App. 1991).

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[4] There is nothing in the record which this Court can find to support the factual conclusion that investigating the death of a child of a former Sheriff's deputy was "usual or ordinary", even though Finding of Fact 14 specifically concluded that investing the death of a former Sheriff's deputy's child was not unusual or extraordinary. Again, the Respondent called no witnesses at the hearing. The Claimant and Officer Denton were the only witnesses to testify on the subject and their testimony does not support Finding of Fact 14.

S.E.2d 672 (341 S.C. 448, Ct. App. 1991).[5] A compensable mental injury under the Act is defined by § 42-1-160, S.C. Code Anno., which provides in its applicable part:

> ... Stress arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury is not a personal injury unless it is established that the stressful employment conditions causing the mental injury were extraordinary and unusual in comparison to the normal conditions of the employment.

Whether the stressful employment conditions were extraordinary and unusual is determined by comparing them to the conditions of the claimant's particular job, not to conditions of an employment generally. Doe v. S.C. Dept. 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 (S.C. App. 2004). Although stress may be inherent in a given job, a combination of stressful events may still be unusual and extraordinary and, therefore, compensable. Doe v. SCDDSN, *supra.*; Shealy v. Aiken County, *supra.*, *citing* Kearse v. S.C. Wildlife

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[5] Also, Workers' Compensation is not a "fault-based" system of recovery. As discussed herein, the proper analysis to apply in determining whether the work-related stressors were unusual or extraordinary requires an examination of the alleged factors as they relate to the particular employee in order to give effect to the legislature's intent that Workers' Compensation be a faultless means of recovery. See, Howard Delivery Services, Inc. v. Zurich American Ins. Co., 547 U.S. 651, 126 S. Ct. 2105 (2006):

> [W]orkers' Compensation laws assure that workers will be compensated for work-related injuries whether or not negligence of the **employer** contributed to the injury...In exchange for no-fault liability, employers gain immunity from tort actions that might yield damages many times higher than awards payable under Workers' Compensation schedules. (emphasis added) pg. 655
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> The invention of Workers' Compensation as it has existed in this country involves a classic social trade-off or, to use a Latin term, a quid pro quo...What is given to the employee is the right to receive certain limited benefits regardless of fault...What is taken away is the employee's right to recover full tort damages...for employers - they [Workers' Compensation] remove the risk of large judgments and heavy cost generated by tort litigation...[Workers' Compensation] relieves the employer of not only common-law tort liability but also of statutory liability under virtually all state statutes, as well as liability in contract and in admiralty, for an injury covered by the compensation act.
> Pg 662

Resources Dept., 236 S.C. 540, 115 S.E.2d 183 (1960).

Assuming the Commission's findings as set forth in its Orders are appropriate for appellate review, it is clear that the Commission failed to conduct the proper analysis. In Doe v. SCDDSN, the majority opinion concluded that the standard to be applied is whether the work conditions were unusual to the particular employee's strains, Doe citing 2 Larson's on Workers' Compensation Law, section 44.05 (4)(d)(1999). In her concurrence opinion, Chief Justice Toal explained that a fatal error occurs in the analysis when the Commission focuses on the ordinary aspects of the Claimant's employment to the exclusion of an examination of the extraordinary, and the consequent use of these ordinary aspects to support the conclusion that the injury is not compensable.[6] The Commission must look at the particular Claimant and whether the asserted change of conditions in the employment are, for that particular employee, unusual or extraordinary,

[6] An aspect of the Claimant's life which the Commission appears to fail to consider is her struggle after being molested and rape. Even though this is an event which the employer's expert witness seems to conclude was significant in her predisposition to having emotional issues, it appears to have no importance to the Commission.

A significant reason behind the position of the majority's opinion that the work conditions need to be analyzed as to "the particular employee's normal strains" and the Chief Justice's concurrence opinion that a change in the employee's working condition needed to be evaluated as to "how the conditions affect the Petitioner [the particular employee]" is, again, in order to effectuate the legislative purpose , see footnote 5, but also the opinions are consistent in preventing injuries from being compensable based on a reasonable or fault-base analysis.

Respondent references the lack of a policy in the Sheriff" department as a reason in support of the Commission's decision. The existence or lack of a policy, again, indicates an improper focus in the Commission's analysis. It is also suggestive of a "fault-based" analysis which is contrary to the "faultless-based" means of recovery found in the Workers' Compensation Act. Also, our Supreme Court has never applied an objective standard of "reasonable" employment when considering whether a worker was exposed to "unusual of extraordinary" work conditions, but rather compared to the Claimant's particular job. Shealy, *supra*. This Court also notes that if the quality of friendship between the father of the deceased child and the Appellant is an issue, the quantitative factors are, again, to be measured from the Appellant's position in order to avoid a fault system of analysis based solely on the negligence standard of reasonableness. Additionally, also what becomes a non-determinative factor in a faultless-based analysis is the correctness or incorrectness of Officer Denton's decision to keep Appellant on the accident investigation even though she asked to be removed.

and, must evaluate how the changed conditions affected the Claimant. Additionally, similar to the Court's analysis in Doe, the fatal flaw in the present case is the focus on the ordinary aspects of the Claimant's employment to the exclusion of an examination of the extraordinary or unusual, and the effects on the Appellant of these factors. Id., citing Stokes v. First Nat'l Bank, 298 S.C. 13, 377 S.E.2d 922 (Ct. App. 1988). The Commission's Order in the present case is void of the required analysis and, therefore, as a matter of law, is reversed.

The Court also notes 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 the Appellant and her supervisor, Captain Denton. They both testified the April 4, 2005 investigation was unusual and extraordinary because, among other factors, in their combined forty-eight (48) years of law enforcement experience, neither had ever been called upon to investigate a violent death involving a person they knew and a fellow officer.[7]

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[7] Captain Denton testified:

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 condition 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 be extraordinary?**

If the Commission's Order is proper for judicial review, then the analysis required by Doe v. SCDDSN was not accomplished by the Commission and the Order should be reversed.[8]

PROXIMATE CAUSE

Additionally, the Commission's Order and finding as to proximate cause is deficient as a matter of law and is reversed. Again, assuming the Order is sufficient for judicial review, the Commission's Findings of Fact as to proximate cause was that the Claimant had "failed to prove" the accident investigation was "the proximate cause of her mental breakdown". By using the terminology "failed to prove", this Court applies a traditional reading of these terms to believe the Commissioner felt "the burden of proof" as to an element of the claim was not established by the employee. As such, the Commission's finding is clearly erroneous, applying the substantial evidence standard of review, because the only conclusion that can be drawn from the medical information is that there exists the necessary showing of proximate cause to link the accident

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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?

By the 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 run over by a police car that was driven by a former employee whom we were friends with. That's the whole fact.** (Emphasis added)

(Hearing Tr. pp. 98 - 99).

[8] Given the evidence in the record which supports a finding in favor of Appellant, it is due to this Court's respect for the role of the Commission as fact-finder that the decision is to remand the case given the defectiveness of the Order rather than reversal. However, if remand to allow the Commission the opportunity to apply the correct legal analysis is not proper, the Court can find that based upon the substantial evidence standard of review (substantial evidence being not a mere scintilla of evidence nor evidence viewed blindly from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the Full Commission reached), the record does not support the decision made by the Commission when this Court applies the proper legal test to the record.

investigation of her friend's child's death and her mental breakdown.[9]

The Commission's Order does not suggest, implicitly or expressly, that the proximate cause element of the claim fails because of some intervening or superseding act. An intervening act or superseding act that breaks the proximate cause link is, traditionally, in the nature of affirmative defenses to which the Claimant does not bear the burden of proof. Additionally, in view of clear and uncontested evidence of proximate cause contained in the medical records, the Commission's Order requires the Court to speculate as to how, factually, the Appellant did not meet her "burden of proof". This 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 Appellant. The medical testimony overwhelmingly establishes the causative link to the work environment even when considering her pre-existing mental issues and the subsequent death of her husband's cousin.

Additionally, the only case law referenced to the Single Commissioner was Nawa v. Wackenhut Corp., 341 S.E.2d 800 (S.C. App. 1986). Any reliance by the Commission to restrict the "proximate cause" link, as apparently advocated by the employer before this Court is, as a matter of law, misplaced if Nawa was presented for the legal proposition that work-related stressors are required to be "the sole" factor that created this injury. Nawa is factually distinguishable from the present case in many respects. Nawa dealt with whether a fatal stroke was caused by job-related stress or by sexual intercourse. In affirming the Full Commission and the Circuit Court, the Court of Appeals noted the testimony of a cardiologist which supported the factual conclusion that the rupturing of a berry aneurysm is most commonly associated with sexual intercourse and also noted another physician's testimony that "most probably" the

[9] See S.C. Code § 42-1-160 where causation for mental injuries or stress requires medical causation.

employee would not have suffered the stroke had he not been engaging in sexual intercourse. This Court notes the quality of evidence as to the issue of proximate cause, or lack of proximate cause, presented in Nawa is not present in this case. As noted herein, Respondent's medical expert's opinion supports the proximate cause element of Appellant's case.

The Commissioner further found that the "Claimant failed to prove that the accident investigation on April 4, 2005 was **the** proximate cause of her mental breakdown..." (emphasis added) (Finding of Fact no. 16). A claimant does not have to prove the extraordinary or unusual conditions of employment were "the" proximate cause of a mental stress injury, only that the stressful employment conditions proximately caused the mental injury. See Nawa.

A proximate cause of injury is a cause which, in a natural and continuous sequence, produces the injuries and damages, and without which the injuries and damages would not have occurred. Every natural consequence which flows from a work-related injury, unless the result of an independent intervening cause sufficient to break the chain of causation, is likewise compensable. See Tatum v. MUSC, 346 S.C. 194, 552 S.E.2d 18 (2001) where the act of a physician committing malpractice does not break the chain of causation. The original work-related injury is regarded as the proximate cause of the damage flowing from the subsequent negligent treatment. Tatum citing Whitfield v. Daniel Const. Co., 226 S.C. 37, 83 S.E.2d 460 (1954). It is universally recognized that there may be more than one proximate or legal cause of an injury. Where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributed to all or any of the causes. Childers v. Gaslines, Inc., 141 S.E.2d 761 (1966); Sanders v. Western Auto Supply Co., 183 S.E.2d 312 (1971). While there are cases that use the phrase "the" proximate

cause in discussing the legal standard for establishing causation in a workers' compensation claim, these cases do not limit the well-established rule of causation in workers' compensation claims that has existed for over fifty (50) years. The fact that a claimant may have suffered from a pre-existing mental condition does not preclude Workers' Compensation benefits for a mental injury. Doe v. S.C. Dept. of Disabilities, *supra*.; Ellison v. Frigidair Home Products, 638 S.E.2d 664 (S.C. 2006). A work-related accident which aggravates or accelerates a pre-existing condition, infirmity or disease is also compensable. Mullinax v. Winn-Dixie Stores, Inc., 458 S.E.2d 76, *citing* Brown v. R.L. Jordan Oil Co., 353 S.E.2d 280 (1987).[10]

The only causation conclusion that can be drawn from the record below is that the Appellant established her burden of proof that her mental injuries were proximately caused by the stress from the accident investigation. The Appellant began having recurring nightmares "about the little girl, about the fingerprints under the tank." (Hearing Tr. pp. 24, 50). Her job performance began to suffer and she was referred for counseling. (Hearing Tr. p. 87). On April 24, 2005 she passed out at work for thirty minutes and admitted to the hospital for four days because of uncontrollable high blood pressure. After her discharge, Dr. Weider kept her out of work while he struggled to control her blood pressure and, not knowing the specifics of the investigation, wrote in his office note he felt like he was missing something. The Appellant returned to work on June 7, 2005 but continued to suffer panic attacks, all leading to her severe mental breakdown and psychotic episode on August 7, 2005. Her medical records relate the onset of her mental problems to the investigation on April 4, 2005.

[10] In a Workers' Compensation action, a work-related accident which aggravates or accelerates a pre-existing condition, infirmity, or disease is also compensable. *Id.*

There is no evidence she was anything other than an honest, diligent, and hard working law enforcement officer who was able to do her job. Additionally, nothing is contained in the orders that suggest the Appellant and her witnesses were not creditable. Notably, the Commission mentioned the defense expert's opinion that the Appellant had pre-existing bi-polar disorder and PTSD (a proper Doe v. DDSN analysis would weight her pre-existing condition as a positive factor to find compensability) but inexplicably failed to mention this same expert's opinion that the accident investigation of April 4, 2005 aggravated these pre-existing conditions.[11]

Based upon a comprehensive review and consideration of the record,

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[11] All of the doctors, psychiatrists, and counselors who submitted medical opinions, including the defense experts, stated the investigation of the tragic death of Officer Johnson's infant daughter on April 4, 2005 caused, aggravated, or contributed to the Appellant's mental injury. Dr. Diehl wrote, "it is my opinion that her current psychological difficulties and impairment in work functioning were precipitated by the work related stressor on April 4, 2005." When Dr. Welder learned about the investigation he put the pieces together and wrote, "She has been hospitalized for emotional problems after the investigation of a former deputy who ran over his little two-year-old girl in their driveway accidently and it was just the last straw for Raquel." Dr. Castriotta wrote:

> The above referenced patient is currently under my care for Major Depressive Disorder the Post Traumatic Stress Disorder. It is my professional opinion that the patient's current condition is directly related to the incident that occurred in April of 2005 while employed with the Sheriff's Department. Ms. Martinez investigated the accidental death of a two year old child whose death occurred while her father was moving a car.

And, the defense expert responded to a specific written questions and stated:

> 3) IN YOUR OPINION WAS ANY OF MS. MARTINEZ'S PSYCHIATRIC CONDITIONS CAUSED OR AGGRAVATED BY THE ACCIDENT INVESTIGATION CONDUCTED BY MS. MARTINEZ ON APRIL 4, 2005?
>
> Yes. Both Bipolar and Post Traumatic Stress Disorders were aggravated by the Trauma experienced during the accident investigation she conducted on April 4, 2005.

Where the evidence is susceptible of but one reasonable inference, the question is one of law for the court rather than one of fact for the Commission. Mullinax, *supra*, at 80; Glover v. Rhett Jackson Co., 267 S.E.2d 77 (1980). The Commission's finding that the Claimant "failed to prove" the accident investigation of the tragic death of Officer Johnson's infant daughter on April 4, 2005 was not the proximate cause of her mental breakdown is not supported by substantial evidence and is affected by an error of law, even if the Orders are proper for appellate review. 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.

IT IS HEREBY ORDERED that the Decision and Order of the South Carolina Workers' Compensation Commission is reversed and the case remanded for further review consistent with this Order.

AND IT IS SO ORDERED.

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

2009 FEB 25 PM 1:15
MARC HAYES

Spartanburg, South Carolina
25th day of February, 2009.