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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2019-001064
W.C.C. No. 1121370

Patricia Pate, Employee/Claimant,.....Appellant,

v.

College of Charleston, Employer, and
State Accident Fund, Carrier,.....Respondents.

PETITION FOR REHEARING

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Statement of the Case

By Order dated July 20, 2022, the Court of Appeals reversed the final Decision and Order of the Workers' Compensation Commission dated May 31, 2019 (R. p.34) and remanded TO for the Commission to "evaluate the substance of Pate's claim for a general disability" based on her allegations of "pain radiating into other parts of her body" and "pain-related depression." According to the Court, the Commission "gave no reasoning" in its order for denying additional benefits as a result of these allegations under S.C. Code Ann. § 42-9-10. Respectfully, the Court has overlooked the Commission's detailed finding of fact that Pate had "not met her burden of proving" that she "has any disability or work restrictions as a result of any alleged psychological injury." (R. p.62 #7). The Respondents, the College of Charleston and the State Accident Fund contend that this finding, which is supported by substantial evidence in the record, should have been affirmed by the Court of Appeals and that; therefore, a remand to consider an award of additional benefits for an alleged psychological injury would be improper.

Furthermore, the Respondents respectfully contend that the Court of Appeals misapprehendED both the evidence and the applicable law by suggesting that Pate's subjective complaints of pain "in other parts of her body" constitute "ample evidence" to support an award under S.C. Code Ann. § 42-9-10. As previously held by this Court, such subjective complaints are insufficient to prove the requisite disabling effect or impairment of a second body member such that Pate could be entitled to pursue general disability benefits under that statute. It would appear that the Court overlooked the sound reasoning of precedent by remanding the claim to the Commission to reconsider legally insufficient subjective allegations.

In addition, the Respondents respectfully contend that the Court overlooked substantial evidence in the record that supports the Commission's finding that Pate sustained a 40% loss of use of the back as a result of her work accident, as well as the substantial evidence that the proximate cause of any disability or loss of wage-earning capacity was Pate's subsequent, intervening pulmonary emboli. Therefore, pursuant to Rule 221, S.C.A.C.R., the Respondents respectfully request that the Court of Appeals grant the Petition for Rehearing and issue a new order affirming the final Decision and Order of the Workers' Compensation Commission in accordance with the Administrative Procedures Act. In the alternative, the Respondents request that the Court limit the scope of their mandate on remand to the consideration of whether Pate's work-related low back injury caused "disabling effect" on Pate's legs, and if so, whether she is entitled to general disability benefits as a result thereof.

Arguments

I. The Court of Appeals overlooked the Workers' Compensation Commission's finding of fact regarding the depression claim .

The Court of Appeals has remanded this claim to the Workers' Compensation Commission with a mandate to consider whether Pate is entitled to general disability benefits under S.C. Code Ann. § 42-9-10 as a result of alleged "pain-related depression," suggesting that the Commission did not consider this claim or give any reasoning for its denial. The Court's July 20, 2022, Opinion apparently overlooks the Commission's specific finding of fact regarding Pate's claim for "psyche (depression)," which reads as follows:

> "7. Claimant has not met her burden of proving a psychological injury casually related to her original injury. Her claim is not supported by the preponderance of the evidence. **Specifically, no physician opined that Claimant has any disability or work restrictions as a result of any alleged psychological condition.** No physician has opined to a reasonable degree of medical certainty that Claimant's alleged psychological condition is causally related to her original work injury to her lower back. Claimant's personal history, prior medical history, and current unrelated medical conditions have weighed into this finding as well." (R. p.62--63) (emphasis added).

Despite this specific finding of fact, the Court's Order makes no mention of it, or of the substantial evidence in the record supporting the Commission's denial of benefits for any alleged psychological injury.

Proper consideration of the Commission's finding in this regard should have resulted in a full affirmation in accordance with the Administrative Procedures Act. *See* Bass v. Kenco Group, 366 S.C. 450, 457, 622 S.E.2d 577, 580 (Ct.App.2005) (holding that a reviewing court may only reverse or modify a decision of the Commission if the findings, inferences, conclusions, or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record"); *see also* S.C. Code Ann. § 1-23-380(A)(6)(e) (2005). Therefore, the Respondents respectfully contend that the Court of Appeals should reconsider its decision and affirm the Commission's specific finding of fact regarding the Claimant's alleged psychological condition accordance with the Administrative Procedures Act. *See* Broughton v. South

of the Border, 336 S.C. 488, 520 S.E.2d 634 (Ct.App.1999) (holding it is not within the province of the appellate courts to reverse findings of the Commission that are supported by substantial evidence).

Substantial evidence supporting the Commission's finding regarding the claim for "psyche (depression)" includes the medical records submitted into evidence and even the Claimant's own testimony. At the evidentiary hearing on July 14, 2015, Pate's attorney did not ask her any questions about any alleged psychological injury or depression. (R. pp.493—500). At no time during that hearing did Pate give testimony to support any allegation of a psychological injury or depression related to her low back injury. (R. pp.493—508). While Pate did testify that her brother's recent death from pancreatic cancer was "very stressful" for her and resulted in her seeking medications from her family physician, Pate testified that she was feeling better at the time of the hearing. (R. p.507). Therefore, not even Pate's own testimony could support a finding that she sustained any permanent or disabling psychological injury as a result of her work-related low back injury.

The records Carolina Family Medicine indicate that Pate first complained of a three-to-four-year history of "stress" in January 2013, which was aggravated by "work stressors" and her "brother dying from pancreatic cancer." (R. p.264). While her family physicians also noted "stress" on other occasions, (R. p.269, p.271, p.284, p.286, p.288, p.293, p.296), it was always attributed to undefined "work stressors" and her "brother dying from pancreatic cancer," not her low back injury. In addition, at no time did Carolina Family Medicine indicate that Pate required any work restrictions because of her "stress," much less opine that the condition resulted in any permanent impairment.

As such these records do not support a finding that Pate sustained any permanent or disabling psychological injury as a result of her work-related low back injury.

Pate described her alleged work stressors to her hematologist, Dr. Rose, in December 2014. (R. p.357). According to Pate, her job was "apparently transitioning to a new computer system, and she is concerned about her ability to perform her job."[1] In response, Dr. Rose "offered her words of encouragement regarding her job and also offered her ways she could help train herself with the computer system." Dr. Rose's records do not support a finding that Pate sustained any permanent or disabling psychological injury as a result of her work-related low back injury.

Dr. Dyana Lowndes-Rosen was the only psychiatrist to evaluate Pate. According to Dr. Lowndes-Rosen, Pate's emotional symptoms were due to a "chronic pain syndrome." (R. p.368). However, Dr. Lowndes-Rosen concluded that she had

> "no reason to believe that counseling would be of substantial benefit in that real physical pain is her primary complaint. [Pate] also expressed her belief that she has no need for mental health involvement." (R. p.368).

Dr. Lowndes-Rosen did not recommend any work restrictions or find any permanent psychological impairment. Accordingly, Dr. Lowndes-Rosen's records do not support a finding that Pate sustained any permanent or disabling psychological injury that would entitle her to pursue wage loss benefits under S.C. Code Ann. § 42-9-10.

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[1] "Stress, mental injuries ... are not considered compensable if they result from any event or series of events which are incidental to normal employer/employee relations..." S.C. Code Ann. § 42-1-160(C).

While Trident Pain Center Nurse Practitioner Allison Davis stated on August 21, 2014, -- shortly before her new leg pain and swelling was diagnosed as multiple pulmonary emboli -- that Pate was depressed due to "pain and increased pressures/stressors," neither Ms. Davis, nor her supervisor, Dr. Nolan, commented on these symptoms further. More importantly, neither Ms. Davis, nor Dr. Nolan, ever issued any work restrictions for these symptoms and never indicated that they resulted in any permanent impairment. In fact, after September 4, 2014, there is no mention of any symptoms of depression or stress in the next 17 office notes from Trident Pain Center. Therefore, the records of Trident Pain Center do not support a finding that Pate sustained any permanent or disabling psychological injury that would entitle her to pursue wage loss benefits under S.C. Code Ann. § 42-9-10.

Ms. Davis referred Pate to a psychologist, Mr. Kee, for a one-time evaluation on September 22, 2014. Apparently, Pate complained to Dr. Kee that "there has been conflict that her supervisor has pushed her to do new jobs on the computer ... she reports having problems with anxiety and going to sleep because of worrying about work," though she admitted she had been taking the sleeping medication, Ambien, since 2010 (prior to the work accident). Although Mr. Kee diagnosed a "[m]ajor depressive disorder, single episode, moderate," he did not in any way indicate that Pate's depression was permanent or disabling. Therefore, the one-time evaluation of Mr. Kee a year prior to the hearing does not support a finding that Pate sustained any permanent or disabling psychological injury that would entitle her to pursue wage loss benefits under S.C. Code Ann. § 42-9-10.

Because the findings of the Commission are presumed correct and it is otherwise not within the province of the appellate courts to reverse findings of the Commission

that are supported by substantial evidence, the Court of Appeals should reconsider its mandate that the Commission reconsider the "substance" of Pate's claim for "psyche (depression)." 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); Broughton v. South of the Border, 336 S.C. 488, 520 S.E.2d 634 (Ct.App.1999). Furthermore, because the final determination of witness credibility and the weight to be accorded evidence is reserved to the Commission and even the possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's findings from being supported by substantial evidence, the Court of Appeals should affirm the Commission's findings regarding the claim for "psyche (depression)" in accordance with the Administrative Procedures Act. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000). Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999); DuRant v. South Carolina Dep't of Health & Envtl. Control, 361 S.C. 416, 604 S.E.2d 704 (Ct.App.2004).

II. The Court of Appeals misapprehended the applicable law with regard to whether Pate's back injury had a disabling effect on her legs.

According to the Court's July 20, 2022, Opinion, the Commission must reconsider whether Pate is entitled to general disability benefits under S.C. Code Ann. § 42-9-10 because "the record contains ample markers of a colorable claim that the effects of Pate's back injury extend beyond her back." First, while Pate did allege an unspecified injury to "the legs," she did not ever file a claim for any alleged injury to the hips, or knees, or ankles, or sacroiliac joint. (R. p.68, p.69, p.72, p.74). Furthermore, according to Pate's own testimony, the substance of her leg injury claim is that pain

"sometimes ...leads down to [her] – into [her] right thigh[1] through [her] buttocks.'" (R. p.497, ll.11-15) (emphasis added). However, because intermittent subjective complaints are legally insufficient to support a general disability claim under S.C. Code Ann. § 42-9-10, the remand to reconsider such evidence appears to be premised on a misapprehension of the applicable legal standard established by long-standing and recently reaffirmed precedent.

According to the South Carolina Supreme Court in the seminal case of Singleton v. Young Lumber Company, "[w]here the injury is confined to the scheduled member, and there is no *impairment* of any other part of the body because of such injury, the employee is limited to the scheduled compensation" pursuant to S.C. Code Ann. § 42-9-30. 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960) (emphasis added). *Singleton* intended that "impairment" in this regard is a "physical deficiency." *Id.* Accordingly, entitlement to benefits for permanent and total disability benefits under S.C. Code Ann. § 42-9-10 requires, not only proof that another body part has been "affected" by the work injury, but that another body part is permanently "impaired." Colonna v. Marlboro Park Hosp, 404 S.C. 537, 545,745 S.E.2d 128 (2013) (*cert. dismissed as improvidently granted*) (emphasis added). Indeed, in Colonna, *supra*, the Court of Appeals reasoned that "the question of whether [a claimant] is totally and permanently disabled, and thus entitled to recovery under Section 42-9-10, turns on whether the initial injury had a 'disabling effect' on other parts of her body." *Id.*

Here, despite Pate's intermittent subjective complaints, there is absolutely no

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[1] According to the Court's Opinion, Pate's medical records "reference pain in her left leg and hip." However, the Claimant gave no testimony regarding any problem with her left leg and at no time did she ever file any claim for any alleged injury to either hip. (R. pp.66, 68, 69, 72, 74).

evidence that her work-related back injury had a "disabling effect" on her legs. No doctor ever issued an impairment rating for Pate's intermittent leg complaints, nor does Pate have any restriction on the use of her legs from any source. According to Dr. Nolan (Pate's pain management physician), the location of Pate's pain was repeatedly stated to be simply "lower back" (R. pp. 75, 78, 105, 156, 161, 173, 185, 192, 199) or "low back" (R. pp.81, 90, 108, 110, 116, 125, 132, 142, 143, 145, 146, 154, 158, 178, 181, 182, 197). At no time did Dr. Nolan ever suggest that any intermittent leg complaint was a factor in his spinal impairment rating (much less necessitate a separate impairment rating to either leg), nor did he opine that Pate required any work restrictions as a result of any leg symptoms.

Furthermore, according to Pate's surgeon, Dr. Marzluff, the only body part "injured" on December 14, 2011, was Pate's "back" and the only body part "affected" was her "spine." (R. p.236). Even at his deposition, Dr. Marzluff never suggested that Pate had any permanent impairment of her legs, nor did he suggest that his spinal impairment rating was based on any such complaint or that Pate was in any way disabled or limited by any alleged leg problem. The issue was not even raised to Dr. Marzluff (or Dr. Nolan) by Pate's attorney.

Moreover, Pate has a number of non-work-related leg problems, including a pre-existing ankle injury, which according to Pate remains symptomatic. (R. p.503, lines2—3; pp.256-259). Pate also admits that in 2014 she began having new and different symptoms with respect to her legs, including swelling and discoloration. (R. p.502, ll.19-21). According to her personal physicians' records, in May 2014, she began noticing these new symptoms in both feet and legs. (R. p.277). By July 2014, Pate was reportedly experiencing "tingling in both feet and some swelling in lower legs," in addition to

discoloration of the skin of both feet and lower legs, "which began 2 months" earlier. (R. p.277). Pate was diagnosed with "Edema/Bilateral peripheral – New" in August 2014. (R. p.280). Pate testified that she initially assumed these new leg and foot symptoms in 2014 were caused by the pre-existing April 2011 ankle injury. (R. p.503, APA pp.256--259). However, her hematologists subsequently diagnosed her with chronic venous stasis in the legs and non-pitting edema due to her non-work-related pulmonary emboli. (R. pp.352--361). By November 2014, Pate was also complaining of another "new" problem:

> "pain to the left lower leg and behind the left knee, which did not result from an injury which began 1 month ago. The patient characterized it as stabbing pain when standing up. Severity – worsening. Aggravating factors: weight bearing, standing, walking and bending knee. Relieving factors: nothing. On Xarelto. History of multiple pulmonary embolisms." (R. pp. 288—289).

However, there is no competent medical evidence that the leg and foot symptoms Pate was experiencing in the second half of 2014 were causally related to her work-related low back injury.

More importantly, there is no competent evidence that the work-related low back injury had any "disabling effect on her legs." Again, the record contains no impairment rating for either leg and no restrictions on their use. The mere fact that Pate made various complaints about her legs, the most severe of which are wholly unrelated to her work accident, does not constitute "a colorable claim" that Pate has any "impairment of

any other part of her body because of" her work-related low back injury. Singleton v. Young Lumber, 236 S.C. 454, 114 S.E.2d 837(1960). Because "a claimant must prove not only that another body part was affected ... but that another body part was impaired or injured for section 42-9-10 to apply,"[1] the Respondents respectfully request that the Court of Appeals reconsider its decision to remand the claim and, instead, affirm the Decision and Order of the Commission based upon the substantial evidence in the record and the applicable law.

III. The Court of Appeals overlooked the fact that Pate's subsequent pulmonary emboli are an intervening cause of her present ailments as a matter of fact.

Even assuming, *arguendo*, that Pate was entitled to pursue benefits under S.C. Code Ann. § 42-9-10, Pate is not entitled to benefits for permanent and total disability as a result of the December 14, 2011, accident because Pate was working in her regular, full-time position as the assistant manager of the College of Charleston Copy Center earning her regular, pre-accident wages for more than two years thereafter. Therefore, Pate had no "incapacity for work resulting from" the December 14, 2011, injury back injury during this period, but had a dependable job. Pate had no loss of wages, or even loss of wage-earning capacity, until she was hospitalized for near-fatal pulmonary emboli in September 2014, which aggravated her back condition and resulted in new work restrictions that she had not previously required as a direct result of the December

[1] Colonna v. Marlboro Park Hosp, 404 S.C. 537, 545,745 S.E.2d 128 (2013).

14, 2011, accident. Therefore, as a matter of fact, it is the pulmonary emboli, not the work accident, that are the proximate cause of any disability Pate may now have.

In Geathers v 3V, Inc, 371 S.C. 570, 641 S.E.2d 29 (2007), the Supreme Court reaffirmed the well-established "Gordon Rule," which requires proof of proximate causation, as opposed to mere concurrent causation in South Carolina workers' compensation claims. In applying the "Gordon Rule" to the facts *sub judice*, the questions presented are whether Pate's work-related back injury was non-disabling prior to the pulmonary emboli in September 2014, and whether her non-work-related pulmonary emboli resulted in a new loss of wage-earning capacity? The answer to these questions is undoubtedly "yes."

As to the first question, the record is clear that Pate returned to her regular, full-time job as Assistant Manager of the Copy Center at the College of Charleston on September 12, 2012, and continued working in this position, earning her regular wages despite her low back injury, for over two years before she was hospitalized with multiple pulmonary emboli, unrelated to her employment, in September 2014. Pate's supervisor testified that Pate was capable of performing all of the duties required of this job and it was available to her indefinitely. (R. p.512). Therefore, Pate's work-related back injury was not disabling as a matter of fact.

Regarding the second question, it is equally clear that Pate's disability after September 2014 is the direct result of the multiple pulmonary emboli she suffered in September 2014. Even Pate's treating physician, Dr. Nolan, stated "due to pulmonary embolisms we recommended she be placed out of work." (R. p.144). There is simply no evidence to suggest that Pate would suddenly have ceased working and earning wages

after two years in a dependable job that was available to her "indefinitely" without an intervening cause such as the multiple pulmonary emboli.

In addition, it is equally clear from the record that Pate's multiple pulmonary emboli and anticoagulant therapy after September 2014 aggravated her low back problems. At the hearing before Commissioner Taylor Pate admitted that her back pain increased after the pulmonary emboli. (R. p.506). This aggravation is also clearly documented in the records of Dr. Nolan. For example, after being diagnosed with the pulmonary emboli in September 2014, Dr. Nolan doubled Pate's pain medications because she was no longer able to get the relief from the medication and treatments, she availed herself of prior to the anticoagulant therapy. (R. p.140). Dr. Nolan opined that "[d]ue to her inability to receive needed injection therapy...due to pulmonary embolisms we recommend she be placed out of work." (R. p.144).

While Pate would suggest that her near-fatal, multiple pulmonary emboli and resulting disability are of no factual or legal significance in jurisdictions where concurrent or contributing causation is sufficient, proof of "proximate cause" is essential in South Carolina, as explained by the Supreme Court in the *Geathers* case. In *Geathers*, the Supreme Court specifically rejected the argument that a pre-existing injury was a contributing cause of the employee's disability, in favor of a bright line test requiring that proximate causation be used to determine liability. Clearly, the "proximate cause" of Pate's disability (*i.e.*, inability to earn wages) was the multiple pulmonary emboli and resultant anticoagulant therapy. Once the proximate cause of her disability has been determined, prior contributing causes are of no legal consequence.

According to our Supreme Court, "[p]roximate cause requires proof of (1)

causation in fact and (2) legal cause." Bramlette v. Charter-Medical-Columbia, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990). Causation in fact is demonstrated by establishing that Pate would not have become disabled "but for" the pulmonary emboli, while legal cause is proved by establishing foreseeability. If Pate's sudden disability in September 2014 was not the natural and probable consequence of the December 14, 2011, work injury, such sudden disability after more than two years of full employment was not foreseeable. Vinson v. Hartley, 324 S.C. 389, 400, 477 S.E.2d 715, 721 (Ct.App.1996). Therefore, Pate's work-related back injury was not the proximate cause of her disability and; therefore, this disability is not the responsibility of the Respondents under S.C. Code Ann. § 42-9-10.

IV. The Workers' Compensation Commission's finding that Pate suffered a 40% loss of use of the back is supported by substantial evidence and the award under S.C. Code Ann. § 42-9-30 is supported by the applicable law; therefore, the Commission's Decision and Order should have been affirmed.

Under S.C. Code Ann. § 42-9-30's "medical model," the Legislature has already "statutorily presumed lost earning capacity" for Pate's scheduled injury to her back. Wigfall v. Tidelands Utilities, 354 S.C. 100, 580 S.E.2d 100 (2003) (citing G.E. Moore Co. v. Walker, 232 S.C. 320, 102 S.E.2d 106 (1958) and LARSON'S WORKERS COMPENSATION LAW § 86.02 (1999). The Workers' Compensation Commission was without authority to overrule the Legislature in this regard, but was constrained to weigh the evidence, including the medical impairment ratings and Pate's limited testimony that she has "nagging pain" that affects her activities "at times."

(R. p.497, l.9 & l.17). The Court of Appeals is similarly constrained in determining whether the impairment ratings and this testimony constitutes "substantial evidence" in support of the Commission's finding of a 40% loss of use of the back, as there was clearly no legal error implicit in this finding. Grant v. Grant Textiles, 361 S.C. 188, 191, 603 S.E.2d 858, 859 (Ct. App.2004)

Dr. Nolan's 23% impairment rating alone constitutes substantial evidence in support of the Commission's finding regarding Pate's physical loss of use under S.C. Code Ann. § 42-9-30. Pate does not take issue with the credibility of her treating physician's 23% impairment rating – she did not even seek to cross-examine Dr. Nolan on this, or any other issue. Additionally, there is no evidence that Dr. Nolan, who was in the best position to observe Pate and her medical problems, and who was in the best position to apply the AMA's GUIDE TO THE EVALUATION OF IMPAIRMENT, underestimated that impairment. Dr. Nolan's rating is consistent with his report on February 13, 2014, that Pate "continues to report good pain relief with her injection therapy and medication management and work restrictions." (R. p.82). By September 4, 2014, Pate rated her pain as a "4/10 overall," despite the fact that she was working full time in her regular job. (R. p.132). These reports simply do not support a finding that Pate's physical loss of use of the back exceeds the 40% awarded by the Commission.

The opinions of Dr. Marzluff, Pate's treating surgeon, also constitute substantial evidence in support of the Commission's award. In his 2013 deposition, Dr. Marzluff testified that he believed Pate to have a "40% regional rating to her lumbar spine," which he translated as a "30% whole person rating." (R. pp.468--459). Dr. Marzluff further testified that he has already inflated both of these impairment ratings by adding another "ten percent or so" over and above what would be

appropriate under the AMA GUIDES to account for what he termed "chronic pain." (R. p.466, p.476). Therefore, Dr. Marzluff's impairment rating is actually commensurate with the 23% rating issued by Pate's current treating physician, Dr. Nolan. Respectfully, there is simply no competent evidence in the record that the Commission in any way underestimated Pate's physical loss of use of the back in awarding her benefits under S.C. Code Ann. § 42-9-30.

While Pate argues that, after her impairment ratings were issued, "her condition worsened" and that this worsening somehow supports mandated an even greater inflation of the medical impairment ratings by the Commission, this argument is without merit. Even Pate admits that the worsening of her condition following her multiple pulmonary emboli in September 2014 is not causally-related the December 14, 2011, work accident and; therefore, the worsening of her condition is not the responsibility of the Respondents, nor relevant to the determination of her loss of use of the back caused by the December 14, 2011, accident. Furthermore, Dr. Nolan, who was treating Pate during this time, did not amend or inflate his impairment rating after the pulmonary embolism worsened her low back pain.

Respectfully, it is clear that the Commission – the final arbiter of the weight of the evidence – properly awarded Pate benefits for a 40% loss of use of the back based upon substantial evidence in the record and the applicable law, without resorting to impermissible surmise, conjecture and speculation. *See* Herndon v. Morgan Mills, 246 S.C. 201, 143 S.E.2d 376 (1965). As such, the award should have been affirmed by the Court of Appeals in accordance with the Administrative Procedures Act. *See* Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000) (holding that the final

determination of witness credibility and the weight to be accorded evidence is reserved to the Commission).

Conclusion

Based on the arguments set forth herein above, the College of Charleston and the South Carolina State Accident Fund respectfully request that the Court of Appeals reconsider its Opinion dated July 20, 2022 and conclude that the final Decision and Order of the South Carolina Workers' Compensation Commission should be affirmed in accordance with the Administrative Procedures Act, as it is supported by substantial evidence in the record and the applicable law. In the alternative, the Respondents request that the Court limit the scope of their mandate on remand to the consideration of whether Pate's work-related low back injury caused "disabling effect" on Pate's legs, and if so, whether she is entitled to general disability benefits as a result thereof.

Respectfully submitted,

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August 3, 2022

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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W.C.C. No. 1121370

Patricia Pate, Employee/Claimant,.....Appellant,

v.

College of Charleston, Employer, and
State Accident Fund, Carrier,.....Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that the above-referenced Appellant, Patricia Pate, along with Margaret M. Urbanic, Esq., Mikell H. Wyman, Esq., and Page Hilton, Esq., were served with a copy of the attached Petition for Rehearing of the Respondents this 3rd day of August 2022, by emailing and depositing the same in the United States Mail, first class postage prepaid, addressed to the parties of record, as follows:

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August 3, 2022

Via Email and Regular Mail
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Patricia Pate v. College of Charleston
W.C.C. File No.: 1121370
Appellate Case No.: 2019-001064
Carrier File No.: 2011-4217
Date of Accident: December 14, 2011

Dear Ms. Kitchings:

Enclosed herewith for filing, please find our Petition for Rehearing and original Proof of Service of the same in the above-referenced matter. By a copy of this correspondence, I am serving the other counsel of record with a copy of our Petition. Also enclosed, please find our check in the amount of $50.00 for the filing of this Petition.

Yours very truly,

Kirsten L. Barr

KLB/mbm/les
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