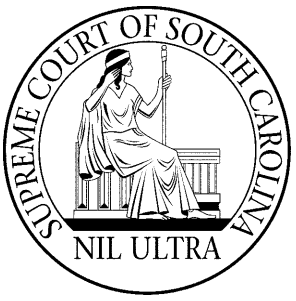

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 29

July 12, 2004

Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of R. Daniel Day, Jr., Respondent.

Opinion No. 25841
Submitted February 19, 2004 - Filed July 12, 2004

PUBLIC REPRIMAND

Attorney General Henry Dargan McMaster and Assistant Deputy Attorney General J. Emory Smith, Jr., both of Columbia, for the Office of Disciplinary Counsel.

R. Daniel Day, Jr., of Seneca, pro se.

PER CURIAM: This disciplinary action arises from two separate matters in which Daniel Day (respondent) failed to (1) enforce a client's divorce decree granting her title to a piece of marital property and (2) respond to his client's request to amend his post-conviction relief (PCR) petition. The Commission on Lawyer Conduct (Commission) recommended that this Court impose a sanction of an admonition. We sanction respondent with a public reprimand.

FACTUAL/PROCEDURAL BACKGROUND

This Court sanctioned respondent with a public reprimand in November 2002 for his general neglect of various legal matters. *In re Day (DayI)*, 352 S.C. 41, 572 S.E.2d 291 (2002). Originally, the Commission attempted to

include the two matters at issue here with the matters considered in *DayI*, but the Court had already issued the *DayI* opinion. Subsequently, this Court remanded these two matters back to the Commission, and the Commission recommended an admonition.

We now review the Commission's recommendation that respondent receive an admonition for his conduct in the following two matters.

HEDDEN MATTER

Julie Hedden (Hedden) was involved in an extensive domestic dispute that ended in divorce. The divorce decree directed Hedden's former spouse to transfer certain property to Hedden. Prior to deeding the property to Hedden, the former spouse died intestate in 1993, leaving their two children as his only heirs. In 1994, Hedden hired respondent to quiet title to the property in compliance with the divorce decree, and in that proceeding, respondent failed to name the two children as parties. The 1994 proceeding produced two separate orders transferring the property to Hedden. A deed was executed, and the property was conveyed to her in 1995.

Later, in 2000, Hedden attempted to sell the property, and the attorney for the prospective purchasers noticed that the two children might have an interest in the property since they were the former spouse's intestate heirs and were not named in the 1994 proceeding to quiet title. Respondent then petitioned for the approval of the sale of the property before a master-in-equity, naming Hedden's two children as parties. The master approved the sale, dispersed half of the proceeds to Hedden, and poured the other half into an escrow account on behalf of the children until it was determined whether the children had a right to the proceeds.[1]

Respondent failed to take any further action to secure the release of the proceeds held in escrow and failed to respond to attempts by Hedden and Hedden's father to contact him to concerning the release of the funds. As a

[1] Respondent misrepresented to the Office of Disciplinary Counsel that he was appointed guardian ad litem and acted as guardian ad litem on behalf of the two children in the 2000 petition to sell Hedden's property.

result, Hedden was forced to hire another attorney to secure the release of the proceeds.

HAWKINS MATTER

Respondent was appointed to represent George Hawkins (Hawkins) in a PCR matter. On two occasions prior to the first PCR hearing,[2] held in September 2000, Hawkins wrote respondent, asking respondent to amend his PCR application to include a challenge to Hawkins's current prison sentence.[3] Respondent failed to respond to the letters Hawkins sent in May and September 2000, and he failed to respond to Hawkins's family's inquiries into whether respondent had amended the application. Respondent never amended the PCR application. After a hearing, Hawkins's first PCR petition was denied.

Prior to the second PCR hearing, Hawkins wrote respondent a letter expressing concern about several issues, and again, respondent failed to respond. At the second hearing, Hawkins's first simple possession conviction expunged, and his request for PCR relief -- a resentencing -- is still under advisement.

LAW/ANALYSIS

The Commission found that respondent violated various *Rules of Professional Conduct* (Rule 407, SCACR). In both the Hedden and Hawkins matters, respondent failed to act with reasonable diligence and promptness in representing both clients (Rule 1.3); failed to keep his clients reasonably informed about the status of their actions and promptly comply with their multiple requests for information (Rule 1.4(a)); failed to represent the clients competently (Rule 1.1); and failed to consult with his clients about the

[2] Hawkins has had two PCR hearings.

[3] Hawkins was convicted of possession with intent to distribute marijuana and was sentenced as a third offender, receiving the maximum sentence of 20 years. He was attempting to assert that his first offense, a simple possession of marijuana conviction, should not have been used to enhance his sentence.

objectives of his representation and the means by which they were to be achieved (Rule 1.2).

Further, respondent failed to cooperate with the Office of Disciplinary Counsel investigation when he provided information concerning the Hedden matter that he knew or should have known was erroneous. *In re Treacy*, 277 S.C. 514, 290 S.E.2d 240 (1982). Respondent alleged that he was hired merely to execute the court-ordered property transfer from Hedden's ex-husband to Hedden, not to quiet title. This allegation is erroneous for two reasons. First, respondent *never* completely effectuated the property transfer because he did not name the two children in the initial action. Thus, he *never* accomplished the task for which he was initially hired. The only reason the subsequent action to quiet title was brought was because respondent neglected to quiet title as required under the divorce decree. Second, Hedden testified that respondent never notified her that he would no longer represent her on the property matter.

Finally, the Commission found, and we agree, that respondent violated Rule 7(a)(1) of the *Rules for Lawyer Disciplinary Enforcement* (Rule 413, SCACR), in violating the *Rules of Professional Conduct*; and Rule 8.4(e), in engaging in conduct that is prejudicial to the administration of justice.

SANCTION

Even though the Commission recommended that this Court should sanction respondent with an admonition, we find that a public reprimand is more appropriate. This Court has publicly reprimanded attorneys for committing similar acts of misconduct. *See In re Spell*, 355 S.C. 655, 587 S.E.2d 104 (2003) (sanctioning the attorney with a public reprimand based on the attorney's violations of Rules 1.3 and 1.4 of the RPC and Rule 8.4 of the RLDE).

Respondent's failure to ensure that Hedden was awarded legal title to the marital property, combined with his misrepresentations to the Office of Disciplinary Counsel (1) that he was hired by Hedden only to execute the court-ordered property transfer to Hedden rather than quiet title and (2) that

he acted as guardian ad litem on behalf of Hedden's two children, warrants the more severe sanction of a public reprimand.

PUBLIC REPRIMAND.

TOAL, C.J., MOORE, WALLER, and PLEICONES, JJ., concur. Burnett, J., not participating.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Teresa Stone,
Claimant/Employee, Respondent,

v.

Traylor Brothers, Inc.,
Employer, and St. Paul's Fire &
Marine Insurance Co., Carrier, Appellants.

Appeal From Horry County
Steven H. John, Circuit Court Judge

Opinion No. 3841
Heard April 6, 2004 – Filed July 6, 2004
Revised July 7, 2004

REVERSED

James R. Courie and R. Mark Davis, of Columbia, for Appellants.

Ian D. Maguire, of Myrtle Beach and John S. Nichols, of Columbia, for Respondent.

BEATTY, J.: In this workers' compensation action, Traylor Brothers, Inc. and St. Paul Insurance Company appeal a circuit court's finding that Teresa Stone was entitled to benefits for injuries she sustained when her estranged boyfriend assaulted her at work. We reverse.

FACTS

Teresa Stone ("Claimant") and Kevin Stone ("Stone") began a relationship in July of 1998.[1] The two apparently started living together in October of that year.[2] The relationship became difficult and was "all over and done with" by the Christmas holidays. Claimant however continued living with Stone. While still living together, Claimant and Stone started working for Traylor Brothers ("Employer") in January of 1999.[3] Two or three weeks later, Claimant spent five nights away from the home she shared with Stone. The morning after the fifth day, Claimant rode to work with a co-worker named Butch. When they arrived, Stone approached Claimant as she was going to retrieve her work tools. The two had a physical confrontation. The other workers separated them but they resumed their fight and had to be separated a second time. Stone allegedly "snatched" Claimant by the hair, "pulled [her] across the parking lot," and told her "we cannot work for the same company. You leave or I leave." Stone also told a male co-worker "Leave my lady alone."

Claimant sustained some injuries as a result of the altercation and sought a hearing with the South Carolina Workers' Compensation Commission ("the Commission"). The commissioner concluded that Claimant's injuries were not compensable. The full Commission affirmed the findings. Claimant appealed to the circuit court. That court reversed the

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[1] Despite identical surnames, Teresa Stone and Kevin Stone are not related by blood or marriage.

[2] At the time, they were both working for a company other than Employer.

[3] Stone worked as a supervisor and Claimant, a welder; however, Stone was not Claimant's supervisor.

decision, reasoning that it had been reached without substantial evidence. This appeal followed.

STANDARD OF REVIEW

In an appeal from the Commission, neither this court nor the circuit court may substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Corbin v. Kohler Co., 351 S.C. 613, 617, 571 S.E.2d 92, 95 (Ct. App. 2002). "Any review of the commission's factual findings is governed by the substantial evidence standard." Lockridge v. Santens of Am., Inc., 344 S.C. 511, 515, 544 S.E.2d 842, 844 (Ct. App. 2001). "Substantial evidence is evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion that the full commission reached." Id. We review the Commission's ruling only to determine whether it is supported by substantial evidence or is controlled by some error of law. See Corbin, 351 S.C. at 617, 571 S.E.2d at 95.

LAW/ANALYSIS

Appellant argues that the circuit court erred in reversing the Commission's decision. We agree.

To receive a worker's compensation award in South Carolina, an employee must show that her injury arose "out of" and "in the course of employment." Howell v. Pac. Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987). While the term "in the course of" refers to the time, place, and circumstances of the accident, the term "arising out of" refers to the origin or the cause of the accident. Id. An injury arises out of one's employment "when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury." Broughton v. S. of the Border, 336 S.C. 488, 497, 520 S.E.2d 634, 638 (Ct. App. 1999). The injury need not be expected or even foreseeable, but "it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence." Carter v. Penney Tire & Recapping Co., 261 S.C. 341, 345, 200 S.E.2d 64, 65 (1973).

Here, the dispute between Claimant and Stone originated from their personal relationship. That relationship started deteriorating even before Stone and Claimant started working for Employer. They had previously fought at home and on other job sites. By all accounts, Stone was acting out of jealously the morning he approached Claimant at work. There is clearly ample support for the Commission's decision. See Bright v. Orr-Lyons Mills, 285 S.C. 58, 61, 328 S.E.2d 68, 71 (1985) (holding that "when the dispute that culminates in an assault arises out of the claimant's private life, the injury is not ordinarily compensable"); Allsep v. Daniel Constr. Co., 216 S.C. 268, 270, 57 S.E.2d 427, 428 (1950) (excluding from coverage an injury "which comes from a hazard to which the workmen would have been equally exposed apart from the employment").

Admittedly, the Commission could have reached a different conclusion. However, that fact does not alter the scope of our inquiry. See Palmetto Alliance, Inc. v. South Carolina Pub. Serv. Comm'n, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984) ("[The] possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence."). We must consider only whether the Commission's decision is supported by substantial evidence. We find that it is. Therefore, it must be affirmed.

Based on the foregoing, the circuit court's decision is

REVERSED.

HEARN, C.J., and ANDERSON, J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Debra M. Therrell, Appellant,

v.

Jerry's Inc. d/b/a Jerry's Travel Center, Employer, and American Alternative Insurance Company, Carrier, Respondents.

Appeal From Clarendon County
Thomas W. Cooper, Jr., Circuit Court Judge

Opinion No. 3843
Heard June 9, 2004 - Filed July 12, 2004

AFFIRMED

Robert David McKissick, and William P. Hatfield, both of Florence, for Appellant.

Paul Linwood Hendrix, of Spartanburg, for Respondents.

STILWELL, J.: In this workers' compensation case, Debra M. Therrell appeals the circuit court's order affirming the full commission's determination that the injuries to her right upper extremity are compensable as an injury to her arm rather than to her shoulder. We affirm.

FACTS

While employed as a waitress at Jerry's Travel Stop in Clarendon County, Therrell slipped and fell, injuring her right arm and shoulder.

At the hearing before the single commissioner, Therrell described the condition of her right arm and shoulder following the accident. She testified she had difficulty performing everyday tasks such as washing clothes, operating a vacuum cleaner, or getting dressed. She was unable to lift things above her shoulder level, requiring her to rely upon her co-workers to assist her in doing the heavier parts of her job. Therrell described experiencing "burning," "grinding," and "popping" sensations in her right shoulder that were aggravated by repetitive activities. She also testified she has reduced strength in her right hand. Even though she was right-hand dominant prior to the accident, she testified her injury required her to rely primarily on her left hand and arm for tasks associated with her job.

The single commissioner concluded Therrell's injury to her right upper extremity resulted in permanent partial disability of twenty percent pursuant to S.C. Code Ann. § 42-9-30 (Supp. 2003), the section prescribing compensation for specific, scheduled body parts. Therrell appealed the award to the full commission, arguing inter alia the commissioner erred in concluding the injury was to her arm rather than her shoulder. The full commission affirmed the award of the single commissioner, adopting her findings of fact, but increasing Therrell's permanent disability rating from twenty percent to thirty percent. The circuit court affirmed the full commission's findings.

STANDARD OF REVIEW

Our review of a decision of the workers' compensation commission is governed by the Administrative Procedures Act. Lark v. Bi-Lo, Inc., 276 S.C. 130, 133, 276 S.E.2d 304, 305 (1981). Although this court may not substitute its judgment for that of the full commission as to the weight of the evidence on questions of fact, we may reverse where the decision is affected by an error of law. S.C. Code Ann. § 1-23-380(A)(6) (Supp. 2003).

LAW/ANALYSIS

The question before us is whether the commission properly classified Therrell's injury compensable as a scheduled body member pursuant to South Carolina Code section 42-9-30 (Supp. 2003).[1] The answer is in the affirmative.

Section 42-9-30 sets forth a schedule prescribing the amount of compensation to be awarded for loss of various, specifically enumerated body parts and organs. Compensation for injuries to body parts not covered by the statute has been prescribed by the workers'compensation commission under Regulation 67-1101. For all other unscheduled injuries, section 42-9-30(20) provides: "For the total or partial loss of, or loss of use of, a member, organ or part of the body not covered herein and not covered under §§ 42-9-10 or 42-9-20, sixty-six and two thirds of the average weekly wages not to exceed five hundred weeks."

In this case, the single commissioner awarded compensation to Therrell under section 42-9-30(13), which provides: "For the loss of an arm, sixty-six and two-thirds percent of the average weekly wages during two hundred twenty weeks." Therrell claims this was error. She asserts the injury was to her shoulder, not to her arm. Therefore, because the shoulder is not among the body parts listed in section 42-9-30, Therrell argues her disability was instead governed by the catch-all provision of 42-9-30(20) which would potentially allow for a longer period of compensation—up to 500 weeks rather than the maximum of 220 weeks scheduled for the loss of an arm.

Therrell asserts that the cases of Gilliam v. Woodside Mills, 312 S.C. 523, 435 S.E.2d 872 (Ct. App. 1993), overruled on other grounds, 319 S.C. 385, 461 S.E.2d 818 (1995), and Roper v. Kimbrell's of Greenville, Inc., 231 S.C. 453, 99 S.E.2d 52 (1957), lend support to her position. Her reliance on these cases is misplaced. In Gilliam, the issue before the court was whether

[1] Section 42-9-30 was amended on February 3, 2004. However, the statute in effect at the time of the incident is controlling and governs this case.

the claimant suffered injuries to more than one part of the body. The compensable accident damaged Gilliam's right knee and hip, requiring a total hip replacement. The court determined these were multiple injuries justifying an award for permanent and total disability pursuant to section 42-9-10 (Supp. 2003). In contrast, Therrell offered no evidence that she sustained more than one injury.

The Roper court affirmed an award of loss of use to both arms, even though there was no direct injury to the arms themselves. The Roper court held the determination was an issue of fact, stating nothing "in the statute relating to workmen's compensation suggests restriction of their meaning to such total or partial loss of use as has resulted from a direct injury to the member itself." Roper, 231 S.C. at 456, 99 S.E.2d at 54.

In deciding whether to award compensation as for a scheduled injury as opposed to a non-scheduled general disability, our supreme court has held:

> The commission may award compensation to a claimant under the scheduled loss statute rather than the general disability statutes so long as there is substantial evidence to support such an award.
>
> An award under the scheduled loss statute, however, is premised upon the threshold requirement that the claimant prove a loss, or loss of use of, a specific "member, organ, or part of the body."

Fields v. Owens Corning Fiberglas, 301 S.C. 554, 555-56, 393 S.E.2d 172, 173 (1990) (citation omitted).

Based on our review of the record, we conclude there is substantial evidence to support the commission's finding that Therrell's injury was properly compensable under section 49-2-30 as a scheduled loss to an arm. Therrell's own testimony indicates her injury affected the use of her right arm, not her shoulder alone. She described her injury as curtailing her ability to use her right hand and arm—essentially requiring her to become left-hand dominant rather than right-hand dominant as she had been before. Moreover,

we note Therrell's treating physician rated her injury as an impairment of the "right upper extremity."

For these reasons, we find Therrell's injury was properly classified as the "loss of use of an arm" under section 42-9-30(13). The ruling of the circuit court affirming the commission is therefore

AFFIRMED.

HEARN, C.J., and CURETON, A.J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

James McGirt, as Personal Representative of the Estate of Bessie P. Haile, Appellant,

v.

Richard H. Nelson, Ivan Nelson, Anthony L. Nelson and Don H. Nelson, II, Respondents.

Appeal From Kershaw County
J. Ernest Kinard, Jr., Circuit Court Judge

Opinion No. 3844
Heard March 10, 2004 – Filed July 12, 2004

AFFIRMED

W. Steven Johnson and William M. Reynolds, III, both of Columbia, for Appellant.

Arthur C. McFarland, of Charleston; Veronica G. Small, of North Charleston; for Respondents.

PER CURIAM: In this action, James McGirt, as personal representative of the Estate of Bessie P. Haile ("the Estate"), appeals the order of the circuit court construing the last will and testament of Richard H. Haile, Jr. We affirm.

FACTS

The Estate brought an action in probate court for a declaratory judgment construing the terms of Richard's last will and testament, particularly regarding the proper ownership of Richard's business upon the death of his wife, Bessie. After the case was removed from the probate court to the circuit court, the parties submitted the matter for adjudication on briefs and joined together in submitting a stipulation of facts. Those relevant to the determination of this case are as follows:

1. Richard executed his last will and testament on May 27, 1971.
2. Richard died testate on December 25, 1976.
3. Richard was survived by his wife of 40+ years, Bessie, and his daughter, Sylvia L. Haile (Sylvia H. Nelson at the time of Richard's death).
4. Sylvia died testate on September 24, 1996.
5. The last will and testament of Sylvia devised her estate to her sons, Richard, Ivan, Anthony, and Don Nelson (collectively, "Respondents").
6. Bessie died testate on May 26, 2001.
7. The last will and testament of Bessie makes each Respondent a $1,000 bequest and devises the rest and residue of her estate to Ralph Haile, the un-adopted child of her and Richard.
8. At the time of Richard's death, he owned an unincorporated business known as Haile's Funeral Home ("the business"), which provided funeral services to the public of Kershaw County.

This case hinges on the construction of Richard's last will and testament. The provisions of this document relevant to the determination of this case are as follows:

> Item II: I will, devise and bequeath my business to my wife, [Bessie], and my daughter, [Sylvia], to share and share alike.
>
> Item III: It is my desire that Haile's Funeral Home be maintained and operated under the name of Haile's Funeral Home.
>
> Item IV: In the event my wife, [Bessie], or my daughter, [Sylvia], should predecease the other in death, then the survivor shall inherit the whole.
>
> Item V: I so direct that my wife, [Bessie], during her life, is vested with full discretion in the operation, control and style of [the business] and I so direct that my said wife, [Bessie], shall file a written accounting, at the beginning of each fiscal year, indicating the profit and expenses of the business and at that time pay to my daughter, [Sylvia], her proportionate share in accord with her pro rata interest in the business.
>
> Item IX: All the rest and remainder of my estate, both real and personal, of whatever kind or nature and wheresoever situated, I will, devise and bequeath unto my beloved wife [Bessie], and my beloved daughter, [Sylvia], to share and share alike.

Respondents claim they own a one-half interest in the business by way of their mother's will. The Estate claims sole ownership of the business by virtue of Item IV of the will and the death of Sylvia before Bessie. The

circuit court found Richard Haile's will vested a one-half interest in the funeral home business to each Bessie and Sylvia. The court further found that Sylvia's interest in the business was properly transferred to Respondents. The Estate now appeals.

STANDARD OF REVIEW

This appeal involves stipulated and undisputed facts; therefore this court is free to review whether the trial court properly applied the law to those facts. WDW Props. v. City of Sumter, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000). We are under no obligation in this case to defer to the trial court's legal conclusions. See J.K.Constr., Inc. v. W. Carolina Reg'l Sewer Auth., 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999).

LAW / ANALYSIS

The Estate contends the lower court erred in construing Richard's Will, particularly the survivorship language in Item IV. We disagree.

It is the cardinal rule of will construction that the testator's intent should be ascertained and followed unless it violates some well-established rule of law. See People's Nat'l Bank of Greenville v. Harrison, 198 S.C. 457, 461, 18 S.E.2d 1, 3 (1941); Wates v. Fairfield Forest Prods. Co., 210 S.C. 319, 322, 42 S.E.2d 529, 530 (1947). In ascertaining the testator's intent, effect must be given to every part of the will. If possible by any reasonable interpretation, "all clauses must be harmonized with each other and with the will as a whole." Shevlin v. Colony Lutheran Church, 227 S.C. 598, 603, 88 S.E.2d 674, 677 (1955).

In Richard's will, the business was devised upon his death to Sylvia and Bessie to "share and share alike." When read alone, this is an unambiguous and absolute grant of half of the business to each. The Estate contends, however, that the language in Item IV cut down this absolute grant

to either a joint tenancy with right of survivorship, a life estate with cross remainder, or a fee simple subject to shifting executory interest.[1]

While the language in Item IV contemplates the possibility of either Bessie or Sylvia predeceasing the other, we do not believe Richard intended this language to cut down the devise of Item II into something less than an absolute grant. "[W]here an estate or interest is given in words of clear and ascertained legal signification, it shall not be enlarged, cut down, or destroyed by superadded words in the same or subsequent clauses, unless they raise an irresistible inference that such was the intention." Schroder v. Antipas, et al., 215 S.C. 552, 556, 56 S.E.2d 354, 355 (1949) (quoting Adams, et al. v. Verner, 102 S.C. 7, 11, 86 S.E. 211, 212 (1915)).

"[A]n estate devised in fee cannot by subsequent language be stripped of its legal incidents, and where it appears that the controlling intention is to give an absolute estate, subsequent language inconsistent therewith must be held ineffective." Rogers v. Rogers, 221 S.C. 360, 368-369, 70 S.E.2d 637, 641 (1952). In some circumstances, an absolute grant may be cut down by subsequent language in a will. However, this subsequent language must be "at least as clear in expressing that intention as the words in which the interest is given." Johnson v. Waldrop, 256 S.C. 372, 376, 182 S.E.2d 730, 731 (1971) (quoting Walker v. Alverson, 87 S.C. 55, 68 S.E. 966 (1910)). Words of doubtful import following a gift made in clear and unequivocal terms cannot cut down or qualify that gift. See Johnson, 256 S.C. at 376, 182 S.E.2d at 731; Wates v. Fairfield Forest Prods. Co., 210 S.C. 319, 322, 42 S.E.2d 529, 530 (1947).

In reviewing Item IV, it appears Richard intended either Bessie or Sylvia to take the business as a sole owner should one predecease the other before his death. However, considering the absolute grant of Item II, this

[1] Our analysis is limited to the general issue of whether the testator intended any of these to apply. Since any one of these interests would grant the Estate present sole ownership of the business, we need not decide which might be the most applicable. See Davis v. Davis, 223 S.C. 182, 192, 75 S.E.2d 46, 50 (1953).

intent becomes less clear upon the death of Bessie or Sylvia after Richard's death. In this circumstance, the language of Item IV constitutes, at the very least, words of doubtful import less clear than the original grant.

The Estate contends that the facts and outcome of Johnson are analogous to this case. We find this reliance misguided. The will in Johnson devised all of testator's property to his wife, but later stated that "upon the death of [his] wife" all remaining property would be divided between his sister and brother. 256 S.C. at 374, 182 S.E.2d at 730. The controlling distinction between Johnson and the case before this court is that in Johnson the added provision was not of doubtful import. The subsequent language in that case clearly contemplates the ultimate divestment of the testator's property upon the future date of his wife's death, not the date of his own. Item IV of Richard's will, however, contains no similar reflection of testator intent.

The issue before this court is one of timing. We must decide, considering the will as a whole, at what point Richard intended the absolute grant of Item II to vest permanently with his wife and daughter. Words concerning the intended time of vesting for a testamentary devise usually refer to one of three dates: (1) the date of the will, (2) the date of testator's death, or (3) the date of the death of a life tenant. See Matter of Will of Hall, 318 S.C. 188, 193, 456 S.E.2d 439, 442 (Ct. App. 1995). As further reflected in Item V, it was Richard's intent that the devise of Item II was to take full possessory effect on the date of his death. It is well established in South Carolina that whenever a devise "takes effect in possession immediately on testator's death, words of survivor-ship [sic] refer to the date of testator's death and are intended to provide for the contingency of the death of the objects of his bounty in his lifetime; unless some other point of time be indicated by the will." Peecksen et al. v. Peecksen et al., 211 S.C. 543, 549, 34 S.E.2d 787, 790 (1945).

Although Haile's will contains words of survivorship, it did not clearly indicate the point in time when the words of survivorship would take effect. As a result, the rule espoused in Peecksen requires construing the words of survivorship to refer to the date of the testator's death and are only applicable

in the event of an heir predeceasing the testator. In Johnson, the point of time was clearly indicated by the will; here it was not. Moreover, this absence of point in time clarity renders the language in Item IV to be of doubtful import, thus not effective in cutting down the absolute grant of Item II.

Accordingly, we find that Richard only intended the survivor of Bessie and Sylvia to inherit the whole business if one should predecease the other before his own death. Since this did not occur, Sylvia inherited an absolute one-half interest in the business, which she transferred to Respondents through her will.

For the foregoing reasons, the circuit court's order is

AFFIRMED.

HEARN, C.J., ANDERSON and BEATTY, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Kevin McCrowey, Appellant,

v.

The Zoning Board of Adjustment of the city of Rock Hill, South Carolina, Respondent.

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Opinion No. 3845
Submitted May 13, 2004 – Filed July 12, 2004

AFFIRMED

R. Chadwick Smith, of Rock Hill, for Appellant.

W. Mark White, of Rock Hill, for Respondent.

PER CURIAM: Kevin McCrowey ("Appellant") appeals a circuit court ruling sustaining the decision of the Zoning Board of Adjustment of

Rock Hill ("Respondent"), which found Appellant's business to be in violation of local zoning ordinances. We affirm. [1]

FACTS

Kevin McCrowey is the owner of property (the "Property") located at 1151 Saluda Street in Rock Hill. On March 24, 1998, Appellant submitted an application for a Certificate of Occupancy along with a diagram of the building located on the Property. In March 1999, Rock Hill granted Appellant a Certificate of Occupancy for the operation of a pool hall.

At the time Appellant submitted the application, he was leasing the Property. Appellant later subleased the Property to Carlondo Brown, who was granted a Commercial Zoning Permit to operate a game room on October 29, 1999. In February 2000, Appellant purchased the Property. On October 20, 2000 Appellant obtained a Certificate of Zoning Compliance for the operation of a sports bar under the name of Infinity 2000 Sports Lounge.

One of Rock Hill's inspectors noted on the Application for Certificate of Zoning Compliance that the parking lot did not conform to the zoning code's design standards, as it appeared the Property did not have enough parking spaces available to accommodate a nightclub. This notation also requested the submission of a parking plan for the site. Appellant submitted the requested parking plan and an additional notation was later added by Rock Hill's zoning administrator stating that the application was "[a]pproved for zoning compliance per plan revised [November 10, 2000]."

However, despite this apparent approval, the same zoning administrator who approved Appellant's parking plan issued a Notice of Violation to Appellant on September 6, 2001, which stated that the parking area and signs located on the Property were in violation of Rock Hill's Zoning Code. Appellant filed a notice of appeal on September 21, 2001 and a hearing was

[1] Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rules 215 and 220(b)(2), SCACR.

held before the Rock Hill Board of Zoning Appeals (the "Board") on November 20, 2001.

Despite the fact that he previously found Appellant's parking plan in compliance with the applicable zoning ordinance, the zoning administrator stated at the hearing that the Property did not currently, nor did it ever, comply with the zoning ordinance since the nightclubs were first opened on the property in 1998. On January 11, 2002, the Board issued a letter denying Appellant's appeal and affirming the decision of the zoning administrator.

Accordingly on February 8, 2002, Appellant appealed the Board's decision to the circuit court pursuant to S.C. Code Ann. § 6-29-820 (Supp. 2002).[2] At the hearing before the circuit court, Appellant argued that Respondent should be estopped from finding the Property in violation of the zoning ordinances based on its earlier conduct. Appellant offered this argument, in part, based on the fact that nightclubs have operated on the Property since 1998 without incident and all with approval of Respondent. In addition, as noted above, the zoning administrator who issued the Notice of Violation previously approved Appellant's parking plan. Therefore, Appellant averred he relied on this past conduct to his detriment when he decided to purchase the Property.

Relying on several South Carolina authorities, Respondent averred that under the facts of this case, the doctrine of equitable estoppel should not be

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[2]

> A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the decision of the board is mailed.

S.C. Code Ann. § 6-29-820 (Supp. 2002).

applied. By order dated May 23, 2002, the trial court agreed with Respondent and affirmed the Board's decision.

STANDARD OF REVIEW

Because Rock Hill enacted the zoning ordinance in question pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, the scope of review is governed by statute. See S.C. Code Ann. §§ 6-29-310 – 1200 (Supp. 2002). Accordingly, as stated in Section 840, "[t]he findings of fact by the board of appeals shall be treated in the same manner as a finding of fact by a jury." S.C. Code Ann. § 6-29-840 (Supp. 2002); see also Heilker v. Zoning Bd. of Appeals for City of Beaufort, 346 S.C. 401, 405, 552 S.E.2d 42, 44 (Ct. App. 2001). Furthermore, "[i]n determining the questions presented by the appeal, the court shall determine only whether the decision of the board is correct as a matter of law." Id.

It is important to note "[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." Restaurant Row Assocs. v. Horry County, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999) (citation omitted). "However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." Id.

LAW/ANALYSIS

Appellant argues the trial court erred in finding the doctrine of equitable estoppel not applicable because the zoning administrator erroneously issued a certificate of zoning compliance. We disagree.

Typically, equitable estoppel is found to exist when the following elements are present:

> (1) [C]onduct by the party estopped which amounts to a false representation or concealment of material facts or which is calculated to convey the impression that the facts are otherwise

> than and inconsistent with those which the party subsequently attempts to assert; (2) the intention or at least expectation that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the true facts; (4) lack of knowledge or the means of knowledge of the facts by the other party; (5) reliance upon the conduct by the other party; and (6) a detrimental change of position by the other party because of his reliance.

Oswald v. Aiken County, 281 S.C. 298, 305, 315 S.E.2d 146, 151 (Ct. App. 1984) (citing Frady v. Smith, 247 S.C. 353, 147 S.E.2d 412 (1966)).

However, it is generally held that "[n]o estoppel can grow out of dealings with public officers of limited authority, and the doctrine of equitable estoppel cannot ordinarily be invoked to defeat a municipality in the prosecution of its public affairs because of an error or mistake of . . . one of its officers or agents . . . ." DeStefano v. City of Charleston, 304 S.C. 250, 257-258, 403 S.E.2d 648, 653 (1991) (quoting Farrow v. City Council of Charleston, 169 S.C. 373, 382, 168 S.E. 852, 855 (1933)) (further citations omitted). See also South Carolina Coastal Council v. Vogel, 292 S.C. 449, 452, 357 S.E.2d 187, 189 (Ct. App. 1987) (holding that the doctrine of equitable estoppel cannot be used to deprive the State of the due exercise of its police power or to frustrate its application of public policy).

Significantly, in spite of this general rule, South Carolina courts have held that "[a] governmental body is not immune from the application of equitable estoppel where its officers or agents act within the proper scope of their authority." South Carolina Coastal Council v. Vogel, 292 S.C. 449, 453, 357 S.E.2d 187, 189 (Ct. App. 1987) (citing Oswald v. Aiken County, 281 S.C. 298, 315 S.E.2d 146 (Ct. App. 1984)).

Although Appellant acknowledges the general rule, he argues the zoning administrator was acting within the proper scope of his authority, and thus, the doctrine should be applicable. Specifically, Appellant avers that in the current case "the Zoning Administrator acted within his proper authority when he concluded that [his] parking area met Rock Hill's zoning

requirements." The Appellant goes on to state "the decision of whether a piece of property conforms to zoning compliance is a determination the zoning administrator would appear to have authority to make."

However, the zoning administrator did not have the authority to alter or waive the zoning ordinance in question. Rock Hill's Zoning Code gives zoning administrators the power to administer and enforce the Zoning Code. Rock Hill's Zoning Code does not grant power to an administrator to alter, modify, or waive provisions contained in the Zoning Code. Further, the zoning administrator was not granted with the authority to grant a variance. The Zoning Code only grants the Zoning Board of Appeals the discretion of whether and when to grant a variance. Because the parties do not dispute that the Property did in fact violate the zoning ordinance, the zoning administrator exceeded his authority when he approved Appellant's parking plan in October 2000. As the zoning administrator's actions in approving Appellant's parking plan were in error, the trial court did not err in concluding, based on the authority cited above, that equitable estoppel could not be applied to frustrate the attempts by Rock Hill to enforce its zoning code as written.

CONCLUSION

Accordingly, based on the foregoing, the decision of the trial court is

AFFIRMED.

HEARN, C.J., ANDERSON and BEATTY, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Sandra Hargrove,	**Employee, Claimant,**
v.	
Titan Textile Co. & Perdue Farms, Inc.,	**Employer,**
And Kemper Insurance Co. & Perdue Farms, self-insured,	**Carrier, Defendants,**
Of whom Perdue Farms, Inc. is the,	**Appellant,**
And Sandra Hargrove, Titan Textile Co. and Kemper Insurance Co. are the,	**Respondents.**

Appeal From Dillon County
A. Victor Rawl, Circuit Court Judge

Opinion No. 3846
Heard June 10, 2004 – Filed July 12, 2004

AFFIRMED

Finley B. Clarke, of Florence, for Appellant.

Walter H. Barefoot, of Florence, for Respondents Titan Textile Co. and Kemper Insurance Co.

William L. Smith, II, of Columbia, for Respondent Sandra Hargrove.

ANDERSON, J.: Perdue Farms, Inc. appeals a Circuit Court order affirming the award of Workers' Compensation benefits to Sandra Hargrove. Perdue argues the Circuit Court erred in ruling substantial evidence supported the finding by the Appellate Panel of the Workers' Compensation Commission that Hargrove aggravated or exacerbated a pre-existing condition during the course of her employment at Perdue. We affirm.

FACTUAL/PROCEDURAL BACKGROUND

Sandra Hargrove is a thirty-six-year-old mother of two who resides in Dillon, South Carolina. Hargrove began working at Titan Textile Company, d/b/a Dillon Yarn (Dillon Yarn), as an inspector/packer in December of 1997. Hargrove's job at Dillon Yarn required her to remove spools of yarn from manufacturing machines and visually inspect the spools before placing them on a metal pole protruding from a pushcart. Once the spool was on the cart, she would wrap it in plastic and then, using both hands, remove the spool from the pole and place it in a box located on the pushcart. Hargrove "put together" fifty or more boxes per day.

A single box can hold any number of spools depending on the size of the particular spool being manufactured. When the cart was full, Hargrove would push it to a conveyor belt where she would unload the boxes. Hargrove testified she made approximately forty or fifty trips per shift to the conveyor line. Her supervisor at Dillon Yarn, Effie Peele, estimated Hargrove would "handle somewhere between 600 and 800 tubes of yarn per day." During her time at Dillon Yarn, Hargrove's work schedule consisted of working eight-hour shifts, seven days in a row, having two or sometimes three days off, and then working seven more days.

Hargrove stated she never experienced problems with either of her arms before working at Dillon Yarn. However, about six or seven months

after her employment at Dillon Yarn began, Hargrove started experiencing problems with her left hand and arm, including swelling and numbness. She did not seek medical attention or notify her employer when these problems first started. She testified she would go home after work and soak her hand and arm and then "it would be all right"—"[t]he pain would go away" and the "swelling would go down." According to Hargrove, this swelling would occur "as much as once a month."

On March 1, 2000, Hargrove applied for a position working first shift at Perdue Farms, a chicken processing plant. On the medical history section of her application, Hargrove was asked if she had ever "had pain, numbness, swelling in [her] hands, wrists, arms." Hargrove indicated that in the past she had problems with "soreness" due to lifting boxes at Dillon Yarn. She further noted a history of pain and swelling in her hand and wrist.

Prior to accepting an application, Perdue's practice is to give the applicant a physical to see if the individual can physically perform the job. The physical consists of a number of tests specifically tailored to the demands of the position being sought. Hargrove was given tests to ascertain her grip strength on both the right and left hands, in addition to other tests on her hands including the Tinel, Phalen and Finklestein tests. These three tests check for numbness and tingling in the hands. The Finklestein test involves physically touching the median nerve to check for tingling.

The Occupational Health Nurse at Perdue, Mary Smith Sutherland, declared all tests on Hargrove were negative. Nurse Sutherland explained that Hargrove's testing indicated she had a strong grip in both hands and no problem taking any of the tests administered by Perdue.

Hargrove's grip strength was important because she was applying for a position in the evisceration department. Nurse Sutherland stated that, in the evisceration department, employees have to pull skin off of the chickens that are being processed. She said that, although machines have already processed the insides of the chickens, employees might have to "scoop" the remaining entrails from the bird's insides. Nurse Sutherland professed the tasks assigned to an employee in the evisceration department involve repetitive work, "to some degree."

After Hargrove passed the physical, Perdue hired her to work in the evisceration department. Hargrove began her employment with Perdue on March 13, 2000.[1] The first week consisted of orientation. Nurse Sutherland testified Hargrove worked 25.61 hours her first week. The first day of her employment consisted of classroom training for the entire day. On each remaining day of her first week, Hargrove spent four hours in the classroom and four hours on a training line. Both Nurse Sutherland and Hargrove testified that new employees could move more slowly on a training line than on a regular line.

Hargrove worked 23.18 hours her second week. Unlike the previous week, she did not have any classroom training and spent all of her time on a regular line, which processed 2,000 to 5,000 chickens each day. Hargrove stated that although she was on a regular line, she did not move as fast as other employees. She declared that her job during this week consisted of pulling the skin off of chickens and removing the remaining entrails from the processed chickens.

On or around March 16, 2000, having finished her shift at Perdue, Hargrove informed Peele, her supervisor at Dillon Yarn, that she was experiencing pain in her left wrist and arm. Hargrove did not tell Peele she believed the problems with her arm were work-related and Peele did not ask if they were. According to Peele, this was the first time Hargrove complained of pain in her hand and arm. Hargrove made similar complaints to Peele on at least two more occasions, although Peele did not keep a record of the complaints. Peele indicated Hargrove's "job was repetitive."

On March 23, 2000, Hargrove worked her shift at Perdue. She testified that, after performing her usual job on the evisceration line for a short time, the line went down and she was instructed to work in the box room. Her duties there consisted of retrieving the boxes others were assembling in the room. When her shift was over, Hargrove went to work her second-shift position at Dillon Yarn.

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[1] Hargrove testified she was seeking a first shift job that would enable her to go back to school in the evenings. However, she was working both jobs when the problems underlying this appeal occurred.

After clocking in, but before working, Hargrove noticed a funny feeling in the fingers on her left hand. Hargrove declared that nothing happened to her hand or arm between the time she left Perdue and the time she arrived at Dillon Yarn that would explain the problems she began having.

Hargrove stated she went to Dillon Yarn's nurse, Joyce Harmon, and "asked [Harmon] about the funny feeling in [her] fingers." Hargrove requested something for pain. The nurse gave Hargrove some Tylenol and then Hargrove went to work as usual. As she was performing her normal duties, Hargrove picked up a tube and it fell from her grasp. She testified that after she dropped the tube she looked down at her left hand and noticed it was swollen. Hargrove went to her supervisor and asked if she could be excused to go see a doctor. She was given permission and went to see her family physician, Dr. Michael Brown, the next day, March 24.

In his medical report, Dr. Brown noted: "Has tenderness over the extensor surface left hand and also at base of the thumb." Dr. Brown x-rayed the hand, placed it in a splint, and prescribed medication. He wrote Hargrove an excuse from work for a few days.

On March 27, 2000, Hargrove went to the medical department at Perdue to provide Dr. Brown's letter excusing her from work. Nurse Sutherland professed she did not ask Hargrove whether the injury was work-related because she did not feel Hargrove had worked at Perdue long enough to have experienced an injury there. Nevertheless, Nurse Sutherland reviewed Hargrove's file and sent her to Perdue's company physician, Dr. Phil Wallace.[2]

Dr. Wallace's report, dated March 27, 2000, indicates Hargrove's left wrist and hand showed "slight swelling." He diagnosed "probable mild tendonitis" and modified her activities for two weeks. The report demonstrates that Dr. Wallace "advised [Hargrove] she probably needs to pick one or the other job" because he did not "think she [could] physically handle both." Dr. Wallace noted, under a section in the report subtitled

[2] Dr. Wallace is the company doctor for both Perdue and Dillon Yarn.

"ADD," that he "[t]alked with Perdue, felt this was not probably W/C, situation where she is using too much work in both _____." Regarding this particular notation, the Single Commissioner concluded:

> The report does speak for itself. A.D.D., I believe, based on reading medical reports stands for addendum. Meaning this is after he talked with Perdue he added this.
>
> . . . .
>
> Well, he doesn't say in the addendum [what his opinion is]. He says "talked with Perdue. Felt this was probably [not] W.C. situation where she's using too much work in both something. They both agreed to give her"—he doesn't say that this—whether this was his. It looks to me like, "talked with Perdue. Felt this was not probably W.C. like Perdue was saying it wasn't Workers' Comp.

Dr. Wallace issued excuses from work, which Hargrove took to both Dillon Yarn and Perdue.[3] On Hargrove's visit to Dillon Yarn, Harmon, the plant nurse, gave her a long-term disability form to complete. Hargrove testified she completed the form and sent it to Dr. Wallace. Harmon stated she talked to Dr. Wallace and received the disability form back from him, which indicated Hargrove's problems with her arm were work-related. In response to the question on the form whether the condition was "due to injury or sickness arising out of patient's employment," Dr. Wallace checked the box after "Yes."

On April 5, 2000, after noting Hargrove was continuing to have pain and limitation of movement in her wrist, Dr. Wallace referred her to Dr. Dwight Jacobus. Dr. Jacobus, an orthopedic surgeon, is one of Perdue's approved doctors for injuries that are work-related. Dr. Jacobus first saw Hargrove on April 7, 2000. He testified that his "initial impression, after [he] took a history and physical, was that of a possible carpal tunnel syndrome as

[3] Hargrove did not return to work for either employer following her first visit with Dr. Wallace.

it related to her left upper extremity." Dr. Jacobus saw Hargrove on at least four occasions and performed a number of tests and diagnostic studies to determine the root cause of her problems. Dr. Jacobus noted Hargrove continued to experience pain and swelling in her left hand. In a medical record dated May 15, 2000, Dr. Jacobus stated: "I still find no specific clinical abnormality other than some changes that possibly might represent an early reflex sympathetic dystrophy. I think a 2nd opinion is important and I have convinced her of that."

On January 18, 2001, Dr. Jacobus wrote a letter to Hargrove's attorney which declared: "It would be my opinion that the symptoms related to the left upper extremity were most probably caused and aggravated by repetitive activities related to her work." In a later deposition, Dr. Jacobus reaffirmed this opinion. In fact, he specifically opined that Hargrove's (1) "long-term repetitious activities" at Dillon Yarn "would have been the activities that instituted the changes leading to the diagnosis or at least the symptoms of carpal tunnel syndrome"; and (2) "secondary job responsibilities of stripping chicken skin" at Perdue "would therefore possibly . . . exacerbate the symptoms that were instituted by the initial employee responsibilities."

Because Hargrove was still complaining of pain and discomfort, Dr. Jacobus felt it prudent to seek a second opinion. Thus, Hargrove was referred to Dr. Robert W. Moore, a physician in Florence, who specializes in upper extremity problems**.** Dr. Moore diagnosed Hargrove with reflex sympathetic dystrophy in her left hand. He suggested that Hargrove participate in pain management, as well as hand therapy and several other treatments. A series of epidural blocks was performed. Hargrove stated these treatments were not helpful.

Responding to a letter from Hargrove's attorney, Dr. Moore stated in a letter dated January 3, 2001, that it was his "opinion that [Hargrove's] problem was not caused by the repetitive activities she performed at Dillon Yarn." Unable to make much progress towards Hargrove's improvement, Dr. Moore referred Hargrove to Dr. James A. Nunley at the Duke University Medical Center. Dr. Nunley agreed that it "looks like she does in fact have reflex sympathetic dystrophy." He noted she "shows the skin changes, the swelling." Dr. Nunley suggested Hargrove be referred to Dr. L. Andrew

Koman at Bowman Gray Medical School Reflex Sympathetic Dystrophy Clinic. Hargrove testified she did not go to Bowman Gray.

On July 19, 2000, Hargrove filed a Form 50 seeking Workers' Compensation benefits against Dillon Yarn alleging repetitive trauma as the cause of her injuries. Hargrove asserted that "[d]ue to injury, the claimant is in need of . . . medical examination and treatment for carpal tunnel syndrome." Dillon Yarn denied Hargrove was entitled to benefits. Dillon Yarn then moved to add Perdue as a co-defendant. Perdue was joined as a party by order dated December 14, 2001. Both Dillon Yarn and Perdue claimed the injuries, if work-related, happened when Hargrove was working for the other.

In her order, the Single Commissioner found the following facts:

> 1. Claimant sustained compensable injuries by accident arising out of and in the course of her employment on March 23, 2000 with both employers.
>
> 2. The employment with Dillon Yarn (Titan Textile) caused claimant's carpal tunnel syndrome.
>
> 3. Claimant's employment with Perdue exacerbated her condition.
>
> 4. The last date of injurious exposure occurred while the employment relationship existed concurrently.
>
> 5. It would be unfair to have one employer accept 100% liability under a theory of last date of injurious exposure when the difference in the last work date—not employment date—was only a matter of hours and included a weekend. Consideration is given also to the work schedule and how it may have figured into dates worked.

The Commissioner concluded: "Pursuant to Section 42-1-160, claimant sustained compensable injuries by accident on March 23, 2000 with both

employers." The Commissioner ruled that Hargrove was entitled to temporary total disability as well as payment of medical expenses, to be split evenly between the employers.

Both employers appealed this decision to an Appellate Panel of the South Carolina Workers' Compensation Commission (the Appellate Panel). The Appellate Panel issued an order unanimously affirming the ruling of the Single Commissioner in its entirety:

> After careful review in the instant case, the Appellate Panel has determined that all of the Hearing Commissioner's Findings of Fact and Rulings of Law are correct as stated. We find that such Findings of Fact and Conclusions of Law are hereby included in this Order by reference . . . . Accordingly, the Findings of Fact and Conclusions of Law set forth in the single commissioner's Order shall become, and hereby are, the law of the case; and, therefore, the Order is sustained in its entirety.

The employers appealed the Appellate Panel's decision to the Circuit Court. The Circuit Court issued a form order affirming the decision. Specifically, the Circuit Court found: "There is substantial evidence to support the Commission's order and therefore it is affirmed." Perdue appealed the Circuit Court's order to this Court.[4]

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers' Compensation Commission. See Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Gibson v. Spartanburg Sch. Dist. No. 3, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000). A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence

[4] Dillon Yarn did not appeal this final order and, in fact, participates in this appeal as a Respondent.

on the whole record." Bursey v. South Carolina Dep't of Health and Envtl. Control, Op. No. 3813 (S.C. Ct. App. filed June 1, 2004) (Shearouse Adv. Sh. No. 24 at 47); S.C. Code Ann. § 1-23-380(A)(6)(e) (Supp. 2003). Under the scope of review established in the APA, this 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 where the decision is affected by an error of law. Frame v. Resort Servs., Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); Stephen v. Avins Constr. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996); S.C. Code Ann. § 1-23-380(A)(6)(d) (Supp. 2003).

The substantial evidence rule of the APA governs the standard of review in a Workers' Compensation decision. Frame, 357 S.C. at 527, 593 S.E.2d at 494; Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 92 (Ct. App. 2002). This Court's review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law. See Gibson, 338 S.C. at 517, 526 S.E.2d at 728-29; see also Lyles v. Quantum Chem. Co. (Emery), 315 S.C. 440, 434 S.E.2d 292 (Ct. App. 1993) (noting that in reviewing decision of Workers' Compensation Commission, Court of Appeals will not set aside its findings unless they are not supported by substantial evidence or they are controlled by error of law).

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, 562 S.E.2d 679 (Ct. App. 2002); Broughton v. South of the Border, 336 S.C. 488, 520 S.E.2d 634 (Ct. App. 1999). The Appellate Panel is the ultimate fact finder in Workers' Compensation cases and is not bound by the Single Commissioner's findings of fact. Gibson, 338 S.C. at 517, 526 S.E.2d at 729; Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. See Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000); Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E.2d 366 (1995); Gibson, 338 S.C. at 517, 526 S.E.2d at 729. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial

evidence. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999); Muir, 336 S.C. at 282, 519 S.E.2d at 591. Where there are conflicts in the evidence over a factual issue, the findings of the Appellate Panel are conclusive. Etheredge, 349 S.C. at 455, 562 S.E.2d at 681.

The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 541 S.E.2d 526 (2001); Hicks v. Piedmont Cold Storage, Inc., 335 S.C. 46, 515 S.E.2d 532 (1999). It is not within our province to reverse findings of the Appellate Panel which are supported by substantial evidence. Broughton, 336 S.C. at 496, 520 S.E.2d at 637. The appellate court is prohibited from overturning findings of fact of the Appellate Panel, unless there is no reasonable probability the facts could be as related by the witness upon whose testimony the finding was based. Etheredge, 349 S.C. at 455-56, 562 S.E.2d at 681.

In the current case, after "careful review," the Appellate Panel found "that all of the Hearing Commissioner's Findings of Fact and Rulings of Law [were] correct as stated." Thus, the Appellate Panel adopted the Single Commissioner's findings of fact and rulings of law by reference into its final order as it is entitled to do under sections 1-23-350 and 42-17-40 of the South Carolina Code. See S.C. Code Ann. §§ 1-23-350 (1986) & 42-17-40 (Supp. 2003); see also Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 584 S.E.2d 390 (Ct. App. 2003) (interpreting these statutory provisions and concluding the Appellate Panel meets the requirements contained therein when it incorporates a Single Commissioner's findings of fact and rulings of law by reference into its order).

LAW/ANALYSIS

Perdue's sole argument on appeal is that the Circuit Court erred in finding the Appellate Panel's decision was supported by substantial evidence. We disagree.

I. Pee v. AVM

Perdue claims Hargrove did not attribute her injury to her work at Perdue. Perdue contends Hargrove "was able to identify a specific incident on March 23, 2000 at Dillon Yarn which caused an acute aggravation of her underlying condition." However, as Perdue acknowledges, it is not necessary for a claimant to identify a specific precipitating event in order for the claimant to be entitled to benefits. Our Supreme Court addressed this issue in Pee v. AVM, Inc., 352 S.C. 167, 573 S.E.2d 785 (2002):

> Employer contends a repetitive trauma injury does not qualify as an "injury by accident" because the cause of the injury is not unexpected and the injury lacks definiteness of time. . . . .
>
> . . . .
>
> As we more recently stated, "in determining whether something constitutes an injury by accident the focus is not on some specific event, but rather on the injury itself." Stokes v. First Nat'l Bank, 306 S.C. 46, 50, 410 S.E.2d 248, 250 (1991). Further, an injury is unexpected, bringing it within the category of accident, if the worker did not intend it or expect it would result from what he was doing. Colvin [v. E.I. DuPont De Nemours Co.], 227 S.C. at 468-69, 88 S.E.2d at 582 (emphasis added). Therefore, if an injury is unexpected from the worker's point of view, it qualifies as an injury by accident. Here, there is no evidence Claimant intended or expected to be injured as a result of her repetitive work activity.
>
> Employer's contention that the cause of the injury must be unexpected is incorrect. Under South Carolina law, if the injury itself is unexpected, it is compensable as an injury by accident.
>
> . . . .
>
> Definiteness of time, while relevant to proving causation, is not required to prove an injury qualifies as an injury by accident.

> For instance, in Sturkie v. Ballenger Corp., 268 S.C. 536, 235 S.E.2d 120 (1977), we found the claimant's emphysema, which developed gradually, was caused by repeated exposure to high humidity and dust on the job and was therefore compensable as an injury by accident. Similarly, in Stokes, supra, we found a psychological disorder which developed over a period of months compensable as an injury by accident.
>
> . . . .
>
> Here, it is uncontested that Claimant's carpal tunnel syndrome was caused by her work activities. The lack of a definite time of injury is therefore not dispositive.

Pee, 352 S.C. at 170-72, 573 S.E.2d at 787-88 (footnote omitted). Whether Hargrove could identify a precipitating event is irrelevant in determining if she is entitled to benefits.

Perdue maintains Hargrove exonerated the company when she stated that nothing unusual happened to her arm while she was working there and that she never experienced pain and swelling in her hand after working at Perdue. Yet, this testimony does not provide a full account of the evidence presented on the issue. Hargrove testified that on March 23, 2000, after working a full shift at Perdue, she went to her second-shift job at Dillon Yarn. She declared that after she clocked in, but before beginning her shift, she began experiencing a funny feeling in the fingers of her left hand. Furthermore, her supervisor at Dillon Yarn professed Hargrove never complained about experiencing problems with her arms or hands prior to her beginning the job at Perdue. Thus, the evidence clearly shows Hargrove had problems with her left hand and arm after working at Perdue.

Perdue gives credence to the fact that Hargrove did not work full time her first two weeks at Perdue. Hargrove worked 25.61 hours her first week at Perdue and 23.18 hours the second week. Although the entire first day consisted of classroom training, for the remainder of her days the first week, Hargrove spent four hours in class and four hours performing her normal job, which consisted of pulling the skin off of chickens and removing their

entrails. Hargrove testified she spent the majority of her time the second week on a regular line, which processed anywhere from 2,000 to 5,000 chickens per day. Furthermore, Dr. Jacobus concluded Hargrove's "long-term repetitious activities" at Dillon Yarn caused the carpal tunnel syndrome and her job at Perdue "possibly . . . exacerbate[d]" the problems. Concomitantly, there is substantial evidence in the record that Hargrove's activities while working for Perdue exacerbated her condition.

II. Dr. Jacobus

After providing a summary of the evidence presented, the Single Commissioner made specific findings of fact, including that Hargrove's employment with Dillon Yarn caused her carpal tunnel syndrome and her employment with Perdue exacerbated the condition. Perdue avers the Single Commissioner misinterpreted Dr. Jacobus' testimony. Specifically, Perdue asserts the Single Commissioner erred when she noted in her order that Dr. Jacobus "stated that both jobs would have exacerbated her problem."

The disputed testimony arose as a result of a hypothetical question posed by Hargrove's attorney. The question followed the chain of events in Hargrove's case, but inaccurately suggested Hargrove spent one entire week in orientation followed by two weeks of performing her normal job. The attorney then asked Dr. Jacobus if he had an opinion as to which job would most likely be the cause of Hargrove's problem. Dr. Jacobus responded:

> It would therefore be my opinion that the long-term repetitious activities, as I believe you related with her first job activities would have been the activities that instituted the changes leading to the diagnosis or at least the symptoms of carpal tunnel syndrome. The secondary job responsibilities of stripping chicken skin, as I perceive that to be, would therefore possibly exacerbate—exacerbate the symptoms that were instituted by the initial employee responsibilities.

This was not the first or only time Dr. Jacobus indicated he considered Hargrove's injuries to be work-related. In a letter dated January 18, 2001, Dr. Jacobus stated: "It would be my opinion that the symptoms related to the

left upper extremity were most probably caused and aggravated by repetitive activities related to her work."

Expert medical testimony is designed to aid the Appellate Panel in coming to the correct conclusion. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999); Tiller v. National Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999). Therefore, the Appellate Panel determines the weight and credit to be given to the expert testimony. Tiller, 334 S.C. at 340, 513 S.E.2d at 846; Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 92 (Ct. App. 2002). Once admitted, expert testimony is to be considered just like any other testimony. Tiller, 334 S.C. at 340, 513 S.E.2d at 846; Corbin, 351 S.C. at 624, 571 S.E.2d at 98.

"If a medical expert is unwilling to state with certainty a connection between an accident and an injury, the 'expression of a cautious opinion' may support an award if there are facts outside the medical testimony that also support an award." Tiller, 334 S.C. at 340, 513 S.E.2d at 846. Thus, if medical expert testimony is not solely relied upon to establish causation, the fact finder must look to the facts and circumstances of the case. Id. at 341, 513 S.E.2d at 846. Proof that a claimant sustained an injury may be established by circumstantial and direct evidence where circumstances lead an unprejudiced mind to reasonably infer the injury was caused by the accident. Id. at 341, 513 S.E.2d at 846-47. However, such evidence need not reach such a degree of certainty as to exclude every reasonable or possible conclusion other than that reached by the Commission. Id. at 341, 513 S.E.2d at 847.

Although medical testimony is entitled to great respect, the fact finder may disregard it if there is other competent evidence in the record. See Tiller, 334 S.C. at 340, 513 S.E.2d at 846 (stating that medical testimony should not be held conclusive irrespective of other evidence). In deciding whether substantial evidence supports a finding of causation, it is appropriate to consider both the lay and expert evidence. Sharpe, 336 S.C. at 161, 519 S.E.2d at 106.

Neither the Single Commissioner nor the Appellate Panel erred in relying on the testimony of Dr. Jacobus. The subtle differences posed in the

hypothetical question, compared to the actual events, merely affect the weight of the doctor's testimony and not its validity.

III. Aggravation of Pre-Existing Condition

Perdue asserts "Dr. Jacobus said nothing about any permanent injury being caused by her employment at Perdue. He only speculated about an aggravation of symptoms."

A work-related accident which aggravates or accelerates a pre-existing condition, infirmity, or disease is compensable. Brown v. R.L. Jordan Oil Co., 291 S.C. 272, 353 S.E.2d 280 (1987); Sturkie v. Ballenger Corp., 268 S.C. 536, 235 S.E.2d 120 (1977); Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995). A condition is compensable unless it is due solely to the natural progression of a pre-existing condition. Mullinax, 318 S.C. at 437, 458 S.E.2d at 80. It is no defense that the accident, standing alone, would not have caused the claimant's condition, because the employer takes the employee as it finds him or her. Id. "[A]ggravation of a pre-existing condition is compensable where disability is continued for a longer time, even though no disability would normally have resulted from the injury alone, or even if the aggravation would have caused no injury to an employee who was not afflicted with the condition." Id. (internal quotations omitted).

When a pre-existing condition or disease is accelerated or aggravated by injury or accident "arising out of and in the course of the employment," the resulting disability is a compensable injury. Brown, 291 S.C. at 275, 353 S.E.2d at 282; Arnold v. Benjamin Booth Co., 257 S.C. 337, 185 S.E.2d 830 (1971); see also Sturkie, 268 S.C. at 541, 235 S.E.2d at 122 (exacerbation of pre-existing disease or injury arising out of or in course of employment is compensable).

The right of a claimant to compensation for aggravation of a pre-existing condition arises only where there is a dormant condition which has produced no disability but which becomes disabling by reason of the aggravating injury. Hines v. Pacific Mills, 214 S.C. 125, 51 S.E.2d 383 (1949). A determination of whether a claimant's condition was accelerated

or aggravated by an accidental injury is a factual matter for the Appellate Panel. Brown, 291 S.C. at 275, 353 S.E.2d at 282. Where there is a conflict in the evidence from the same or different witnesses, the Panel's findings of fact may not be set aside. Id.

IV. Substantial Evidence to Support Decision of Appellate Panel

After thoroughly reviewing the record, we find substantial evidence supports the Appellate Panel's ruling. Hargrove's supervisor at Dillon Yarn testified Hargrove never complained about problems with her hand or arm prior to beginning her employment with Perdue. Although Hargrove experienced problems with her hand and arm before working at Perdue, she said she would go home after work and soak her hand and arm and then "it would be all right"—"[t]he pain would go away" and the "swelling would go down."

On March 1, 2000, Hargrove applied for her position at Perdue. At that time, she was given a physical specifically designed for the rigors of the job for which she was applying. Several of the tests were aimed at detecting problems with her arms and/or hands. Nurse Sutherland testified Hargrove passed all the tests with no problems and possessed a strong grip in both hands.

On March 16, 2000, after completing her shift at Perdue, Hargrove complained to her supervisor at Dillon Yarn for the first time that her hand and arm were giving her problems. On March 23, 2000, Hargrove finished her shift at Perdue and was clocking in at Dillon Yarn when she noticed a funny feeling in the fingers on her left hand. At the time this "funny feeling" began, Hargrove had not yet started her work duties for the day at Dillon Yarn. Later that night, Hargrove's arm became swollen and she asked if she could be excused to go see a doctor.

On March 27, 2000, Hargrove was sent to Dr. Wallace, who opined that he did not "think she [could] physically handle both [jobs]." Dr. Wallace referred Hargrove to Dr. Jacobus, who expressed the opinion that her condition was indeed work-related.

In deciding whether substantial evidence exists, it is appropriate to consider both the lay and expert evidence. See Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999). Although there is evidence from which the Appellate Panel could have gone the other way, there is clearly evidence which would allow reasonable minds to reach the conclusion the Panel reached. Substantial evidence supports the Appellate Panel's finding that Hargrove's work at Perdue aggravated or exacerbated her pre-existing condition.

CONCLUSION

We find substantial evidence supports the Appellate Panel's order. The Circuit Court did not err in affirming this decision. Accordingly, the Circuit Court's ruling is

AFFIRMED.

HUFF, J., concurs.

KITTREDGE, J., dissents in a separate opinion.

KITTREDGE, J.: I respectfully dissent. This appeal presents the question of whether substantial evidence supports the Commission's finding that Sandra Hargrove's nine-day tenure at Perdue Farms – comprised entirely of orientation, training and light work – exacerbated a condition caused by her long-time employment at Dillon Yarn. Having carefully considered the record and applicable standard of review, I would reverse based on my conclusion that the Commission's finding that Hargrove aggravated her pre-existing condition in the course of her brief employment at Perdue Farms is not supported by substantial evidence. In my judgment, the Commission's decision rests solely on speculation.

Hargrove's condition undisputedly originated from her work at Dillon Yarn, where she was employed periodically from 1992 through March 23, 2000. Neither Hargrove nor Dillon Yarn dispute the Commission's finding that Hargrove's condition was caused by her employment with Dillon Yarn.

Thus, this finding is the law of the case. See Unisun Ins. v. Hawkins, 342 S.C. 537, 544, 537 S.E.2d 559, 563 (Ct. App. 2000) (stating an unappealed ruling is the law of the case which the appellate court must assume was correct). Hargrove worked eight-hour shifts at Dillon Yarn, during which she would lift, bag, and box between 600 and 800 spools of yarn from a texturing machine.

On March 13, 2000, Hargrove began her brief tenure with Perdue Farms, while continuing to work full-time at Dillon Yarn. Hargrove worked only 25.61 hours in her first of two weeks as an employee of Perdue Farms. Her first day of employment at Perdue Farms was entirely devoted to orientation and classroom training. On the remaining four days of her first week, Hargrove spent four hours each day receiving additional classroom training and four hours each day on a special production line used to train new employees. The training line moved at half the speed of the normal production lines. Hargrove would rotate between functions throughout the day rather than doing one thing repetitively all day. According to Hargrove, the work using her hands did not involve "any real effort."

During Hargrove's second week at Perdue Farms, she worked 23.18 hours over a four-day period. She continued to work at a training line until fourth day, March 23, 2000, when the line went down. Although she "didn't do much that day" at Perdue Farms, Hargrove did help move empty boxes. Later that same day, Hargrove went to her job at Dillon Yarn, where she complained to her supervisor that her left hand was "swollen," "feeling funny," and had "started hurting." The supervisor sent her to the plant's nurse, who gave Hargrove Tylenol. Hargrove completed her shift, but later went to a physician for additional treatment. Upon the physician's recommendation, Hargrove did not return to work at Dillon Yarn or Perdue Farms. She later brought the present action, seeking workers' compensation benefits from Dillon Yarn. Dillon Yarn joined Perdue Farms as a defendant.

In deposition testimony, the following exchange occurred between Dillon Yarn's counsel and Hargrove:

> [Counsel]: Did the fingers on your left hand feel funny while you were working at Perdue [on March 23, 2000]?

[Hargrove]: No sir.

When Dillon Yarn's counsel asked Hargrove whether she had "ever felt that funny feeling before," Hargrove responded, "The only time I felt that is like when I worked hard at Dillon Yarn." When questioned as to whether she had any knowledge of an incident or accident at Perdue Farms related to her condition, she responded, "No, sir."

Dr. Dwight Jacobus, a general orthopedic surgeon who served as one of Hargrove's treating physicians, provided additional deposition testimony. During the deposition, a hypothetical question posed to Dr. Jacobus solicited his opinion regarding which of Hargrove's jobs had caused her condition, or whether the condition was caused by "a combination of the two" jobs. In pertinent part, the hypothetical was premised on the false assumption that Hargrove's employment at Perdue Farms consisted of "one week of training and two weeks of actually performing the job." Jacobus opined that the long-term, repetitive nature of her job at Dillon Yarn "would have been the activities that instituted the changes leading to the diagnosis or at least the symptoms of carpal tunnel syndrome." He added that the "secondary job responsibilities of stripping chicken [at Perdue Farms], as I perceive that to be, would therefore **possibly** exacerbate … symptoms that were instituted by the initial responsibilities [at Dillon Yarn.]" (emphasis added).

The order of the single commissioner erroneously stated that Dr. Jacobus opined that Hargrove's "left upper extremity problems were most **probably** caused and aggravated by her work … [and] … both jobs would have exacerbated her problem." (emphasis added). The commissioner concluded that Hargrove's work at Perdue exacerbated her pre-existing condition. Consequently, the commissioner ordered Dillon Yarn and Perdue Farms to each pay one-half of the temporary total disability benefits awarded Hargrove, as well as charges for all past, present, and continuing medical expenses related to the injury. An appellate panel of the Commission affirmed, adopting all of the single commissioner's findings. The circuit court affirmed the Commission**.**

I recognize that in workers' compensation cases, compensation may be awarded although "a medical expert is unwilling to state with certainty a

connection between an accident and an injury … 'if there are facts outside the medical testimony that also support an award.'" Tiller v. Nat'l Health Care Ctr., 334 S.C. 333, 340, 513 S.E.2d 843, 846 (1999), citing Grice v. Dickerson, Inc., 241 S.C. 225, 127 S.E.2d 722 (1962). This court applied this principle in Muir v. C.R. Bard, Inc., 336 S.C. 266, 287, 519 S.E.2d 583, 594 (Ct. App. 1999) ("If a medical expert is unwilling to state with certainty a connection between an accident and an injury, the 'expression of a cautious opinion' may support an award if there are facts outside the medical testimony that also support an award"). Here, the Commission relied *solely* on the testimony of Dr. Jacobus in finding that Hargrove's employment at Perdue Farms exacerbated her condition. The Commission adopted the single commissioner's finding that Dr. Jacobus opined that Hargrove's condition was "most probably" exacerbated by both of her jobs. Dr. Jacobus rendered no such opinion, as he only testified that Hargrove's work at Perdue Farms "**possibly** exacerbate[d]" symptoms of the condition caused by her work at Dillon Yarn. At best, Dr. Jacobus provided an "expression of a cautious opinion" with respect to the relationship between Hargrove's condition and her work at Perdue Farms. There is no additional evidence, lay or otherwise, supporting an award against Perdue Farms. In fact, Hargrove's testimony refutes any suggestion or inference of a connection between her injury and her nine-day employment at Perdue Farms, which she conceded did not involve "any real effort." "Workers' compensation awards must not be based on surmise, conjecture or speculation." Tiller, 334 S.C. at 339, 513 S.E.2d at 845.

I reach this conclusion fully cognizant of the deferential substantial evidence standard of review applicable to appeals from the Commission. Consistent with this deferential standard of review, an appellate court must nevertheless ensure the record contains some evidence beyond a mere scintilla which, considering the record as a whole, would allow reasonable minds to concur in the conclusion reached by the Commission. See Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (holding that an appellate court's review of appeals from the Commission is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law); Broughton v. South of the Border, 336 S.C. 488, 496, 520 S.E.2d 634, 637 (Ct. App. 1999) ("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"). Mindful of this deferential standard of review, the record in my judgment yields, at best, a mere scintilla of evidence to support the Commission's finding that Hargrove aggravated her pre-existing condition in the course of her brief employment at Perdue Farms. I would reverse.