

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Case Number 2020-001668
Unpublished Opinion Number 2020-UP-266; Filed December 9, 2020

Johnnie Bias, Employee, Petitioner,

v.

SCANA Corporation, Self-Insured Employer, Respondent.

BRIEF OF PETITIONER

Jacob M. Smith, Esquire
SC Bar No.: 100757
Smith & Jones Law, LLC
949 E. Main St., Suite B
Lexington, SC 29072
(803) 996-3333
Attorney for Petitioner

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE COURT OF APPEALS ERR IN THEIR APPLICATION OF THE "SUBSTANTIAL EVIDENCE" STANDARD OF REVIEW IN AFFIRMING THE COMMISSION'S DENIAL OF BENEFITS BASED ON A NATURAL PROGRESSION OF A PRE-EXISTING CONDITION, WHEN THERE IS NO EVIDENCE IN THE RECORD THAT INDICATES PETITIONER'S INJURIES WERE THE NATURAL PROGRESSION OF HIS PRE-EXISTING CONDITION?

- II. DID THE COURT OF APPEALS EXCEED THEIR ROLE AS AN APPELLATE COURT BY SUBSTITUTING THEIR VIEW OF THE EVIDENCE INSTEAD OF DEFERRING TO THE COMMISSION AS THE APPROPRIATE FACT FINDERS IN THE CASE?

STATEMENT OF THE CASE

This matter arises from a work-related injury sustained by Petitioner/Claimant, Johnnie Bias, ("Bias") on October 14, 2014. The Respondent/Defendant, SCANA Corporation, ("SCANA") denied the claim.

Bias filed a Form 50, Request for a Hearing, on January 24, 2017, seeking benefits for an injury by accident and/or aggravation of a pre-existing condition to his left hip, left leg, left ankle, left hand, left wrist, left arm, buttocks, back, right hip, right leg, right ankle, right foot, nervous system, bladder, urological system, penis and psychological overlay. (R. p. 50). On February 23, 2017, SCANA filed a Form 51, denying Bias sustained an injury by accident arising out of and in the course of his employment. (R. p. 55).

A hearing was held on September 19, 2017, in front of Commissioner Avery B. Wilkerson, Jr. ("Single Commissioner") At the hearing, Bias contended that (1) he suffered a work-related injury to his back, left leg, right leg, bladder, urological system, penis, and resultant psychological as affirmatively found by Dr. Poletti, Dr. Rames, Dr. Gunter, Dr. Lind, and Dr. Hutcheson; (2) he was entitled to past, present and future medical treatment and care due to his work-related injuries, as affirmatively found by Dr. Poletti, Dr. Rames, Dr. Gunter, Dr. Lind, and Dr. Hutcheson; (3) he was entitled to additional medical treatment, as he had not reached maximum medical improvement for all work-related injuries; (4) he was entitled to back TTD, as he did not return to work following his October 14, 2014 work-related injury as he was written out of work by Dr. Poletti, and was subsequently terminated; and (5) if deemed to be at maximum medical improvement, Bias contended he was permanently and totally disabled under S.C. Code §42-9-10, as a combination of his work-related injuries resulted in the complete destruction of his earning

capacity and alternatively under S.C. Code §42-9-30, as he was permanently and totally disabled after suffering greater than fifty-percent (50%) loss of use to his back. (R. pp. 11-12).

On January 18, 2018, the Single Commissioner issued his Order finding that Bias did not sustain a compensable injury by accident on October 14, 2014. (R. p. 41). Furthermore, while the Single Commissioner found that not all of Bias's issues preexisted the date of his injury, the Single Commissioner concluded that Bias did not sustain a compensable aggravation of a pre-existing condition on October 14, 2014, and that he was not entitled to any benefits under the South Carolina Workers' Compensation Act. (R. p. 39). The Commissioner also found that Bias's current condition was the natural progression of his pre-existing condition despite some of his symptoms newly developing after his work accident. (R. p. 40).

On January 29, 2018, Bias filed a Form 30, Request for Commission Review. (R. pp. 58-61). Oral arguments were held before the South Carolina Workers' Compensation Commission ("Commission") on April 16, 2018. (R. p. 417). On July 19, 2018, the Commission affirmed the Order of the Single Commissioner, without making any additional Findings of Fact or Conclusions of Law. (R. p. 44). Bias timely filed a Notice of Appeal with the South Carolina Court of Appeals on August 13, 2018. (R. p. 718).

The Court of Appeals, without oral arguments, filed an unpublished opinion, Bias v. SCANA Corporation, affirming the Commission's Order. Unpublished Opinion No. 2020-UP-266 (Ct. App. – filed September 9, 2020) (R. pp. 769-771). The Court of Appeals ruled that Bias received treatment for urological issues prior to his accident and that there

was evidence that supported Bias's symptomology was the natural progression of a pre-existing condition. Id.

STATEMENT OF FACTS

Bias, a 61-year-old military veteran, was employed with SCANA for a period of seventeen years. (R. p. 121, lines 7-8; p. 123, lines 4-8). Bias admittedly had a pre-existing lower back condition. (R. p. 125, lines 18-23). In 1983, Bias underwent surgery on his lower back due to a herniated disc. (R. p. 126, lines 3-5). In 2001, Bias began treating with Dr. Steven Poletti at Southeastern Spine Institute for low back and left leg pain. (R. p. 296). Bias continued to intermittently treat with Dr. Poletti in the years leading up to his work accident. (R. p. 126, lines 9-19). Prior to his injury at work on October 14, 2014, Bias's lower back and radicular symptoms were predominantly left-sided. (R. p. 352). Bias did complain of some right leg pain to Dr. Poletti's office in February of 2010; however, his right leg symptoms resolved following an injection. (R. p. 127, line 17 – p. 129, line 6; pp. 305-306; pp. 310-311).

On October 12, 2012, Bias returned to Dr. Poletti's office with complaints of back and left leg radicular symptoms. (R. p. 311). After a period of conservative treatment, Bias continued to complain of back and left leg symptoms. (R. p. 325). As a result, Dr. Poletti ultimately recommended and performed a redo laminectomy/discectomy at L5-S1 and laminectomy/discectomy at L4-L5 on March 7, 2014. (R. p. 325; pp. 330-334). Following that surgery, Bias's symptoms and pain significantly improved, and he ultimately returned to work with SCANA. (R. p. 130, lines 19-25; p. 149, line 23 – p. 150, line 9; p. 335; pp. 339-341; p. 467, lines 6-11). In fact, at his deposition, Dr. Poletti confirmed Bias's

condition improved after his surgery in March 2014, and that Bias returned to work with minimal pain complaints. (R. p 466, line 24 – p. 467, line 5).

While working for SCANA on October 14, 2014, Bias was walking down a flight of concrete stairs to check on a problem at a pond, when he slipped on some rocks and fell on his backside. (R. p. 125, lines 2-17). Bias immediately notified his supervisor, Anthony Miles, of his accident, and Bias informed his supervisor that he was having pain in his buttocks, both hands and left ankle. (R. p. 125, lines 2-17; p. 132, lines 9-12; p. 403). On the same date, Bias's supervisor sent an email detailing Bias's fall and injuries. (R. p. 403; p. 494, line 25 – p. 495, line 9).

On October 15, 2014, the day after his fall at work, Bias presented to Dr. Poletti's Physician Assistant Lane Tuggle for a previously scheduled follow-up appointment. (R. p. 133, line 22 – p. 134, line 2). Admittedly, at this appointment, Bias did not mention his documented fall at work from the day before, as he was not having any significant new symptoms at that time. (R. p. 133, lines 3-20; p. 456, lines 16-18). Dr. Poletti testified it was not inconsistent or unusual for a patient to not complain of symptoms immediately after an accident. (R. p. 461, lines 12-21; p. 476, line 11 – p. 477, line 3; p. 477, line 17 – p. 478, line 10). Dr. Poletti noted pain can increase over a few days following an injury and this would not be an abnormal occurrence. Id. Dr. LaMotta also testified it was not unusual to not experience the full effect of a fall or accident right away and noted it may take up to 48 hours for pain to materialize. (R. p. 680, lines 7-19).

A few days following his accident, Bias began experiencing low back pain radiating into his right leg, increased weakness, difficulty ambulating and left leg coldness and numbness. (R. p. 216, line 2 – p. 217, line 22; pp. 344-345; p 458, lines 10-12). As a result

of his new and increasing symptoms, Bias contacted SCANA and requested medical treatment. (R. p. 134, line 12 – p. 135, line 10). SCANA scheduled Bias for an appointment with Dr. Weisglass; however, SCANA subsequently cancelled the appointment with Dr. Weisglass and instructed Bias to seek treatment with his personal physician. Id.

On October 22, 2014, eight days after his work accident, Bias was seen by Dr. Poletti's Physician's Assistant as a work-in appointment. (R. pp. 344-345). At that visit, Bias described his work accident and complained of increased weakness, difficulty ambulating, and numbness and a cold feeling in his left leg. Id. Notably, Bias also reported that since the fall, he was experiencing increasing back pain and a new complaint of radiating pain down his right leg. Id. During examination, Bias was noted to have antalgic gait, positive straight leg raise, diminished reflexes on the left, difficulty with heel and toe raise on the left and slightly diminished range of motion of the lumbar spine. Id. Due to concerns that Bias had suffered a re-herniation in his back, a lumbar MRI was ordered. (R. p. 345).

On October 29, 2014, Bias underwent an MRI of his lumbar spine and returned for a follow up appointment with Dr. Poletti. (R. pp. 346-348). At which time, Dr. Poletti noted Bias had increasing right-sided pain following the fall. Id. Dr. Poletti also reviewed the lumbar MRI and opined that it revealed a recurrent herniation. (R. p. 346). Dr. Poletti discussed surgical intervention at that time and opined Bias was unable to return to work. (R. p. 346; p. 467, lines 15-25).

On January 7, 2015, Dr. Poletti opined that Bias's L4-5 disc reherniation and his worsening back and leg pain were caused by his fall at work on October 14, 2014. (R. p. 352). Bias continued to treat with Dr. Poletti, and throughout his treatment, Dr. Poletti

noted Bias's ongoing back pain, buttocks pain, hip pain, positive straight leg raise, bilateral leg weakness, difficulty with ambulation, urological dysfunction, including increased urinary urgency, changing and increasing medications, numbness, cold sensations in the left leg, nerve damage, and increasing pain levels. (R. pp. 355-358; p. 364; pp. 366-368). Dr. Poletti opined Bias was a candidate for a lumbar fusion, but he was unsure if it would improve Bias's condition. (R. p. 468, lines 14-16).

On March 16, 2016, Bias was seen by Dr. Nicholas Lind, PsyD, a clinical psychologist with Post Trauma Resources, for an independent psychological evaluation. (R. pp. 271-274). Dr. Lind diagnosed Bias with Adjustment Disorder with Depressed Mood, and he opined Bias's psychological condition was aggravated as a result of his October 14, 2014 work injuries. (R. pp. 271-275; p. 619, line 21 – p. 620, line 5; p. 622, lines 8-15; p. 629, lines 14-16; p. 631, lines 2-7; p. 636, lines 8-15; p. 637, lines 5-9; p. 640, lines 7-11; p. 643, lines 13-16). Dr. Lind recommended routine psychological and psychiatric treatment for as long as his pain persisted, medication to control his sleep disorder and an antidepressant for mood disorder. (R. pp. 271-275; p. 627, line 17 – p. 628, line 3; p. 634, lines 7-11; p. 636, line 16 – p. 637, line 4). Dr. Lind indicated Bias was not at maximum medical improvement for his psychological injuries. (R. p. 273; p. 275).

On March 22, 2016, Bias was seen by Dr. Justin Hutcheson with Carolina Center for Advanced Management of Pain for a pain management evaluation. (R. pp. 262-265). Dr. Hutcheson noted Bias experienced left leg numbness, right leg pain, worsening foot drop, significant depressive symptoms and urological incontinence since his fall at work on October 14, 2014. (R. p. 264; p. 519, lines 5-11; p. 533, lines 4-16). Dr. Hutcheson opined Bias's fall at work aggravated his pre-existing condition. (R. pp. 264-265; p. 543,

lines 4-20; p. 577, lines 18-20; p. 581, line 22 – p. 582, line 5). He further opined that Bias would need lifetime pain management care to include ongoing medications, injections, physical therapy, imaging, durable medical equipment (for leg weakness, incontinence, back pain) and a spinal cord stimulator. (R. pp. 264-265; p. 577, lines 8-12). Dr. Hutcheson also indicated that Bias would need additional psychological care and urological treatment as a result of his work injury. (R. pp. 264-267). Dr. Hutcheson subsequently completed a Form 14B noting Bias sustained 26% whole person impairment for the lumbar spine as a result of his work injury. (R. p. 267).

On May 27, 2016, Bias was seen by Dr. Ross Rames, a urologist with MUSC, for an independent medical evaluation. (R. pp. 257-260). Dr. Rames diagnosed Bias with urinary urgency, fecal urgency, urge incontinence and erectile dysfunction as a result of his October 14, 2014 work accident. Id. Dr. Rames noted evidence of sacral nerve dysfunction with absent bulbocavernosal reflex. Id. Dr. Rames opined Bias would require further treatment. Id.

Bias presented to Dr. Ivan LaMotta with Midlands Orthopaedics and Neurosurgery for an evaluation on September 8, 2016. (R. pp. 252-256). Dr. LaMotta opined that Bias sustained an aggravation of his pre-existing condition due to his October 14, 2014 work-related accident. (R. p. 255). However, in his deposition, while Dr. LaMotta testified that Bias's symptoms worsened after his fall at work, he was unable to testify to a reasonable degree of medical certainty as to the cause of the worsening. (R. p. 715, line 16 – p. 716, line 7).

On January 18, 2017, SCANA sent Bias to Dr. Brett Gunter for an independent medical evaluation. (R. pp. 369-372). Dr. Gunter's assessment was complex clinical

syndrome, and he opined that Bias's back pain was more severe and his right leg pain was a new symptom since his work accident on October 14, 2014. Id. Dr. Gunter recommended an updated MRI in order to determine Bias's further treatment options. Id.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act establishes the standard for judicial review of decisions by the Appellate Panel of the Workers' Compensation Commission. Fredrick v. Wellman, Inc., 385 S.C. 8, 682 S.E.2d 516 (Ct. App. 2009). Under the scope of review established in the Administrative Procedures Act, an appellate court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse or modify the Commission's decision if the appellant's substantial rights 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." See Stone v. Traylor Bros., Inc., 360 S.C. 271, 600 S.E.2d 551 (Ct. App. 2004).

Section 1-23-380(A)(5) of the South Carolina Code specifically provides:

The Court may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are . . . (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. . . .

S.C. Code Ann. § 1-23-380(A)(5) (2007) (Emphasis Added).

Thus, "review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law." Rodriguez v. Romero, 363 S.C. 80, 610 S.E.2d 488 (2005)(citing Hendricks v. Pickens County, 335 S.C.

405, 517 S.E.2d 698 (Ct. App. 1999)). The “substantial evidence” required to support the factual findings of the Commission is not a mere scintilla of evidence, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached in order to justify its action. *See Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995); *Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 519 S.E.2d 102 (1999).

Additionally, an award from the Commission cannot be based upon mere possibilities, probabilities, surmise or conjectures. *Broughton v. South Carolina Game & Fish Dept.*, 219 S.C. 50, 64 S.E.2d 152 (1951). If the findings of the Commission are based on surmise, speculation or conjecture, then the issue becomes one of law for the court and not of fact for the Commission. *Herndon v. Morgan Mills, Inc.*, 246 S.C. 201, 143 S.E.2d 376 (1965).

ARGUMENT

I.

THE COURT OF APPEALS ERRED IN THEIR APPLICATION OF THE “SUBSTANTIAL EVIDENCE” STANDARD OF REVIEW IN AFFIRMING THE COMMISSION’S DENIAL OF BENEFITS BASED ON A NATURAL PROGRESSION OF A PRE-EXISTING CONDITION, AS THERE IS NO EVIDENCE IN THE RECORD THAT INDICATES BIAS’S INJURIES WERE THE NATURAL PROGRESSION OF HIS PRE-EXISTING CONDITION.

The South Carolina Workers’ Compensation Act allows a claimant who has a pre-existing condition to receive benefits for a subsequent work-related disability if he establishes by a preponderance of the evidence that the subsequent injury aggravated the pre-existing condition. *See* S.C. Code §42-9-35 (2007); *Burnette v. City of Greenville*, 401

S.C. 417, 737 S.E.2d 200 (Ct. App. 2012). Pursuant to S.C. Code §42-9-35, an employee is entitled to compensation benefits if the employee can “establish by a preponderance of the evidence, including medical evidence, that: (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or (2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury.”

In the present case, substantial evidence in the record does not support the Commission’s finding that Bias failed to meet his burden of proving he sustained a compensable injury or aggravation of his pre-existing back condition on October 14, 2014, and that his current condition was the natural progression of a pre-existing condition. Instead, the overwhelming evidence in this case, including Bias’s physical complaints, the objective findings and the medical testimony, clearly establishes that Bias sustained a compensable injury.

Bias had a pre-existing lower back condition, which required him to undergo surgery on March 7, 2014. (R. pp. 325; pp. 330-334). While Bias admittedly had some continued back pain and radicular pain down his left leg, his pain had significantly improved following surgery. (R. p. 130, lines 19-25; p. 149, line 23 – p. 150, line 9; p. 335; pp. 339-341; p. 467, lines 6-11). On August 6, 2014, Dr. Poletti’s Physician’s Assistant confirmed Bias had great improvement in his overall strength and mobility and had minimal pain complaints, with some residual weakness and numbness in his left foot that was greatly improved and was continuing to get better. (R. p. 340). Additionally, Dr. Poletti, who performed the surgery in March 2014, confirmed Bias had a significant improvement with his pain following his surgery and leading up to his work accident. (R. p. 466, line 24 – p. 467, line 5). Bias was able to return to work and perform his job duties

at SCANA following his surgery. (R. p. 130, lines 19-25). In fact, during his seventeen year employment with SCANA, Bias always returned to work despite intermittently treating for his pre-existing low back condition. (R. p. 123, lines 1-9; R. p. 130, lines 19-25; p. 149, line 23 – p. 150, line 9; p. 335; pp. 339-341; p. 467, lines 6-11).

On October 14, 2014, Bias was walking down a flight of concrete steps at SCANA in order to check a problem at a pond, when he slipped on some rocks, fell and landed on his backside. (R. p. 125, lines 2-17). Bias immediately notified his supervisor of his accident, and Bias informed his supervisor that he was having pain in his buttocks, both hands and left ankle. (R. p. 125, lines 2-17; p. 132, lines 9-12; p. 403). An email was sent to Mr. Terry Seagle, the Safety and Training Coordinator at SCANA, documenting Bias's accident and injuries. (R. p. 403; p. 494, line 25 – p. 495, line 9). This email documenting Bias's work accident was not disclosed, despite subpoena, until during Mr. Seagle's deposition, over two years after Bias's work accident. (R. p. 495, line 3 – p. 496, line 11; p. 399). Prior to the discovery of this email, Respondents asserted that the injury had not been documented at the time of the accident. (R. p. 462, lines 10-17).

On October 15, 2014, the day after his injury, Bias presented for a routine, scheduled follow-up appointment with Dr. Poletti's office. (R. p. 133, line 22 – p. 134, line 2). Bias admittedly did not report the fall to Dr. Poletti's Physician's Assistant during his appointment on October 15, 2014, because his problems from the fall had not manifested, and he was just experiencing soreness in his buttocks at that time. (R. p. 134, lines 12-22; p. 206, lines 10-15; p. 208, lines 6-8; p. 212, lines 15-20; p. 213, lines 1-7). A few days after his fall at work, additional symptoms began manifesting, which doctors opined was consistent with Bias's injury. (R. p. 461, lines 12-21; p. 476, line 11 – p. 477, line 3; p.

477, line 17 – p. 478, line 10; p. 680, lines 7-19). Bias immediately requested medical treatment from SCANA. (R. p. 134, line 12 – p. 135, line 10). While SCANA initially scheduled Bias for an appointment with Dr. Weisglass in Charleston, SCANA ultimately cancelled this appointment and Bias had to seek treatment on his own. Id. Bias immediately called and scheduled an appointment and followed up with Dr. Poletti's office. (R. p. 135, line 19 – p. 136, line 11).

On October 22, 2014, just eight days after his work accident, Bias presented back to Dr. Poletti's Physician's Assistant with complaints of low back pain lateralizing to the right side, increased weakness on his left side, and difficulty ambulating. (R. pp. 344-345). Bias's new symptoms included increased weakness, difficulty ambulating, numbness and a cold sensation in his left leg. (R. pp. 344-345). Bias also reported that after the fall he was experiencing new, radiating pain down his right leg. Id. Dr. Poletti and Dr. Gunter, **Respondent's own expert**, not only documented the increasing lower back and left sided symptomology, **but new symptomology on the right side following the injury.** (R. p. 352; pp. 369-372) (Emphasis Added). Bias's subjective complaints of pain following his fall at work were also supported by the doctors' objective findings. Bias was noted to have antalgic gait, positive straight leg raise, diminished reflexes, difficulty with heel and toe raise and diminished range of motion of his lumbar spine. Id. Furthermore, **an MRI performed on October 29, 2014, fifteen days after the injury, revealed a recurrent disc herniation.** (R. p. 346) (Emphasis Added).

On January 7, 2015, Bias followed up with Dr. Poletti, and in his report from that day, Dr. Poletti stated:

Mr. Bias is somebody I've known for some time. He's had decompressive laminectomy in February of 2014 and was

doing well and had returned to work. On 10/14/2014 he slipped and fell while at work and *after this* began having severe right-sided leg pain. I should note that his preoperative symptoms were of back and left leg pain, and these left leg symptoms had improved. **After the fall he began having some increasing weakness into the left leg and some pain into the right leg, which he had not had before.** When I saw him on 10/29/2014, we recommended that he have an MRI scan; and **this MRI scan demonstrated a worsening of his disc at the L4-5 level lateralizing to the right. This is consistent with injuries sustained in a slip and fall. I believe to a reasonable degree of medical certainty most probably that his fall of 10/14/2014 caused his L4-5 disc to re-herniate and is contributing to the worsening of his back and leg pain.** He is unable to work at this point.

(R. p. 352) (Emphasis Added). Dr. Poletti, who treated Bias both before and after his work injury, confirmed in his deposition that Bias's work accident aggravated his preexisting condition.

Q: [Mr. Smith] And I know that you've stated this in your note, but just for the record, is it still your opinion today that Mr. Bias' current condition is more likely than not a work-related aggravation of a preexisting condition?

A: Yes, that's my opinion.

(R. p. 481, line 23 – p. 482, line 3) (Emphasis Added).

Dr. Hutcheson also opined Bias's fall at work aggravated his pre-existing condition. (R. pp. 264-265; p. 543, lines 14-20; p. 577, lines 18-20; p. 581, line 22 – p. 582, line 5). He further opined that Bias would need lifetime pain management care to include ongoing medications, injections, physical therapy, imaging, durable medical equipment (for leg weakness, incontinence, back pain), and a spinal cord stimulator. (R. pp. 264-265; p. 577, lines 8-12). Dr. Hutcheson also indicated that Bias would need additional psychological care and urological treatment as a result of his work injury. (R. p. 264; p. 267).

On January 18, 2017, after Mr. Seagle's deposition and the revelation of the email documenting Mr. Bias's work accident, SCANA sent Bias to Dr. Brett Gunter for an independent medical evaluation. (R. pp. 369-372). Dr. Gunter opined that Bias's back pain was more severe and his right leg pain was a new symptom since his work accident on October 14, 2014.

Assessment: Complex clinical syndrome. His LEFT hip and leg pain was present prior to the injury. **His back pain is more severe since the injury and his RIGHT leg pain is new since the injury.** Dr. Rames has addressed the issues related to incontinence. In order to make a determination about whether there are any further options with regard to this patient we would need to determine whether [or] not he has a mechanically stable spine and whether or not he has nerve root entrapment. Once that information is [k]now[n] we can make a determination about whether any additional treatment might be useful.

(R. p. 372) (Emphasis Added).

In addition, Dr. Lind diagnosed Bias with Adjustment Disorder with Depressed Mood following his work accident, and he opined Bias's psychological condition was aggravated as a result of his October 14, 2014 work injuries. (R. pp. 271-275; p. 619, line 21 – p. 620, line 5; p. 622, lines 8-15; p. 629, lines 14-16; p. 631, lines 2-7; p. 636, lines 8-15; p. 637, lines 5-9; p. 640, lines 7-11; p. 643, lines 13-16).

Furthermore, Dr. Rames, a urologist with MUSC, diagnosed Bias with urinary urgency, fecal urgency, urge incontinence and erectile dysfunction as a result of his October 14, 2014 work accident. (R. pp. 257-260).

In total, of the six providers that evaluated Bias following his work injury, **five**, including, but not limited to, Dr. Poletti, Bias's treating physician for nearly 15 years, and Dr. Gunter, Respondent's own expert, affirmatively indicated new or worsening symptoms

due to his work injury. (R. p. 352; p. 481, line 23 – p. 482, line 3; pp. 264-265; p. 543, lines 14-20; p. 577, lines 18-20; p. 581, line 22 – p. 582, line 5; pp. 369-372; pp. 271-275; p. 619, line 21 – p. 620, line 5; p. 622, lines 8-15; p. 629, lines 14-16; p. 631, lines 2-7; p. 636, lines 8-15; p. 637, lines 5-9; p. 640, lines 7-11; p. 643, lines 13-16; pp. 257-260) (Emphasis Added). Only Dr. LaMotta was unable to affirmatively state that Bias's current symptomology was a result of his fall at work. (R. p. 715, line 22 – p. 716, line 7). However, Dr. LaMotta did confirm a worsening of Bias's symptoms following his fall at work. (R. p. 715, lines 16-21). While not able to opine to a reasonable degree of medical certainty that Bias's worsening symptoms stemmed from his fall at work, it is more important to note that Dr. LaMotta also could not opine to a reasonable degree of medical certainty that Bias's current condition was the natural progression of his pre-existing condition. In fact, **there is no expert testimony that affirmatively indicates Bias's current condition is a natural progression of his pre-existing condition.** (Emphasis Added). Instead, the overwhelming expert testimony only leads to the conclusion that Bias's current condition is the result of his work injury.

When viewing the record as a whole, the conclusion that Bias's current symptomology is the natural progression of his pre-existing condition is not supported by the medical evidence. Instead, the overwhelming evidence in the record, including expert testimony, supports the conclusion that Bias sustained an aggravation of a pre-existing condition due to his fall at work.

II.

THE COURT OF APPEALS ERRED IN THEIR APPLICATION OF THE “SUBSTANTIAL EVIDENCE” STANDARD BY ADDING THEIR VIEW OF THE EVIDENCE INSTEAD OF DEFERRING TO THE COMMISSION AS THE APPROPRIATE FACT FINDERS IN THE CASE, THEREBY EXCEEDING THEIR ROLE AS AN APPELLATE COURT.

A court “may not substitute its judgment for that of any agency as to the weight of the evidence on questions of fact unless the agency’s findings are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Tiller v. National Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999). As noted above, 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. Etheredge v. Monsanto Co., 349 S.C. 451, 455-56, 562 S.E.2d 679, 681 (Ct. App. 2002).

The Court of Appeals, in deciding without oral arguments, ruled that Bias had been receiving treatment for urological issues prior to this accident. (R. p. 770). The medical record is clear in that the urological issues Bias suffered from started **after** his fall at work on October 14, 2014. (R. pp. 46, 260, 263, 352, 370) (Emphasis Added). Furthermore, the medical evidence in the record only supports the conclusion that Bias’s urological issues stem from the work accident; no doctor opined that Bias’s urological issues were the natural progression of a pre-existing condition. (R. p. 260, 370). The Commission actually found as fact that Bias’s **“urological issues also naturally progressed from his pre-existing symptoms, despite having never complained of urological issues prior to the**

alleged work incident.” (R. p. 40) (Emphasis Added). Despite the overwhelming medical evidence to the contrary and the finding by the Commission that Bias never complained of urological issues prior to his fall at work, the Court of Appeals concluded **“Bias received treatment for urological...issues prior to this accident.”** (R. p. 770) (Emphasis Added). Neither the Commission’s nor the Court of Appeal’s conclusion is supported by medical evidence in the record, as the medical evidence in the record clearly indicates that Bias’s urological issues were the direct result of his October 14, 2014 fall at work.

It is clear that the Court of Appeals exceeded its appellate authority in finding that Bias received treatment for urological issues prior to the accident, as the medical evidence in the record leads only to one conclusion: that Bias’s urological symptoms not only started after, but were also a direct result of his October 14, 2014 fall at work.

CONCLUSION

Based on the foregoing, the only reasonable inference to be drawn from the substantial evidence in the record is that Bias sustained a compensable injury by accident arising out of and in the course of his employment on October 14, 2014. Accordingly, Petitioner Bias respectfully requests that this Court issue an Order reversing the Commission’s decision that Bias did not sustain a compensable injury by accident arising out of and in the course of his employment on October 14, 2014, and remand the case back to the Commission for a determination of Bias’s entitlement to benefits under the Act.

Respectfully Submitted,

SMITH & JONES LAW, LLC



Jacob M. Smith, Esquire
S.C. Bar No: 100757

949 E. Main Street, Ste. B
Lexington, SC 29072
Attorney for Petitioner
(803) 996-3333

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