

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION

Appellate Panel of the Full Commission

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WCC Number: 1709864  
Appellate Case No.: 2019-000460

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**RECEIVED**  
SEP 27 2019  
SC Court of Appeals

Sarah Jefferies, Employee, ..... Appellant,

v.

Milliken, Employer,

and

Liberty Ins. Co., ..... Respondents.

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**INITIAL BRIEF OF RESPONDENTS**

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## STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Appellate Panel of the South Carolina Workers' Compensation Commission Have Jurisdiction to Hear Appellant's Appeal of the Single Commissioner's Order?
- II. Does the Record on Appeal Contain Substantial Evidence Requiring Affirmance of the Appealed Order?
- III. Did the Appellant Prove Proximate Cause?

## STATEMENT OF THE CASE

Appellant is not represented. On July 19, 2017, the Appellant filed a Form 50, Request for Hearing, alleging she sustained an injury to her left hip and left leg as a result of pushing racks and bags of waste at work on or about June 22, 2017 and further alleging entitlement to additional medical examination and treatment for her alleged injuries. (R. at \_\_\_\_.) Thereafter, Respondents filed a Form 51, denying compensability of the Appellant's alleged left hip and left leg injuries. (R. at \_\_\_\_.) Immediately prior to the Single Commissioner hearing, Appellant was informed of her right to an attorney, invoked that right, and the hearing was postponed to be reset before the next jurisdictional Commissioner. (R. at \_\_\_\_.) Ultimately, Appellant did not retain an attorney.

A hearing was held before Commissioner Avery B. Wilkerson, Jr. (hereinafter, "Single Commissioner") on March 2, 2018, to determine the issues outlined in the parties' Forms 50 and 51. At the hearing, it was the Appellant's position that she sustained a compensable injury to her left hip and left leg on June 22, 2017 as a result of pushing racks and bags of waste during the course of her employment. She further contended she was entitled to workers' compensation benefits, including but not limited to additional medical treatment for her left hip and left leg.

At the hearing, Respondents sought denial of the claim and asserted the Appellant was unable to meet her burden of proof by a preponderance of the evidence that she sustained a compensable injury to her left hip and left leg by accident arising out of and in the course of her employment as

required under S.C. Code Ann. § 42-1-160. (R. at \_\_\_\_.) In the alternative, Respondents denied the alleged mechanism of injury caused the Appellant's alleged condition to her left hip and left leg for reasons including the Appellant's longstanding history of leg, back, and hip problems. Respondents further contended Appellant could not satisfy her burden of proving her condition was causally related to her work with Milliken because there was no adequate medical opinion to that effect. In addition, Respondents took the position the Appellant failed to provide evidence, as required in South Carolina, that the Appellant's job at Milliken was the proximate cause of her injuries pursuant to Nawa v. Wackenhut Corp., 288 S.C. 250, 341 S.E.2d 800 (Ct. App. 1986).

After the hearing, and per the instructions of the Single Commissioner, Respondents prepared the proposed Decision and Order, and a copy of the proposed Decision and Order was mailed to the Appellant on April 13, 2018 to the address on file as of the date of the hearing. (R. at \_\_\_\_.) On April 19, 2018, Respondents mailed correspondence to the Single Commissioner advising that the Appellant had received the proposed Decision and Order and expressing the Appellant's concerns with the contents of the proposed Decision and Order, and this correspondence was contemporaneously mailed to Appellant. (R. at \_\_\_\_.)

Following the hearing, the Single Commissioner issued a Decision and Order, dated April 26, 2018, finding that the Appellant failed to prove by a preponderance of the evidence that she sustained a compensable injury by accident arising out of and in the course of her employment on or about June 22, 2017, and the Appellant's employment with Milliken was not the proximate cause of her alleged injuries as required in Nawa. (R. at \_\_\_\_.) On April 26, 2018, the Commission mailed the approved Decision and Order to the Appellant. (R. at \_\_\_\_.)

The Appellant filed an appeal on June 4, 2018. On that date, the Commission issued an Administrative Order dismissing the Appellant's Request for Commission Review as untimely

pursuant to § 42-17-50, R.67-701, and R.67-205D. A copy of this Order was sent via regular mail to defense counsel and the Appellant. (R. at \_\_\_\_.)

On June 22, 2018, Respondents received via regular mail two documents: (1) notice of the Appellant's Motion to Reinstate Appeal, indicating she failed to receive the approved Decision and Order and (2) a Form 30 on June 1, 2018. Included with the notice from the Commission dated June 20, 2018 were two copies of a "Motion to Reinstate" - one is dated June 8, 2018 and the other June 14, 2018. (R. at \_\_.)

On June 28, 2018, Respondents filed a Response to Appellant's Motion to Reinstate Appeal contending the Appellant's appeal filed on June 4, 2018 was untimely and outside the fourteen-day period for which an application for Commission review must be made pursuant to S.C. Code § 42-17-50. (R. at \_\_\_\_.)

On July 16, 2018, the Commission granted the Appellant's Motion to Reinstate Appeal. The Appellant filed a Form 59 Informal Brief with this Commission on August 24, 2018. On August 31, 2018, the Commission served a copy of the Appellant's Form 59 on the Respondents, and that correspondence was received by the Respondents on September 4, 2018.

The claim was set for hearing on October 23, 2018 before the Appellate Panel of the South Carolina Workers' Compensation Commission (hereinafter "Appellate Panel"). At that time, the Appellate Panel allowed the Appellant a second opportunity to obtain an attorney, and the appeal hearing was postponed for that purpose. (R.at \_\_.) The appeal hearing was reset for December 18, 2018. Appellant appeared without an attorney, and the appeal went forward. After considering oral argument and the evidence in the record, the Appellate Panel fully affirmed the Single Commissioner. The Appellate Panel's order was filed and served on March 1, 2019. (R. at \_\_.)

On March 12, 2019, Appellant filed an initial Notice of Appeal to this Court. On March 22, 2019, this Court issued a letter concerning the deficiencies in the Appellant's Notice of Appeal.

On March 30, 2019, Appellant mailed a handwritten Notice of Appeal, ostensibly attempting to remedy the defects noted in the March 22, 2019 correspondence from this Court. On April 10, 2019, this Court issued additional correspondence to Appellant asserting the appeal contained continuing deficiencies, and the appeal will be dismissed unless the Appellant remedied the deficiencies. On May 6, 2019, this Court issued an order dismissing the Appellant's appeal for failure to remedy the deficiencies noted in its previous correspondence. Subsequently, Appellant filed a "motion to reinstate," to which the Respondents filed a return. On July 19, 2019, this Court issued an order reinstating the appeal. On August 26, 2019, Appellant filed an Initial Brief and Proof of Service. On September 11, 2019, this Court issued a letter noting deficiencies in the Appellant's Initial Brief and requesting remedy of those deficiencies within 10 days.

#### **STANDARD OF REVIEW**

"The substantial evidence rule of the Administrative Procedures Act governs the standard of review in a [w]orkers' [c]ompensation decision." Frame v. Resort Servs. Inc., 357 S.C. 520, 527, 593 S.E.2d 491, 494 (Ct. App. 2004). "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 620, 611 S.E.2d 297, 300 (Ct. App. 2005). "The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence." Olson v. S.C. Dep't of Health & Env'tl. Control, 379 S.C. 57, 63, 663 S.E.2d 497, 501 (Ct. App. 2008).

## ARGUMENT

### **I. The Appellate Panel of the Workers' Compensation Commission Lacked Appellate Jurisdiction, and This Appeal Fails as a Matter of Law.**

By May 15, 2018, Appellant had failed to appeal before the Appellate Panel, and, therefore, the Workers' Compensation Commission lacked jurisdiction to hear the appeal. South Carolina Code of Laws Section 42-17-50 requires that the application for review of a single commissioner order be made to the commission within 14 days' notice of the Order: "If an application for review is made to the commission within fourteen days from the date when notice of the award shall have been given, the commission shall review the award." (emphasis added). "The fourteen day period is jurisdictional." Reg. 67-701 A. Indeed, the South Carolina Supreme Court has explicitly held "the Commission lacks the authority to extend the fourteen days permitted for the filing of an appeal from the decision of a single commissioner." Allison v. W.L. Gore & Assocs., 394 S.C. 185, 188–89, 714 S.E.2d 547, 549 (2011). Therefore, any application for review filed outside of this time period cannot be considered, and when an appeal is untimely, the Commission is required by law to deny appeal. The Commission has no power to act otherwise.

In granting appeal, the Commission acted without authority, and any further action by the Commission should be vacated. Following the hearing, the Single Commissioner issued a Decision and Order, dated April 26, 2018, finding that the Appellant failed to prove by a preponderance of the evidence that she sustained a compensable injury by accident arising out of and in the course of her employment on or about June 22, 2017, and the Appellant's employment with Milliken was not the proximate cause of her alleged injuries as required in Nawa. On April 26, 2018, the Commission mailed the approved Decision and Order to the Appellant. (R. at \_\_\_\_.) Regulation 67-213 specifically addresses this issue:

A. The Commission serves orders electronically, by certified mail, return receipt requested or by deposit in the United States Postal Service, first class postage, addressed to the parties pursuant to R.67-210.

- (1) Service is made by delivering a copy of the order to an unrepresented party or to the attorney representing the party.
- (2) When service is made by certified mail, the date of service is the date of the addressee's receipt indicated by the certified mail return receipt. When service is made by first class mail, five days are added to the date of mailing. Service by first class mail is deemed complete five days after the date of deposit in the United States Postal Service. Service made electronically is deemed complete five days after the date the electronic transmission is completed, unless the Commission's electronic server indicates that the transmission was unable to be completed.

(Emphasis added). In this case, the Appellant was pro se, and the order was mailed. Given that service is deemed complete five days after the date of mailing, the 14 day period for appeal began no later than May 1.<sup>1</sup> Therefore, the period for timely appeal ended May 14, and the required method of appeal is the Form 30. There is no evidence in the Record that Appellant filed a Form 30 before May 15. Therefore, the Appellant failed to timely file a Form 30, and the case should have finally ended at that point. By allowing appeal, the Commission acted without authority. The proper remedy, and the relief requested by the Respondents, is to vacate the decision and order of the Appellate Panel, with instructions to issue an order denying Appellant's appeal in total due to lack of appellate jurisdiction.

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<sup>1</sup> As shown in the hearing transcript, Appellant had informed the Commission of a "new address." (Hrg. Tr. 56.) Furthermore, the Appellant received the proposed order written by Respondents' counsel served on April 13, 2018 (R. at \_\_\_), as she called Respondents' counsel after receipt and expressed her objections. Her objections were noted in the letter dated April 19, 2018 (R. at \_\_\_.) Appellant certainly had notice of the content of the order. Per operation of Regulations 67-210 and 67-213, service is accomplished by mailing the order to the pro se litigant, and service is deemed complete five days after placement of the order in the United States mail. The Record shows that service was accomplished via mail. Furthermore, there is a continuing obligation to update pleadings per Regulation 67-610. By corollary, assuming arguendo Appellant did have an address change in the interim, Appellant has an obligation to inform the Commission of the same. In any event, service was properly accomplished, the time for appeal ran, and Appellant missed her deadline to appeal.

## II. Substantial Evidence Supports the Substantive Decision of the Commission.

While the Commission did not have the authority to hear the appeal, nevertheless, the Commission denied the claim, and substantial evidence supports the decision. “This Court’s review is limited to deciding whether the commission's decision is unsupported by substantial evidence or is controlled by some error of law.” Liberty Mut. Ins. v. S.C. Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297, 300 (Ct. App. 2005). “While reasonable minds could have reached a different conclusion based on the record, [the appellate body] must not engage in fact-finding that would disregard the Commission’s factual findings on these issues. Nero v. S.C. Dep’t of Transp., 422 S.C. 424, 427, 812 S.E.2d 735, 737 (2018). In this case, substantial evidence supports the substance of the Commission’s denial of benefits.

At the hearing, Appellant alleged that she sustained an injury to her left hip and left leg as a result of an injury at work on or around June 22, 2017. The Appellant’s medical records are inconsistent with her testimony and do not corroborate the Appellant’s allegation of injury: On June 28, 2017, six days after the alleged injury, the Appellant presented to Dr. Rollins complaining of off and on bilateral hip pain over the last several years. (APA #5, pp. 67.) She was assessed for osteoarthritis and bilateral hip pain, right greater than left. (APA #5, pp. 69.) However, at the hearing, Appellant testified as follows: “I told [Dr. Rollins] I had a problem with my right leg. It’s not my left; my left leg never hurt me because I was working.” (Hrg. Tr. at 28.) “I never had hip problems before. . . . I never had hip problems before . . . never.” (Hrg. Tr at 28-29.) “I never told him I had problems for years . . . because I didn’t.” (Id.)<sup>2</sup>

Following the appointment with Dr. Rollins, the Appellant continued to treat with Dr. Ruffing on July 10, 2017 when she presented complaining of arthritis and aching in her hip and

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<sup>2</sup> As shown in Section III infra, Appellant had documented problems with her left leg prior to the alleged injury. Therefore, her testimony is not reliable. There is substantial evidence in the Record showing prior leg pain.

upper legs. No work injury is mentioned and, the note indicates a history of “[n]o injury.” Dr. Ruffing diagnosed the Appellant with bilateral hip pain. X-rays showed no acute injury and revealed osteoarthritis of both hips. (APA #4, pp. 58-61).

On July 12, 2017, the Appellant told Dr. Rollins of pushing a buggy at work. Dr. Rollins wrote, “[w]hile this lady says that this is work related, she actually gave us the history when she was in the office just a couple of weeks ago that she had had pain off and on over several years in her hips, and now she is saying that this is work related. I cannot really connect this type of problem to pushing a buggy. While that may make her hurt more, I do not think it is a causative factor to any significant degree.”<sup>3</sup> (APA #5, p. 72).

Furthermore, one of the Senior Production Leaders, who had authority over the Appellant, Michael Williams, testified that the Appellant had never reported a work injury to him. (Hrg. Tr. at 40.) Mr. Williams testified that Appellant had a limp since November 2016. (Hrg. Tr. at 41.)

At the hearing before the Single Commissioner, the Appellant testified she presented to Ashley Atchley, Milliken Registered Nurse, on the date of the alleged incident complaining of pain in both legs. (Hrg. Tr. at 23). The Appellant’s testimony was contradictory to the testimony of Ms. Atchley who testified the Appellant presented on or about June 26, 2017 complaining of right hip and right anterior thigh pain only. Ms. Atchley further testified the Appellant did not report any left leg pain or any specific injury. (Hrg. Tr. at 50, 51, 54).

In sum, the Commission’s determination that there was no compensable injury is supported by substantial evidence in the Record: The history of years of bilateral hip pain given to Dr. Rollins; a documented history of prior left leg pain; a history of no injury given to Dr. Ruffing; testimony that no injury was reported to Mr. Williams, and Ms. Atchley’s testimony that Appellant

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<sup>3</sup> The Appellant presented no expert medical causation opinion linking her left hip and leg condition to an alleged injury at work on or about June 22, 2017.

did not report left leg pain or specific injury. Given the substantial evidence in the Record, the Commission's decision on the merits should be affirmed.

### **III. Appellant Failed to Prove Proximate Cause.**

As an additional basis to support its conclusions, the Appellate Panel noted the Appellant's employment with Milliken was not the proximate cause of her alleged injuries as required in Nawa v. Wackenhut Corp., 288 S.C. 250, 252 (1986). More specifically, as Nawa provides, "South Carolina requires the employee's job be more than one factor, to any extent, in the injury or death."

#### Id.

In Nawa, the Appellant died when he suffered a stroke during intercourse shortly after arriving home from work, and it was alleged that the stress from work was a contributing factor in bringing about the stroke, and compensability was sought for the Appellant's death. In denying compensability of the claim in Nawa, the South Carolina Court of Appeals specifically relied on Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (1960) and noted the following:

The Appellants contend, and frame their arguments on appeal around the assumption, that an employee's death is compensable if his job is a contributing factor to any degree to his death. They allege job related stress was a contributing cause of John's death and, relying on their proffered rule of compensability, conclude his death is compensable. The Appellants correctly concede no South Carolina case has expressly adopted such a rule. We decline to adopt the Appellants' interpretation of the law.

Nawa, 288 S.C. at 252.

As noted above, in this case, the Appellant alleged she sustained injury to her left hip and left leg as a result of an injury at work on or around June 22, 2017. Prior to the date of alleged injury, the evidence reveals the Appellant made several claims for bodily injury, including various injuries to her neck, back, left arm, left shoulder, left leg, hips, and right leg as a result of numerous motor vehicle accidents. (APA #1, p. 1; APA #6, pp. 94, 102, 103, 105, 109, 113, 114, 124). More specifically, according to the ISO Claim Search report, the Appellant pursued bodily injury claims

for injuries she allegedly sustained to her left leg and right leg as a result of motor vehicle collisions as early as August 21, 1994 and October 28, 1995, respectively. (APA #6, p. 109-113). In addition, on June 28, 2017 and contrary to her hearing testimony, the Appellant provided a history to her own physician that she experienced bilateral hip pain off and on over the last several years. (APA #5, pp. 67-69). Furthermore, the Appellant's own physician indicated the Appellant's initial history did not include any mention of a work injury and, in fact, Dr. Rollins stated that the Appellant's alleged work injury involving "pushing a buggy" was not "a causative factor to any significant degree." (APA #5, pp. 70-72).


Not only did the Appellant fail to provide any medical evidence or opinion linking her left hip and leg condition to any alleged injury at work, but the medical opinion of her own physician was that the Appellant's alleged mechanism of injury at work was not a causative factor for her alleged condition. Accordingly, given the aforementioned history, the opinions of the Appellant's physician, and the Appellant's hearing testimony, the Single Commissioner correctly opined the Appellant failed to prove by a preponderance of the evidence her alleged mechanism of injury was the proximate cause of her left leg and hip condition as required by Nawa.

### **CONCLUSION**

For the reasons set forth above, Respondents respectfully request the Appellate Panel's decision be vacated with instructions to deny appeal, or, in the alternative, that the substance of the Appellate Panel's decision be affirmed.

Respectfully submitted,

**WILSON JONES CARTER & BAXLEY, P.A.**

  
\_\_\_\_\_  
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Date: September 25, 2019

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA WORKERS'  
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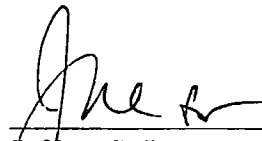
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**PROOF OF SERVICE**

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I certify that I have served the Initial Brief of Respondents on Sarah Jefferies by depositing a copy of it in the United States Mail, postage prepaid, on September 25, 2019, addressed to her at 1438 Boiling Springs Road, Apt. B, Spartanburg, South Carolina 29303.

September 25, 2019



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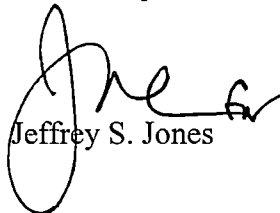
Re: Sarah Jefferies vs. Milliken and Company  
WCC File No.: 1709864 DOI: 6/22/2017  
Appellate Case No.: 2019-000460  
Carrier: Liberty Insurance Corporation - Claim No.: WC555 D64872  
WJC&B File No.: 0010.05006

Dear Ms. Kitchings:

I enclose for filing the Initial Brief of Respondents and Respondents' Designation of Matter to be Included in the Record on Appeal in the above-referenced case. By copy of this correspondence, I am serving a copy of the Initial Brief and Designation of Matter on the Appellant, Sarah Jefferies.

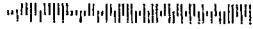
With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

  
Jeffrey S. Jones

JSJ/jcw  
Enclosures

cc: Ms. Sarah Jefferies (via certified and regular mail)  
Ms. Lauren Moeykens (via e-mail)



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