

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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SC Court of Appeals

**APPEAL FROM
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1206236**

Appellate Case No. 2019-001936

Jennie Cox,.....Appellant,

v.

**Palmetto State Transportation, Employer, and
Cherokee Insurance Company, Carrier,.....Respondents,**

REPLY BRIEF OF APPELLANT

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STANDARD OF REVIEW

The Administrative Procedures Act (APA) establishes the standard of judicial review of workers' compensation decisions. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010); Lark v. Bi-Lo, Inc., 276 S.C. 130 276 S.E.2d 304 (1981). Under the APA, an appellate Court can reverse or modify the decision of the Commission where the substantial rights of the appellant have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence considering the record as a whole. Transp. Ins. Co. v. South Carolina Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010); Pierre, 386 S.C. at 540, 689 S.E.2d at 618; Tiller v. National Health Care Ctr. of Sumter, 334 S.C. 333, 338, 513 S.E.2d 843, 845 (1999); S.C. Code Ann. § 1-23-380(A)(6). Substantial evidence of the quality required to sustain the findings of the Commission 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. Tiller, 334 S.C. at 338, 515 S.E.2d at 815; Miller v. State Roofing Co., 312 S.C. 452, 441 S.E.2d 323 (1994); Stokes v. First Nat'l Bank, 306 S.C. 46, 410 S.E.2d 248 (1991). Further, an appellate court may reverse or modify the Commission's decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are affected by other error of law. Stephen v. Avins Constr. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996). Finally, South Carolina appellate courts have long recognized that it is logical for the Commission, which did not have the benefit of observing the witnesses, to give weight to the findings of the Single

ARGUMENT

I. SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE FULL COMMISSION'S FINDING THAT APPELLANT DID NOT SUFFER PERMANENT AND TOTAL DISABILITY AS A RESULT OF HER WORK RELATED INJURIES.

Even under the limited scope of review applicable on appeal from the Workers' Compensation Full Commission, it remains axiomatic that rulings which are not supported by substantial evidence warrant reversal. In the instant case, several of the Full Commission's findings are unsupported by any evidence at all, let alone substantial evidence of the quality required to sustain the findings of the Commission on appeal.

By way of example, the record is totally void of any evidence supporting the Full Commission's findings that the Appellant did not suffer significant, compensable, psychological injury as a direct result of her work-related injury. To the contrary, the only evidence in the record addressing this issue indicates that the psychological injuries Appellant suffered were directly related to her work-related accident, that any psychological conditions she suffered from prior to her work-related accident were vastly exacerbated by the work related accident, and that the seriousness of the psychological injuries Appellant suffered was of sufficient significance when combined with her physical injuries to render her permanently and totally disabled. Importantly, Respondents offered no evidence contradicting Dr. Brabham's findings in this respect. While reasonable minds might differ as to the precise definition of "substantial evidence," there can be no real question but that the lack of any evidence at all does not amount to substantial evidence.

Likewise, the Full Commission seemingly ignored the lack of any medical evidence in the record contradicting expert findings that Appellate was left unable to perform her job duties

as a truck driver following her work-related accident as a direct result of the injuries she sustained and the long term effects of those injuries. To the contrary, Respondent's own work-hardening providers confirmed that Appellant was no longer able to perform her duties as a truck driver in compliance with industry standards following her work related accident. While Respondents rely heavily on the fact that Appellant returned to work for a period after spending an extensive period of time recuperating, the record is void of any evidence that Appellant was ever able to reach her pre-injury working capacity. Neither is there any evidence to contradict Appellant's account that she did her best to work despite the constant pain and physical incapacities caused by her work-related injuries until she simply could not perform her job duties at even a reduced capacity. It goes without saying that the purpose and intent of South Carolina's Workers' Compensation Act is not to punish injured workers for making great efforts to remain a viable part of the workforce despite physical injuries that eventually render those efforts unsuccessful. By viewing Appellant's return to work blindly without giving proper consideration to the limited capacity in which she was able to return (and was ultimately unable to sustain), the Full Commission essentially penalized the Appellant for attempting to regain her pre-injury work status.

Finally, and perhaps most significantly, the Full Commission's refusal to consider the Supplemental Report offered by Dr. Brabham which addressed concerns the Commission raised during Respondent's initial appeal amounts to nothing short of a complete circumvention of the idea that the Commission should conduct a full and fair evaluation of all of the relevant evidence. To be clear, Dr. Brabham's supplemental report was not an attempt to create new evidence to support the Appellant's position; rather, the report was prepared for the specific purpose of addressing concerns raised by the Full Commission about Dr. Brabham's existing

report. Refusal to even consider a supplemental report offered by the only person qualified to address the Full Commission's concerns flies in face of notions of fundamental fairness and reliance on substantial evidence in rendering an adjudication.

CONCLUSION

It may well be that orders of the Full Commission that warrant reversal on appeal due to the lack of substantial evidence supporting the decision are as rare of the proverbial hen's teeth; however, the instant case presents just such a rarity as contemplated by even the most deferential standard of review. Because substantial evidence in the record does not support the Full Commission's denial of Appellant's claim for permanent and total disability benefits, the Order must be reversed and the case remanded for entry of an order finding the Appellant to be permanently and totally disabled due to a combination of her injuries, including psychological injury.

Respectfully submitted,

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Certificate of Counsel

The undersigned Counsel certifies that this brief complies with Rule 211(b), SCACR.

April 27, 2022

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