

STEPHEN B. SAMUELS
P. JASON REYNOLDS
ATTORNEYS AT LAW

March 30, 2020

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S.C. SUPREME COURT

Via Hand Delivery and U.S. Mail
Honorable Daniel E. Shearouse
Clerk of Court, S.C. Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

Re: Danny B. Crane v. Raber's Discount Tire Rack, et al.
Appellate Case: 2018-000959 Opinion 27951

Dear Mr. Shearouse:

Enclosed for filing please find the original and one copy of *Petitioner's Return to Petition for Rehearing* in the above-referenced appeal. If you would kindly return a stamped copy of the *Return to Petition for Rehearing* to my office in the enclosed self-addressed stamped envelope.

By copy of this letter and enclosure to Daniel P. Ranaldo and Matthew J. Story, we are serving a copy of *Petitioner's Return to Petition for Rehearing* upon counsel for the Respondents as indicated by the attached Proof of Service.

If you have any questions or concerns, please do not hesitate to contact me. Thank you for your consideration.

With kindest regards, I am

Yours very truly,

Wanda Powell
Paralegal to Stephen B. Samuels

/wp
Enclosure(s) as stated

cc: Mathew J. Story, Esq.
Margaret H. Urbanic, Esq.
Lisa C. Glover, Esq.
James Raber d/b/a Raber's Discount Tire Rack

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from the Workers' Compensation Commission

Op. No. 27951 (S.C. Supt. Ct. filed February 14, 2018)(Shearouse Adv. Sh. No. 10 at 8)

Danny B. Crane, Petitioner,

v.

Raber's Discount Tire Rack, Employer, and
South Carolina Uninsured Employers Fund, Carrier, Respondents.

RETURN TO PETITION FOR REHEARING

ARGUMENT

1. As the Court remanded for a *de novo* hearing before a different commissioner, the hearing must necessarily consider all issues raised at the original hearing unless these issues have been deemed proven or abandoned.

Respondents have asked for rehearing on the single issue of whether it was proper for the Court to instruct the commission on remand to hold a new hearing to “make *de novo* findings on Crane's claims for temporary total disability, permanent impairment, and future medical care based on his alleged hearing loss, head or brain injury, and psychological overlay.” Crane v. Raber's Discount Tire Rack, Op. No. 27951 (S.C. Supt. Ct. filed February 14, 2018)(Shearouse Adv. Sh. No. 10 at 16-17). Respondents specifically argue that Petitioner “abandoned [the claim for a brain

injury] after the denial by the Single Commissioner.” [Petition for Rehearing, page 2].

In his brief to the Court of Appeals, Petitioner made this statement: “On appeal, Crane abandoned the brain and face claims.” [App. p. 280 n.1]. Petitioner acknowledges that the specific claim for a brain injury was abandoned on the first level of appeal to the Appellate Panel.¹

The question before the Court is whether ordering a *de novo* hearing reinstates the brain injury claim or whether it is procedurally barred. In its Decision, the Court “remand[ed] to the commission for new hearing on all three claims.” Id. The Court specifically ordered:

We remand to a different commissioner for a new hearing. The commissioner must reconsider the date of maximum medical improvement and make *de novo* findings on Crane's claims for temporary total disability, permanent impairment, and future medical care based on his alleged hearing loss, head or brain injury, and psychological overlay.

Id.

In Brunson v. American Koyo Bearings, this Court addressed whether an interlocutory order of the Appellate Panel remanding a case for a *de novo* hearing was immediately appealable. The decision turned on whether the order deprived the appellant of a substantial right – which in turn required analysis of the issues to be addressed on remand. The Court described the appellant’s argument:

Brunson’s claim of “substantial right” springs from the fact that Employer admitted the compensability of the contact dermatitis injury and took no exception to this ruling in the appeal to the Commission. Brunson apparently believes the *de novo* hearing before the single commissioner includes all issues, including those not challenged in Employer’s appeal to the Commission. Brunson, however, is not required to relitigate unchallenged findings – which are the law of the case – including Employer’s admission in connection with the contact dermatitis injury.

Brunson v. American Koyo Bearings, 367 S.C. 161, 623 S.E.2d 870 (2006).

¹ Respondents cite to Petitioner’s Brief to the Full Commission. Although this document was not part of the Record on Appeal, Respondents characterization is accurate.

Brunson seems to indicate that because Crane did not appeal the denial of the brain injury it then must be the law of the case even though the Court ordered a *de novo* hearing. The difference may lie in the fact that Brunson's employer admitted the contact dermatitis injury in their Form 51 and stated on appeal that "Nothing in the full commission's order alters or eliminates that admission." Id.

In the instant case, there is no admission; Respondents denied all elements of the claim. The Commission found as a fact that Crane did suffer hearing loss in a work-related accident (albeit finding erroneously that his hearing had returned to baseline when he saw Dr. Ky for the rib injury).

If the remand hearing is a "pure" *de novo* hearing, such that all issues are in play as if the first hearing never happened, then it would seem all parties must relitigate all issues. Conversely, if the Court has ordered that the hearing loss and psychological overlay are proven as a matter of law – such that the remand hearing is limited to "temporary total disability, permanent impairment, and future medical care" – then the brain injury claim would seem to be procedurally barred as the law of the case. The confusion here may arise because the Court refers to "*alleged* hearing loss, head or brain injury, and psychological overlay." This reference seems to indicate Crane must still prove he suffered these injuries. However, the instructions on remand also seem to imply that the only contested issues are "temporary total disability, permanent impairment, and future medical care."

This would be an indication that the Court found Crane proved his injuries.

CONCLUSION

Petitioner request that the Court deny the Petition for Rehearing. If rehearing is granted and the brain injury claim is deemed abandoned, Petitioner would ask that, faithful to the remand instructions, the Court clarify that it found Petitioner had proven the other elements of his claims.

Respectfully Submitted,



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ATTORNEY FOR PETITIONER

March 30, 2020
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

S.C. SUPREME COURT

Op. No. 2018-UP-85 (S.C.Ct.App. filed February 14, 2018)

Appellate Case No. 2018-000959

Danny B. Crane,.....Petitioner,

v.

Raber's Discount Tire Rack, Employer, and
South Carolina Uninsured Employers Fund, Carrier,..... Respondents.


PROOF OF SERVICE

I certify that I, Wanda Powell, paralegal to Stephen B. Samuels have caused a copy of the **Return to Petition for Rehearing** to be served via hand delivery and U.S. mail, with sufficient postage affixed thereto and return address clearly marked on March 30, 2020, addressed as follows:

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Wanda Powell, Paralegal

March 30, 2020
Columbia, South Carolina



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