THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Avery B. Wilkerson, Jr. Chair
T. Scott Beck, Commissioner
R. Michael Campbell, II, Commissioner

WCC File No. 1102937
Appellate Case No. 2019-001141

Barry Adickes, Claimant.....Respondent,

v.

Philips Healthcare, Employer,
and Fidelity & Guarantee
Insurance Company, Carrier. ..... Appellants.

RESPONDENT'S INITIAL BRIEF

William L. Smith, II # 5226
CHAPPELL SMITH & ARDEN
P.O. Box 12330
Columbia, SC 29211
(803) 929-3600
(803) 929-3604 (facsimile)
bsmith@csa-law.com
Attorney for Respondent

Table of Contents

Table of Authorities

South Carolina Cases

Statutes

Other Authorities

Counter Statement of Issues on Appeal

I. Whether the Workers' Compensation Commission correctly awarded benefits for all weeks in the 340 week period following Respondent's accident that he experienced partial wage loss.

II. Whether the Workers' Compensation Commission correctly extended Respondent's award by the number of weeks he was totally disabled.

Statement of the Case

In September of 2014, Barry Adickes (Respondent) requested a hearing with the Workers' Compensation Commission claiming reduced earning capacity after an injury. (Form 50).

Phillips Healthcare (Employer) and Fidelity & Guaranty Insurance Company (Carrier), (collectively, Appellants), disputed this and also argued the hearing was premature. (Form 51).

A single commissioner heard the claim in January of 2015. (2015 Hr. Tr.). He issued an award in August of 2015, finding the claim was timely and awarding benefits. (Order, McCaskill).

The Defendants, Employer/ Carrier, appealed to the Commission's Appellate Panel, which heard oral arguments in December of 2015. (2015 Panel Tr.). The Panel affirmed the single commissioner's decision the following February. (2-8-16 Comm. Order).

The Defendants, Employer/ Carrier, further appealed to this Court alleging three points of error. (Op. No. 2018-UP-027). Employer/ Carrier argued the Commission erred in finding Respondent Adickes had reached maximum medical improvement, erred in finding he sustained permanent partial disability, and erred in awarding 340 weeks of benefits. (Op. No. 2018-UP-027). This Court affirmed the Commission on the former two points, but found the Commission erred in making a 340 week award. (Op. No. 2018-UP-027). The case was therefore remanded to the Commission for a calculation of benefits consistent with the order of this Court. (Op. No. 2018-UP-027).

The Commission then remanded the case to a single commissioner for a calculation of benefits. The parties were heard on October 9, 2018, and the Commissioner issued an order on January 17, 2019, finding Respondent Adickes was entitled to benefits beginning the date he was terminated by Employer and finding Employer/ Carrier were not entitled to a set-off for the weeks Adickes was totally disabled. (Order, Barden). Appellants, Phillips Healthcare and Fidelity &

Guaranty Insurance Company then appealed to the Appellate Panel of the full Commission, which heard oral arguments on April 30, 2019. (2019 Panel Tr.). An Order affirming the single commissioner's decision was issued on June 20, 2019. (June 2019 Comm. Order) The present appeal follows.

Statement of Facts

Respondent's summary of this case's history follows. Several of the medical records contain similar accounts of his car wreck, and the original hearing commissioner's decision has a synopsis of this case, including citations.

On March 22, 2011, Respondent Adickes, while in a company car, went off the side of a mountain road in North Carolina crashing into a ravine. He lost consciousness for a period of time and spent five hours trapped in his car about one hundred feet down the side of the mountain. He was rescued after he used his mobile phone to call EMS early the next morning. (2015 Hr. Tr. p. 15).

Respondent Adickes saw several physicians in the months that followed. Dr. James Rentz examined Mr. Adickes and eventually performed surgery. (Claimant's APA, pp. 156, 178-79). Dr. Nicholas Tuttle, Respondent's family doctor, sent Respondent to Dr. Howard Mandell, a neurologist, about two weeks after the wreck. (Claimant's APA pp. 129-132). Extensive records document Respondent's concussion, neck injury, and damage to his right shoulder. (Claimant's APA pp. 48-185). Doctors eventually gave Mr. Adickes a 15% impairment rating to his right shoulder, a 10% rating to his spine, and a 15% rating to his brain. (Claimant's APA pp. 77a, 82, 96).

The Respondents' case is peculiar in part because he returned to work shortly after his injury and continued working for over two years before he was terminated by the Employer. Respondent was out of work approximately one month—the wreck was March 22, 2011, and he returned to work May 1. (2015 Hr. Tr. p. 29). The Employer terminated Respondent thirty-two months later, in January of 2014.

The parties disputed the details of the termination. Employer claimed it was part of a company-wide reduction-in-force and had nothing to do with Respondent's work. (2015 Hr. Tr. 128). Mr. Adickes testified to a conversation with his boss wherein his boss specifically told him the firing was performance-related.

Regardless, Mr. Adickes's job with employer ended and he sought further employment. He ultimately accepted a new job in May of 2014, but made substantially less money than he did with Employer. Respondent Adickes argued before the Commission that the wreck left him with cognitive defects; persistent headaches, as well as, impaired "executive function" impacting his focus, concentration, ability to multi-task, and similar tasks. (Form 58 with Attachment). Further, he argued those deficits prevented him from working a demanding, high paying job like he had with Employer. (Form 58, with Attachment). He supported that claim with testimony from his wife, his doctors, and a vocational expert. (Form 58, with Attachment). The Commission agreed, and this Court found the Commission's finding was supported by substantial evidence.

Standard of Review

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers' Compensation Commission. See *Lark v. Bi–Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981); *Gibson v. Spartanburg Sch. Dist. No. 3*, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000). A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." *Bursey v. South Carolina Dep't of Health and Envtl.*, 360 S.C. 135, 600 S.E.2d 80 (2004); S.C. Code Ann. § 1-23-380(5). Under the scope of review established in the APA, this Court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. *Frame v. Resort Servs., Inc.*, 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); *Stephen v. Avins Constr. Co.*, 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996); S.C. Code Ann. § 1-23-380(5).

The substantial evidence rule of the APA governs the standard of review in a Workers' Compensation decision. *Frame*, 357 S.C. at 527, 593 S.E.2d at 494; *Corbin v. Kohler Co.*, 351 S.C. 613, 571 S.E.2d 92 (Ct. App. 2002). 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. *See Gibson*, 338 S.C. at 517, 526 S.E.2d at 728–29; *see also Lyles v. Quantum Chem. Co. (Emery)*, 315 S.C. 440, 434 S.E.2d 292 (Ct. App. 1993) (noting that in reviewing a decision of the Workers' Compensation Commission, the Court of Appeals will not set aside its findings unless they are not supported by substantial evidence or they are controlled by error of law).

Argument

Claimant's position is not complex in regard to the opinion of the 2018 opinion of the Court and a plain reading of S.C. Code Ann. section 42-9-20. Namely, that he is entitled to two thirds of the difference between his preinjury wages and his post-injury wages up to the average weekly wage of the state for the year preceding his accident for a total of 347 and 5/7 weeks. For most of the first 147 weeks post-accident, Claimant remained in the employ of Employer and received the same or similar salary as before the accident. Thus, pursuant to the opinion of this Court, those weeks are credited against the 340 week maximum recovery allowed from the date of injury and 193 weeks remain. For the remaining 193 weeks, however, Claimant earned, as a result of his on the job injury, substantially less than he earned preinjury and is therefore entitled to wage loss benefits in the amount of $704.92 per week.[1]

This number of weeks is then increased by seven and five sevenths weeks, for Claimant received temporary total disability benefits for that number of weeks over the course of two periods. The South Carolina Code at section 42-9-20 plainly states that when a period of total disability benefits is paid, the number of weeks such benefits were paid "shall not be deducted from the maximum period allowed in [section 42-9-20] for partial disability." Therefore Claimant is entitled to compensation for an additional seven and five sevenths weeks of partial disability benefits.

I. The Appellate Panel of the Workers' Compensation Commission correctly awarded benefits for all weeks in the 340 week period following Respondent's accident during which he experienced partial wage loss.

The Commission correctly awarded benefits for all weeks in the 340 week period following Respondent's accident during which he experienced wage loss. In 2018, this Court found the

[1] The amount of Claimant's reduced earning capacity is not in dispute at this time.

Commission erred in making a 340 week award. Appellants now seek to further restrict his benefits by pushing back the date those benefits could start. This argument is illogical and unsupported according to this Court's guidance provided in 2018.

Adickes's position here is straightforward: Pursuant to this Court's guidance, Respondent can only receive wage loss benefits for a set number of weeks that follow his accident. Respondent suffered no wage loss from his resulting disabilities while he remained in the employ of Employer. He is not entitled to benefits for those weeks; however, since his termination by Employer he has suffered a disability through partial wage loss—which has not changed—and he is entitled to compensation for those remaining weeks.

The appellate courts have stated as much on multiple occasions: "PPD benefits are intended to compensate an injured claimant for the loss of earning capacity over the designated 340 weeks. . . ." *Adickes v. Phillips Healthcare*, Op. No. 2018-UP-027 (S.C. Ct. App. filed January 17, 2018). "By the clear terms of [section 42-9-20], compensation is not awarded for the physical injury, but for disability produced by the injury. The disability is measured by the employee's capacity or incapacity to earn the wages that he was receiving at the time of his injury. Loss of earning capacity is the criterion." *Owens v. Hendon*, 252 S.C. 166, 169, 165 S.E.2d 696, 698 (1969). "It is well-settled that an award under the general disability statutes must be predicated upon a showing of a loss of earning capacity, whereas an award under the scheduled loss statute does not require such a showing." *Skinner v. Westinghouse Elec. Corp.,* 394 S.C. 428, 432, 716 S.E.2d 443, 445–46 (2011) (quoting *Fields v. Owens Corning Fiberglas,* 301 S.C. 554, 555, 393 S.E.2d 172, 173 (1990)).

Specifically, this Court has held, "Although a finding of MMI often coincides with an award of permanent disability benefits . . . an individual can also be permanently disabled and still

have yet to achieve MMI." *McMahan v. S.C. Dept. of Ed.-Trans.*, 417 S.C. 481, 489, 790 S.E.2d 393, 397 (Ct. App. 2016). In that case, the Court sought to determine if the family of a deceased claimant could receive benefits under the Act even if the claimant had not reached MMI prior to his unrelated death. *Id.* The Court found they could, ruling that a finding of MMI is not required for a claimant to be permanently disabled. *Id.* Notably here, Respondent Adickes's partial wage loss resulting from his disability has remained unchanged since his termination. Hence, it is factually and legally permanent.

In *Bass v. Kenco*, the Court addressed a situation where the Commission found the claimant at MMI for certain injuries but not for others and awarded permanent benefits pursuant to section 42-9-20. 366 S.C. 450, 466-67, 622 S.E.2d 577, 585-86 (Ct. App. 2005). There the Commission found the claimant at MMI for his physical injuries, but not his mental injuries. *Id.* The Defendants in that case argued the claimant was not entitled to permanent benefits until he reached MMI for all injuries. *Id.* The Court, however, disagreed stating, "A declaration of maximum medical improvement is irrelevant to the award of permanent partial disability . . . [m]aximum medical improvement is a distinctly different concept from disability." *Id.* The Court went further, explaining, "It is true that when a claimant receiving temporary benefits reaches maximum medical improvement and is still disabled, temporary benefits are terminated and the claimant is awarded permanent benefits. It does not follow, however, that a claimant who has not reached maximum medical improvement is precluded from an award of permanent benefits." *Id.*

In a similar vein, the *McMahan* Court also addressed the issue of awarding permanent benefits prior to a finding of maximum medical improvement. The Court, in a footnote stated, "the Appellate Panel misstated the law . . . when it found "it is well settled in South Carolina that the award of disability benefits is premature prior to a claimant reaching MMI." *McMahan*, at 489

n.3, 790 S.E.2d at 397 n.3. In that case, the Appellate Panel cited *Smith v. S.C. Dep't of Mental Health*, 335 S.C. 396, 399, 517 S.E.2d 694, 696 (1999) in which the supreme court stated permanent disability cannot be determined before MMI. *Id.* However, the Court distinguished that case, for it regarded an employers' ability to cease paying TTD, and "never held an individual was precluded from a permanent disability award without a finding of MMI." *Id.* Instead, the Court stated the correct proposition is found in *Bass*, which held a claimant who has not reached MMI is not precluded from an award of permanent benefits. *Id.*

In the case at bar, the Appellants assert a legal error similar to that of the Commission in *McMahan* by citing *Smith* for the proposition that benefits pursuant to section 42-9-20 cannot be awarded prior to a finding of MMI. Specifically, the Appellants' cite *Smith* and *Curiel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d 482, 485 (2007), which cites *Smith*, to support their argument that benefits are awarded on a locked continuum in which MMI must occur prior to awarding any permanent benefits. However, as held by *McMahan*, "MMI and disability are not always inextricably intertwined." *McMahan*, at 488-89, 790 S.E.2d 397 (citing *Dodge v. Broccoli, Clark, Layman, Inc.*, 334 S.C. 574, 581, 514 S.E.2d 593, 596 (Ct. App. 1999)). Furthermore, the *Bass* Court offered the most pointed and relevant statement to the facts at bar, stating "a declaration of maximum medical improvement is irrelevant to the award of *permanent partial disability*." *Bass*, at 466, 622 S.E.2d 585 (emphasis added). Moreover, *Smith* and *Curiel* importantly dealt with issues of credit to the employer/ carrier for overpayment of temporary benefits towards a scheduled member (section 42-9-30) award. Such credit is inapplicable to the case *sub judice*.

The facts of this case are most aligned, for purposes of this legal question, with those in *Bass*. Both cases involve section 42-9-20, and in both cases, benefits were correctly awarded for

a loss that accrued prior to and/or irrespective of maximum medical improvement. As stated by the Court in 2018, "PPD benefits are intended to compensate an injured claimant for the loss of earning capacity over the designated 340 weeks from the injury." *Adickes*, Op. No. 2018-UP-027 (citing *Owens*, 252 S.C. at 169, 165 S.E.2d at 698). Once Employer terminated Respondent, he began to suffer wage loss that is well documented and is no longer in dispute. As this Court affirmed in 2018, Respondent suffered a decrease in his ability to earn wages, which was caused by his workplace injury, and which manifested itself when he was terminated on January 17, 2014. *Adickes*, Op. No. 2018-UP-027. Section 42-9-20 provides compensation for that decrease in ability to earn wages. Whether the loss in capacity manifested itself before or after MMI is irrelevant. The wage loss Respondent began to suffer in January of 2014 was permanent as of that date, for he never again earned his preinjury wages. This was a direct result of the disability that was wrought by Mr. Adickes's work related injuries.

Furthermore, in contrast to other benefits awarded under the Act, section 42-9-20 makes no distinction between temporary and permanent benefits. The words "temporary" and "permanent" do not appear in this general disability statute. The statute awards benefits based only on disability, which is defined under section 42-1-120 as, "the incapacity because of injury to earn the wages which the employee was receiving at the time of the injury in the same or any other employment." S.C. Code Ann. § 42-1-120. Because there is no distinction between temporary and permanent, the only issue is whether the definition of disability has been met. *See Outlaw v. Johnson Service Co.*, 254 S.C. 486, 176 S.E.2d 152 (1970) (Loss of earning capacity alone is the criterion for compensation under the Act).

To limit an award to 340 weeks from the date of injury on the back end and at the same time limit the award at the front end, by waiting until MMI to award benefits, is nonsensical. Under

this approach, the compensation due a claimant who suffered partial wage loss would, in essence, depend on how long it took her to reach MMI. This is not the intended result of the Act. The ability to procced under sections 42-9-10 and 20 are vested rights of claimants who sustain injuries to multiple body parts. *Brown v. Owen Steel Co., Inc.*, 316 S.C. 278, 280, 450 S.E.2d 57, 58 (Ct. App. 1994) ("The policy behind allowing a claimant to proceed under the general disability sections 42-9-10 and 42-9-20 allows for a claimant whose injury, while falling under the scheduled member section, nevertheless affects other parts of the body and warrants providing the claimant with the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section."). The argument posited by Appellants, if accepted, would effectively remove the right of a claimant to establish the combined effects of his disability were greater than the sum of the presumptive losses provided for in section 42-9-30.

Correspondingly, the Court in remanding for a calculation of benefits, took no issue with and did not reverse the original finding that Respondent's disability manifested itself on January 17, 2014. Instead, the Court simply found Respondent's award must be reduced by the number of weeks he worked for Employer before his disability manifested itself. The original commissioner found correctly that Respondent's wage loss began on January 17, 2014. That finding has not been overturned and is consequently the law of the case. *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) (citing 5 C.J.S. Appeal & Error § 991 (2007) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.")).

No fact finder has found a date of MMI in this matter, for the date of MMI is irrelevant to benefits awarded under section 42-9-20. Appellant's argue for a date of MMI. The Commission, however, correctly found that it was precluded from doing so concluding, "The affirmed order

does not contain a date of maximum medical improvement and to find such a date would be determining an issue beyond the scope of the remand from the Court of Appeals." (June 2019 Comm. Order).

The only expectation of the Commission on remand was to solve a math problem, which it did. In his Order of August 27, 2015, Commissioner McCaskill found that Respondent's wage loss began on January 17, 2014, when he was terminated. The Appellate Panel affirmed. Despite the arguments of Appellants, the Court did not reverse this finding. Rather, the court said,

> The record is clear Adickes did not suffer a wage loss until he was terminated from Employer. Under the Appellate Panel's interpretation, Adickes would receive PPD wage loss compensation for the period he worked full time and earned a full time salary. We hold the Appellate Panel erred by expanding the timeframe and award for PPD benefits in contravention of the plain language of section 42-9-20 and the legislative intent for compensation. Accordingly, we reverse the Appellate Panel's award of 340 weeks' compensation commencing January 17, 2014, and remand for a new calculation of benefits consistent with the plain language of section 42-9-20.

Adickes, Op. No. 2018-UP-027. Therefore, the Court affirmed that wage loss began on January 17, 2014. It only reversed the award to reduce the award by the number of weeks (147) that elapsed between the date of injury (March 22, 2011) and the date the wage loss began (January 17, 2014) which lessens the total award from 340 weeks to 193 weeks. The only instruction from the Court on remand is to make the award fit this holding.

The Court has stated "where a case that has been appealed is remanded by the court to the workers' compensation commission with specific directions, the commission must proceed in accordance with those directions." *Bobo v. Marshane Corp.*, 302 S.C. 86, 88, 394 S.E.2d 2, 4 (Ct. App. 1990) (citing 101 C.J.S. *Workmen's Compensation* § 790 at 37 (1958)). Further, the court opined, "[i]n such a case, the order limits the authority of the commission." *Id.* The supreme court has additionally held that an administrative body cannot consider additional evidence where the court had reversed a judgment and remanded the issues to the administrative body for a

determination pursuant to specific instructions. *Parker v. S.C. Public Service Commission*, 288 S.C. 304, 342 S.E.2d 403 (1986); *See also In re Doherty*, 109 N.E. 887 (Mass. 1915) (where a remand order did not authorize the commission to expunge the old record and to make a new one, the commission lacked authority to make a new record).

Respondent's position here is simple, logical, and consistent with case law and the plain language of the statute. The Commission correctly awarded benefits from the date his wage loss began. His disability was permanent as of that date, and MMI has no relevance as to the awarding of wage loss benefits pursuant to section 42-9-20. Respondent is entitled to benefits as awarded by the Commission. He therefore respectfully asks this Court affirm the order of the Commission.

II. The Workers' Compensation Commission correctly extended Respondent's award by the number of weeks he was totally disabled.

The Commission correctly extended Respondent's award by the number of weeks Respondent received TTD benefits. This conclusion of the Commission is consistent with prior case law interpreting section 42-9-20, consistent with a plain reading of section 42-9-20, and consistent with the intent of the Court's 2018 opinion in this matter.

In *Bass*, the defendants argued the Commission erred in not giving them a credit for TTD benefits paid. *Bass*, at 465, 622 S.E.2d at 585. In that case, similar to the case at bar, the claimant suffered a mental injury and a physical injury. *Id.* at 466, 622 S.E.2d 585. The claimant's mental injuries were the proximate cause of his loss in earning capacity, while his physical injuries were the direct cause of his temporary total disability. *Id.* The Court stated "[t]he period of total disability of the [physical injury] [was] separate and distinct from the subsequent period of permanent partial general disability stemming from the physiological issues." *Id.* Consequently, the Court held "[the claimant] was paid total temporary benefits only for the uncontested period

of his physical disability. Accordingly, the commissioner correctly applied section 42-9-20 and declined to give [the employer] a credit for temporary benefits paid."

Here, the period that Respondent argues should not be deducted from the maximum period allowed is the period during which he received temporary total disability benefits for his physical injuries. The facts are thus parallel to those in *Bass*. Respondent Adickes's brain injury with loss of executive function was the primary cause of his wage loss, while his neck and shoulder injuries and treatment of those injuries were the cause of his temporary total disability. The periods are separate and distinct, and the Commission correctly declined to give Appellants credit for the temporary total benefits paid.

Likewise, a plain reading of section 42-9-20 supports the position taken by the Commission. The final sentence of that section states, "In case the partial disability begins after a period of total disability, the [period of total disability] shall not be deducted from the maximum period allowed in this section for partial disability." S.C. Code. Ann. 42-9-20. The "maximum period" described being 340 weeks post accident. That sentence is not redundant or superfluous. *See* 82 C.J.S. Statutes § 433 (2012) ("Courts are loath to read statutes in a manner that would render parts of them entirely superfluous, meaningless, or inoperative."). Instead, it provides an exception to the maximum period allowable stated in the previous sentence.

According to the position argued by Appellants, the final sentence operates to prevent a claimant from having two weeks reduced from his award for every one week he was totally disabled. This is an incongruous result, and would not be the default position if the final sentence were to be excluded from the statute. To wit, previous versions of the code specifically mandated such a result. *See e.g.* S.C. Code Ann. § 72-152 (1962). The removal of such provision thus disallows that procedure, and the addition of the final sentence as it reads currently, allows partial

wage loss benefits to extend beyond 340 weeks by the number of weeks the claimant was totally disabled.

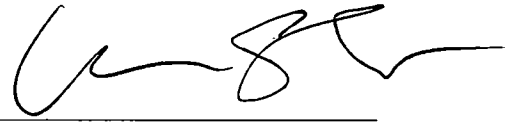
Further, this position is consistent with the prior 2018 Opinion of the Court in his matter. At that time, the Court addressed the larger question of whether claimants who suffer wage loss are entitled to a 340 week award or an award over the course of 340 weeks from the date of injury. The Court stated the latter was correct and most in line with the legislature's intent. What the Court did not address, as the issue was not before it, was the final sentence of section 42-9-20, which provides an exception to the general rule that claimants receive benefits over the course of 340 weeks from the date of injury. Extending the award beyond 340 weeks for weeks paid in TTD is consistent with both the Opinion of the Court and the plain language of the statute.

Respondent is entitled to further wage loss benefits for the number of weeks he was totally disabled. Prior case law and section 42-9-20 support the position taken by the Commission, and its Decision and Order should be affirmed.

Conclusion

This Court should affirm the Appellate Panel's Order *in toto*. First, the Commission correctly awarded Respondent wage loss benefits for every week he suffered wage loss during the statutory period. Second, the Commission correctly did not give Appellants credit for the weeks Respondent was totally disabled. The Commission's Order is consistent with a plain reading of section 42-9-20 and the cases interpreting it. The Commission committed no errors of law, and the Court should affirm.

Respectfully submitted,



William L. Smith, II
Chappell, Smith & Arden, PA
P.O. Box 12330
Columbia, SC 29211
(803) 929 3600
(803) 929 3604 (facsimile)
bsmith@csa-law.com
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Avery B. Wilkerson, Jr., Chair
T. Scott Beck, Commissioner
R. Michael Campbell, II, Commissioner

WCC File No. 1102937
Appellate Case No. 2019-001141

Barry Adickes, Claimant.....Respondent,

v.

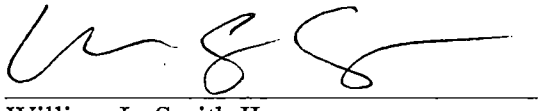
Philips Healthcare, Employer,
and Fidelity and Guarantee
Insurance Company, Carrier. ..... Appellants.

Proof of Service

I certify that I have served *Respondent's Initial Brief* and *Designation of Matters* on the Appellants by depositing a copy of it in the United States Mail, postage prepaid, on November 13, 2019, addressed to their attorney of record, Brooke A. Payne, Payne Law Group, LLC, PO Box 2449, Mt. Pleasant, SC 29465.

November 13, 2019

Respectfully Submitted,



William L. Smith II
2801 Devine Street, Suite 300
Columbia, SC 29201
PH: (803) 929-3600
bsmith@csa-law.com
ATTORNEY FOR RESPONDENT

Part of the CSA-LAW NETWORK

CSA LAW

CHAPPELL SMITH & ARDEN, P.A.

Licensed to practice
in South Carolina,
North Carolina
and Georgia.

PO Box 12330
Columbia, SC 29211
Phone 803.929.3600
Fax 803.929.3604
Toll Free 800.531.9780
www.CSA-LAW.com

November 13, 2019

Via Hand Delivery
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Barry Adickes, Claimant, Respondent v. Philips Healthcare, Employer, and Fidelity & Guarantee Insurance Company, Carrier, Appellants.
Appellate Case No. 2019-001141

Dear Ms. Kitchings:

Enclosed for filing in the above referenced matter please find Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal along with the original Proof of Service of the same. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

William L. Smith, II
(803) 509-5839
bsmith@csa-law.com

WLS/kll
Enclosures
cc: Brooke A. Payne, Esquire