THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2020-001474

David Casey, Employee, Respondent,

v.

APTIM Federal Services, LLC, Employer, and XL Specialty Insurance Company, Carrier, Appellants.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

A. Procedural History

This case arises out of an admitted work-related accident David Casey (Respondent) suffered on December 10, 2018. The sole issue on appeal involves whether the Appellate Panel of the South Carolina Workers Compensation Commission (Appellate Panel) erred in reversing a single commissioner and awarding Respondent temporary total disability (TTD) benefits when such a finding is not corroborated by any medical evidence and is based on surmise, conjecture, or speculation.

On July 1, 2019, a hearing was held before Commissioner R. Michael Campbell, II of the South Carolina Workers' Compensation Commission (the single commissioner). (Single Commissioner Hr. Tr. p. 1). On December 12, 2019, the single commissioner issued an order finding Respondent was not entitled to TTD for any alleged period. *See generally* (Single Commissioner Order). Both parties appealed the single commissioner's order to the Appellate Panel.[1] The Appellate Panel issued an order on June 29, 2020. In a 2-1 decision, the Appellate Panel reversed the single commissioner and awarded Respondent TTD from "January 18, 2019 through May 12, 2019 (less the ten days [Respondent] was accommodated with light duty work)." (Appellate Panel Order p. 12, FF #11). Appellants filed a Motion to Reconsider, which the Appellate Panel denied—again in a 2-1 decision. On November 4, 2020, Appellants timely appealed the Appellate Panel's orders to this Court. (Appellants' Notice of Appeal dated November 4, 2020). This appeal followed.

[1] Appellants appealed the single commissioner's finding that Respondent had not reached MMI and was entitled to second medical opinion; however, that issue is not on appeal before this Court.

B. Summary of Relevant Arguments

1. Single Commissioner Hearing

At the single commissioner hearing, Respondent contended he was entitled to TTD pursuant to *Pollack v. Southern Wine & Spirits of America*, 405 S.C. 9, 747 S.E.2d 430 (2013) because "[h]e was out of work due to the work-related injury and no other reason." (Single Commissioner Hr. Tr. p. 5, ll. 8-11). Specifically, he sought TTD for the period "December 14[, 2018] until May 13[, 2019] with the exception of the three weeks he was able to work under restrictions for the employer." (Single Commissioner Hr. Tr. p. 5, ll. 11-15).

Appellants argued that Respondent was not entitled to any accrued TTD because he was not under any work restrictions and any restrictions he may have received were from an unauthorized provider and were not valid. (Single Commissioner Hr. Tr. p. 5, ll. 21-25, p. 6, ll. 1-4). Appellants further asserted that even if the single commissioner were to find the purported restrictions to be valid, Respondent testified he could have performed his regular job, but he was a contract worked who did not have a contract during the period in question and, therefore, he is not "disabled" for purposes of the Workers' Compensation Act. (Single Commissioner Hr. Tr. p. 6, ll. 4-8). Appellants further pointed out that per the opinion of Dr. Ivan LaMotta, Respondent had reached maximum medical improvement (MMI) and he did not have any permanent impairment and, therefore, there was no evidence of disability. (Single Commissioner Hr. Tr. p. 6, ll. 9-15).

2. Appellate Panel Hearing

Following the single commissioner's denial of Respondent's TTD claim, the Appellate Panel heard the case on March 16, 2020. (Appellate Panel Hr. Tr. p. 3, l. 2). At the hearing, Respondent argued that the single commissioner erred in denying his request for TTD for the

period December 13, 2018 through May 9, 2019 (minus 19 days where he worked light duty). (Appellate Panel Hr. Tr. p. 5, ll. 11-25). Respondent further argued that a medical care provider's instruction that he could return to work without restrictions "with attention not to aggravate his injury" was tantamount to a work restriction and, therefore, he was entitled to TTD under *Cranford v. Hutchinson Construction*, 399 S.C. 65, 731 S.E.2d 303 (Ct. App. 2012). (Appellate Panel Hr. Tr. p. 8, ll. 19-25, p. 9, ll. 1-16). Respondent asserted he was assigned work restrictions as of December 13, 2018 until March 14, 2019 when Dr. LaMotta increased his restrictions to 40 to 45 pounds. (Appellate Panel Hr. Tr. p. 10, ll. 5-9). He also argued the single commissioner erred in finding Appellants offered him light duty during that period. (Appellate Panel Hr. Tr. p. 8, ll. 1-11). Respondent argued that he was out of work for 19 weeks between December 2018 and May 2019 and that Appellants did not provide him employment for those weeks, and therefore, he was entitled to TTD for that entire period. (Appellate Panel Hr. Tr. p. 7, ll. 12-16).

In response, Appellants argued that there are two important considerations for this case: (1) the nature of Respondent's employment and (2) "what is a work restriction and whether or not [Respondent] actually [has] work restrictions." (Appellate Panel Hr. Tr. p. 11, ll. 22-25, p. 12, ll. 1-4). Specifically, Appellants argued that Respondent's position was that of a "project employee" and by his own admission his jobs as an Unexploded Ordnance (UXO) technician or construction support technician are not available 52 weeks out of the year. (Appellate Panel Hr. Tr. p. 12, ll.). As for the first issue, Appellants argued that Respondent would not be entitled to TTD from December 13, 2018 until January 6, 2019—even assuming he was under restrictions—because his projected ended on December 13, 2018 and he was off work anyway until January 6, 2019. (Appellate Panel Hr. Tr. p. 12, ll. 17-25, p. 13, ll. 1-8).

Appellants further argued that Respondent's argument that "attention not to aggravate the injury" was a work restriction was without merit and that his claims that he was assigned work restrictions by Chesapeake Regional, Bayview Urgent Care, and his primary care provider were not supported by the medical evidence. (Appellate Panel Hr. Tr. p. 14, ll. 6-25). Moreover, Appellants asserted that Respondent went on his own to the Veteran's Administration (VA) Hospital in Columbia, South Carolina for medical treatment, he received a work note; however, there was no evidence that the work restriction was related to either a work accident or an injury to Respondent's back. (Appellate Panel Hr. Tr. p. 14, ll. 23-25, p. 15, ll. 1-12). Therefore, to rely on such document to find Respondent was assigned work restrictions causally related to the December 10, 2018 accident would amount to surmise, conjecture, or speculation. (Appellate Panel Hr. Tr. p. 15, ll. 13-15). Relying on *Cranford*, Appellants also argued that "where you're released to return to work and take it easy, . . . that does not equate to work restrictions." (Appellate Panel Hr. Tr. p. 15, ll. 17-20). Therefore, Appellants asserted that the single commissioner correctly found Respondent was not entitled to TTD for any alleged period. (Appellate Panel Hr. Tr. p. 16, ll. 17-25).

C. Summary of Relevant Rulings

1. Single Commissioner's Ruling

On December 12, 2019, the single commissioner issued an order finding Respondent was not entitled to TTD for any alleged period. *See generally* (Single Commissioner Order). Specifically, the single commissioner found:

> [Respondent] has not provided a physician note writing him out of work, and his work restrictions were accommodated by

> [Appellants]. As such, [Respondent] failed to meet his burden of proving he is entitled to back [TTD] benefits.

(Single Commissioner Order, p. 9, FF #11).

The single commissioner further found

> Under *Lee v. Bondex*, 406 S.C. 97, 102, 749 S.E.2d 155, 157 (Ct. App. 2013), [Respondent] bears the burden of proving entitlement to temporary disability compensation. To do so, he must prove that work restrictions prevent him from performing the job he had before the injury and that his current employer has not offered him light duty employment. *Id.* at 102-03, 749 S.E.2d at 157. In this case, [Respondent] has failed to meet his burden of proving he is entitled to TTD for any alleged period.

(Single Commissioner Order, p. 10, COL #4).

Both parties appealed the single commissioner's order to the Appellate Panel of the South Carolina Workers Compensation Commission.

2. Appellate Panel's Ruling

By Order dated June 29, 2020, a majority of the Appellate Panel found:

> The [s]ingle [c]ommissioner erred by finding [Respondent]'s work restrictions were accommodated by [Appellants] and that [Respondent] did not meet his burden proving entitlement to TTD. While the [s]ingle [c]ommissioner's Find of Fact 11[2] is accurate

[2] As previously stated, the single commissioner's finding of fact # 11 stated: "[Respondent] has not provided a physician note writing him out of work, and his work restrictions were

> regarding [Respondent] not being written out of work completely, it is inaccurate that [Appellants] accommodated his restrictions continuously throughout the period he was under restrictions. [Respondent] met his burden of proof establishing a compensable injury with work-related restrictions that [Appellants] did not continuously accommodate from January 18, 2019 through May 12, 2019.

(Appellate Panel Order p. 10) (emphasis added).

Thus, the Appellate Panel awarded Respondent TTD from "January 18, 2019 through May 12, 2019 (less the ten days he was accommodated with light duty work)." (Appellate Panel Order p. 13, FF #4). Commissioner Avery B. Wilkerson, Jr. dissented, noting he would have affirmed the single commissioner's Order "in full." (Appellate Panel Order p. 15).

On July 2, 2020, Appellants filed a motion to reconsider the Appellate Panel's Order, arguing the Appellate Panel's award of TTD amounted to surmise, conjecture, or speculation. (Appellant's Motion to Reconsider). On October 12, 2020, in another 2-1 decision, a majority of the Appellate Panel denied Appellant's Motion to Reconsider. (Appellate Panel Order dated October 12, 2020).

STATEMENT OF THE FACTS

A. Background Facts

Respondent was 42 years old at the time of the hearing before the single commissioner. (Respondent's APA p. 1). He is a high school graduate who also received certification as a

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accommodated by [Appellants]. As such, [Respondent] failed to meet his burden of proving he is entitled to back [TTD] benefits." (Single Commissioner Order p. 10, FF #11).

registered medical assistant from Remington College. (Single Commissioner Hr. Tr. p. 8, ll. 2-8). His employment history includes work as a UXO technician, which involves working on active ranges or flood sites doing metal detection for unexploded ordnance and then, if necessary, disposing of any ordnance. (Single Commissioner Hr. Tr. p. 8, ll. 20-23; p. 9, ll. 1-15).

Respondent testified he began working for APTIM Federal Services in March 2017, and, as part of his job, he had worked all over the country at various sites. (Single Commissioner Hr. Tr. p. 9, ll. 18-19; p. 10, ll. 1-25). His first job was from March 2017 through September 2017. (Single Commissioner Hr. Tr. p. 48, ll. 17-20). He was out of work from September 2017 until November 2017. (Single Commissioner Hr. Tr. p. 48, ll. 17-23). His next job was in Texas from November 2017 through March 2018. (Single Commissioner Hr. Tr. p. 48, ll. 21-23). He was out of work against between March 2018 and April 2018. (Single Commissioner Hr. Tr. p. 49, ll. 7-10). His next job was in Adak, Alaska and lasted from April 2018 until September 2018. (Single Commissioner Hr. Tr. p. 49, ll. 7-12). He was then out of work yet again while his contract ended until October 2018. (Single Commissioner Hr. Tr. p. 49, ll. 11-14).

Respondent testified that "the nature of [his] industry is you don't work 52 weeks out of the year[.]". (Single Commissioner Hr. Tr. p. 28, ll. 16-19). Specifically, he explained that his job is "contract work." (Single Commissioner Hr. Tr. p. 28, ll. 20-22). He further explained that since he started working for APTIM in 2017, he had never worked 52 consecutive weeks in a year. (Single Commissioner Hr. Tr. p. 28, ll. 23-25; p. 29, ll. 1-3). His job required him to go around the country to a project, work as long as the contract provided for, and then leave to go elsewhere. (Single Commissioner Hr. Tr. p. 29, ll. 4-18).

Respondent testified that in October 2018 he went to work at Fentress Auxiliary Airfield in Chesapeake, Virginia. (Single Commissioner Hr. Tr. p. 10, ll. 24-25; p. 11, ll. 1-2). He explained

that his job in Virginia was UXO technician level 3 work, which was considered "construction support." (Single Commissioner Hr. Tr. p. 11, ll. 9-25). In this position, he was given a metal detector and instructed to inspect the ground before digging. (Single Commissioner Hr. Tr. p. 11, ll. 19-25). He explained that he worked at Fentress until December 2018 when the job ended for the holiday season and then started back in January 2019. (Single Commissioner Hr. Tr. p. 11, ll. 3-8). He further testified that all of the workers at the Fentress Airfield were off work from December 14, 2018 through January 6, 2019 for the holidays. (Single Commissioner Hr. Tr. p. 11, ll. 3-8). Beginning on January 7, 2019, Respondent returned to work at the Fentress Airfield as did all of the other employees assigned to work there. (Single Commissioner Hr. Tr. p. 11, ll. 3-8).

He explained the construction support position differed from normal UXO work, which typically required the employee to lift a minimum of 40 to 45 pounds. (Single Commissioner Hr. Tr. p. 11, ll. 9-17; p. 13, ll. 12-19). Respondent testified that he had worked in this UXO construction support position on four separate occasions, and he was working in this position at the time of the single commissioner hearing. (Single Commissioner Hr. Tr. p. 12, ll. 15-24; p. 13, ll. 2-5).

On December 10, 2018, Respondent suffered an admitted work-related accident when he "was standing next to his truck behind the open door when another truck was going backward and hit the door. [Respondent] was pinned between the door and his truck." (Respondent's APA p. 1).

B. Respondent's Medical Treatment and Work Restrictions

Respondent disputed medical records from Chesapeake Regional following his work accident that indicated he was released to return to work without restrictions. (Single Commissioner Hr. Tr. p. 47, ll. 12-25, p. 48, ll. 1-3; Respondent's APA pp. 1-6). He claimed he was assigned 5-pound lifting restrictions at his initial visit at Chesapeake Regional on December 10, 2018, which were then increased to 10 pounds by Bayview Urgent Care. (Single Commissioner

Hr. Tr. p. 48, ll. 4-13; Respondent's APA pp. 1-6). However, there is not a work note from Chesapeake Regional in the APAs. (Respondent's APA pp. 1-6). According to Respondent, he was assigned 10-pound lifting restrictions from Bayview Urgent Care in December 2018 following his work accident and doctors told him these restrictions were in place "until either I felt no pain or I saw another physician." (Single Commissioner Hr. Tr. p. 15, ll. 8-17). There is also not a note from Bayview Urgent Care in the record to corroborate the alleged 10-pound work restrictions. (Appellants' APA pp. 38-44, 80). Respondent was presented with a note from Bayview Urgent Care dated December 11, 2018 that states he is released full duty "with attention not to aggravate injury" and "if [he] has further problems, he will contact his case manager." (Single Commissioner Hr. Tr. p. 50, ll. 14-25; Appellants' APA p. 43). According to Respondent, he remained under restrictions of "attention not to aggravate his injury" until March 14, 2019 when Dr. LaMotta changed his restrictions to 40-45 pounds lifting. (Single Commissioner Hr. Tr. p. 53, ll. 23-25, p. 54, ll. 1-20).

Respondent next acknowledged that a note from Dr. Ann Cooper of Bayview Urgent Care dated December 13, 2018 stated:

> "[Respondent] has only 2 days left to work on this job as he is an out of town contractor and will return home to [South Carolina] on 12/13/18. Therefore, I will release patient to full duty on 12/13/18 but [he] will contact his case manager if he has any further problems connected [with] this injury in the future."

(Single Commissioner Hr. Tr. p. 34, ll. 13-20; Appellants' APA pp. 39-40).

Respondent was asked whether it was true that Dr. Cooper released him to return to work full duty as of December 13, 2018, and he responded, "If the pain subsided and there were no

further issues with [his] back, yes." (Single Commissioner Hr. Tr. p. 34, ll. 21-25; Appellants' APA pp. 39-40). Respondent thus took the position that this was only a full duty release if "there are no further injuries or problems with the back." (Single Commissioner Hr. Tr. p. 35, ll. 1-10). However, he further acknowledged the note stated he was released full duty by Dr. Cooper on December 13, 2018, and he was to follow-up with his case manager if he had any more problems with his back. (Single Commissioner Hr. Tr. p. 36, ll. 1-6; Appellants' APA pp. 39-40).

Respondent was next presented with a Virginia Department of Workmen's Compensation Physician's Report from Dr. Cooper dated December 11, 2018. (Single Commissioner Hr. Tr. p. 36, ll. 7-12; Appellants' APA p. 80). This form indicates Dr. Cooper opined that Respondent did not suffer any disability, permanent defect, or permanent disfigurement and that he was able to return to work without restrictions as of December 11, 2018. (Appellants' APA p. 80). Respondent did not dispute this report. (Single Commissioner Hr. Tr. p. 37, ll. 15-22; Appellants' APA p. 80). Respondent also agreed that, assuming he was released to return to work without restrictions on December 13, 2018, he was able to perform any job at APTIM. (Single Commissioner Hr. Tr. p. 45, ll. 19-25, p. 46, ll. 1-3).

Respondent stated that upon returning home to South Carolina from his January stint in Chesapeake, Virginia, he presented to the VA Hospital in Columbia, South Carolina for treatment. (Single Commissioner Hr. Tr. p. 17, ll. 16-22). According to Respondent, the provider at the VA Hospital assigned him 10-pound lifting restrictions. (Single Commissioner Hr. Tr. p. 17, ll. 23-25; p. 18, ll. 1-23; Appellant's APA p. 7). Although the record does contain a note from the VA Hospital dated January 18, 2019 assigning him 10-pound lifting restrictions, this note does not specify the condition Respondent was treated for and/or whether that condition is causally related to the work accident on December 10, 2018. (Appellant's APA p. 7).

Respondent admitted that the only report he had from the VA Hospital that was in the record was the one-page work note contained in Appellant's APA Submissions page 7. (Single Commissioner Hr. Tr. p. 30, l. 25; p. 31, ll. 1-16; Appellant's APA p. 7). Importantly, Respondent further agreed that this work note did not indicate that he was under work restrictions due to a back injury. (Single Commissioner Hr. Tr. p. 31, ll. 17-23; Appellant's APA p. 7). Respondent denied asking the provider at the VA Hospital to assign him 10-pound work restrictions. (Single Commissioner Hr. Tr. p. 41, ll. 2-9). He claimed that he "told [the provider] what was given to me when [he] first was seen at [Chesapeake Regional H]ospital and they said that they would continue what was being done." (Single Commissioner Hr. Tr. p. 41, ll. 2-9).

Respondent also refused to admit that the reason there were no other medical records from the VA Hospital in the record because he declined to sign an authorization allowing the Appellants to obtain the records from that provider. (Single Commissioner Hr. Tr. p. 31, ll. 17-23; Appellant's APA p. 7). Respondent's counsel objected to this line of testimony, arguing that they refused to sign the authorization because they objected to its scope and that they too had tried unsuccessfully to obtain records from the VA Hospital. (Single Commissioner Hr. Tr. p. 32, ll. 24-25; p. 33, ll. 1-20). Nevertheless, whatever the reason, it is undisputed that the only medical record from the VA Hospital is the one-page work note as shown in Appellant's APA page 7. (Appellant's APA p. 7).

Respondent later saw his primary care provider, Dr. Benjamin Askins at Lexington Family Medical. (Single Commissioner Hr. Tr. p. 19, ll. 6-8). He stated he saw Dr. Askins because he developed back pain the first day he returned from the holiday break, and the adjuster instructed him on approximately January 14, 2019 to see his primary care provider. (Single Commissioner Hr. Tr. p. 19, ll. 9-25). According to Respondent, the adjuster told him to send her the restrictions from his primary care provider and "that would be how we dealt with the workers' comp issue." (Single

Commissioner Hr. Tr. p. 19, ll. 21-25; p. 20 ll. 1-2). Emails between Respondent and the adjuster are included in the record. (Respondent's APA pp. 22-36). It appears the adjuster did instruct Respondent on January 23, 2019 to send her any work notes he received from Dr. Askins; however, there is no indication that the adjuster instructed Respondent to go to the VA Hospital. (Respondent's APA p. 22). Respondent testified he was assigned work restrictions by Dr. Askins in January 2019; however, the records from Dr. Askins admitted into the record do not substantiate this claim. (Single Commissioner Hr. Tr. p. 60, ll. 23-25, p. 61, ll. 1-6; Respondent's APA pp. 8-11).

Respondent later saw Dr. Ivan Lamotta at Midlands Orthopaedic on March 14, 2019. (Single Commissioner Hr. Tr. p. 22, ll. 1-4; Respondent's APA pp. 17-19). Dr. Lamotta recommended conservative treatment to include physical therapy and home exercises and assigned him work restrictions. (Single Commissioner Hr. Tr. p. 22, ll. 5-17). However, Respondent also testified that when he saw Dr. LaMotta on March 14, 2019, he was able to do any job offered by APTIM—either the UXO Tech 3 job or the construction support job. (Single Commissioner Hr. Tr. p. 40, ll. 20-25, p. 41, l. 1; Respondent's APA pp. 17-19). He explained the restrictions he received from Dr. Lamotta on March 14, 2019 were less restrictive than the most intensive job he had with APTIM. (Single Commissioner Hr. Tr. p. 45, ll. 10-18; Respondent's APA p. 19). As such, Respondent agreed that as of March 14, 2019 he could perform any job with APTIM, not just a tech 3 job but any job[.]". (Single Commissioner Hr. Tr. p. 45, ll. 15-18; Respondent's APA p. 19). Respondent testified that in May 2019, Dr. Lamotta released him to return to work full duty. (Single Commissioner Hr. Tr. p. 23, ll. 6-20; Respondent's APA p. 16).

C. Respondent's Work Following the Accident

Respondent testified that in light of the alleged work restrictions, the only job he was able to do following the accident was the construction support position, which caused him to miss potential

employment opportunities after the work accident. (Single Commissioner Hr. Tr. p. 15, ll. 18-20; p. 17, ll. 6-11). Specifically, he stated there was a job in Quantico, Virginia—which was a typical UXO position—that came open "a couple weeks after [he] went to Chesapeake, Virginia" and that he would have taken had he been able. (Single Commissioner Hr. Tr. p. 15, ll. 21-25; p. 16, ll. 1-17). He also claimed to have missed out on other employment opportunities due to his alleged work restrictions in the approximately six or seven months prior to the hearing including jobs in Dam Neck, Virginia and Adak, Alaska. (Single Commissioner Hr. Tr. p. 16, ll. 20-25; p. 17, ll. 1-6). He stated he believed the Dam Neck, Virginia job became available in February 2019 and the Adak, Alaska job became available in April 2019. (Single Commissioner Hr. Tr. p. 54, ll. 11-25, p. 55, ll. 1-11). According to Respondent, his restrictions forced him out of the pool of candidates for that job and there were generally no jobs available until he returned to work at a job at Camp Pendleton, which he claimed started on May 13 or May 14, 2019. (Single Commissioner Hr. Tr. p. 55, ll. 9-15, p. 24, ll. 6-10).

According to Respondent, from December 14, 2018 until he started the job at Camp Pendleton, he worked for APTIM in Virginia for "maybe another week or so . . . at the beginning of January [2019]." (Single Commissioner Hr. Tr. p. 24, ll. 19-25; p. 25, l. 1). However, he also stated he worked in Colorado in March for "about four or five days" and he worked in April for "maybe five days." (Single Commissioner Hr. Tr. p. 25, ll. 3-6). He explained that these jobs were construction support positions that were within his allegedly assigned work restrictions. (Single Commissioner Hr. Tr. p. 25, ll. 10-12).

Respondent returned to work full duty at Camp Pendleton from May 13 or 14, 2019 until he voluntarily left that job early on or about June 25, 2019. (Single Commissioner Hr. Tr. p. 24, ll.). At the time of the single commissioner hearing on July 1, 2019, Respondent did not have any work restrictions. (Single Commissioner Hr. Tr. p. 24, ll. 3-5).

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act governs judicial review of decisions by the Workers' Compensation Commission. S.C. Code Ann. § 1-23-380 (Supp. 2019). An appellate court's review is limited to the determination of whether the Appellate Panel's decision is supported by substantial evidence or is controlled by an error of law. *Grant v. Grant Textiles*, 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007). "An appellate court may reverse a decision by the Appellate Panel if it is affected by an error of law or is clearly erroneous in view of the substantial evidence." *Harrison v. Owen Steel Co.*, 422 S.C. 132, 137, 810 S.E.2d 433, 435 (Ct. App. 2018).

"While the findings of an administrative agency are presumed correct, they may be set aside if they are unsupported by substantial evidence." *Clemmons v. Lowe's Home Centers, Inc.-Harbison*, 420 S.C. 282, 287, 803 S.E.2d 268, 270 (2017). "'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 that the administrative agency reached or must have reached in order to justify its action." *Adams v. Texfi Indus.*, 341 S.C. 401, 404, 535 S.E.2d 124, 125 (2000) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)).

Although the question of whether a claimant is entitled to TTD is generally a question of fact for the Appellate Panel, this Court will reverse that finding when it is not supported by any findings of fact or conclusions of law. *See e.g., Robles v. Party Reflections, Inc.*, Op. No. 2019-UP-177 (S.C. Ct. App. May 22, 2019) (unpublished) (per curiam) (reversing the Appellate Panel's denial of TTD when it did not make any findings of fact or consider all of the medical evidence in the record). Furthermore, this Court will reverse an award of the Appellate Panel that is based on surmise, speculation, or conjecture. *See Clade v. Champion Labs.*, 330 S.C. 8, 11, 496 S.E.2d 856,

857 (1998) (stating a workers' compensation award must not be based on surmise, conjecture, or speculation).

ARGUMENT

I. The Appellate Panel's award of TTD is based on surmise, conjecture, or speculation because Respondent failed to produce any medical evidence that he was assigned work restrictions related to the December 10, 2018 work accident that prevented him from performing his regular job with APTIM

The claimant bears the burden of proving such facts that will render his injury compensable. *Shealy v. Algernon Blair, Inc.*, 250 S.C. 106, 110, 156 S.E.2d 646, 648 (1967); *Clade*, 330 S.C. at 11, 496 S.E.2d at 857. A workers' compensation award must not be based on surmise, conjecture or speculation. *Id.*

The claimant bears the burden of proving entitlement to temporary disability compensation. *Lee v. Bondex, Inc.*, 406 S.C. 97, 102, 749 S.E.2d 155, 157 (Ct. App. 2013).

> For temporary disability benefits, a claimant must prove only that work restrictions prevent him from performing the job he had before the injury, and that his current employer has not offered him light-duty employment. . . . [T]he claimant satisfies his burden by proving work restrictions that prevent him from performing his regular job and the unavailability of light-duty employment through the same employer.

Id. at 102-03, 749 S.E.2d at 157-58.

Pursuant to section 42-9-260 of the South Carolina Code, TTD payments may begin when "an employee has been out of work *due to* a reported work-related injury ... for eight days[.] ..."

S.C. Code Ann. § 42-9-260 (Supp. 2019) (emphasis added). Under the workers' compensation regulations, disability is considered "incapacity *because of injury* to earn wages which the employee was receiving at the time of the injury in the same or any other employment." 25A S.C. Code Reg. 67-502(B)(1) (Supp. 2019) (emphasis added). A disability is "presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42-9-260." *Id.* An employer is not obligated to pay TTD benefits if the employee has returned to work for more than 15 days or the employee has been released by the treating physician for limited duty work and the employer provides limited duty work consistent with the terms upon which the employee has been released. *Id.*; *see also Pollack v. S. Wine & Spirits of Am.*, 405 S.C. 9, 14, 747 S.E.2d 430, 433 (2013).

A. The medical evidence shows Respondent was released to return to work without restrictions as of December 13, 2018.

Appellants would note that the medical evidence shows that Respondent was released to return to work without restrictions as of December 13, 2018. This evidence is contained in the records located in Appellants' APA submissions pages 38 through 44, and page 80. (Appellants' APA pp. 38-44, 80). Notably, these medical records show that Respondent was released to return to work full duty as of December 13, 2018. Specifically, Dr. Ann Cooper of Bayview Urgent Care stated the following on December 13, 2018:

> "[Respondent] has only 2 days left to work on this job as he is an out of town contractor and will return home to [South Carolina] on 12/13/18. Therefore, I will release patient to full duty on 12/13/18 but [he] will contact his case manager if he has any further problems connected [with] this injury in the future."

(Appellants' APA pp. 39-40).

Dr. Cooper even completed a Virginia Department of Workmen's Compensation Physician's Report dated December 11, 2018. (Appellants' APA p. 80). This form unambiguously indicates Dr. Cooper opined that Respondent did not suffer any disability, permanent defect, or permanent disfigurement and that he was able to return to work without restrictions as of December 11, 2018. (Appellants' APA p. 80).

Defendants respectfully assert that these records show that Respondent was not assigned work restrictions as a result of the work accident. Because Respondent was not assigned work restrictions, he was not disabled as a result of a work accident and, therefore, is not entitled to TTD for this period. *See Pollack*, 405 S.C. at 15, 747 S.E.2d at 433 ("[T]he entitlement of TTD benefits is premised on a nexus between the work-related injury and the inability to earn wages. An injured employee will be entitled to TTD compensation when his incapacity to earn wages is *due to* or *because of* the injury.").

B. Despite the presence of the words "full duty" and "without restrictions" appearing on the relevant medical records, the instruction "attention not to aggravate the injury" is not tantamount to a work restriction.

Respondent has taken the position in this case that his release from Bayview Urgent Care with "attention not to aggravate the injury" was tantamount to a work restriction. Specifically, he has argued in this case that Dr. Cooper's instruction that Respondent was released to full duty as of December 13, 2018 with "attention not to aggravate his injury" amounted to a work restriction. (Appellate Panel Hr. Tr. p. 8, ll. 19-25, p. 9, ll. 1-16). Initially, Appellants note that it is unclear whether the Appellate Panel ruled on this argument because there is not a finding of fact addressing the import, if any, of Dr. Cooper's instruction in its Order. (Appellate Panel Order dated June 29,

2020, pages 10-12). However, assuming the Appellate Panel did reject this argument, that finding is now the law of the case because Respondent did not file a motion to reconsider nor did he appeal the Appellate Panel's Order. *See Frampton v. S.C. Dep't of Nat. Res.*, Op. No. 5726 (S.C. Ct. App. filed May 13, 2020) (Shearouse Adv. Sh. No. 19 at 84) (stating an unchallenged ruling right or wrong is the law of the case and requires affirmance) (Lockemy, C.J., concurring in part and dissenting in part). Assuming this Court addresses the merits of this argument, Appellants note that *Cranford v. Hutchinson Construction*, 399 S.C. 65, 731 S.E.2d 303 (Ct. App. 2012) supports Appellants position that a medical provider's full duty release "with attention not to aggravate the injury" is not tantamount to a work restriction.

In *Cranford*, 399 S.C. at 76, 731 S.E.2d at 309, the claimant's medical providers initially released him with instructions that he "be somewhat careful with lifting" and further instructed the claimant to refrain from "heavy lifting" and "strenuous activity." *Id.* at 75, 731 S.E.2d at 308. The court of appeals held that these statements indicated the claimant was not released to return to work without restriction at this point in his treatment. *Id.* However, later in the course of the claimant's treatment, he was released to return to work "with the use of good body mechanics and careful lifting techniques." *Id.* at 76, 731 S.E.2d at 309. The Court of Appeals held that the latter statements did not amount to work restrictions. *Id.* Specifically, the Court of Appeals noted the doctor's "express approval of returning the claimant to work and finding no permanent impairment" equated to "returning to work without restriction." *Id.*; *see also* S.C. Code Ann. Regs. 67-502(D) (defining "[r]eturn to work without restriction as "[a] statement of the authorized health care provider about the capacity of the claimant to meet the demands of a job and the conditions of employment. The determination must be made when the claimant's physical condition is static or is stabilized with or without medical treatment. The determination is appropriate when there

are no physical limitations on the claimant's ability to perform the same or other suitable job as the claimant performed before the injury.").

Appellants respectfully assert that *Cranford* supports our position that a full duty release with "attention not to aggravate the injury" is not tantamount to a work restriction. The instructions in *Cranford* to "be somewhat careful with lifting" and to refrain from "heavy lifting" and "strenuous activity" were specific instructions from the providers regarding the limits of the claimant's work activity. *Id.* at 75, 731 S.E.2d at 308. These statements to be "somewhat careful with heavy lifting" and even to "refrain from heavy lifting" are obviously specific instructions from the provider that limit the claimant's work activity. *Id.* However, that is not what occurred in the case at bar. Here, the full duty work release simply says "attention not to aggravate the injury." (Appellants' APA p. 43). Unlike *Cranford*, this was not an instruction limiting Respondent's job duties such as lifting, pushing, or pulling. 399 S.C. at 75, 731 S.E.2d at 308. On the other hand, Appellants would respectfully assert that the statement "attention not to aggravate the injury" is similar to the doctor's note in *Cranford* to return to work with "the use of good body mechanics and careful lifting techniques," which was found to be a full duty release. *Id.* at 76, 731 S.E.2d at 309. In both scenarios, the provider is essentially instructing the claimant to be "careful" upon returning to work, which is not the same thing as limiting the claimant's ability to perform his job. *Cf.* S.C. Code Ann. Regs. 67-502(D) (stating a "[r]eturn to work without restriction" "is appropriate when there are no physical limitations on the claimant's ability to perform the same or other suitable job as the claimant performed before the injury."). Moreover, as with the full duty release in *Cranford*, Dr. Cooper further opined that Respondent had no permanent impairment from the accident and expressly approved his return to work. (Appellants' APA p. 80). Dr. Cooper's recommendation that Respondent should essentially try not to aggravate his injury is not

tantamount to a work restriction; therefore, Respondent's argument inapposite is without merit. (Appellants' APA p. 43). As such, Appellants respectfully assert that *Cranford* does not support Respondent's position that "attention not to aggravate the injury" is tantamount to a work restriction. We therefore assert the substantial evidence shows Respondent was released to return to work without restrictions as of December 13, 2018.

C. The terms of the Appellate Panel's Order show that it was based on surmise, conjecture, or speculation.

As previously stated, the Appellate Panel awarded Respondent TTD from "January 18, 2019 through May 12, 2019 (less the ten days he was accommodated with light duty work)." (Appellate Panel Order p. 13, FF #4). Aside from Appellants' arguments that follow in this appeal, there are several issues with this award that Appellants initially want to point out for the Court's review.

First, there is no finding of fact showing why the Appellate Panel ordered the benefits to start as of January 18, 2019. At the single commissioner hearing, Respondent argued that he was entitled to TTD for the period "December 14[, 2018] until May 13[, 2019] with the exception of the three weeks he was able to work under restrictions for the employer." (Single Commissioner Hr. Tr. p. 5, ll. 11-15). At the Appellate Panel hearing, Respondent asserted he was seeking TTD for the period December 13, 2018 through May 9, 2019 (minus 19 days where he worked light duty). (Appellate Panel Hr. Tr. p. 5, ll. 11-25). Presumably, the Appellate Panel started benefits as of January 18, 2019 because there was an uncorroborated work note that assigned Respondent 10-pound lifting restrictions on January 18, 2019. (Respondent's APA p. 7). However, one would be forced to speculate that was their reason because there is not a finding of fact from the Appellate Panel stating they relied on the VA Hospital work note to start benefits as of January 18, 2019.

Similarly, it is unclear why the Appellate Panel chose to award Respondent TTD through May 12, 2019. (Appellate Panel Order p. 12, FF #11). As previously stated, Respondent initially sought benefits until May 13, 2019 at the single commissioner hearing. (Single Commissioner Hr. Tr. p. 5, ll. 11-15). Conversely, at the Appellate Panel, he narrowed his request for TTD through May 9, 2019. (Appellate Panel Hr. Tr. p. 5, ll. 11-25). Presumably, he did this because May 9, 2019 is when Dr. LaMotta released Respondent to return to work without restrictions and found he reached MMI. (Respondent's APA pp. 16, 20). Nevertheless, the Appellate Panel conspicuously ordered the benefits payable through May 12, 2019 without any findings of fact to explain the reasoning behind their decision. (Appellate Panel Order p. 12, FF #11).

What is equally unclear is why the Appellate Panel only allowed Appellants ten days of credit for the period "he was accommodated with light duty work." (Appellate Panel Order p. 12, FF #11). As previously stated, Respondent took the position at the single commissioner hearing and the Appellate Panel that he was accommodated for "three weeks" and "19 days," respectively. (Single Commissioner Hr. Tr. p. 5, ll. 11-15; Appellate Panel Hr. Tr. p. 5, ll. 11-25). The decision to find that Respondent was only accommodated ten days is contrary to Respondent's own positions in these proceedings. Furthermore, the decision was made without any findings of fact to support their decision. Appellants respectfully assert that these decisions—without sufficient findings of fact and conclusions of law to support them—are obvious examples that the Appellate Panel's order in this case rested on surmise, conjecture, or speculation and require this Court's reversal. *See Clade*, 330 S.C. at 11, 496 S.E.2d at 857 (stating a workers' compensation award must not be based on surmise, conjecture, or speculation); *Robles*, Op. No. 2019-UP-177 (unpublished) (per curiam) (reversing the Appellate Panel's denial of TTD when it did not make any findings of fact or consider all of the medical evidence in the record).

D. The Appellate Panel erred in presumably relying on the VA Hospital work note to find Respondent was assigned work restrictions on January 18, 2019 related to the December 10, 2018 work accident.

At the proceedings before the single commissioner and the Appellate Panel, much attention was drawn to the work note contained in Respondent's APA page 7. (Respondents' APA p. 7). This is a note from Physician Assistant Tracy R. Harrison that states Respondent was seen at the VA Hospital in Columbia on January 18, 2019. (Respondents' APA p. 7). This note states that Respondent was "unable to lift more than 10 pounds until medically cleared." (Respondents' APA p. 7). Notably absent from this work note, however, are any corresponding medical records. In fact, this was the only note submitted by Respondent from the VA Hospital. (Respondents' APA p. 7). The note also does not indicate (1) what condition Respondent was treated for; (2) whether he was treated for an injury to his back; or (3) whether the treatment was related to the work accident occurring on December 10, 2018. (Respondents' APA p. 7). Respondent could have been treated for another condition, another work accident, or anything else. We have no way of knowing what condition Respondent was treated for at the VA Hospital on January 18, 2019. Again, one would be forced to speculate that this note was related to the December 10, 2018 work accident to Respondent's back.

As the Court is well aware, it is axiomatic that a workers' compensation award cannot be based on surmise, conjecture, or speculation. *Clade v. Champion Labs.*, 330 S.C. 8, 11, 496 S.E.2d 856, 857 (1998); *see also Bundrick v. Powell's Garage*, 248 S.C. 496, 503, 151 S.E.2d 437, 441 (1966) (holding an award of disability benefits must be founded on evidence of sufficient substance and may not rest on surmise, conjecture, or speculation). However, that is exactly what occurred here when the Appellate Panel relied on the VA Hospital work note to find Respondent

was assigned work restrictions causally related to the December 10, 2018 work accident. One would certainly have to speculate as to whether this work note was related to treatment for the work accident, and/or that the work restrictions were for his back injury.

Respondent had the burden to produce evidence that these work restrictions from the VA Hospital were related to a work-related injury to his back occurring on December 10, 2018. *See Lee*, 406 S.C. at 102, 749 S.E.2d at 157 (stating the claimant bears the burden of proving entitlement to temporary disability compensation); *id.* at 102-03, 749 S.E.2d at 157-58) (stating a claimant must prove only that work restrictions prevent him from performing the job he had before the injury, and that his current employer has not offered him light-duty employment). It was not Appellants' burden to disprove that the restrictions were related to the work accident. Respondent could have produced other medical evidence showing that the treatment and work restrictions were for a work-related injury to his back occurring on December 10, 2018; however, he did not do so. The single commissioner recognized this flaw in Respondent's claim and consequently denied Respondent's claim for TTD benefits. A majority of the Appellate Panel instead chose to speculate that the restrictions were related to the work accident and in doing so violated well-established jurisprudence in this state.

Respondent will argue that his testimony at the hearing established that these restrictions are causally related to the work accident on December 10, 2018. Indeed, Respondent testified at the single commissioner hearing that he was assigned work restrictions at the VA Hospital. (Single Commissioner Hr. Tr. p. 17, ll. 23-25; p. 18, ll. 1-23). However, Respondent also testified he was assigned 5-pound lifting restrictions at Chesapeake Regional when he first treated after the accident. (Single Commissioner Hr. Tr. p. 48, ll. 4-13; Respondent's APA pp. 1-6). Respondent next testified that these alleged 5-pound restrictions were reduced to 10-pound lifting restrictions

at Bayview Urgent Care. (Single Commissioner Hr. Tr. p. 15, ll. 8-17). However, neither the Chesapeake Regional records nor the Bayview Urgent Care records support these claims. (Appellants' APA pp. 38-44, p. 80). Appellants respectfully invite the Court to examine these records because these alleged restrictions are nowhere to be found. (Respondent's APA pp. 1-6; Appellants' APA pp. 38-44, p. 80).

Perhaps more importantly, the restrictions the Appellate Panel presumably relied on were from an unauthorized provider. As the court is well aware, the employer directs medical treatment in a workers' compensation case. *See* 25A S.C. Code Ann. Regs 67-509(A) (Supp. 2019) ("The employer's representative chooses an authorized health care provider and pays for authorized treatment."). Respondent testified that the adjuster instructed him to go to his primary care provider. However, Respondent further testified that the adjuster told him he needed to see a "panel physician," but he subsequently went to the VA Hospital. (Single Commissioner Hr. Tr. p. 29, ll. 21-25, p. 30, ll. 1-4). Respondent testified he went to see "a primary care physician at the VA [Hospital], and [he] also saw [his] primary care physician, Dr. Benjamin Askins in Columbia, Lexington, Medical Center." Respondent further testified that Dr. Askins gave him work restrictions. (Single Commission Hr. Tr. p. 30, ll. 11-13). However, similar to the other providers he claimed assigned him work restrictions, the alleged work restrictions assigned by Dr. Askins are notably absent from the record. (Respondent's APA pp. 8-13). Thus, the record is clear that Respondent went on his own to a primary care physician for treatment after he was instructed to see a panel physician. This treatment was unauthorized because it was against the instructions of the adjuster to see a panel physician. (Respondent's APA p. 26). However, even assuming *arguendo* that the treatment at the VA Hospital and/or Dr. Askins was authorized by the adjuster, Respondent failed to produce any medical evidence showing that the assigned work restrictions

were related to a December 10, 2018 work accident with an injury to his back. (Respondent's APA pp. 7-13). As such, the Appellate Panel's reliance on the VA Hospital note to award Respondent TTD from January 18, 2018 through May 12, 2019 (absent the ten days his restrictions were accommodated) was based on speculation, surmise, or conjecture.

E. Respondent's March 14, 2019 work restrictions did not restrict him from performing his "regular job" at APTIM

Having established that Respondent was not assigned work restrictions causally related to the work accident between December 13, 2018 through his visit with Dr. Askins on February 8, 2019, Appellants next address his next medical appointment, which was with Dr. Ivan LaMotta on March 14, 2019. (Respondent's APA pp. 17-19). Notably, this visit is the first time Respondent is assigned work restrictions causally related to the work accident on December 10, 2018. (Respondent's APA p. 19). Specifically, Dr. LaMotta notes Respondent can do "limited light duty to medium duty work lifting 40-45 pounds." (Respondent's APA p. 19).

Under *Lee v. Bondex*, Respondent would be entitled to TTD beginning March 14, 2019 if he can show that (1) his work restrictions prevented him from performing his regular job at and the (2) employer did not offer him employment within his restrictions. *See* 406 S.C. at 102, 749 S.E.2d at 157-58 (stating to prove entitlement to TTD the claimant must prove "work restrictions that prevent him from performing his regular job and the unavailability of light-duty employment through the same employer" (emphasis added)). However, Respondent failed to meet his burden of proving either prong with regard to the restrictions he received from Dr. LaMotta.

Notably, Respondent testified the restrictions he received from Dr. Lamotta on March 14, 2019 were less restrictive than the most intensive job he had with APTIM. (Single Commissioner Hr. Tr. p. 45, ll. 10-18; Respondent's APA p. 19). Moreover, Respondent agreed that as of March

14, 2019 he could perform any job with APTIM, not just a tech 3 job but any job[.]". (Single Commissioner Hr. Tr. p. 45, ll. 15-18; Respondent's APA p. 19). Because he was not precluded from returning to his regular job as of March 14, 2019, he was not entitled to TTD. As such, Respondent did not prove that as of March 14, 2019, he was assigned "work restrictions that prevent[ed] him from performing his regular job[.]" *Lee*, 406 S.C. at 102, 749 S.E.2d at 157-58. Therefore, the Appellate Panel erred in awarding Respondent TTD for any period after March 14, 2019 until his full duty release on May 9, 2019. (Respondent's APA p. 16). Similarly, the Appellate Panel's decision to award Respondent TTD beyond the full duty release on May 9, 2019, was without any evidentiary support because as of May 9, 2019, Respondent was not assigned any work restrictions.

F. The Appellate Panel's Order is not supported by substantial evidence.

As a final matter, Appellants will address Respondent's likely argument that the Appellate Panel's decision should be affirmed because it is supported by substantial evidence. Substantial evidence is defined as "'evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.'" *Adams v. Texfi Indus.*, 341 S.C. 401, 404, 535 S.E.2d 124, 125 (2000) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)). Appellants are readily cognizant of this difficult burden to overcome in this appeal; however, we humbly believe that this case presents one of the relatively few cases that does not have substantial evidence supporting the Appellate Panel's decision.

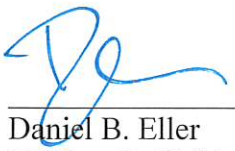
There are several reasons why substantial evidence does not exist in this case. First, Respondent was released to full duty as of December 13, 2018 and, therefore, would not be entitled to TTD for any period during his full duty release. However, even assuming the "attention not to

aggravate the injury" statement qualifies as a work restriction, there is no evidence that this work restriction precluded Respondent from performing his regular job with APTIM. In fact, there is no other medical evidence in the record as to what that statement means. It was Respondent's burden to produce medical evidence showing he was precluded from working due to the work accident on December 10, 2018. He failed to do that in this case. He likewise did not meet his burden of proving the purported January 18, 2019 work restrictions from the VA Hospital were causally related to his work accident. It is undisputed that there is no medical evidence in the record to support that these restrictions were causally related to the work accident. While Respondent's testimony may support such a finding, Respondent also testified that he was assigned 5- and 10-pound restrictions from Chesapeake Regional and Bayview Urgent Care, respectively, which is contradicted by the record. Finally, Respondent was assigned work restrictions on March 14, 2019; however, these restrictions did not preclude him from performing any job at APTIM. As such, any claim for TTD during the post-March 14, 2019 era likewise fails. In short, the Appellate Panel's Order is not based on substantial evidence and instead rested on surmise, conjecture, or speculation. Accordingly, Appellants respectfully request that the Court reverse the Appellate Panel's award of TTD from "January 18, 2019 through May 12, 2019 (less the ten days he was accommodated with light duty work)." (Appellate Panel Order p. 13, FF #4).

CONCLUSION

Accordingly, Appellants respectfully assert the Appellate Panel erred as a matter of law in awarding Respondent TTD from "January 18, 2019 through May 12, 2019 (less the ten days he was accommodated with light duty work)." (Appellate Panel Order p. 13, FF #4). We therefore ask that the Court of Appeals reverse the Appellate Panel's decision, in part, and deny Respondent's request for TTD.

Respectfully Submitted,



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Attorneys for Appellants

January 28, 2021

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2020-001474

David Casey, Employee, Respondent,

v.

APTIM Federal Services, LLC, Employer, and XL Specialty Insurance Company, Carrier, Appellants.

PROOF OF SERVICE

The undersigned certifies that he served counsel for Respondent with a copy of **Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal** by depositing a copy of same via electronic mail addressed to:

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January 28, 2021

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January 28, 2021

VIA "ONE-DRIVE"

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

Re: David Casey v. APTIM Federal Services, LLC and XL Speciality Insurance Co.
Appellate Case No. 2020-001474

Dear Ms. Kitchings:

Enclosed please find **Appellants' Initial Brief and Designation of Matter**, as well as proof of service upon Respondent's attorney for same. Thank you for your consideration.

With kind regards,

ELLER TONNSEN BACH, LLC

William F. Childers, Jr.

WFC

Enclosures

cc: Richard C. Alexander (via electronic mail)