

RECEIVED

Jun 12 2020

SC Court of Appeals

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

OTIS NERO

Plaintiff(s)

vs.

SC DEPARTMENT OF TRANSPORTATION,
Employer, and STATE ACCIDENT FUND,
Carrier,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2020-CP - 21- _____

Submitted By: STEPHEN J. WUKELAAddress: PO BOX 13057FLORENCE SC 29504SC Bar #: 68351Telephone #: 843-669-5634Fax #: 843-669-5150

Other: _____

E-mail: stephen@wukelalaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20____-NJ-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Isolate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstate Dry. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☒ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Incapacitated Adult Settlement
(790)
☐ Other (999) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

SCCA / 234 (02/2018)

Date: 3/5/2021

Page 1 of 2

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. CP-21-

OTIS NERO

SC DEPARTMENT OF TRANSPORTATION

PLAINTIFF(S)

AND STATE ACCIDENT FUND
DEFENDANT(S)

Submitted by: STEPHEN J. WUKELA

Attorney for: ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This Court hereby renders judgment in the amount of \$190,648.00, along with weekly benefits in the amount of \$346.57 in accordance with the Order of the S.C. Court of Appeals, Op. No. 5660, (06/26/19)(cert. den'd., 02/12/2020)(attached), which reinstated the Order of the Workers' Compensation Commission dated 08/05/2014. (Attached).

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : See Page 2 for additional information

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
OTIS NERO	S.C. DEPT. OF TRANS. AND STATE ACCIDENT FUND	\$190,648 along with weekly benefits in the amount of \$346.57
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Stephen J. Wukela

PO Box 13057

Florence SC 29504

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kirsten Barr

PO Box 2167

Mt. Pleasant SC 29464

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This is a Workers' Compensation matter. By Order of August 5, 2014, the Single Commissioner of the Workers' Compensation Commission Ordered inter alia that the Defendants "shall pay the Claimant benefits at the weekly compensation rate of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars from June 20, 2012 until the date of this Order and continuing until further Order of this Commission." (attached). (The Single Commissioner's Order also ordered the payment of certain medical bills. That portion will, if necessary, be addressed by subsequent judgment when those amounts are ascertained).

Thereafter, the case had a long appellate history; culminating in the Court of Appeals reinstating the Order of the Single Commissioner by Order of June 26, 2019. (attached). The Defendants petitioned certiorari to the Supreme Court and certiorari was denied by the Supreme Court by Order dated February 12, 2020. (attached).

The Workers' Compensation Act, S.C. Code §42-17-70 provides: "Any party in interest may file in the court of common pleas of the county in which the injury occurred ... an award of the commission affirmed upon appeal, whereupon such court shall render judgment in accordance therewith and notify the parties."

The Claimant, therefore, filed the attached Order of the Court of Appeals dated June 26, 2019 reinstating the Order of the Single Commissioner dated August 5, 2014.

The amount of the judgment is calculated as follows:

A. Indemnity Benefits

The Single Commission ordered the payment of weekly compensation benefits at the weekly rate of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars from June 20, 2012, to the date of the Single Commission Order and continuing until further Order of the Commission. That amount, as of March 6, 2000, totals \$139,321.14; representing weekly benefits of \$346.57 for the 402-week period of 06/20/2012-03/06/2020.

B. Interest

The Workers' Compensation Act, S.C. Code §42-9-240 provides:

Date on which compensation payable under award becomes due.

The first installment of compensation payable under the terms of an award by the commission or under the terms of a judgment of a court upon an appeal from such an award shall become due seven days from the date of such an award or from the date of such a judgment of the court, on which date all compensation then due shall be paid, including interest from the original date of the award at the maximum legal rate. (emphasis added).

By Order of the Supreme Court, 2014-01-03-01, dated 01/03/2014, (attached), for the period 01/15/2014 through 01/14/2015, the legal rate of interest is 7.25% compounded annually. The Single Commission Order was issued on 08/05/2014. Therefore, as of March 6, 2020, the total amount of interest owed was \$33,995.22.

C. Ten (10%) Percent Penalty

The Workers' Compensation Act, S.C. Code §42-9-90 provides:

.... if any installment of compensation payable in accordance with the terms of an award by the commission is not paid within fourteen days after it becomes due, as provided in Section 42-9-240, there shall be added to such unpaid installment an amount equal to ten per cent thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

No payment was made within fourteen (14) days after it became due, i.e. February 26, 2020. (see attached Certificate of Non-payment). A ten (10%) percent penalty shall be added. Ten (10%) percent of the amount above is \$17,331.64.

Therefore, the total amount of the judgment, (including interest and penalties), as of March 6, 2020, is \$190,648.00, along with weekly benefits in the amount of \$346.57.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Otis Nero, Appellant,

v.

South Carolina Department of Transportation, Employer,

AND

State Accident Fund, Carrier, Respondents.

Appellate Case No. 2015-001277

Appeal From The Workers' Compensation Commission

Opinion No. 5660

Submitted May 3, 2018 -- Filed June 26, 2019

REVERSED

Stephen J. Wukela, of Wukela Law Firm, of Florence, for
Appellant.

John Gabriel Coggiola, of Willson, Jones, Carter &
Baxley, P.A., of Columbia, for Respondent.

MCDONALD, J.: Otis Nero lost consciousness and fell to the ground in the presence of his two immediate supervisors while working on a South Carolina Department of Transportation (SCDOT) road crew. Nero argues the Appellate Panel of the Workers' Compensation Commission erred in reversing the Single Commissioner's findings that (1) SCDOT received adequate notice of his workplace accident and (2) Nero demonstrated reasonable excuse for—and

SCDOT was not prejudiced by—Nero's late formal notice. Upon our prior review of Nero's arguments, we considered the question of timely notice as a jurisdictional issue and applied a de novo standard of review in reversing the Appellate Panel decision. *Nero v. S.C. Dep't of Transp.*, 420 S.C. 523, 804 S.E.2d 269 (Ct. App. 2017). Our supreme court granted SCDOT's petition for a writ of certiorari and reversed, reiterating that "timely notice under section 42-15-20 is not a jurisdictional determination, and must be reviewed under the substantial evidence standard." *Nero v. S.C. Dep't of Transp.*, 422 S.C. 424, 812 S.E.2d 735 (2018). We now reverse the Appellate Panel because the substantial evidence in the record does not support its findings that Nero failed to provide SCDOT with adequate notice of his workplace injury or that SCDOT was prejudiced by Nero's late formal notice.

Facts and Procedural History

On June 20, 2012, Nero was working on a SCDOT road crew supervised by lead man Benjamin Durant and supervisor Danny Bostick. Nero's work, along with that of four or five other members of the crew, involved pulling a thirty-foot-long two-by-four "squeegee board" to level freshly poured concrete. At some point during the day, Bostick pulled Nero off the squeegee board temporarily because Nero appeared overheated. After a break, Nero returned to pulling the squeegee board.

At approximately 3:00 p.m., after finishing the day's work and cleaning up, the crew, including Nero, Durant, and Bostick, were talking and joking near the supervisor's truck when Nero lost consciousness and fell to the ground. Nero regained consciousness, stood up, told his supervisors he was fine, and drove home. Once home, Nero passed out again in his driveway. His wife immediately took him to the hospital where he was admitted, diagnosed with cervical stenosis, and treated by a neurosurgeon.

While at the emergency room, Nero filled out a "History and Physical Report" stating in part, "I passed out talking to my boss." Nero was initially seen by his primary care physician, Dr. Robert Richey. After a series of tests, Dr. Richey determined Nero had cervical stenosis and referred Nero to a neurosurgeon, Dr. William Naso, who performed a fusion surgery.

On July 9, 2012, prior to his surgery, Nero provided the employer's human resources department with his "SCDOT Certification of Health Care Provider for Employee's Serious Health Condition (Family Medical Leave Act)" paperwork. Nero did not specifically mention a neck "popping" incident with the squeegee

board in this submission, but did report that he required neck surgery. Under the section designated "approximate date condition commenced," Nero wrote, "several years—neck and syncope."

On January 6, 2014, Nero filed a request for a hearing, alleging he suffered injuries to his neck and shoulders while pulling the squeegee board on June 20, 2012. The single commissioner found Nero's claim compensable as an injury by accident that aggravated a preexisting cervical disc condition in Nero's neck. The single commissioner further determined Nero had a "reasonable excuse" for not formally reporting his work injury because (1) his lead man and supervisor were present and knew of pertinent facts surrounding the accident sufficient to indicate the possibility of a compensable injury, (2) the lead man and supervisor followed up with Nero, and (3) SCDOT was aware Nero did not return to work after the June 20, 2012 incident. Further, SCDOT was notified Nero was hospitalized and ultimately had neck surgery. Finally, the single commissioner found SCDOT was not prejudiced by the late formal reporting of the injury.

SCDOT appealed to the Appellate Panel. The Appellate Panel reversed the single commissioner, finding that although Nero's two immediate supervisors witnessed him collapse, Nero never reported that an incident with the squeegee board involved a "snap" in his shoulders and neck. The Appellate Panel further found Nero's excuse for not formally reporting was not reasonable and SCDOT was prejudiced because Nero's late reporting deprived it of the opportunity to investigate the incident and whether Nero's work aggravated any preexisting cervical stenosis.

Standard of Review

The Administrative Procedures Act (APA) establishes the standard for our review of Appellate Panel decisions. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Under the APA, this court may reverse or modify the decision of the Appellate Panel when the substantial rights of the appellant have been prejudiced because "the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689–90 (2010); *see also* S.C. Code Ann. § 1-23-380(5)(d)–(e) (Supp. 2016). "The Appellate Panel is the ultimate fact finder in workers' compensation cases, and if its findings are supported by substantial evidence, it is not within our province to reverse those findings." *Mungo v. Rental Unif. Serv. of Florence, Inc.*, 383 S.C. 270, 279, 678 S.E.2d 825, 829–30 (Ct. App.

2009). "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." *Taylor v. S.C. Dep't of Motor Vehicles*, 368 S.C. 33, 36, 627 S.E.2d 751, 752 (Ct. App. 2006) (quoting *S.C. Dep't of Motor Vehicles v. Nelson*, 364 S.C. 514, 519, 613 S.E.2d 544, 547 (2005)).

Law and Analysis

I. Adequate Notice

Nero argues the Appellate Panel erred when it found SCDOT did not receive adequate notice under section 42-15-20(A) of the South Carolina Code (2015). We agree.

Section 42-15-20 sets forth the requirement that an employee provide timely notice of an accident to an employer, stating, in pertinent part:

(A) Every injured employee or his representative immediately shall on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a notice of the accident and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this title prior to the giving of such notice, unless it can be shown that the employer, his agent, or representative, had knowledge of the accident or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person.

(B) Except as provided in subsection (C), no compensation shall be payable unless such notice is given within ninety days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been prejudiced thereby.

"Section 42-15-20 requires that every injured employee or his representative give the employer notice of a job-related accident within ninety days after its occurrence." *Bass v. Isochem*, 365 S.C. 454, 472, 617 S.E.2d 369, 379 (Ct. App. 2005); *see also McCraw v. Mary Black Hosp.*, 350 S.C. 229, 237, 565 S.E.2d 286, 290 (2002) ("Pursuant to S.C. Code Ann. § 42-15-20 (1985), notice to the employer must be given within 90 days after the occurrence of the accident upon which the employee is basing her claim."). "Generally, the injury is not compensable unless notice is given within ninety days." *Bass*, 365 S.C. at 473, 617 S.E.2d at 379. "The burden is upon the claimant to show compliance with the notice provisions of section 42-15-20." *Id.*; *Lizee v. S.C. Dep't of Mental Health*, 367 S.C. 122, 127, 623 S.E.2d 860, 863 (Ct. App. 2005) ("The claimant bears the burden of proving compliance with these notice requirements.").

"Section 42-15-20 provides no specific method of giving notice, the object being that the employer be actually put on notice of the injury so he can investigate it immediately after its occurrence and can furnish medical care for the employee in order to minimize the disability and his own liability." *Hanks v. Blair Mills, Inc.*, 286 S.C. 378, 381, 335 S.E.2d 91, 93 (Ct. App. 1985). Satisfaction of the notice provision should be liberally construed in favor of claimants. *Mintz v. Fiske-Carter Constr. Co.*, 218 S.C. 409, 414, 63 S.E.2d 50, 52 (1951); *Etheredge v. Monsanto Co.*, 349 S.C. 451, 458, 562 S.E.2d 679, 683 (Ct. App. 2002). In *Etheredge*, this court concluded "notice is adequate, when there is some knowledge of accompanying facts connecting the injury or illness with the employment, and signifying to a reasonably conscientious supervisor that the case might involve a potential compensation claim." 349 S.C. at 459, 562 S.E.2d at 683; *contra Sanders v. Richardson*, 251 S.C. 325, 328, 162 S.E.2d 257, 258 (1968) (explaining that just because an employer has knowledge of the fact that an employee becomes ill while at work "does not necessarily, of itself, serve the employer with notice that such illness constituted or resulted in a compensable injury").

We agree with SCDOT that Nero never formally reported the mechanics of his injury to his employer. However, the undisputed evidence in the record demonstrated SCDOT had adequate notice within the statutory requirement. On the day of the incident, Bostick became concerned about Nero and temporarily pulled him off of the squeegee board work.¹ Later that day, as the crew was

¹ Bostick explained in his deposition that although Nero never made any complaints to him about his ability to pull the squeegee board, he was concerned for Nero due to both the summer heat and Nero's age.

cooling down and preparing to leave the job site, Nero lost consciousness and fell to the ground. Durant and Bostick both witnessed this. Both men called Nero while he was in the hospital, and both were aware he needed to have neck surgery. Both were aware that Nero did not return to work at SCDOT following his surgery, and Nero filled out the necessary leave paperwork through SCDOT's human resources department.

Significantly, the undisputed documentary evidence in the record further established notice. As early as July 13, 2012, SCDOT received written notification from Nero's family doctor, Richey, that Nero had been out of work since the date of his collapse and needed neck surgery. In July and August 2012, SCDOT received correspondence from Florence Neurosurgery and Spine confirming Dr. Naso was treating Nero for cervical radiculopathy. SCDOT corresponded with the medical provider in November 2012 regarding whether Nero would be able to return to work. There is simply no support in the record for the Appellate Panel's finding that SCDOT lacked knowledge of Nero's workplace injury—or of the cervical problems for which he was being treated—for purposes of section 42-15-20(A).

SCDOT argues Nero omitted several crucial facts contrary to his argument that a reasonably conscientious manager should have been aware of a potential compensation claim. First, "and most importantly," SCDOT points to the "SCDOT Certification of Health Care Provider for Employee's Serious Health Condition (Family Medical Leave Act)" form (Exhibit 1), signed by Nero and Dr. Richey and delivered to the human resources department in July 2012.² Exhibit 1 states the approximate date Nero's condition commenced was "several years—neck and syncope."³ SCDOT contends Nero never actually reported an "injury," despite his

² Bostick testified that had he been aware of the contents of Exhibit 1, he would have further investigated the accident. Nero received this form with his "paperwork from Human Resources," Dr. Richey completed a portion of the FMLA form, and it was returned to SCDOT.

³ However, SCDOT's own Question 4 and Nero's response provide additional context: "4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such relevant facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment): Have to have neck surgery." Nero's beginning date for the period of incapacity was listed as June 20, 2012 (the day he collapsed at the job site). As for

conversations with both Bostick and Durant while hospitalized. SCDOT further remarks on the medical evidence in the record, however, the medical opinions it references address causation, not notice.⁴

At his deposition, Nero testified the injury to his upper back and shoulders was a result of pulling the squeegee over a concrete pad.

Q: And tell me what happened during that process of you pulling the squeegee board?

A: I got a pain in between pulling the squeegee board when they take someone off it that put more stress in there, due to whoever is left on the squeegee has got less to help pull it.

Q: Yes Sir.

A: But you also still got to keep going [be]cause if you don't keep going—you're going to blotch up. So I was doing that, I felt like a pressing like a, you know, snap back there between my shoulder and my neck. . . .

Nero's possible return to work date, Dr. Richey noted on the form "For now he is out - after surgery we can estimate this 7/12/12."

⁴ It appears the Appellate Panel conflated the concept of notice with the evidentiary concept of an injured worker's proof of his claim. Still, we recognize that some of the evidence SCDOT submits in support of its argument that SCDOT lacked notice of the mechanism of Nero's injury may be relevant to both notice and causation. For example, in the medical history questionnaire Nero prepared and signed for Dr. Naso, Nero left blank this line: "Complaint Related to an Injury? _____ Workman's Compensation? _____." And Dr. Naso initially commented, "I do not think his syncope is related to cervical spine pathology." But Dr. Richey testified Nero's preexisting cervical spine condition was aggravated by his pulling of the squeegee board and that this, along with Nero's work in the heat, caused the syncope.

Q: Okay. Now did you tell him, "Hey Mr. Bostick, I—I think I've hurt my neck just now"?

A: No, I didn't tell him that.

Q: Okay, when he took you off, what did you do?

A: I just step out of the way, got off to see—out of the cement, took a little break, and then I went right back.

Nero further testified that while he was pulling the squeegee, he felt "like a bone snapped or something snapped—or popped." Nero spoke with Bostick and Durant while he was in the hospital but did not tell them he felt "a snap[ping], crackling, and popping sensation" in his neck. Nero testified he told Bostick, "I think he asked me what . . . was wrong. I said I am in the hospital. I said ever since I fell out, I said, I've been here ever since."

Supervisor Bostick's deposition testimony is more illustrative of SCDOT's notice. With regard to Nero's "Family Medical Leave Act" form completed in part by Dr. Richey, Nero's counsel asked:

Q: You haven't ever seen [the SCDOT FMLA leave form], but you would agree with me that by July of 2012—this document is dated July the 9th of 2012, I think—yeah, July the 9th. By July the 9th, DOT was aware that Mr. Nero had been out of work since June the 20th and that he had to have neck surgery?

A: Would I have known that?

Q: No. No. I'm asking if you agree with me that the Department of Transportation knew that.

A: I don't know, because I don't know what paperwork he passed on to get to that point.

Q: Fair enough.
Well, I got this document from the Department of Transportation.

A: Right.

Q: So --

A: But I wouldn't have known.

Q: I'm--well, you know. I'm not asking what you knew. I'm asking whether you would agree with me that, given this document, the Department of Transportation would have known that.

[Objection to the form].

Q: Go ahead and answer.

A: That they would have known something then?

Q: Yeah.

A: I guess they would have start[ed] doing their investigation.

Q: Okay. Do you know whether they did start doing an investigation at that point?

A: No, I don't. Like I said, the only--the only thing we ever heard of this is whenever that initial call was made, and whoever they talked to, I wouldn't [know] all that. The only thing I knew, Greg, my boss, called me in and asked me about the situation.

Bostick testified that he provided a written statement over a year prior to his March 2014 deposition in response to a call from his own supervisor. Bostick elaborated, "The only time I ever wrote anything, when they--we--it was brought to our attention that he called the department to say he got hurt on the job, so then that's when our safety guy--district safety guys started investigating what's going on, trying to find out was this eligible that happened, when it happened, whatever." Although Bostick's written statement is undated, a file notation of 2012-4525 appears at the top of the document.

Nero's situation is a far cry from that of the auto body paint technician who reported to his employer that he was "pretty sore" and "must have hurt [himself]" in *Hartzell v. Palmetto Collision, LLC*, 415 S.C. 617, 620, 785 S.E.2d 194, 195 (2016). The *Hartzell* petitioner did not seek immediately seek medical care, and he ended his employment approximately one month after this conversation because "business was slow." *Id.* at 620, 785 S.E.2d at 196. Over one year later, Hartzell filed a claim alleging a partial permanent injury to his back. *Id.* Although both the single commissioner and the Workers' Compensation Commission determined Hartzell "reported his work-related injury to Employer within the requisite time" as required by 42-14-20, this court reversed the Commission's notice finding. *Id.* at 621, 785 S.E.2d at 196.

Our supreme court reversed the court of appeals' finding of a notice failure in *Hartzell*, explaining, "[w]hile reasonable minds could have reached a different conclusion based on the record, we must not engage in fact-finding that would disregard the Commission's factual finding on these issues." *Id.* at 623, 785 S.E.2d at 197. There, the employer, while not denying a conversation with the employee may have occurred, testified it did not "ring a bell." *Id.* at 620, 785 S.E.2d at 196. In *Hartzell*, the substantial evidence of notice was this forgotten conversation—with no seeking of immediate medical care or correspondence between the treating physicians and employer prior to the claimant's filing of a Form 50. *Id.* at 623, 785 S.E.2d at 197.

Conversely, here, as the single commissioner's order explained, the "evidence of the record reveals that the employer was aware that the Claimant was in the hospital and that he was being treated by a neurosurgeon for cervical radiculopathy. (See Plaintiff's Exhibits 1-5). In fact, the employer wrote the neurosurgeon for his views as to the Claimant's work ability in November, 2012. (Plaintiff's Exhibit 5)." In sum, the substantial evidence in this record simply does not support the Appellate Panel's finding that SCDOT lacked adequate notice of Nero's workplace injury under section 42-15-20(A). See *Etheredge*, 349 S.C. at 459, 562 S.E.2d at 683 (concluding "notice is adequate, when there is some knowledge of accompanying facts connecting the injury or illness with the employment, and signifying to a reasonably conscientious supervisor that the case might involve a potential compensation claim").

II. Reasonable Excuse

Nero next contends the Appellate Panel erred in finding he failed to establish a "reasonable excuse" for the formal notice deficiency and that SCDOT was prejudiced by this lack of notice. We agree.

Section 42-15-20(B) provides in relevant part that "no compensation shall be payable unless such notice is given within ninety days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been prejudiced thereby." Once reasonable excuse has been established, it is the employer's burden to demonstrate prejudice from the absence of formal notice. *Lizee*, 367 S.C. at 129-30, 623 S.E.2d at 864. However, "lack of prejudice does not justify compensation unless the requirement of reasonable excuse is also satisfied." *Gray v. Laurens Mill*, 231 S.C. 488, 492, 99 S.E.2d 36, 38 (1957). When determining whether prejudice exists, the Appellate Panel should be cognizant that the notice requirement protects the employer by enabling it to "investigate the facts and question witnesses while their memories are unfaded, and . . . to furnish medical care [to] the employee in order to minimize the disability and consequent liability upon the employer." *Mintz*, 218 S.C. at 414, 63 S.E.2d at 52.

Here, Nero's reason for not formally reporting his workplace incident was that his supervisors were present when he lost consciousness and he was hospitalized the same day of the incident. Further, as the single commissioner recognized, Nero's lead man, Durant, testified he never reported the incident to his own supervisor, Bostick, because Bostick was "right there."

Q: I'm looking at [these] instructions you guys got about injuries on the job. As the lead man, do you get to choose—you have some discretion in choosing what injuries to report and what injuries not to report?

A: Do we get—no. I don't care if it's—if it—whatever it is, it is, if it's small or whatever else.

Q: I mean, a guy hurts his thumb, you've got to report it?

A: If you hurt your thumb and you feel like you need medical attention, you need to go report it.

....

Q: But do you have any responsibility as the lead man to report injuries?

A: Do I have any? Yes, if it happens right here with me, I have a responsibility to report it.

Q: What if I say, look here, lead man, it's just my thumb. Don't worry about it. I don't want to report it.

A: Well—

Q: Can you say, no, we're not going to tell the supervisor?

A: No, I am not going to do that because there's too much that [can] come back and bite you.

Q: All right. Well, let me ask you, when [Nero] passed out that day, did you tell your supervisor about it?

A: He was right there.

....

Q: Safe to say, after that day, when you knew that Nero had passed out, you felt like that it had been reported wherever it needed to be reported on the count of the fact that your supervisor was standing right there?

A: Well, not only that, I mean, being real, it probably done got back to whoever it need[ed] to get back to when he was out of work.⁵

⁵ And we know, based on Bostick's own deposition testimony as to when he provided his statement to SCDOT, that "the district safety guys" and Bostick's own supervisor were investigating Nero's incident and injury at least a year prior to Nero's filing of the Form 50 on January 6, 2014.

In reversing the single commissioner's finding that Nero provided a "reasonable excuse" for not formally reporting his work injury, the Appellate Panel found:

Although Claimant's supervisors witnessed Claimant's syncope episode, Claimant never reported the alleged accident from pulling the squeegee board, which was the basis of his claim. Claimant was given several opportunities to report his work accident and even submitted FMLA paperwork . . . indicating that his problem lasted for several years instead of requesting workers' compensation.

Although Nero failed to give SCDOT formal notice, his excuse was reasonable because his supervisors were both present at the time of his injury and were aware of his treatment. SCDOT was aware Nero never returned to work following the June 2012 episode and knew of his hospitalization and need for neck surgery well within the ninety-day notice window. Within a few weeks of Nero's collapse, SCDOT was aware of Nero's treatment by a qualified neurosurgeon, that he was having neck surgery, and that he would be unable to return to work. At some point long before Nero filed his Form 50, SCDOT was conducting its own investigation as to Nero's injury at the job site. Thus, the employer suffered no prejudice to either its ability to investigate or furnish medical care in order to minimize Nero's disability and its own liability. As the substantial evidence in the record does not support the contrary conclusions of the Appellate Panel, we reverse.

Conclusion

Based on the foregoing analysis, we reverse the decision of the Appellate Panel and reinstate the order of the single commissioner.

REVERSED.

LOCKEMY, C.J., and KONDUROS, J., concur.

EXHIBIT 1

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1222136

Otis Nero, Employee,

Claimant,

vs.

S.C Department of Transportation, Employer,
and State Accident Fund, Carrier,

Defendants.

HEARING: Held in Columbia, South Carolina, on March 28, 2014

APPEARANCES: Claimant represented by Stephen J. Wukela, Esquire,
Florence, SC
Defendants represented by Justin T. Williams, Esquire,
Columbia, SC

PURPOSE OF HEARING: To determine the issues set forth in the Form 50 and Form
51

DECISION AND ORDER: By: Aisha Taylor, Commissioner

FILED: August 5, 2014

I. STIPULATIONS

Counsel for the parties stipulated at the hearing to the following:

1. That the purpose of the hearing is to determine issues set forth in the Forms 50 and 51, and any other issues which may timely come before the Commissioner;
2. Notice of the hearing was timely and properly served upon all parties of interest;
3. Venue, set in Richland County, is proper;
4. The Claimant has an average weekly wage of \$519.83 yielding a compensation rate of \$346.57. (Hrg. Tr. p. 5 ll 21 – 24).

II. APA SUBMISSIONS

Under the South Carolina Administrative Procedures Act, the following records were submitted into evidence:

Claimant's APA Submissions:

APA #	PHYSICIAN/ OTHER	GROUP/AGENCY	DATE OF REPORT	PAGES
APA#1		Carolinas Hospital System	06/20/12 - 08/29/12	000001 - 000016
APA#2	William B. Naso, M.D.	Florence Neurosurgery & Spine, P.C.	06/28/12 - 09/11/12	000017 - 000037
APA#3	Robert M. Richey, M.D.		07/09/12 - 12/13/12	000038 - 000047
APA#4	Claimant's Check Stub		07/16/12	000048
APA#5	Claimant's Statement		06/18/13	000049

EXHIBITS

	EXHIBITS	DATE OF REPORTS	PAGES
A.	SCDOT Safety Memo and Sign-In Sheet	June 12, 2012	A1 – A5
B.	SCDOT Power Point		B1 – B14
C.	SCDOT FMLA Leave Letter	June 26, 2012	C1 – C2
D.	SCDOT Leave Transaction Form	December 10, 2012	D1
E.	Ben Durant Statement	June 20, 2013	E1
F.	Danny Bostic Statement		F1

G.	Deposition Transcript of Dr. Robert Richey		
H.	Deposition Transcript of Ben Durant		
I.	Deposition of Danny Bostic		
J.	Deposition of Cristi Junkin		
K.	Deposition of the Claimant		

Also, admitted into evidence without objection were Plaintiff's Exhibits 1 - 5 containing portions of the employer's personnel file on the Claimant as follows:

	EXHIBITS	DATE OF REPORTS
1.	Certification of Healthcare Provider for Employee's Serious Health Condition (Family & Medical Leave Act)	07/09/12
2.	Work Excuse completed by Dr. R. Blake Kline, M.D.	07/12/12
3.	Medical Release Letter by Dr. Robert Richey, M.D.	07/13/12
4.	Work Excuse from Lisa Jones, RN	11/23/12
5.	Letter from Employer to Dr. William Naso, M.D.	11/27/12

(Hrg Tr. p. 6, l. 1 - 22).

STATEMENT OF THE CASE

This is a denied case before the Commission on the Claimant's Form 50. Claimant alleges that on June 20, 2012, while working on a S.C. Department of Transportation (hereinafter "DOT") crew at the DOT shop yard, while using a squeegee board smoothing cement, Claimant suffered a sudden onset of pain in his neck and shoulders followed thereafter by an episode of syncope.

Defendants admit that Danny Bostick, the road crew supervisor, and his immediate subordinate Ben Durant, the crew lead man or foreman, witnessed the syncopal episode, resuscitated Mr. Nero and directed him to go home. The Claimant drove home by himself and had another passing out episode when he got into the yard at his house. His wife then took him to the emergency room at Carolinas Hospital System.

There the records reflect he was seen, and admitted by, Dr. Robert Richey, his family doctor. Dr. Richey ordered a CT of the brain, right foot and chest x-ray, a stress test and, ultimately, a MRI of the cervical spine. After the cervical MRI revealed abnormality at multiple levels, Dr. Richey consulted with neurosurgeon, Dr. William Naso. (Claimant's APA No. 1, pp. 1 – 11).

Dr. Naso noted a chief complaint of neck pain and in his history recorded that “the patient is a 62-year-old black male who was admitted with syncope but who also has been having neck pain and pain into both arms, predominantly in the right upper extremity with pain radiating to the right shoulder and arm into the middle and ulnar hand. He complains of numbness and weakness in both hands.” (Claimant's APA No. 1, p. 10).

Ultimately, Dr. Naso diagnosed cervical radiculopathy and recommended conservative measures including a series of epidural steroid injections and physical therapy. Although he opined, “I do not think his syncope is related to his cervical spine pathology.” (Claimant's APA No. 1, pp. 10 – 11).

Dr. Richey discharged the Claimant from the hospital on June 24, 2012 and indicated, “the cause of the syncope I think has something to do with his spinal stenosis and a reflex mechanism.” (Claimant's APA No. 1, p. 12).

After discharge, the Claimant followed up with Dr. Naso who recommended anterior cervical discectomy and fusion at C6-7 and C7-T1. That was performed by Dr. Naso on August 28, 2012. (Claimant's APA No. 1, pp. 13 – 14).

The Claimant contends that he suffered a cervical spine and upper extremity injury, that he is entitled to treatment at the hands of Dr. Richey and Dr. Naso, and that he is entitled to temporary total disability from the date of the accident and continuing.

The Defendants deny the claim on notice and causation.

EVIDENCE

Above-listed APAs, depositions, and exhibits were admitted into evidence without objection. In addition, the following testimony was admitted into evidence:

CLAIMANT, OTIS NERO

Claimant testified at trial that he is 64 years old and has a ninth grade education but he has very few reading skills and is unable to read a newspaper. He testified that he left school in the ninth grade to go to work to take care of his family as his father was ill. He started off plowing fields with a mule, has driven trucks, run backhoes, trackhoes, and bulldozers, welded, and performed other sorts of labor-type work. (Hrg. Tr. p. 17, l. 25 – p. 18, l. 10).

He testified that he has worked for the Department of Transportation for two stints. The most recent period was approximately three and a half to four years. (Hrg. Tr. p. 18, l. 11 – p. 19, l. 3). He testified that on June 20, 2012 he was working for a DOT road crew, that Mr. Durant was the lead man of that crew, and that Mr. Bostick was the supervisor. (Hrg. Tr. p. 19, ll. 4 – 14).

He testified that on June 20, 2012 he and other members of the road crew were pouring a slab of cement approximately 30 feet wide. (Hrg. Tr. p. 19, ll. 15 – 22). He testified that leveling the cement involved the use of a squeegee board that was in fact a two-by-four approximately 30 feet in length. He testified that the squeegee board was operated by a number of men who stretched the board across the form and worked it back and forth, pulling it to level the cement. (Hrg. Tr. p. 20, l. 6 – p. 22, l. 8).

Mr. Nero testified that during that process he felt an onset of pain in his shoulder and his neck. He testified:

- A. So as I was doing that, I felt a pressing like a, you know, snap of back there between my shoulder and my neck. And I don't know whether it's the boss that was spotting me or something when I -- when that happened or then that. I don't know exactly that's when -- when he took me off towards there, you know.

(Hrg. Tr. p. 22, ll. 11 - 17).

Mr. Nero further testified:

- Q. Okay. Now, did you tell him, "Hey, Mr. Bostick, I -- I think I've hurt my neck just now"?

A. No, I didn't tell him that.

- Q. Okay. When he took you off, what did you do?

A. I just stepped out the way, got off to see -- out of the cement, took a little break, and then I went back.

(Hrg. Tr. p. 22, ll. 18-24).

Mr. Nero testified that after finishing that job the employees cleaned up the equipment and walked to the parking lot where their supervisor and lead man were sitting in a truck. Mr. Nero testified:

- A. Mr. Bostick and my supervisor -- supervisor and lead man, Mr. Bostick and Ben Durant, they pulled up in the truck, parked it right beside facing in the shed. Then I walked on over there and walked around the right hand side of the truck, and Mr. Durant had the door open. I just walked up there and was standing and was just talking to him, you know. And we were talking, just like jiving and a laugh, you know, laughing, cutting a fool laughing, you know. Then just all of the sudden, I -- went out. It was hot, and he asked me, he said, "Are you all right?" I had done fell to the ground then. Matter of fact, he was getting out -- out of the truck, then and trying to help me get up.

- Q. And -- And what did you tell him?

A. I -- I told him then, I said -- I said, "Well I feel like I'm all right." You know, I said -- I said, "I feel okay." I said, "I don't know what happened, you know," So I just went out. So generally when we leave, we knock off, we walk -- I said, "Well, I tell you what, let me walk around..."

(Hrg. Tr. p. 24, ll. 4-25).

Mr. Nero further testified that he drove home, but that as soon as he pulled up in the yard and started to get out of the truck he had a second episode of syncope. (Hrg. Tr. p. 25, ll. 14-18).

Thereafter, his wife took him to the emergency room where he was admitted by Dr. Robert Richey. (Hrg. Tr. p. 25, ll. 19 - 22). The hospital records reflect that Dr. Richey performed a number of tests and consulted with a neurosurgeon, Dr. William Naso, who ultimately performed neck surgery. (Claimant's APA No. 1, p. 2). Mr. Nero testified that he had never had neck pains or problems before that day. (Hrg. Tr. p. 26, ll. 1 - 13).

He further testified that, after the accident, Mr. Benjamin Durant called him and he let Mr. Durant know that he was in the hospital and that he was going to have surgery. He talked to Mr. Bostick while in the hospital as well in the same vein. (Hrg. Tr. p. 26, ll. 17 - 23). He testified that he received some paperwork from Human Resources, had it signed by his doctor, and returned it to them as well. (Hrg. Tr. p. 26, l. 24 - p. 27, l. 17). Claimant's Exhibit No. 1 is a Family Medical Leave form that is filled out by Dr. Richey on July 9, 2012 and was produced from the records of the South Carolina Department of Transportation. (Hrg. Tr. p. 6, ll. 2- 11; Plaintiff's Exhibit 1).

Mr. Nero testified that he had an accident on the job in the past during which he was operating a machine and injured his knee. (Hrg. Tr. p. 27, l. 17 - p. 28, l. 15). He testified that during that accident his supervisor at the time was present. He testified:

- Q. Okay. And did you report that accident to anybody?
- A. Yes, sir. A matter of fact, it was the workers around there at that time see'd (sic) what happened. And I tried to, thought I could walk, went to get down off the machine, and when I got down to the ground, I noticed I ain't had no -- nothing in my leg. I just fell out.
- Q. Mr. Phillips saw the accident?
- A. Yeah.

(Hrg. Tr. p. 29, ll. 1-9).

Mr. Nero went on to testify:

- Q. Okay. Now, the -- the -- the one of the issues in this case is the employer says, listen, they never -- he never said to Mr. Bostick and Mr. Durant, "Hey, I hurt my neck that day pulling that squeegee board;" Is that correct?
- A. Correct.
- Q. Okay. And they say, you know, you never told Ms. Christy, "Hey, Ms. Christy, I hurt my neck that day pulling that squeegee board;" Is that correct?
- A. That's correct.
- Q. Okay. Why didn't you report it?
- A. Well, I didn't report it because they was there. You know, they -- they saw what happened. And from the time when I went to the hospital, I didn't never get back to work. That's why when Ben called me, I let him know. And then Ben obviously had to tell Danny 'cause he turned around and called me directly behind them but right after he called, both of them calling. So I figured they'd know, you know.

(Hrg. Tr. p. 29, l. 10 -- p. 30, l. 3) (emphasis added).

The Claimant testified he was still having problems with his neck and his hands and he had to take medication every night. (Hrg. Tr. p. 30, ll. 4 -- 8). He is receiving social security disability benefits. (Hrg. Tr. p. 30, ll. 9 -- 21).

On cross examination, Mr. Nero testified that he was working with approximately six people on the squeegee board. He testified:

- Q. Thank you, sir. And isn't it true that you -- you're saying that you hurt your back or you felt some pain while you were on that squeegee board; Is that true, sir?
- A. I said I heard something snap, a pop in my -- my neck and my shoulder.
- Q. Okay. All right, sir. And at any -- Isn't it true that at no time when you heard that snap, crackle, and pop in your neck and shoulder, at no time did you tell anyone that you had sustained that injury; Isn't that true?
- A. That's true. That's true.

Q. Isn't it also true, sir, that at some point in time your supervisor, crew leader, Mr. Bostick, took you off of that squeegee board; Is that true, sir?

A. Yes, sir.

Q. Isn't it true that at that time you did not notify him that you heard a snap, crackle, and pop in your neck; Is that true, sir?

A. That's true.

(Hrg. Tr., p. 32, l. 7 – p. 33, l. 1).

He further testified:

Q. Okay. Now, isn't it true that while you were pulling that squeegee board that you did not pass out?

A. No, I did not pass out —

Q. Okay.

A. — While I was pulling the squeegee board.

Q. Okay. Isn't true that when you were pulled off that squeegee board that you did not pass out?

A. No, not until after I took off again.

Q. And isn't it also true that you did not pass out while you walked to the shed?

A. No. I passed — No, I — that's true.

Q. Okay. So isn't it also true that you passed out after you were laughing; isn't that true, sir?

A. Yes, sir. We was standing, like I said, I was standing at the boss man's truck.

Q. Okay. And isn't it true that you didn't pass out until you started laughing; isn't that true?

A. Yeah, I was laughing. We was laughing or just finished laughing when that — when that — when that occurred. Yes, sir.

(Hrg. Tr. p. 33, l. 17 – p. 34, l. 12).

Mr. Nero admitted to having had dizzy spells in the past while on the job. (Hrg. Tr. p. 34). He admitted to having a workers' compensation claim in the past. (Hrg. Tr. p. 34). He further admitted that when he was asked on this injury by Mr. Durant and Mr. Bostick whether he was okay, he indicated that he felt like he was okay. (Hrg. Tr. p. 36). He admitted having been trained about how to report a workers' compensation claim, that he had the opportunity to

communicate with members of the Department of Transportation after the injury and that no one encouraged him not to file a workers' compensation claim. (Hrg. Tr. pp. 38 – 40).

On re-direct, the Claimant testified that in his prior workers' compensation claim he did not have to report it to his supervisor because the supervisor witnessed the incident. (Hrg. Tr. pp. 42-43).

BENJAMIN DURANT

The deposition of Benjamin Durant, lead man, was also admitted into evidence. Mr. Durant testified that he remembered Mr. Nero passing out on the date of the accident. (Dep. Durant, pp. 10 – 11). He described the employees pouring of the concrete pad that day and the spreading of the pad using the squeegee board. (Dep. Durant, pp. 12 – 13). He testified that he did not recall specifically one way or another whether Mr. Nero was one of the guys pulling the squeegee board. (Dep. Durant, p. 18). He testified, however, that it would not have been unusual for him to have done so. (Id.).

He further testified:

- Q. Okay. At any point during the time he worked for you, did Mr. Nero complain about his neck giving him trouble or his arms giving him trouble?
- A. I never heard him say anything about his neck, and I never heard him say anything about his arms.
- Q. Did he ever complain about any body part?
- A. I've heard him say, "Oy. Owe." I don't what Oy, owe could mean for anything. I say Oy, Owe sometimes. You know what I mean?
- Q. Did he -- did he say that that day?
- A. Did he say it that day?
- Q. Yes, sir.
- A. I can't remember, sir.
- Q. Is it possible that he did?
- A. He may have. Like I said, I don't -- I don't -- we all -- like I said, we're always back there cutting the fool, laughing, doing whatever under the shed. Well, I wasn't under the shed. I actually was, like I said, sitting in the truck, and a few of them was under the shed or

whatever, and he was standing right there with me talking with me on my side of the truck.

(Dep. Durant, p. 27, ll. 3 - 23).

He went on to testify:

A. Yeah. I don't remember who he -- I don't remember what he was doing or what, but I know -- like I said, we was sitting in the truck, me and him. And I don't remember him -- I don't know if he seen something of what, I mean, as far as, you know, that, but I know when I looked over there, I heard the loud noise, and it was him.

Q. It was Mr. Nero?

A. It was Mr. Nero.

Like I said, the cooler he had in his hand fell. He hit the ground with the cooler.

Q. So what did you do -- what did Mr. Nero say to you once he staggered?

A. Whew, like that.

And I said, Otis, are you all right?

He said, Yeah, I'm all right. I just go a little dizzy.

Q. At that point in time did he tell you that he hurt himself while working that day?

A. No. He didn't tell me anything like that.

Q. Did he tell you that his neck was hurting?

A. No.

Q. Did he tell you that his back was hurting?

A. No.

Q. Did he tell you that his shoulders were hurting?

A. No. He didn't tell me anything.

Q. He didn't tell you -- did he tell you anything was hurting?

A. No, sir.

Q. Did he tell you what caused him to have that dizzy spell?

A. No, sir, he didn't.

(Dep. Durant, p. 37, l. 6 - p. 38, l. 13).

Mr. Durant testified that he was required to report all accidents, (Dep. Durant p. 42, l. 1 - p. 43, l. 8), but that he did not report the Claimant's syncope to his supervisor because his supervisor was present. He testified:

Q. I'm looking at this instructions you guys got about injuries on the job. As the lead man, do you get to choose -- you have some

discretion in choosing what injuries to report and what injuries not to report?

A. Do we get — no. I don't care if it's — if it — whatever it is, it is, if it's small or whatever else.

Q. I mean, a guy hurts his thumb, you've got to report it?

A. If you hurt your thumb and you feel like you need medical attention, you need to go report it.

* * *

Q. But do you have any responsibility as the lead man to report injuries?

A. Do I have any? Yes, if it happens right here with me, I have a responsibility to report it.

Q. What if I say, look here, lead man, it's just my thumb. Don't worry about it. I don't want to report it.

A. Well —

Q. Can you say, no, we're not going to tell the supervisor?

A. No. I'm not going to do that because there's too much that come back and bite you.

Q. All right. Well, let me ask you, when he passed out that day, did you tell your supervisor about it?

A. He was right there.

(Dep. Durant, p. 44, l. 18 — p. 47, l. 12) (emphasis added).

Q. Safe to say, after that day, when you knew that Nero had passed out, you felt like that it had been reported wherever it needed to be reported on the count of the fact that your supervisor was standing right there?

A. Well, not only that, I mean, being real, it probably done got back to whoever it need to get back to when he was out of work.

(Dep. Durant p. 49, l. 14-21).

DANNY BOSTICK

The deposition of Danny Bostick was also admitted into evidence. Mr. Bostick described the use of the squeegee board. (Dep. Bostick, pp. 9 — 10). He further testified:

A. I was sitting in the truck talking to the guys up under the shed. Ben was in the passenger seat of the truck. My back is turned to them. Nero is standing inside the truck talking to Ben.

So the only thing I knew, I felt the truck rock, because I'm sitting in the truck. When I looked back, he was holding on to the side of the door, so I said, Ben ask him and see what's wrong with him. So when that happened, he asked, well -- he asked him what was wrong, and he said, well, I just get dizzy like that, and he stood up. I said, Are you okay?
He said, yeah.

(Dep. Bostick, p. 13 l. 13 – 25).

With regard to Plaintiff's Exhibit 1, the Family Medical Leave Act form filled out by Dr.

Richey, Mr. Bostick testified:

- Q. You haven't ever seen [Plaintiff's Trial Exhibit 1], but you would agree with me that by July of 2012 -- this document is dated July the 9th of 2012, I think -- yeah, July the 9th.
By July the 9th, DOT was aware that Mr. Nero had been out of work since June the 20th and that he had to have neck surgery?
- A. Would I have known that?
- Q. No. No. I'm asking if you agree with me that the Department of Transportation knew that.
- A. I don't know, because I don't know what paperwork he passed in to get to that point.
- Q. Fair enough.
Well, I got this document from the Department of Transportation.
- A. Right.
- Q. So --
- A. But I wouldn't have known.
- Q. I'm -- well, I know. I'm not asking what you knew. I'm asking whether you would agree with me that, given this document, the Department of Transportation would have known that.

MR. WILLIAMS: Objection to the form.

BY MR. WUKELA:

- Q. Go ahead and answer.
- A. That they would have known something then?
- Q. Yeah.
- A. I guess they would have start doing their investigation.
- Q. Okay. Do you know whether they did start doing an investigation at that point?
- A. No, I don't.

(Dep. Bostick, p. 27, l. 11 – p. 28, l. 17).

When Claimant's counsel asked Mr. Bostick whether he would have conducted an investigation into the accident if he had received Plaintiff's Trial Exhibit 1, Mr. Bostick testified:

- Q. And let me ask you one more thing. Listen, Mr. Bostick, I know you didn't have this document, [Plaintiff's Trial Exhibit 1]. You've already told me that.
- A. Right.
- Q. Okay. But if you had that, if Nero had brought it to you -- okay. Now, you knew he had been out of work since that day he laid out and that his note said that he had to have neck surgery. Would that have triggered you to do an investigation?
- A. Well, I would have went to the safety coordination.
- Q. Okay. Okay. Which is what you're --
- A. -- suppose to do.
- Q. -- supposed to do?
- A. Yeah.

(Dep. Bostick, p. 28, l. 23 - p. 29, l. 12).

On cross examination, Mr. Bostick testified that Mr. Nero had dizziness in the past while laughing. (Dep. Bostick pp. 30 - 31). He further testified:

- Q. So on June 20, 2012, did you see him do any of what you describe as straining work?
- A. Well, I have -- I have stopped him because he was the oldest guy mostly in the crew, and I have younger guys, and I will tell him, give up that squeegee board. Let one of them younger guys get a hold of that board and do it.
- Q. Okay.
- A. And he will come off of it.
- Q. So --
- A. Because it's hot.
- Q. Well, my question is very specific. On June 20, 2012, the alleged date of injury, did you do any of what you just described?
- A. Yes.
- Q. Okay. You told him to get off the squeegee board?
- A. Yes.
- Q. Okay. Now, why did you do that?
- A. It's hot, and I know he's an older guy, so if I know I can -- we've got other people that can relieve him, I try to take him off of that.

(Dep. Bostick, p. 33, ll. 2 - 23).

He testified that his crew members have all had training on reporting injuries if they get injured on the job. (Dep. Bostick, pp. 38 – 39). On re-direct he testified:

- Q. Okay. The day he passed out, you didn't feel like you needed to fill out any Form 12B because you didn't know why he passed out, and he said he was all right.
- A. Exactly.
- Q. But you didn't -- he didn't come back?
- A. He never came back.
- Q. You didn't know why he didn't come back?
- A. No.
- Q. Okay. If he had, on July the 9th, 2012, brought you [Plaintiff's Trial Exhibit 1] and it said he was out since June the 20th, 2012, and he had to have neck surgery, would that have triggered you to do an investigation, to fill out a Form 12B?
- A. Well, I would have went in the office and got with Eric and Al Griggs. Al is our safety coordinator. Eric is our boss. And we would have went to investigating what we need to be doing in a situation like that, you know.
- Q. Okay. You would have considered that an indication there was a possible work-related injury that we need to investigate?
- A. I didn't know what it -- it would have -- could have been, you know. I wouldn't have known until we got [Plaintiff's Trial Exhibit 1]. Then they would have start their process of investigating how they go about notifying who they need to notify and do their thing, because certain parts we'll get out of the stage of it, when it gets -- starts going up, you know, because I don't do the safety part of it. They'll get to the safety coordinator. We got on in the district. It goes to Columbia. It goes on to do their thing.
- Q. Yeah. But you didn't have [Plaintiff's Trial Exhibit 1]
- A. No. It wouldn't have come to me. If he would have brought -- unless he would have come on the yard and brought it to me personally, it wouldn't have come to me because they're supposed to go through the office.
- Q. But if it had --
- A. We would have went back in the office.
- Q. And you have said let's -- let's go through this work-related injury paperwork?
- A. Yeah. We would have talked to the people we needed to talk to, to get it -- get that -- get it solved, whatever is going on.

(p. 43, l. 6 – p. 44, l. 25) (emphasis added).

MEDICAL RECORDS

The medical records of Carolinas Hospital System, Florence Neurosurgery and Spine, and Dr. Robert Richey were also admitted without objection. Those records reveal that the Claimant presented at Carolinas Hospital System on June 20, 2012. (Claimant's APA No. 1, p. 1).

There he was seen and admitted by Dr. Robert Richey, his family doctor. Dr. Richey ordered a CT of the brain, right foot and chest x-rays, a stress test and, ultimately, a MRI of the cervical spine. (Claimant's APA No. 1, pp. 1 – 8). After the cervical MRI revealed abnormality at multiple levels, Dr. Richey consulted with neurosurgeon, Dr. William Naso. (Claimant's APA No. 1, pp. 10 – 11).

Dr. Naso noted a chief complaint of neck pain and that "the patient is a 62-year-old black male who was admitted with syncope but who also has been having neck pain and pain into both arms, predominantly in the right upper extremity with pain radiating to the right shoulder and arm into the middle and ulnar hand. He complains of numbness and weakness in both hands." (Claimant's APA No. 1, p. 10).

Ultimately, Dr. Naso diagnosed cervical radiculopathy and recommended conservative measures including a series of epidural steroid injections and physical therapy. (Claimant's APA No. 1, pp. 10 – 11; Claimant's APA No. 2). Although he opined, "I do not think his syncope is related to his cervical spine pathology." (Claimant's APA No. 1, p. 11).

Dr. Richey discharged the Claimant on June 24, 2012 and indicated, "the cause of the syncope I think has something to do with his spinal stenosis and a reflex mechanism." (Claimant's APA No. 1, p. 12).

After discharge, the Claimant followed up with Dr. Naso who recommended anterior cervical discectomy and fusion at C6-7 and C7-T1. That procedure was performed by Dr. Naso on August 28, 2012.

DR. ROBERT RICHEY

The deposition of Dr. Robert Richey, who saw him at Carolinas Hospital beginning June 20, 2012, was admitted into evidence. He testified that he began taking care of Mr. Nero as his family doctor in 2007. (Dep. Richey, p. 8, ll. 5 – 11).

In the hospital on June 24, 2012, Dr. Richey ordered a cervical MRI given Mr. Nero's complaints of bilateral hand, and arm numbness, and syncope. (Claimant's APA No. 1, p. 8; Dep. Richey, p. 10, ll. 6 – 23). The MRI report showed moderate narrowing at C6-7 and C7-T1 and stenosis at C3-4. (Claimant's APA No. 1, pp. 8-9). In the hospital, Dr. Richey had also performed other tests including an EKG, telemetry, and CT of the brain, all to exclude alternate possible causes for the Claimant's syncope. (Dep. Richey, p. 9). None of those other tests explained the syncope. (Dep. Richey, p. 10, ll. 2 – 5).

He testified:

- Q. Okay. Was it your conclusion at that time that you had solved the mystery, if you will, that you had figured out what was the cause of this syncopal episode?
- A. I didn't solve the mystery, but I had a hypothesis.
- Q. All right. Talk to me about that.
- A. Well, on page 12 --
- Q. Yes, sir.
- A. -- the next to the last paragraph it's the cause -- "The cause of the syncope, I think, I think has something to do with his spinal stenosis and a reflex mechanism. We really cannot prove it, but from a monitoring standpoint, we found no problems. Cardiology consultation was also made."
- Q. All right. Tell me what you mean by that, and you say -- when you use this term "a reflex mechanism," explain to me what you mean by that?

A. Well, first I will say that the opinion of the neurosurgeon was that that wasn't the case.

Q. Uh-huh.

A. Although, he's not an expert on syncope. I would also state that I have seen a case that he and I were both involved in to where we were certain that it was the cause of the syncope and yet he said it wasn't, so we all differ.

Q. Sure.

A. And there is literature on this, but the body is very, very complicated and the sympathetic nervous system comes out of the brain. They both are involved in the neck and mechanisms of pain make people pass out. I did not document as well as I could have possibly what happened to make him pass out. It is so infrequently we really find the cause and so you have to go through the exercise of what happened. And so my hypothesis was that that this was some type neurogenic mechanism.

Q. Well, good and I'm sure he's glad of that as well. Well, can you say that of all the possible causes of the syncope that this was the most probable even if you can't be absolutely sure about it?

A. It was my opinion at the time.

Q. Okay. And was that opinion to a reasonable degree of medical certainty.

A. I would argue it is.

(Dep. Richey, p. 12, l. 22 - p. 14, l. 9; p. 16, l. 4-11) (emphasis added).

Dr. Richey also noted that he consulted with Dr. William Naso, who did not believe that the syncope was caused by the stenosis; however, Dr. Naso did ultimately recommend and perform anterior cervical discectomy and fusion at C6-7 and C7-T1 to correct the stenosis. With regard to Dr. Naso's opinion about the cause of the syncope, Dr. Richey testified:

A. -- and so I gave you a hypothesis or an opinion which is reasonable --

Q. Right.

A. -- and I think that you can find people on both sides of that issue if you wanted to, but I would say I disagree with the neurosurgeon in regard to the fact that but for the fact that he had spinal stenosis, this probably wouldn't have happened. That's my opinion and I'm entitled to it, but he's entitled to his.

Q. So you're saying but for the fact a spinal --

A. If he, if he didn't have that spinal cord pressure, I don't think he would have passed out.

(Dep. Richey, p. 56, l. 18 - p. 57, l. 6).

Nevertheless, setting aside whether the stenosis directly caused the syncope, as Dr. Richey opined, Dr. Richey also testified to a reasonable degree of medical certainty that it was also his opinion that Mr. Nero had preexisting stenosis that was aggravated by pulling the squeegee board. He testified:

Q. Sure. Do you have an opinion, though, as to whether that activity would have aggravated the condition of his cervical spine?

A. More than likely, certainly.

Q. And is that opinion to a reasonable degree of medical certainty?

A. I think so.

(Dep. Richey, p. 19, ll. 12 - 18) (emphasis added).

In sum, he testified:

Q. You've also testified pretty unequivocally that he had preexisting stenosis in that spine before June the 20th, 2012, that he had a arthritic condition?

A. He would have to have.

Q. He would have to have had. And that certainly wasn't caused by the squeegee board or the syncope?

A. Yes, sir.

Q. That was caused -- that was age and years of working?

A. That's my opinion.

Q. Okay. I think I also understood your testimony, that, however, using the squeegee board the way he did that day aggravated that preexisting stenosis?

A. My theory on that is that he had increased pressure, abdominal pressure. It would have increased his backflow in his veins and that might have been just enough to offset his equilibrium in his spinal cord.

Q. Potentially causing that syncope?

A. Adding to it.

Q. Adding to it?

A. Yes.

Q. Given the fact that it's June and he's been working?

- A. Correct.
- Q. All right. And set aside the syncope, though, also aggravating that preexisting stenosis resulting in the bilateral arm numbness and the aggravation of that condition to the point that Dr. Naso recommended and performed a bilateral fusion?
- A. Yes, sir.
- Q. Okay. And that's your opinion to a reasonable degree of medical certainty?
- A. That's the fact.

(Dep. Richey, p. 54, l. 6 – p. 55, l. 15).

FINDINGS OF FACT

After the hearing and giving careful consideration to the documentary evidence, medical records, and the testimony of the above individuals:

1. I find the parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, with Otis Nero being the Claimant, and South Carolina Department of Transportation being the Employer, and the State Accident Fund being the Carrier.

This finding is based upon stipulation of the parties at the commencement of the hearing.

2. I find that pursuant to S.C. Code §42-1-40 the Claimant's average weekly wage is Five Hundred Nineteen and 83/100 (\$519.83) Dollars a week resulting in a compensation rate of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars.

This is pursuant to the stipulation of the parties at the commencement of the hearing.

3. I find that pursuant to S.C. Code §42-1-160, the Claimant sustained a compensable injury by accident to his neck out of and in the course of his employment on June 20, 2012 while pulling a squeegee board leveling concrete; and, I further find, pursuant to S.C. Code §42-9-35 by a preponderance of the evidence, including medical

evidence, that the accident aggravated the preexisting cervical disc disease condition that was present in the Claimant's neck, albeit asymptomatic until the accident.

This finding is based on the above set out evidence. The preponderance of the medical evidence, including the diagnoses of Dr. Naso and the causation statement of Dr. Richey, forms the basis, in particular, for this conclusion.

Dr. Naso, the treating neurosurgeon, saw the Claimant on June 24, 2012 in the hospital at the request of Dr. Richey. (Claimant's APA No. 1, pp. 10 – 11). This evaluation was performed only four days after the accident. Dr. Naso reviewed an MRI of the cervical spine dated June 24, 2012 which showed:

On the axial images, C2-3 is unremarkable.

At C3-4 there is mild spinal stenosis with the AP diameter of the canal measuring 9.5 mm. There is moderate narrowing of the right foramen and mild narrowing of the left foramen due to a diffuse disc bulge.

At C4-5 there is moderate narrowing of both foramen and mild spinal stenosis due to a diffuse disc bulge. AP diameter of the canal is 1 cm.

At C5-6 there is mild narrowing of the right foramen. The left foramen is spinal stenosis secondary to diffuse disc bulge. AP diameter of the canal is 9.5 mm.

At C6-7 there is moderate narrowing of both foramen with spinal stenosis. AP diameter of the canal measures 9.5 mm.

At C7-T1 there is moderate spinal stenosis with the AP diameter of the canal measuring 8 mm. There is moderate narrowing of both neural foramen due to a diffuse disc bulge.

IMPRESSION:

ABNORMALITY AT MULTIPLE LEVELS. MOST SEVERELY INVOLVED IS C7-T1. CLINICAL CORRELATION RECOMMENDED.

(Claimant's APA No. 1, p. 8).

On June 24, 2012, Dr. Naso noted the Claimant's complaints of syncope and neck pain into both arms, predominantly the right upper extremity, as well as numbness and weakness in both hands. He diagnosed cervical radiculopathy and ordered epidural steroid injections. (APA No. 1, pp. 10 – 11).

The Claimant's uncontradicted testimony was that he had not had any neck pain prior to June 20, 2012. (Hrg. Tr. p. 26, ll. 11 – 13).

Dr. Richey testified unequivocally that the Claimant suffered from a preexisting condition that was aggravated by pulling the squeegee board to level the concrete on June 20, 2012. He testified:

Q. Sure. Do you have an opinion, though, as to whether that activity would have aggravated the condition of his cervical spine?

A. More than likely, certainly.

Q. And is that opinion to a reasonable degree of medical certainty?

A. I think so.

(Dep. Richey, p. 19, ll. 12 – 18).

Q. You've also testified pretty unequivocally that he had preexisting stenosis in that spine before June the 20th, 2012, that he had a arthritic condition?

A. He would have to have.

Q. He would have to have had. And that certainly wasn't caused by the squeegee board or the syncope?

A. Yes, sir.

Q. That was caused -- that was age and years of working?

A. That's my opinion.

Q. Okay. I think I also understood your testimony, that, however, using the squeegee board the way he did that day aggravated that preexisting stenosis?

A. My theory on that is that he had increased pressure, abdominal pressure. It would have increased his backflow in his veins and that might have been just enough to offset his equilibrium in his spinal cord.

Q. Potentially causing that syncope?

A. Adding to it.

Q. Adding to it?

- A Yes.
- Q Given the fact that it's June and he's been working?
- A Correct.
- Q All right. And set aside the syncope, though, also aggravating that preexisting stenosis resulting in the bilateral arm numbness and the aggravation of that condition to the point that Dr. Naso recommended and performed a bilateral fusion?
- A Yes, sir.
- Q Okay. And that's your opinion to a reasonable degree of medical certainty?
- A That's the fact.

(Dep. Richey, p. 54, l. 6 – p. 55, l. 15).

Also, while there appears to be some disagreement between Drs. Richey and Naso as to whether the neck condition directly caused the syncope, it was Dr. Richey's uncontradicted testimony that pulling the squeegee board on the afternoon of June 20, 2012 aggravated the preexisting but previously asymptomatic stenosis in Mr. Nero's neck, causing neck pain and bilateral upper extremity pain.

4. I find that the Claimant's neck injury affected both shoulders and arms in the form of radiculopathy.

This finding is based on the above set out records and testimony. In particular, both Dr. Richey and Dr. Naso clearly opined that the Claimant was suffering radiculopathy into his upper extremities as a result of his neck condition. Dr. Naso diagnosed cervical radiculopathy and noted:

The patient is a 62-year-old black male who was admitted with syncope but who also has been having neck pain and pain into both arms, predominantly in the right upper extremity with pain radiating to the right shoulder and arm into the middle and ulnar hand.

(Claimant's APA No. 1, p. 10).

The uncontroverted testimony of the Claimant at trial was that he was still having problems with his hands, even subsequent to the two-level fusion. (Hrg. Tr. p. 30, ll. 4 - 6).

5. I find that the Claimant is not at maximum medical improvement and determination of permanency is premature at this time.

This finding is based on the stipulation of the parties at the commencement of the hearing. (Hrg. Tr. p. 17, ll. 2 - 6).

6. I find that pursuant to S.C. Code §42-15-20 the Claimant had a reasonable excuse for not formally reporting his work injury due to the fact that his lead man, Mr. Durant, and the crew supervisor, Mr. Bostick, were both present and had knowledge of the pertinent facts surrounding the accident sufficient to indicate the possibility of a compensable injury and followed up with the Claimant after the accident; moreover, the Department of Transportation was aware that the Claimant had not returned since his syncopal episode on June 20, 2012 and they were further aware that he had been hospitalized and had ultimately been treated by a neurosurgeon and undergone neck surgery.

The Courts have consistently held that the purpose of the notice provision, S.C. Code §42-15-20 and its predecessors, is twofold: First, it affords protection of the employer in order that he may investigate the facts and question witnesses while their memories are unfaded; and second, it affords the employer the opportunity to furnish medical care to the employee in order to minimize the disability and consequent liability to the employer. (See, e.g., Mintz vs. Fiske-Carter Construction Company, 218 S.C. 409 (1951)).

The Courts have also held that the notice section should be liberally construed in favor of claimants, but that there are limitations upon the rule and the statutory requirements cannot be

disregarded altogether. (Id.) (See also Hartzell v. Palmetto Collision, LLC, 406 S.C. 233 (S.C. App. 2013)).

The Claimant bears the burden of proving either notice or reasonable excuse. (See Lizee v. S.C. Department of Mental Health, 367 S.C. 122 (S.C. App. 2005). However, once reasonable excuse has been shown, it is the employer's burden to show prejudice resulting from the absence of formal notice. (See Lizee v. S.C. Department of Mental Health, 367 S.C. 122 (S.C. App. 2005)).

Here, I find that the employer had actual knowledge and informal notice of the pertinent facts surrounding the accident sufficient to indicate the possibility of a compensable injury and, therefore, trigger investigation of the accident and treatment of the injury. The Claimant's supervisors were present during the incident of syncope which ultimately led the Claimant to the hospital on the same day. The employer was also aware that the Claimant remained in the hospital and was treated by a neurosurgeon, who performed two-level fusion shortly thereafter. (See Plaintiff's Exhibits 1 - 5).

The Claimant demonstrated reasonable excuse for not formally reporting the work injury because his supervisors were present and, as the Claimant testified, he had spoken with them both while in the hospital. (Hrg. Tr. p. 29, l. 21 - p. 30, l. 3). Moreover, the Claimant subsequently provided the employer with documents describing his condition including Plaintiff's Exhibit 1, which is a Family Medical Leave Act form from his family doctor, Dr. Richey, dated July 9, 2012, just under three weeks after the accident. The FMLA form indicates the Claimant's condition is "neck and syncope" and further indicates that the Claimant "has to have neck surgery." (Plaintiff's Exhibit 1).

Claimant's supervisor, Mr. Bostick, testified that he did not receive Claimant's Exhibit 1, nor would he have in the normal course of business. Instead, as was customary, Plaintiff gave the form to the Human Resources office. (Dep. Bostick, pp. 16 - 29). Mr. Bostick testified that if he had been aware of the contents of Exhibit 1, it would have caused him to do further investigation into the accident. He testified:

Q. And let me ask you one more thing. Listen, Mr. Bostick, I know you didn't have this document, [Plaintiff's Trial Exhibit 1]. You've already told me that.

A. Right.

Q. Okay. But if you had that, if Nero had brought it to you - okay. Now, you knew he had been out of work since that day he laid out and that his note said that he had to have neck surgery. Would that have triggered you to do an investigation?

A. Well, I would have went to the safety coordination.

Q. Okay. Okay. Which is what you're -

A. - suppose to do.

Q. - supposed to do?

A. Yeah.

(Dep. Bostick, p. 28, l. 23 - p. 29, l. 12).

Q. Okay. The day he passed out, you didn't feel like you needed to fill out any Form 12B because you didn't know why he passed out, and he said he was all right.

A. Exactly.

Q. But you didn't - he didn't come back?

A. He never came back.

Q. You didn't know why he didn't come back?

A. No.

Q. Okay. If he had, on July the 9th, 2012, brought you [Plaintiff's Trial Exhibit 1] and it said he was out since June the 20th, 2012, and he had to have neck surgery, would that have triggered you to do an investigation, to fill out a Form 12B?

A. Well, I would have went in the office and got with Eric and Al Griggs. Al is our safety coordinator. Eric is our boss. And we would have went to investigating what we need to be doing in a situation like that, you know.

Q. Okay. You would have considered that an indication there was a possible work-related injury that we need to investigate?

- A. I didn't know what it -- it would have -- could have been, you know. I wouldn't have known until we got [Plaintiff's Trial Exhibit 1]. Then they would have start their process of investigating how they go about notifying who they need to notify and do their thing, because certain parts we'll get out of the stage of it, when it gets -- starts going up, you know, because I don't do the safety part of it. They'll get to the safety coordinator. We got on in the district. It goes to Columbia. It goes on to do their thing.
- Q. Yeah. But you didn't have [Plaintiff's Trial Exhibit 1]
- A. No. It wouldn't have come to me. If he would have brought -- unless he would have come on the yard and brought it to me personally, it wouldn't have come to me because they're supposed to go through the office.
- Q. But if it had --
- A. We would have went back in the office.
- Q. And you have said let's -- let's go through this work-related injury paperwork?
- A. Yeah. We would have talked to the people we needed to talk to, to get it -- get that -- get it solved, whatever is going on.

(p. 43, l. 6 -- p. 44, l. 25) (emphasis added).

The Claimant's lead man, Mr. Durant, was also present during the incident of syncope and he testified that he was required to report all accidents, (Dep. Durant p. 42, l. 1 -- p. 43, l. 8), but that he did not report the Claimant's syncope to his supervisor because his supervisor was present. He testified:

- Q. I'm looking at this instructions you guys got about injuries on the job. As the lead man, do you get to choose -- you have some discretion in choosing what injuries to report and what injuries not to report?
- A. Do we get -- no. I don't care if it's -- if it -- whatever it is, it is, if it's small or whatever else.
- Q. I mean, a guy hurts his thumb, you've got to report it?
- A. If you hurt your thumb and you feel like you need medical attention, you need to go report it.

* * *

- Q. But do you have any responsibility as the lead man to report injuries?

- A. Do I have any? Yes, if it happens right here with me, I have a responsibility to report it.
- Q. What if I say, look here, lead man, it's just my thumb. Don't worry about it. I don't want to report it.
- A. Well --
- Q. Can you say, no, we're not going to tell the supervisor?
- A. No. I'm not going to do that because there's too much that come back and bite you.
- Q. All right. Well, let me ask you, when he passed out that day, did you tell your supervisor about it?
- A. He was right there.

(Dep. Durant, p. 44, l. 18 - p. 47, l. 12) (emphasis added).

- Q. Safe to say, after that day, when you knew that Nero had passed out, you felt like that it had been reported wherever it needed to be reported on the count of the fact that your supervisor was standing right there?
- A. Well, not only that, I mean, being real, it probably done got back to whoever it need to get back to when he was out of work.

(Dep. Durant p. 49, l. 14-21).

Thus, the lead man, Mr. Durant, like the Claimant, believed the incident had been adequately reported because of the presence of their respective supervisor.

The Plaintiff's Exhibits 2 - 4 contain out-of-work slips from the Claimant's treating neurosurgeon, Dr. Naso, to the employer indicating he was unable to work due to cervical radiculopathy. Indeed, Plaintiff's Exhibit 5 contains a letter written by the employer to Dr. Naso acknowledging that they were aware that Dr. Naso was treating the Claimant and asking Dr. Naso his opinions as to the Claimant's ability to return to work.

Thus, the employer was obviously aware the Claimant had an incident where he passed out after pulling the squeegee board; that he had not returned to work, and that, instead, he had been taken to the hospital where he was treated by his family doctor and a neurosurgeon, who diagnosed cervical stenosis and recommended, and ultimately performed, neck surgery.

The Claimant's lead man testified that he did not fill out a formal report of incident after the Claimant's passing out episode because his supervisor was present and he believed that was sufficient. It is certainly reasonable for Mr. Nero to have believed the same thing.

Claimant's crew supervisor, Danny Bostick, testified that if he had been aware of the details that the Human Resources department received in the form of the FMLA form contained in Plaintiff's Trial Exhibit 1, he would have further investigated the incident.

On cross examination, the Defendants explored the fact that the Claimant had a prior workers' compensation injury on the job. However, the testimony revealed that during that prior incident, like this one, his employer was present and therefore no more formal mode of notice was required. (Hrg. Tr. p. 27, l. 18 - p. 29, l. 9).

Thus, the undersigned finds that the employer had sufficient actual knowledge and informal notice of the pertinent facts surrounding Mr. Nero's injury to indicate the possibility of a compensable injury, and, therefore to trigger them to do an investigation of Claimant's injury and to direct Claimant's medical treatment. The undersigned further finds that given the Claimant's knowledge that the employer had been present during his passing out episode and was aware of his subsequent treatment, it was reasonable for the Claimant to conclude that no more formal reporting was required.

7. I find that the Defendants were not prejudiced by the late formal reporting of the injury.

Once reasonable excuse has been established, it is the employer's burden to demonstrate prejudice from the absence of formal notice. (See Lizee v. S.C. Department of Mental Health, 367 S.C. 122 (S.C. App. 2005)). Again, in evaluating prejudice, the Commission is cognizant that the purpose of the notice requirement is to afford the employer the ability to investigate the

facts of a claim while the witnesses memories are unfaded; and secondly, to afford the employer the opportunity to furnish medical care to minimize disability. (See, e.g., Mintz vs. Fiske-Carter Construction Company, 218 S.C. 409 (1951)).

Here, the Claimant's supervisors witnessed the syncopal episode and were able to testify with clarity as to their recollections. The Claimant received treatment at the hospital the day of the accident and remained in the hospital to see a neurosurgeon, who diagnosed the Claimant with cervical radiculopathy after reviewing an MRI of his cervical spine performed within four days of the accident. After conservative care, the neurosurgeon ultimately performed surgery on August 28, 2012, approximately two months after the accident.

The evidence of the record reveals that the employer was aware that the Claimant was in the hospital and that he was being treated by a neurosurgeon for cervical radiculopathy. (See Plaintiff's Exhibits 1 – 5). In fact, the employer wrote the neurosurgeon for his views as to the Claimant's work ability in November, 2012. (Plaintiff's Exhibit 5).

The only suggestion of prejudice that the employer makes is that they were not able to send Claimant to a physician of their choice to explore a treatment alternative to surgery. (Hrg. Tr. p. 11, l. 24 – p. 12, l. 4).

However, it is undisputed that the employer was aware, as early as July 9, 2012, just three weeks after the accident, that the Claimant's family doctor, Dr. Richey, believed that the Claimant required neck surgery. (Plaintiff's Exhibit 1). Similarly, by July 12, 2012, by virtue of Claimant's Exhibit 2, the employer was aware that the Claimant was being treated for cervical radiculopathy by Florence Neurosurgery & Spine.

The records of Dr. Naso at Florence Neurosurgery & Spine reveal that he recommended, and Claimant underwent, conservative treatment including a series of epidural steroid injections

and physical therapy before Dr. Naso recommended and performed surgery. (Claimant's APA No. 2). At no point, did the employer indicate any dissatisfaction with the treatment the Claimant was receiving. Indeed, the employer wrote Dr. Naso in November, 2012 to obtain his opinions as to the Claimant's work ability. (Plaintiff's Exhibit 5).

The Defendants have offered no evidence to support a conclusion that they were prejudiced in any way by the absence of more formal notice of the Claimant's injuries. Indeed it would seem that the Claimant's medical treatment was prompt and comprehensive. Moreover, the employer's investigation of the accident was unimpaired, given the fact that two of Claimant's supervisors actually witnessed the pertinent facts, and recalled them with clarity.

The employer has suffered no prejudice.

8. I find that the Claimant is totally disabled and entitled to benefits pursuant to S.C. Code §42-9-10 for the period beginning June 20, 2012 to the date of this Order and continuing in the weekly amount of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars until further Order of this Commission.

This finding is based on the above set out records and testimony. In particular, Dr. Richey's uncontroverted statement in Claimant's Exhibit 1 indicates that he expects that the Claimant will be incapacitated due to his medical condition from June 20, 2012, indefinitely. Also, Claimant's Exhibits 2 and 3 contain out-of-work slips from Dr. Richey and Dr. Kline of Florence Neurosurgery & Spine.

9. I find that pursuant to S.C. Code §42-15-60 the Employer is required to furnish adequate and proper medical care and shall pay for all medical treatment rendered to the Claimant related to this accident from the date of injury, June 20, 2012, to the date of this Order and continuing for such additional time as such treatment will tend to lessen

the Claimant's period of disability; including the medical treatment rendered by Carolinas Hospital System, Dr. Robert Richey, Dr. William Naso, and the surgery performed by Dr. Naso on August 28, 2012.

CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Code of Laws, 1976, as amended, §42-17-40, it is the determination of this Commissioner:

1. Pursuant to S.C. Code §42-1-130, the Claimant was a covered Employee at the time in question; and under S.C. Code §42-1-140, the Defendant-Employer was a covered Employer under the Act.

2. Pursuant to S.C. Code §42-1-40 the Claimant's average weekly wage is Five Hundred Nineteen and 83/100 (\$519.83) Dollars a week resulting in a compensation rate of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars.

3. Pursuant to S.C. Code §42-1-160, the Claimant sustained a compensable injury by accident to his neck out of and in the course of his employment on June 20, 2012 while pulling a squeegee board leveling concrete; and, that pursuant to S.C. Code §42-9-35 the accident aggravated the preexisting cervical disc disease condition that was present in the Claimant's neck; albeit asymptomatic until the accident.

4. Pursuant to Singleton v. Young Lumber Co., 236 S.C. 454 (1960) and its progeny the Claimant's neck injury affected both shoulders and arms in the form of radiculopathy.

5. The Claimant is not at maximum medical improvement and determination of permanency is premature at this time.

6. Pursuant to S.C. Code §42-15-20 the Claimant had a reasonable excuse for not formally reporting his work injury due to the fact that his lead man, Mr. Durant, and the crew supervisor, Mr. Bostick, were both present and had knowledge of the pertinent facts surrounding the accident sufficient to indicate the possibility of a compensable injury and followed up with the Claimant after the accident; moreover, the Department of Transportation was aware that the Claimant had not returned since his syncopal episode on June 20, 2012 and they were further aware that he had been hospitalized and had ultimately been treated by a neurosurgeon and undergone neck surgery.

7. Pursuant to S.C. Code §42-15-20, the Defendants were not prejudiced by the late reporting of the injury.

8. Pursuant to S.C. Code §42-9-10, the Claimant is totally disabled and entitled to benefits for the period beginning June 20, 2012 to the date of this Order and continuing in the weekly amount of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars until further Order of this Commission.

9. Pursuant to S.C. Code §42-15-60 the Employer is required to furnish adequate and proper medical care and shall pay for all medical treatment rendered to the Claimant related to this accident from the date of injury, June 20, 2012, to the date of this Order and continuing for such additional time as such treatment will tend to lessen the Claimant's period of disability; including the medical treatment rendered by Carolinas Hospital System, Dr. Robert Richey, Dr. William Naso, and the surgery performed on August 28, 2012.

ORDER

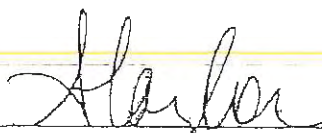
IT IS, THEREFORE, ORDERED that the Form 50 regarding the injury of June 20, 2012 under workers' compensation file no. 1222136 is found to be a compensable accident.

IT IS FURTHER ORDERED that the Employer, South Carolina Department of Transportation, and their Carrier, State Accident Fund, shall pay all medical treatment rendered to the Claimant related to this accident from the date of injury, June 20, 2012, to the date of this Order and continuing for such additional time as such treatment will tend to lessen the Claimant's period of disability, including medical treatment rendered by Carolinas Hospital System, Dr. Robert Richey, Dr. William Naso, and the surgery performed on August 28, 2012.

IT IS FURTHER ORDERED that the Employer/Carrier shall pay the Claimant benefits at the weekly compensation rate of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars from June 20, 2012 until the date of this Order and continuing until further Order of this Commission.

No hearing costs are assessed in this instance.

S.C. WORKERS' COMPENSATION COMMISSION



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic

mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

August 5, 2014

By: Renee Smith, Administrative Assistant to Commissioner Taylor

EXHIBIT 2

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Otis Nero, Appellant,

v.

South Carolina Department of Transportation, Employer,

AND

State Accident Fund, Carrier, Respondents.

Appellate Case No. 2015-001277

Appeal From The Workers' Compensation Commission

Opinion No. 5660

Submitted May 3, 2018 – Filed June 26, 2019

REVERSED

Stephen J. Wukela, of Wukela Law Firm, of Florence, for
Appellant.

John Gabriel Coggiola, of Willson, Jones, Carter &
Baxley, P.A., of Columbia, for Respondent.

MCDONALD, J.: Otis Nero lost consciousness and fell to the ground in the presence of his two immediate supervisors while working on a South Carolina Department of Transportation (SCDOT) road crew. Nero argues the Appellate Panel of the Workers' Compensation Commission erred in reversing the Single Commissioner's findings that (1) SCDOT received adequate notice of his workplace accident and (2) Nero demonstrated reasonable excuse for—and

SCDOT was not prejudiced by—Nero's late formal notice. Upon our prior review of Nero's arguments, we considered the question of timely notice as a jurisdictional issue and applied a de novo standard of review in reversing the Appellate Panel decision. *Nero v. S.C. Dep't of Transp.*, 420 S.C. 523, 804 S.E.2d 269 (Ct. App. 2017). Our supreme court granted SCDOT's petition for a writ of certiorari and reversed, reiterating that "timely notice under section 42-15-20 is not a jurisdictional determination, and must be reviewed under the substantial evidence standard." *Nero v. S.C. Dep't of Transp.*, 422 S.C. 424, 812 S.E.2d 735 (2018). We now reverse the Appellate Panel because the substantial evidence in the record does not support its findings that Nero failed to provide SCDOT with adequate notice of his workplace injury or that SCDOT was prejudiced by Nero's late formal notice.

Facts and Procedural History

On June 20, 2012, Nero was working on a SCDOT road crew supervised by lead man Benjamin Durant and supervisor Danny Bostick. Nero's work, along with that of four or five other members of the crew, involved pulling a thirty-foot-long two-by-four "squeegee board" to level freshly poured concrete. At some point during the day, Bostick pulled Nero off the squeegee board temporarily because Nero appeared overheated. After a break, Nero returned to pulling the squeegee board.

At approximately 3:00 p.m., after finishing the day's work and cleaning up, the crew, including Nero, Durant, and Bostick, were talking and joking near the supervisor's truck when Nero lost consciousness and fell to the ground. Nero regained consciousness, stood up, told his supervisors he was fine, and drove home. Once home, Nero passed out again in his driveway. His wife immediately took him to the hospital where he was admitted, diagnosed with cervical stenosis, and treated by a neurosurgeon.

While at the emergency room, Nero filled out a "History and Physical Report" stating in part, "I passed out talking to my boss." Nero was initially seen by his primary care physician, Dr. Robert Richey. After a series of tests, Dr. Richey determined Nero had cervical stenosis and referred Nero to a neurosurgeon, Dr. William Naso, who performed a fusion surgery.

On July 9, 2012, prior to his surgery, Nero provided the employer's human resources department with his "SCDOT Certification of Health Care Provider for Employee's Serious Health Condition (Family Medical Leave Act)" paperwork. Nero did not specifically mention a neck "popping" incident with the squeegee

board in this submission, but did report that he required neck surgery. Under the section designated "approximate date condition commenced," Nero wrote, "several years—neck and syncope."

On January 6, 2014, Nero filed a request for a hearing, alleging he suffered injuries to his neck and shoulders while pulling the squeegee board on June 20, 2012. The single commissioner found Nero's claim compensable as an injury by accident that aggravated a preexisting cervical disc condition in Nero's neck. The single commissioner further determined Nero had a "reasonable excuse" for not formally reporting his work injury because (1) his lead man and supervisor were present and knew of pertinent facts surrounding the accident sufficient to indicate the possibility of a compensable injury, (2) the lead man and supervisor followed up with Nero, and (3) SCDOT was aware Nero did not return to work after the June 20, 2012 incident. Further, SCDOT was notified Nero was hospitalized and ultimately had neck surgery. Finally, the single commissioner found SCDOT was not prejudiced by the late formal reporting of the injury.

SCDOT appealed to the Appellate Panel. The Appellate Panel reversed the single commissioner, finding that although Nero's two immediate supervisors witnessed him collapse, Nero never reported that an incident with the squeegee board involved a "snap" in his shoulders and neck. The Appellate Panel further found Nero's excuse for not formally reporting was not reasonable and SCDOT was prejudiced because Nero's late reporting deprived it of the opportunity to investigate the incident and whether Nero's work aggravated any preexisting cervical stenosis.

Standard of Review

The Administrative Procedures Act (APA) establishes the standard for our review of Appellate Panel decisions. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Under the APA, this court may reverse or modify the decision of the Appellate Panel when the substantial rights of the appellant have been prejudiced because "the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689–90 (2010); *see also* S.C. Code Ann. § 1-23-380(5)(d)–(e) (Supp. 2016). "The Appellate Panel is the ultimate fact finder in workers' compensation cases, and if its findings are supported by substantial evidence, it is not within our province to reverse those findings." *Mungo v. Rental Unif. Serv. of Florence, Inc.*, 383 S.C. 270, 279, 678 S.E.2d 825, 829–30 (Ct. App.

2009). "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." *Taylor v. S.C. Dep't of Motor Vehicles*, 368 S.C. 33, 36, 627 S.E.2d 751, 752 (Ct. App. 2006) (quoting *S.C. Dep't of Motor Vehicles v. Nelson*, 364 S.C. 514, 519, 613 S.E.2d 544, 547 (2005)).

Law and Analysis

I. Adequate Notice

Nero argues the Appellate Panel erred when it found SCDOT did not receive adequate notice under section 42-15-20(A) of the South Carolina Code (2015). We agree.

Section 42-15-20 sets forth the requirement that an employee provide timely notice of an accident to an employer, stating, in pertinent part:

(A) Every injured employee or his representative immediately shall on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a notice of the accident and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this title prior to the giving of such notice, unless it can be shown that the employer, his agent, or representative, had knowledge of the accident or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person.

(B) Except as provided in subsection (C), no compensation shall be payable unless such notice is given within ninety days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been prejudiced thereby.

"Section 42-15-20 requires that every injured employee or his representative give the employer notice of a job-related accident within ninety days after its occurrence." *Bass v. Isochem*, 365 S.C. 454, 472, 617 S.E.2d 369, 379 (Ct. App. 2005); *see also McCraw v. Mary Black Hosp.*, 350 S.C. 229, 237, 565 S.E.2d 286, 290 (2002) ("Pursuant to S.C. Code Ann. § 42-15-20 (1985), notice to the employer must be given within 90 days after the occurrence of the accident upon which the employee is basing her claim."). "Generally, the injury is not compensable unless notice is given within ninety days." *Bass*, 365 S.C. at 473, 617 S.E.2d at 379. "The burden is upon the claimant to show compliance with the notice provisions of section 42-15-20." *Id.*; *Lizee v. S.C. Dep't of Mental Health*, 367 S.C. 122, 127, 623 S.E.2d 860, 863 (Ct. App. 2005) ("The claimant bears the burden of proving compliance with these notice requirements.").

"Section 42-15-20 provides no specific method of giving notice, the object being that the employer be actually put on notice of the injury so he can investigate it immediately after its occurrence and can furnish medical care for the employee in order to minimize the disability and his own liability." *Hanks v. Blair Mills, Inc.*, 286 S.C. 378, 381, 335 S.E.2d 91, 93 (Ct. App. 1985). Satisfaction of the notice provision should be liberally construed in favor of claimants. *Mintz v. Fiske-Carter Constr. Co.*, 218 S.C. 409, 414, 63 S.E.2d 50, 52 (1951); *Etheredge v. Monsanto Co.*, 349 S.C. 451, 458, 562 S.E.2d 679, 683 (Ct. App. 2002). In *Etheredge*, this court concluded "notice is adequate, when there is some knowledge of accompanying facts connecting the injury or illness with the employment, and signifying to a reasonably conscientious supervisor that the case might involve a potential compensation claim." 349 S.C. at 459, 562 S.E.2d at 683; *contra Sanders v. Richardson*, 251 S.C. 325, 328, 162 S.E.2d 257, 258 (1968) (explaining that just because an employer has knowledge of the fact that an employee becomes ill while at work "does not necessarily, of itself, serve the employer with notice that such illness constituted or resulted in a compensable injury").

We agree with SCDOT that Nero never formally reported the mechanics of his injury to his employer. However, the undisputed evidence in the record demonstrated SCDOT had adequate notice within the statutory requirement. On the day of the incident, Bostick became concerned about Nero and temporarily pulled him off of the squeegee board work.¹ Later that day, as the crew was

¹ Bostick explained in his deposition that although Nero never made any complaints to him about his ability to pull the squeegee board, he was concerned for Nero due to both the summer heat and Nero's age.

cooling down and preparing to leave the job site, Nero lost consciousness and fell to the ground. Durant and Bostick both witnessed this. Both men called Nero while he was in the hospital, and both were aware he needed to have neck surgery. Both were aware that Nero did not return to work at SCDOT following his surgery, and Nero filled out the necessary leave paperwork through SCDOT's human resources department.

Significantly, the undisputed documentary evidence in the record further established notice. As early as July 13, 2012, SCDOT received written notification from Nero's family doctor, Richey, that Nero had been out of work since the date of his collapse and needed neck surgery. In July and August 2012, SCDOT received correspondence from Florence Neurosurgery and Spine confirming Dr. Naso was treating Nero for cervical radiculopathy. SCDOT corresponded with the medical provider in November 2012 regarding whether Nero would be able to return to work. There is simply no support in the record for the Appellate Panel's finding that SCDOT lacked knowledge of Nero's workplace injury—or of the cervical problems for which he was being treated—for purposes of section 42-15-20(A).

SCDOT argues Nero omitted several crucial facts contrary to his argument that a reasonably conscientious manager should have been aware of a potential compensation claim. First, "and most importantly," SCDOT points to the "SCDOT Certification of Health Care Provider for Employee's Serious Health Condition (Family Medical Leave Act)" form (Exhibit 1), signed by Nero and Dr. Richey and delivered to the human resources department in July 2012.² Exhibit 1 states the approximate date Nero's condition commenced was "several years—neck and syncope."³ SCDOT contends Nero never actually reported an "injury," despite his

² Bostick testified that had he been aware of the contents of Exhibit 1, he would have further investigated the accident. Nero received this form with his "paperwork from Human Resources," Dr. Richey completed a portion of the FMLA form, and it was returned to SCDOT.

³ However, SCDOT's own Question 4 and Nero's response provide additional context: "4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such relevant facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment): Have to have neck surgery." Nero's beginning date for the period of incapacity was listed as June 20, 2012 (the day he collapsed at the job site). As for

conversations with both Bostick and Durant while hospitalized. SCDOT further remarks on the medical evidence in the record, however, the medical opinions it references address causation, not notice.⁴

At his deposition, Nero testified the injury to his upper back and shoulders was a result of pulling the squeegee over a concrete pad.

Q: And tell me what happened during that process of you pulling the squeegee board?

A: I got a pain in between pulling the squeegee board when they take someone off it that put more stress in there, due to whoever is left on the squeegee has got less to help pull it.

Q: Yes Sir.

A: But you also still got to keep going [be]cause if you don't keep going—you're going to blotch up. So I was doing that, I felt like a pressing like a, you know, snap back there between my shoulder and my neck. . . .

Nero's possible return to work date, Dr. Richey noted on the form "For now he is out - after surgery we can estimate this 7/12/12."

⁴ It appears the Appellate Panel conflated the concept of notice with the evidentiary concept of an injured worker's proof of his claim. Still, we recognize that some of the evidence SCDOT submits in support of its argument that SCDOT lacked notice of the mechanism of Nero's injury may be relevant to both notice and causation. For example, in the medical history questionnaire Nero prepared and signed for Dr. Naso, Nero left blank this line: "Complaint Related to an Injury? _____ Workman's Compensation? _____." And Dr. Naso initially commented, "I do not think his syncope is related to cervical spine pathology." But Dr. Richey testified Nero's preexisting cervical spine condition was aggravated by his pulling of the squeegee board and that this, along with Nero's work in the heat, caused the syncope.

Q: Okay. Now did you tell him, "Hey Mr. Bostick, I—I think I've hurt my neck just now"?

A: No, I didn't tell him that.

Q: Okay, when he took you off, what did you do?

A: I just step out of the way, got off to see—out of the cement, took a little break, and then I went right back.

Nero further testified that while he was pulling the squeegee, he felt "like a bone snapped or something snapped—or popped." Nero spoke with Bostick and Durant while he was in the hospital but did not tell them he felt "a snap[ping], crackling, and popping sensation" in his neck. Nero testified he told Bostick, "I think he asked me what . . . was wrong. I said I am in the hospital. I said ever since I fell out, I said, I've been here ever since."

Supervisor Bostick's deposition testimony is more illustrative of SCDOT's notice. With regard to Nero's "Family Medical Leave Act" form completed in part by Dr. Richey, Nero's counsel asked:

Q: You haven't ever seen [the SCDOT FMLA leave form], but you would agree with me that by July of 2012—this document is dated July the 9th of 2012, I think—yeah, July the 9th. By July the 9th, DOT was aware that Mr. Nero had been out of work since June the 20th and that he had to have neck surgery?

A: Would I have known that?

Q: No. No. I'm asking if you agree with me that the Department of Transportation knew that.

A: I don't know, because I don't know what paperwork he passed on to get to that point.

Q: Fair enough.
Well, I got this document from the Department of Transportation.

A: Right.

Q: So --

A: But I wouldn't have known.

Q: I'm--well, you know. I'm not asking what you knew. I'm asking whether you would agree with me that, given this document, the Department of Transportation would have known that.

[Objection to the form].

Q: Go ahead and answer.

A: That they would have known something then?

Q: Yeah.

A: I guess they would have start[ed] doing their investigation.

Q: Okay. Do you know whether they did start doing an investigation at that point?

A: No, I don't. Like I said, the only--the only thing we ever heard of this is whenever that initial call was made, and whoever they talked to, I wouldn't [know] all that. The only thing I knew, Greg, my boss, called me in and asked me about the situation.

Bostick testified that he provided a written statement over a year prior to his March 2014 deposition in response to a call from his own supervisor. Bostick elaborated, "The only time I ever wrote anything, when they--we--it was brought to our attention that he called the department to say he got hurt on the job, so then that's when our safety guy--district safety guys started investigating what's going on, trying to find out was this eligible that happened, when it happened, whatever." Although Bostick's written statement is undated, a file notation of 2012-4525 appears at the top of the document.

Nero's situation is a far cry from that of the auto body paint technician who reported to his employer that he was "pretty sore" and "must have hurt [himself]" in *Hartzell v. Palmetto Collision, LLC*, 415 S.C. 617, 620, 785 S.E.2d 194, 195 (2016). The *Hartzell* petitioner did not seek immediately seek medical care, and he ended his employment approximately one month after this conversation because "business was slow." *Id.* at 620, 785 S.E.2d at 196. Over one year later, Hartzell filed a claim alleging a partial permanent injury to his back. *Id.* Although both the single commissioner and the Workers' Compensation Commission determined Hartzell "reported his work-related injury to Employer within the requisite time" as required by 42-14-20, this court reversed the Commission's notice finding. *Id.* at 621, 785 S.E.2d at 196.

Our supreme court reversed the court of appeals' finding of a notice failure in *Hartzell*, explaining, "[w]hile reasonable minds could have reached a different conclusion based on the record, we must not engage in fact-finding that would disregard the Commission's factual finding on these issues." *Id.* at 623, 785 S.E.2d at 197. There, the employer, while not denying a conversation with the employee may have occurred, testified it did not "ring a bell." *Id.* at 620, 785 S.E.2d at 196. In *Hartzell*, the substantial evidence of notice was this forgotten conversation—with no seeking of immediate medical care or correspondence between the treating physicians and employer prior to the claimant's filing of a Form 50. *Id.* at 623, 785 S.E.2d at 197.

Conversely, here, as the single commissioner's order explained, the "evidence of the record reveals that the employer was aware that the Claimant was in the hospital and that he was being treated by a neurosurgeon for cervical radiculopathy. (See Plaintiff's Exhibits 1-5). In fact, the employer wrote the neurosurgeon for his views as to the Claimant's work ability in November, 2012. (Plaintiff's Exhibit 5)." In sum, the substantial evidence in this record simply does not support the Appellate Panel's finding that SCDOT lacked adequate notice of Nero's workplace injury under section 42-15-20(A). See *Etheredge*, 349 S.C. at 459, 562 S.E.2d at 683 (concluding "notice is adequate, when there is some knowledge of accompanying facts connecting the injury or illness with the employment, and signifying to a reasonably conscientious supervisor that the case might involve a potential compensation claim").

II. Reasonable Excuse

Nero next contends the Appellate Panel erred in finding he failed to establish a "reasonable excuse" for the formal notice deficiency and that SCDOT was prejudiced by this lack of notice. We agree.

Section 42-15-20(B) provides in relevant part that "no compensation shall be payable unless such notice is given within ninety days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been prejudiced thereby." Once reasonable excuse has been established, it is the employer's burden to demonstrate prejudice from the absence of formal notice. *Lizee*, 367 S.C. at 129–30, 623 S.E.2d at 864. However, "lack of prejudice does not justify compensation unless the requirement of reasonable excuse is also satisfied." *Gray v. Laurens Mill*, 231 S.C. 488, 492, 99 S.E.2d 36, 38 (1957). When determining whether prejudice exists, the Appellate Panel should be cognizant that the notice requirement protects the employer by enabling it to "investigate the facts and question witnesses while their memories are unfaded, and . . . to furnish medical care [to] the employee in order to minimize the disability and consequent liability upon the employer." *Mintz*, 218 S.C. at 414, 63 S.E.2d at 52.

Here, Nero's reason for not formally reporting his workplace incident was that his supervisors were present when he lost consciousness and he was hospitalized the same day of the incident. Further, as the single commissioner recognized, Nero's lead man, Durant, testified he never reported the incident to his own supervisor, Bostick, because Bostick was "right there."

Q: I'm looking at [these] instructions you guys got about injuries on the job. As the lead man, do you get to choose—you have some discretion in choosing what injuries to report and what injuries not to report?

A: Do we get—no. I don't care if it's—if it—whatever it is, it is, if it's small or whatever else.

Q: I mean, a guy hurts his thumb, you've got to report it?

A: If you hurt your thumb and you feel like you need medical attention, you need to go report it.

....

Q: But do you have any responsibility as the lead man to report injuries?

A: Do I have any? Yes, if it happens right here with me, I have a responsibility to report it.

Q: What if I say, look here, lead man, it's just my thumb. Don't worry about it. I don't want to report it.

A: Well—

Q: Can you say, no, we're not going to tell the supervisor?

A: No, I am not going to do that because there's too much that [can] come back and bite you.

Q: All right. Well, let me ask you, when [Nero] passed out that day, did you tell your supervisor about it?

A: He was right there.

....

Q: Safe to say, after that day, when you knew that Nero had passed out, you felt like that it had been reported wherever it needed to be reported on the count of the fact that your supervisor was standing right there?

A: Well, not only that, I mean, being real, it probably done got back to whoever it need[ed] to get back to when he was out of work.⁵

⁵ And we know, based on Bostick's own deposition testimony as to when he provided his statement to SCDOT, that "the district safety guys" and Bostick's own supervisor were investigating Nero's incident and injury at least a year prior to Nero's filing of the Form 50 on January 6, 2014.

In reversing the single commissioner's finding that Nero provided a "reasonable excuse" for not formally reporting his work injury, the Appellate Panel found:

Although Claimant's supervisors witnessed Claimant's syncope episode, Claimant never reported the alleged accident from pulling the squeegee board, which was the basis of his claim. Claimant was given several opportunities to report his work accident and even submitted FMLA paperwork . . . indicating that his problem lasted for several years instead of requesting workers' compensation.

Although Nero failed to give SCDOT formal notice, his excuse was reasonable because his supervisors were both present at the time of his injury and were aware of his treatment. SCDOT was aware Nero never returned to work following the June 2012 episode and knew of his hospitalization and need for neck surgery well within the ninety-day notice window. Within a few weeks of Nero's collapse, SCDOT was aware of Nero's treatment by a qualified neurosurgeon, that he was having neck surgery, and that he would be unable to return to work. At some point long before Nero filed his Form 50, SCDOT was conducting its own investigation as to Nero's injury at the job site. Thus, the employer suffered no prejudice to either its ability to investigate or furnish medical care in order to minimize Nero's disability and its own liability. As the substantial evidence in the record does not support the contrary conclusions of the Appellate Panel, we reverse.

Conclusion

Based on the foregoing analysis, we reverse the decision of the Appellate Panel and reinstate the order of the single commissioner.

REVERSED.

LOCKEMY, C.J., and KONDUROS, J., concur.

EXHIBIT 3

The Supreme Court of South Carolina

Otis Nero, Respondent,

v.

South Carolina Department of Transportation, Employer,
and State Accident Fund, Carrier, Petitioners.

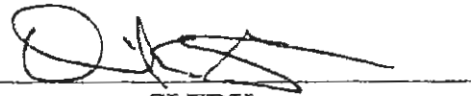
Appellate Case No. 2019-001586
Lower Court Case No. WCC 1222136

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

February 12, 2020

cc:

Stephen J. Wukela, Esquire
Kirsten Leslie Barr, Esquire
The Honorable Jenny Abbott Kitchings
The Honorable Amy Bracy

EXHIBIT 4

*Court News ...***Interest Rate on Money Decrees and Judgments**

The Supreme Court issues order regarding the legal rate of interest on money decrees and judgments.

2014-01-03-01

The Supreme Court of South Carolina

RE: Interest Rate on Money Decrees and Judgments

ORDER

S.C. Code Ann. § 34-31-20 (B) (Supp. 2013) provides that the legal rate of interest on money decrees and judgments "is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points."

The Wall Street Journal for January 2, 2014, the first edition after January 1, 2014, listed the prime rate as 3.25%. Therefore, for the period January 15, 2014, through January 14, 2015, the legal rate of interest for judgments and money decrees is 7.25% compounded annually.

s/Jean Hoefler Toal C.J.
FOR THE COURT

Columbia, South Carolina
January 3, 2014

EXHIBIT 5

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2020-CP-21-

OTIS NERO,

Claimant,

vs.

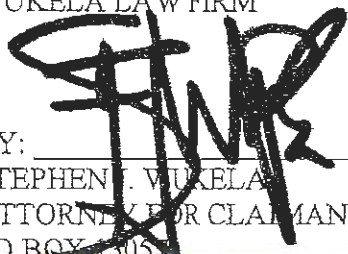
SC DEPARTMENT OF TRANSPORTATION,
Employer, and STATE ACCIDENT FUND,
Carrier,

Defendants.

**CERTIFICATE OF NON-PAYMENT
OF AWARD**

The undersigned hereby certifies that no payment has been made by the above-captioned Defendants on the award of the Single Commission dated August 5, 2014.

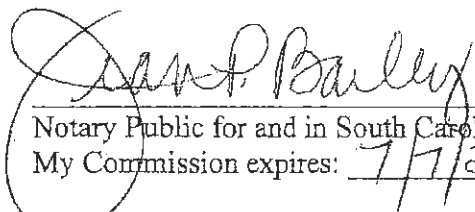
WUKELA LAW FIRM

BY: 
STEPHEN J. WUKELA
ATTORNEY FOR CLAIMANT
PO BOX 13057
FLORENCE SC 29504
843-669-5634
stephen@wukelalaw.com

SWORN to before me

this 5 day of

March, 2020.

 (L.S.)

Notary Public for and in South Carolina.

My Commission expires: 7/7/2027

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. CP-21-

OTIS NERO

SC DEPARTMENT OF TRANSPORTATION

PLAINTIFF(S)

AND STATE ACCIDENT FUND
DEFENDANT(S)

Submitted by: STEPHEN J. WUKELA

Attorney for: ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This Court hereby renders judgment in the amount of \$190,648.00, along with weekly benefits in the amount of \$346.57 in accordance with the Order of the S.C. Court of Appeals, Op. No. 5660, (06/26/19)(cert. den'd., 02/12/2020)(attached), which reinstated the Order of the Workers' Compensation Commission dated 08/05/2014. (Attached).

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : See Page 2 for additional information

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
OTIS NERO	S.C. DEPT. OF TRANS. AND STATE ACCIDENT FUND	\$190,648 along with weekly benefits in the amount of \$346.57
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Stephen J. Wukela

PO Box 13057

Florence SC 29504

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kirsten Barr

PO Box 2167

Mt. Pleasant SC 29464

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This is a Workers' Compensation matter. By Order of August 5, 2014, the Single Commissioner of the Workers' Compensation Commission Ordered inter alia that the Defendants "shall pay the Claimant benefits at the weekly compensation rate of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars from June 20, 2012 until the date of this Order and continuing until further Order of this Commission." (attached). (The Single Commissioner's Order also ordered the payment of certain medical bills. That portion will, if necessary, be addressed by subsequent judgment when those amounts are ascertained).

Thereafter, the case had a long appellate history; culminating in the Court of Appeals reinstating the Order of the Single Commissioner by Order of June 26, 2019.(attached). The Defendants petitioned certiorari to the Supreme Court and certiorari was denied by the Supreme Court by Order dated February 12, 2020. (attached).

The Workers' Compensation Act, S.C. Code §42-17-70 provides: "Any party in interest may file in the court of common pleas of the county in which the injury occurred ... an award of the commission affirmed upon appeal, whereupon such court shall render judgment in accordance therewith and notify the parties."

The Claimant, therefore, filed the attached Order of the Court of Appeals dated June 26, 2019 reinstating the Order of the Single Commissioner dated August 5, 2014.

The amount of the judgment is calculated as follows:

A. Indemnity Benefits

The Single Commission ordered the payment of weekly compensation benefits at the weekly rate of Three Hundred Forty-Six and 57/100 (\$346.57) Dollars from June 20, 2012, to the date of the Single Commission Order and continuing until further Order of the Commission. That amount, as of March 6, 2000, totals \$139,321.14; representing weekly benefits of \$346.57 for the 402-week period of 06/20/2012-03/06/2020.

B. Interest

The Workers' Compensation Act, S.C. Code §42-9-240 provides:

Date on which compensation payable under award becomes due.

The first installment of compensation payable under the terms of an award by the commission or under the terms of a judgment of a court upon an appeal from such an award shall become due seven days from the date of such an award or from the date of such a judgment of the court, on which date all compensation then due shall be paid, including interest from the original date of the award at the maximum legal rate.(emphasis added).

By Order of the Supreme Court, 2014-01-03-01, dated 01/03/2014, (attached), for the period 01/15/2014 through 01/14/2015, the legal rate of interest is 7.25% compounded annually. The Single Commission Order was issued on 08/05/2014. Therefore, as of March 6, 2020, the total amount of interest owed was \$33,995.22.

C. Ten (10%) Percent Penalty

The Workers' Compensation Act, S.C. Code §42-9-90 provides:

.... if any installment of compensation payable in accordance with the terms of an award by the commission is not paid within fourteen days after it becomes due, as provided in Section 42-9-240, there shall be added to such unpaid installment an amount equal to ten per cent thereof, which shall be paid at the same time as, but in addition to, such installment, unless such nonpayment is excused by the commission after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

No payment was made within fourteen (14) days after it became due, i.e. February 26, 2020. (see attached Certificate of Non-payment). A ten (10%) percent penalty shall be added. Ten (10%) percent of the amount above is \$17,331.64.

Therefore, the total amount of the judgment, (including interest and penalties), as of March 6, 2020, is \$190,648.00, along with weekly benefits in the amount of \$346.57.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Florence Common Pleas

Case Caption: Otis Nero VS Department Of Transportation South Carolina ,
defendant, et al
Case Number: 2020CP2100755
Type: Master/Order/Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2020-03-11 09:49:12 page 6 of 6

ELECTRONICALLY FILED - 2020 Mar 11 10:19 AM - FLORENCE - COMMON PLEAS - CASE#2020CP2100755