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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

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WCC File No. 1514359

Court of Appeals Case No. 2021-000633

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Rachel J. Turner, Employee.....Appellant-Respondent,

v.

Medustrial Healthcare Staffing Service and Condustrual, Inc.;  
Guarantee Insurance Company; Countrywide Staffing Solutions Group, Inc.;  
South Carolina Department of Corrections;  
State Accident Fund; and South Carolina Uninsured Employer's Fund..... Respondents.

of which Condustrual, Inc. f/k/a Medustrial Healthcare Staffing Service, Employer, is the  
Respondent-Appellant.

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**INITIAL JOINT BRIEF OF RESPONDENTS SOUTH CAROLINA PROPERTY AND  
CASUALTY INSURANCE GUARANTY ASSOCIATION ON BEHALF OF  
GUARANTEE INSURANCE COMPANY AND COUNTRYWIDE STAFFING  
SOLUTIONS GROUP, INC. TO APPELLANT-RESPONDENT RACHEL J. TURNER'S  
INITIAL BRIEF OF APPELLANT**

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## STATEMENT OF ISSUES

1. Whether substantial evidence supports the Full Commission finding Turner is not entitled to temporary total disability compensation from the date of the incident and continuing on a running award where there is no evidence to support a running award and Turner refused the offer of suitable employment.
2. Whether substantial evidence supports the Full Commission's determination of Turner's average weekly wage where Turner's average weekly wage should be based upon Turner's gross revenue, less deductions for business related expenses necessary to generate her income as reflected on her federal income tax returns.
3. Whether substantial evidence supports the Full Commission denying Turner's Motion to Submit Additional and After Discovered Evidence where the alleged "newly discovered evidence" would not have produced a different result, was known by Turner or could have been secured by reasonable diligence prior to the hearing before the Single Commissioner, and does not support the relief Turner ultimately seeks.

## STATEMENT OF THE CASE

This is a workers' compensation appeal by Rachel J. Turner (Turner) from the Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel (the Full Commission), filed on April 6, 2021. **(Order)**.

Turner filed a claim against Respondents South Carolina Department of Corrections (SCDC), Condustrual, Inc. f/k/a Medustrial Healthcare Staffing Service (Condustrual), Countrywide Staffing Solutions Group, Inc. (Countrywide), State Accident Fund, South Carolina Uninsured Employer's Fund, and Guarantee Insurance Company (Guarantee), alleging she suffered physical injuries to her right shoulder, right arm, back, and psychological injuries caused by an incident at SCDC on September 5, 2015. **(Form)**. Condustrual denied the claim, arguing Turner was an independent contractor and not an employee eligible for workers compensation benefits as defined in the Workers Compensation Act. The Single Commissioner held a hearing over multiple days beginning on July 24, 2017, and concluding on November 6, 2017.

The Single Commissioner issued a Decision and Order on July 21, 2020, from which all parties appealed the Single Commissioner's Decision and Order to the Full Commission in one way or another. As the Order states in the Stipulations section, on November 27, 2017, after the hearing in this matter concluded, Guarantee consented to and was placed into liquidation by the Second Judicial Circuit Court in and for Leon County, Florida. Thereafter, the South Carolina Property and Casualty Insurance Guaranty Association (the Guaranty Association) has appeared on behalf of Guarantee in this matter.

The Guaranty Association requested that the Full Commission reverse certain portions of the Decision and Order of the Single Commissioner because the Single Commissioner erred in finding and concluding (1) all four factors of the test used by South Carolina to determine whether

a worker is an employee or an independent contractor preponderate in favor of Turner having the status of employee and concluding Turner was an employee; (2) the primary method of calculating average weekly wage (AWW) should be employed, such that the AWW is \$1,130.86 and the compensation rate is \$753.94; (3) Turner developed PTSD as a direct result of the assault and surrounding injuries; and (4) Turner was disabled within the meaning of the Act from September 6, 2015, until September 30, 2016. **(Guaranty Association's App. Brief).**

To the extent the Full Commission concluded Turner was an employee eligible for workers compensation benefits, the Guaranty Association asked the Full Commission to affirm the Single Commissioner's conclusions that (1) the record does not include evidence to support finding Turner was unable to work in any capacity after September 30, 2015, (2) Turner refused suitable employment and therefore is not entitled to temporary total disability benefits (TTD), and (3) *Burnette v. City of Greenville*, 401 S.C. 417, 737 S.E.2d 200 (Ct. App. 2012) barred an award of TTD. **(Guaranty Association's Resp. Br. to Turner's App. Br.).** Additionally, the Guaranty Association and Respondent Countrywide jointly asked the Full Commission to affirm the Single Commissioner's Decision and Order that (1) Countrywide is not liable for any losses because Condustrail failed to acquire workers compensation coverage for Turner under the Condustrail/Countrywide Agreement, and reformation of contract is not warranted under any common or statutory law or in equity; and (2) the Guaranty Association is not liable for any losses suffered by Turner because (a) Condustrail was not an insured under the Policy, and (b) Turner was never an employee of record of Countrywide, and even if Turner had been an employee of record of Countrywide, she was a prison worker, not among the workers in class codes and locations approved by Guarantee under the Policy. **(Guaranty Association/Countrywide's Resp. Br. to Condustrail's App. Br.).**

The Full Commission affirmed the Decision and Order of the Single Commissioner except for the calculation of Turner's AWW and compensation rate. **(Order)**. Turner and Condustrual appealed various issues from this Order, to which the Guaranty Association, jointly with Respondent Countrywide, now files their Initial Brief responding to Turner's appeal.<sup>1</sup>

### **STANDARD**

The Administrative Procedures Act ("APA") governs this Court's review of the Full Commission's decisions. *See Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). "The claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture or speculation." *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 384, 769 S.E.2d 1, 2-3 (2015) (quoting *Crisp v. South Co.*, 401 S.C. 627, 641, 738 S.E.2d 835, 842 (2013)). "A decision of the Worker's Compensation Commission will not be overturned by a reviewing court unless it is clearly unsupported by substantial evidence in the record." *Howell v. Pac. Columbia Mills*, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987). Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the Full Commission reached. *Waters v. S.C. Land Resources Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d 913 (1996).

In an appeal from the Full Commission, this Court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but it may reverse when the decision is affected by an error of law. *Hopper v. Terry Hunt Const.*, 373 S.C. 475, 479, 646 S.E.2d 162, 164 (Ct. App. 2007), *aff'd*, 383 S.C. 310, 680 S.E.2d 1 (2009). "Certain situations

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<sup>1</sup> In a separate Brief filed concurrently with the instant brief, the Guaranty Association and Countrywide jointly responded to Condustrual's Initial Brief of Appellant.

involve a mixed question of law and fact.” *Id.* When mixed questions of law and fact are presented, the question of “whether the facts of a case were correctly applied to [the law] is a question of fact, subject to the substantial evidence standard.” *Id.* (holding the determination of the requirements to transfer liability to the State Accident Fund under section 42-1-415 was a question of law, but whether the statutory employer and its carrier met those requirements was a question of fact subject to the substantial evidence standard).

Whether Turner is an independent contractor or employee is a jurisdictional question. The existence or absence of an employment relationship is jurisdictional; therefore, “this Court has the power and duty to review the entire record and decide the jurisdictional facts in accordance with the preponderance of the evidence.” *Glass v. Dow Chem. Co.*, 325 S.C. 198, 482 S.E.2d 49 (1997); *Vines v. Champion Blg. Prods.*, 315 S.C. 13, 431 S.E.2d 585 (1993).

### **ARGUMENT**

The Guaranty Association and Countrywide jointly respond to Turner’s Initial Brief. *See* Rule 208(b)(6), SCACR (providing that in cases involving more than one appellant or respondent, any number of parties may join in a single brief and any party may adopt by reference all or any part of the brief of another).

Turner’s Initial Brief raises three issues for the Court’s consideration as follows:

1. Whether substantial evidence supports the Full Commission finding Turner is not entitled to temporary total disability compensation from the date of the incident and continuing on a running award where there is no evidence to support a running award and Turner refused the offer of suitable employment.
2. Whether substantial evidence supports the Full Commission’s determination of Turner’s AWW where Turner’s AWW should be based upon Turner’s gross revenue, less deductions for business related expenses necessary to generate her income as reflected on her federal income tax returns.
3. Whether substantial evidence supports the Full Commission denying Turner’s Motion to Submit Additional and After Discovered Evidence where the alleged

“newly discovered evidence” would not have produced a different result, was known by Turner or could have been secured by reasonable diligence prior to the hearing before the Single Commissioner, and does not support the relief Turner’s ultimately seeks.

In response, the Guaranty Association and Countrywide adopt and incorporate the applicable common law arguments asserted on pages 14-29 of the Respondent Brief previously filed by Respondent-Appellant Condustrial on December 29, 2021, adding consideration of the following specific record evidence regarding Turner’s medical treatment:

Directly after the incident at SCDC on September 5, 2015, Turner went to the emergency department at Palmetto Health Richland where she was “discharged home in stable condition” with instructions to follow up with counseling. **(Turner’s APA p. 7-8)**. Turner then met with Dr. Robert Dunn at Springdale Family Practice twice. Turner also began receiving mental health services from the State Office of Victim Assistance (“SOVA”). The September 16, 2015 Physician’s Disability Report from SOVA states Turner will be totally unable to work from “September 16, 2015, through September 30, 2015.” **(Turner’s APA p. 291)**.

On October 20, 2015, Dr. Ryan Hess, an orthopedist at USC Ortho Parkridge, noted that Turner would attend psychological therapy, but nonetheless released Turner back to work with a lifting restriction of no greater than ten to twenty pounds. **(Turner’s APA p. 28)**. Thereafter, Turner also received psychological treatment at Palmetto Behavioral Day Treatment where instead of discussing any psychological issues, Turner mostly discussed her financial concerns and transportation issues. She met with licensed social workers and counselors for therapy and psychiatrists for medication and evaluations. On October 21, 2015, Turner inquired of Palmetto Behavioral if they would give her a note to give to her employer excusing her from work. **(Turner’s APA p. 38)**. Although Turner continued to receive services from Palmetto Behavioral

after her request, the record before the Commission did not include any note from Palmetto Behavioral or any other facility excusing her from work after September 30, 2015.

The November 13, 2015 progress note from the therapist states:

Patient was encouraged to create a plan for shelter since she reports that she was given an eviction notice yesterday. Therapist confirmed previous options: move in with ex-partner's family (which has been offered), children get jobs and go to school part time to help with bills (offered by children), or she could wait for everything to happen (eventually homeless). Patient declined assistance from ex-partner's family and her children's help because she doesn't want to burden others. Patient was encouraged to reconsider her options. Patient became upset and reported not feeling heard. Patient stated she didn't want to talk anymore and left. Patient later returned and requested financial assistance to get home because she is almost out of gas. Patient was offered a ride home (per facility resources) but denied financial assistance by staff. Patient refused the ride and decided to leave the building.

**(Turner's APA p. 79) (emphases added).**

The November 17, 2015 progress note from the therapist states:

Patient reported that she is "a victim" and she should be treated as such. When asked to move toward defining herself outside of "a victim," she refused. Patient was asked how we could help her and she stated that she didn't know beyond helping her find financial resources. When asked if she wanted to discharge from program, she stated that she would like to finish last two days of treatment this week because the groups offered her a place to vent and support. Patient to finish out treatment this week and will discharge as planned 11/20/15. Patient will continue with Lexington Mental Health: therapist, MD: appt 11/25/15 at 8am per patient. Patient scheduled her own outpatient appts and refused the outpatient providers set for patient.

**(Turner's APA p. 81) (emphases added).**

The November 19, 2015 progress notes states Turner became "irritated" and requested to speak with the doctor when the therapist informed her that the doctor would not sign a DMV form stating she was unable to drive. **(Turner's APA p. 83).** Turner also became "irritated" when the

therapist informed her that she could not make copies or fax documents that were unrelated to Turner's treatment. *Id.*

On November 20, 2015, the therapist called Turner to inquire about her absence and during the call Turner reported that she was in Charleston, SC and she planned to present the following Monday to complete her discharge from the program. **(Turner's APA p. 84)**. Turner reported that "she was stable and plans to have a good weekend." *Id.* (emphasis added).

That same day, on November 20, 2015, Dr. Stephanie Berg issued a discharge summary when discharging Turner from care. Dr. Berg's report notes that "[d]uring the course of treatment, pt engaged in group therapy, individual therapy, and medication management. Zoloft was recommended but she did not obtain it citing financial concerns. She was provided several options for medication payment assistance but did not follow through. . . . Patient was to attend on 11/20/15 but did not attend as she had traveled out of town[.]" **(Turner's APA p. 53)**. Under "Discharge Condition," the record states "Psychiatrically stable. Patient denied any thought of suicide or homicide[.] There was no evidence of delusions or hallucinations. Insight, and judgment were fair." **(Turner's APA p. 54)**.

### **CONCLUSION**

Initially, the Guaranty Association and Countrywide submit that substantial evidence demonstrates Turner was an independent contractor, not an employee. As addressed in the Guaranty Association and Countrywide's joint Respondents' Brief to Condustrial's Brief of Appellant, to the extent this Court finds Turner was an employee, however, the Guaranty Association and Countrywide submit that substantial evidence, including the Full Commission's adoption of the Single Commission's assessment of the credibility of the witnesses at the hearing, as applied to the controlling law in this case leaves only one conclusion: Condustrial did not

provide for workers compensation insurance for Turner under these specific circumstances. That is, Condustrial knowingly staffed Turner at a prison facility without providing her worker's compensation insurance or ensuring that she had obtained it for herself. Further, substantial evidence in the record supports the decision of the Full Commission regarding Turner's average weekly wage, duration of benefits, and her refusal of the offer of suitable employment. Finally, the Full Commission properly denied Turner's Motion to Submit Additional and After Discovered Evidence. For these reasons, the Guaranty Association and Countrywide respectively submit that the decision of the Full Commission on this issue of whether Turner is an employee should be REVERSED, but in the event the Court of Appeals affirms the Full Commission's decision in this regard, then the decision of the Full Commission should be AFFIRMED in all other respects.

Respectfully,

s/Beth B. Richardson

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Rachel J. Turner, Employee.....Appellant-Respondent,

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South Carolina Department of Corrections;  
State Accident Fund; and South Carolina Uninsured Employer's Fund..... Respondents.

of which Condustrual, Inc. f/k/a Medustrial Healthcare Staffing Service, Employer, is the  
Respondent-Appellant.

**PROOF OF SERVICE**

I certify that I have caused the **Initial Joint Brief of Respondents South Carolina Property and Casualty Insurance Guaranty Association on Behalf of Guarantee Insurance Company and Countrywide Staffing Solutions Group, Inc. to Respondent-Appellant Rachel J. Turner's Initial Brief of Appellant** to be served on all attorneys of record by electronic mail on March 3, 2022 at the following addresses:

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March 3, 2022

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**Subject:** Turner v. Guarantee - Initial Joint Briefs of Guarantee and Countrywide and Designation of Matter with Proofs of Service [IMAN-CLIENTS.FID59158]  
**Date:** Thursday, March 3, 2022 5:47:08 PM  
**Attachments:** [image001.png](#)  
[GUARANTEE\\_COUNTRYWIDE\\_Joint\\_Initial\\_Respondent's\\_Brief\\_to\\_Appellant\\_CONDUSTRIAL'S\\_Initial\\_Brief.pdf](#)  
[Proof\\_of\\_Service\\_-\\_Respondent's\\_Joint\\_Initial\\_Brief\\_to\\_Condustrual's\\_Appeal.pdf](#)  
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Dear Counsel:

The attached are being filed with the SC Court of Appeals this afternoon. Documents being filed include the following:

1. INITIAL JOINT BRIEF OF RESPONDENTS SOUTH CAROLINA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION ON BEHALF OF GUARANTEE INSURANCE COMPANY AND COUNTRYWIDE STAFFING SOLUTIONS GROUP, INC. TO RESPONDENT-APPELLANT CONDUSTRIAL, INC. F/K/A MEDUSTRIAL HEALTHCARE STAFFING SERVICE INITIAL BRIEF OF APPELLANT
2. PROOF OF SERVICE – INITIAL JOINT BRIEF OF RESPONDENTS SOUTH CAROLINA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION ON BEHALF OF GUARANTEE INSURANCE COMPANY AND COUNTRYWIDE STAFFING SOLUTIONS GROUP, INC. TO RESPONDENT-APPELLANT CONDUSTRIAL, INC. F/K/A MEDUSTRIAL HEALTHCARE STAFFING SERVICE INITIAL BRIEF OF APPELLANT
3. INITIAL JOINT BRIEF OF RESPONDENTS SOUTH CAROLINA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION ON BEHALF OF GUARANTEE INSURANCE COMPANY AND COUNTRYWIDE STAFFING SOLUTIONS GROUP, INC. TO APPELLANT-RESPONDENT RACHEL J. TURNER’S INITIAL BRIEF OF APPELLANT
4. PROOF OF SERVICE - INITIAL JOINT BRIEF OF RESPONDENTS SOUTH CAROLINA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION ON BEHALF OF GUARANTEE INSURANCE COMPANY AND COUNTRYWIDE STAFFING SOLUTIONS GROUP, INC. TO APPELLANT-RESPONDENT RACHEL J. TURNER’S INITIAL BRIEF OF APPELLANT
5. RESPONDENTS SOUTH CAROLINA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION ON BEHALF OF GUARANTEE INSURANCE COMPANY AND COUNTRYWIDE STAFFING SOLUTIONS GROUP, INC.’S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL
6. PROOF OF SERVICE - RESPONDENTS SOUTH CAROLINA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION ON BEHALF OF GUARANTEE INSURANCE COMPANY AND

COUNTRYWIDE STAFFING SOLUTIONS GROUP, INC.'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

A copy of this email will be included with the Proofs of Service for the Court.

With kindest regards,  
Cyndi Nygord



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