

# SC Workers' Compensation Commission



***SC Employers' Advocates Association***

***December 1, 2022***

***Scott Beck, Chairman***



# South Carolina Workers' Compensation Commission

## SUFFICIENCY OF COMMISSION ORDERS

Pate v. College of Charleston, Op. No. 5925 (Ct. App. July 20, 2022)



## South Carolina Workers' Compensation Commission

### FACTS

Claimant injured her back while working as a copy center employee for the College of Charleston.

While she was treating for her back injury, her ATP referred her for a psych evaluation.

She was also hospitalized for blood clots in her lungs. Treatment for the blood clots interfered with her treatment regimen for her back injury and prevented her from returning to work.

She alleged additional injury to her legs and psyche (depression).

The College admitted the back injury, but argued that her medical treatment and impairments were caused by an intervening act: the blood clots in her lungs.

Pate v. College of Charleston, Op. No. 5925 (Ct. App. July 20, 2022)



## South Carolina Workers' Compensation Commission

### PROCEDURAL HISTORY

- The Single Commissioner agreed with the College and awarded compensation solely for Claimant's back injury. Claimant was not awarded any future medical treatment.
- The Appellate Panel reversed the finding that the blood clots were an intervening act and remanded the claim to the Single Commissioner to determine her degree of disability and to award medical treatment.
- On remand, the Single Commissioner awarded Claimant 40% PPD to the back and future medical treatment to include injections, a TENS unit, pain meds, and a back brace.
- Claimant again appealed her claim to the Appellate Panel.
- The Appellate Panel affirmed the Single Commissioner's award.



# South Carolina Workers' Compensation Commission

## Appellate Court Opinion

The Court of Appeals reversed and remanded the claim to the Commission to analyze the claim under the general disability statutes and to determine whether Claimant is permanently and totally disabled.

Pate v. College of Charleston, Op. No. 5925 (Ct. App. July 20, 2022)



## South Carolina Workers' Compensation Commission

### Why?

- **The record contained medical evidence indicating that Claimant may have a claim for additional injuries other than just the back. However, the Commission did not give any analysis supporting its decision that this was a single-member injury.**
- **Without any analysis regarding the compensability of the claim under the general disability statutes, a ruling regarding permanent and total disability was premature.**



## South Carolina Workers' Compensation Commission

### The Takeaway:

**The Commission was not reversed because its decision was incorrect. It was reversed because it didn't explain why, in its view, Claimant's back injury did not affect other body parts.**

**Pate v. College of Charleston, Op. No. 5925 (Ct. App. July 20, 2022)**



## South Carolina Workers' Compensation Commission

### **AFFIRMATIVE DEFENSES: McDevitt Street & Willful Intent to Injure**

**Brailey v. Michelin N.A., Op. No. 5906 (Ct. App. November 2, 2022)**





## South Carolina Workers' Compensation Commission

### FACTS

**Claimant suffered a back injury while working for Michelin.**

**When he was hired, he submitted to, and passed, a pre-employment physical. He also completed a pre-employment medical questionnaire indicating that he had “never had medical attention for back injury, backache, or back pain.”**

**During the Single Commissioner Hearing, Claimant testified that he settled a prior workers' compensation claim with a prior employer for a back injury in 1997.**

**Thereafter, he worked for Westinghouse without complaints of back pain for 16 years.**

**When Michelin denied the claim, Claimant filed for a hearing.**

**Brailey v. Michelin N.A., Op. No. 5906 (Ct. App. November 2, 2022)**



# South Carolina Workers' Compensation Commission

## PROCEDURAL HISTORY

**The Single Commissioner denied benefits.**

**The Appellate Panel affirmed the Single Commissioner's decision because:**

- **Claimant was not credible based upon inconsistencies in his testimony**
- **Claimant knowingly and willfully misrepresented his prior back condition by answering "no" to a question about medical treatment for prior back conditions on his pre-employment medical questionnaire**
- **MD's causation opinion was invalid because he wasn't aware of Claimant's prior back injury.**
- **Claimant willfully intended to injure himself because he failed to report severe back pain for 4 weeks prior to the alleged date of injury.**



# South Carolina Workers' Compensation Commission

## Appellate Court Opinion

**The Court of Appeals reversed the Commission holding that Claimant's injury is compensable and remanding the claim for a determination of benefits due.**

**Brailey v. Michelin N.A., Op. No. 5906 (Ct. App. November 2, 2022)**



## South Carolina Workers' Compensation Commission

### Why?

- **The Commission incorrectly determined that a causal connection existed between Claimant's misrepresentation of his prior back problems and the work accident. There was no evidence in the record that Claimant hadn't recovered from the 1997 back injury.**
- **The uncontroverted medical evidence in the record did not support the conclusion that the Claimant could have expected to suffer similar back problems in 2017.**
- **There was no evidence in the record that Claimant began working at Michelin deliberately intending to injure his back.**
- **Claimant's credibility was not a "reasonable and meaningful basis" for the Commission to deny benefits.**



## South Carolina Workers' Compensation Commission

### The Takeaway:

**The Court relied on direct evidence, or the lack thereof, in determining whether Defendants met their burden to prove the affirmative defenses. A credibility finding cannot be used to deny benefits where other evidence in the record supports an award.**

**Brailey v. Michelin N.A., Op. No. 5906 (Ct. App. November 2, 2022)**



# South Carolina Workers' Compensation Commission

## AFFIRMATIVE DEFENSES: McDevitt Street

Padgett v. Cast & Crew Entertainment, Op. No. 5948 (Ct. App. October 26, 2022)



## South Carolina Workers' Compensation Commission

### FACTS

**Claimant suffered prior injuries to his left foot, leg, back, hips, and right leg while working for Defendant Cast & Crew.**

**As a condition of settlement, Claimant agreed that he would not apply for employment with Cast & Crew in the future.**

**Thereafter, Claimant was hired under a different name through the Teamsters Union to work through Cast & Crew as a driver for Danger Boy Productions.**

**He was injured a second time tearing his right Achilles tendon and fracturing his right ankle.**



## South Carolina Workers' Compensation Commission

### PROCEDURAL HISTORY

- The Single Commissioner found Claimant was Cast & Crew's employee when he was injured, suffered a compensable injury, and had not yet reached MMI. However, Defendants were not required to pay any additional TTD, TPD, PPD, or P&T benefits because Claimant received more than 500 weeks of compensation from the prior settlement agreement or the current claim.
- The Appellate Panel vacated the Single Commissioner's finding that Claimant had exceeded 500 weeks of benefits reinstating Claimant's TTD and finding that a determination of permanent benefits under 42-9-170 was premature because Claimant had not yet reached MMI.





# South Carolina Workers' Compensation Commission

## Appellate Court Opinion

**The Court of Appeals affirmed the Appellate Panel holding that the settlement agreement did not void the employer/employee relationship and there was no evidence that Claimant misrepresented his identity or that the misrepresentation was causally related to the injury. It agreed that the 42-9-170 was inapplicable because, by its terms, it only applies to *permanent* injuries.**

**Padgett v. Cast & Crew Entertainment, Op. No. 5948 (Ct. App. October 26, 2022)**



## South Carolina Workers' Compensation Commission

### Why?

- The act defines “employee” as every person engaged in an employment whether lawfully or unlawfully employed.” The settlement Agreement was not dispositive of Claimant’s employment status.
- Even though Claimant listed a different name on his employment forms in 2015, he also completed an I-9 and provided his social security card and SC Driver’s License that set forth his legal name. Defendant had notice that Frankie Padgett and Perry Padgett were the same person. Using a different name on employment forms was not causally related to his right ankle injury.
- 42-9-170 does not address temporary total disability payments- the only payments Claimant received.

Padgett v. Cast & Crew Entertainment, Op. No. 5948 (Ct. App. October 26, 2022)



## South Carolina Workers' Compensation Commission

### The Takeaway:

In order to prevail on a McDevitt Street defense, there must be a misrepresentation of a *physical condition*.

Padgett v. Cast & Crew Entertainment, Op. No. 5948 (Ct. App. October 26, 2022)



# South Carolina Workers' Compensation Commission

## SETTLEMENT AGREEMENTS

In re Horne, Op. No. 5929 (Ct. App. August 3, 2022)



## South Carolina Workers' Compensation Commission

### FACTS

**In 2011, Claimant was seriously injured at work and was awarded permanent and total disability benefits and lifetime medical benefits.**

**In 2016, the parties attended a mediation in order to discuss settlement of Claimant's future medical benefits.**

**The mediation was successful, and the parties signed a "Agreement Following Mediation Conference." According to the Form 70 filed with the Commission, the parties were to submit a signed clincher at a later date.**

**7 days after mediation, Claimant died in an unrelated motor vehicle accident. Coincidentally, on the same day, the carrier forwarded a \$1,000,000 settlement check to Claimant's attorney.**

**No agreement and final release was ever signed or filed with the Commission.**

**King's attorney filed for a hearing requesting the Commission to file the mediation agreement.**

**In re Horne, Op. No. 5929 (Ct. App. August 3, 2022)**



# South Carolina Workers' Compensation Commission

## PROCEDURAL HISTORY

- The Single Commissioner held that the Mediation Agreement was not enforceable because the document was different than an Agreement and Final Release and because Commission Regulations did not provide that a mediation agreement is binding once signed.
- The Appellate Panel Affirmed the decision in full.

In re Horne, Op. No. 5929 (Ct. App. August 3, 2022)



# South Carolina Workers' Compensation Commission

## Appellate Court Opinion

**The Court of Appeals reversed the Appellate Panel holding that Defendants were required to file the Mediation Agreement with the Commission. Despite Defendants' failure to perform this ministerial act, the parties substantially complied with the requirements of 42-9-390. The Court remanded the claim to the Commission with express instructions to enforce the agreement.**



## South Carolina Workers' Compensation Commission

### Why?

- **The parties substantially complied with 42-9-30 because a Form 70 indicating that the matter had settled at mediation was filed with the Commission, Defendants substantially performed their obligation of sending the settlement check to Claimant's attorney, and neither party indicated an intent to withdraw from the mediation agreement after it was fully executed. According to the Court: "There was nothing left to decide."**
- **The Court viewed the filing requirement as purely "ministerial."**

In re Horne, Op. No. 5929 (Ct. App. August 3, 2022)





## South Carolina Workers' Compensation Commission

### The Takeaway:

**Fully executed mediation agreements where all parties are represented by counsel may be enforceable by the Commission regardless of whether they are filed in accordance with 42-9-390.**

**In re Horne, Op. No. 5929 (Ct. App. August 3, 2022)**



# South Carolina Workers' Compensation Commission

## REPETITIVE TRAUMA

Brooks v. Benore Logistics, Op. No. 5891 (Ct. App. January 19, 2022)



## South Carolina Workers' Compensation Commission

### FACTS

**Claimant sustained injuries to his lower back and right lower extremity while working as a “switcher” truck driver for Benore Logistics.**

**His job required him to repeatedly climb, bend, twist, and stoop while entering his work truck.**

**At the Hearing, Defendants presented an ergonomics report indicating that these job duties created no increased risk of injury to Claimant’s back.**

**Claimant presented a medical opinion stating that Claimant’s repetitive activities most probably caused his low back pain and radicular symptoms.**



# South Carolina Workers' Compensation Commission

## PROCEDURAL HISTORY

- The Single Commissioner found Claimant suffered a compensable repetitive trauma injury.
- The Appellate Panel, relying on the ergonomics report, reversed and denied benefits finding that 42-1-172 requires that Claimant must prove a causal connection between the “condition under which the work is performed and the injury” AND that the claimant’s specific job activities are repetitive.

Brooks v. Benore Logistics, Op. No. 5891 (Ct. App. January 19, 2022)



# South Carolina Workers' Compensation Commission

## Appellate Court Opinion

**The Court of Appeals reversed the Appellate Panel holding that it was legal error to require that a Claimant prove that their specific job activities are repetitive and remanded the claim to the Commission for calculation of benefits.**

**Brooks v. Benore Logistics, Op. No. 5891 (Ct. App. January 19, 2022)**



## South Carolina Workers' Compensation Commission

### Why?

- **The plain language of 42-1-172 does not require a finding that the claimant's specific job activities are repetitive.**
- **By requiring such a finding, the Commission placed Claimant in the untenable position of having to provide evidence that could not satisfy the standards for medical evidence under 42-1-172 and erroneously substituted an ergonomics report for a medical opinion stated to a reasonable degree of medical certainty.**



## South Carolina Workers' Compensation Commission

### The Takeaway:

**For repetitive trauma claims, there is no requirement that a claimant prove that their job duties are repetitive.**

**These claims will succeed or fail based upon the existence of medical evidence stated to a reasonable degree of medical certainty that a causal connection exists between a claimant's repetitive job duties and the injury.**

\* The South Carolina Supreme Court granted certiorari on September 8, 2022.

**Brooks v. Benore Logistics, Op. No. 5891 (Ct. App. January 19, 2022)**



# South Carolina Workers' Compensation Commission

## ATTORNEY FEES

**In Re: Stephen Evans, Op. No. 2022-UP-329 (Ct. App. August 10, 2022)**





## South Carolina Workers' Compensation Commission

### FACTS

**The Commission awarded attorney fees to Claimant's former counsel where counsel filed a "Motion to Enforce Charging Lien" rather than a Form 61 Attorney Fee petition as required by Commission Regulations.**

**The Motion included the settlement amount offered to his former client during the course of his representation and the parties' contingency fee agreement.**



# South Carolina Workers' Compensation Commission

## PROCEDURAL HISTORY

- **The Single Commissioner granted Counsel's Motion to Enforce Charging Lien.**
- **The Appellate Panel affirmed the decision in full.**

**In Re: Stephen Evans, Op. No. 2022-UP-329 (Ct. App. August 10, 2022)**



# South Carolina Workers' Compensation Commission

## Appellate Court Opinion

**In an unpublished opinion, the Court of Appeals affirmed the Appellate Panel holding that because substantial evidence in the record supported the conclusion that Counsel represented Claimant at the time the settlement offer was made and because Counsel substantially complied with Commission Regulations regarding the approval of attorney fees it did not err in granting the Motion.**

**In Re: Stephen Evans, Op. No. 2022-UP-329 (Ct. App. August 10, 2022)**



## South Carolina Workers' Compensation Commission

### Why?

- **Counsel submitted documentation that provided the Commission with the information necessary to determine whether his fees could be approved regardless of whether the information was presented on a specific form.**

**In Re: Stephen Evans, Op. No. 2022-UP-329 (Ct. App. August 10, 2022)**



## South Carolina Workers' Compensation Commission

### The Takeaway:

**The Appellate Courts will not elevate form over function and will liberally construe Commission regulations “in the furtherance of the purpose for which the South Carolina Workers’ Compensation Law is intended.” See S.C. Code Ann. Regs. 67-201(A).**

**In Re: Stephen Evans, Op. No. 2022-UP-329 (Ct. App. August 10, 2022)**