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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appeal No.: 2022-001546

Monica Murphy, Employee, ...Appellant,

v.

Halocarbon Products Corporation, Employer, and
Commerce & Industry Insurance Company
c/o AIG Claims, Inc., Carrier,.....Respondents.

BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

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II. WHETHER CLAIMANT'S ATTACKS ON THE COMMISSION'S CREDIBILITY FINDINGS ARE MISPLACED AND DO NOT WARRANT REVERSAL?

STATEMENT OF THE CASE

This case was initiated when Claimant Monica Murphy filed a Form 50 alleging injury to her heart and lungs, bones, smell and taste, and neurological system as the result of inhaling hydrofluoric acid ("HF") fumes on August 11, 2015, while working for Respondent Hydrocarbon Products Corporation ("Employer"). (Form 50, dated September 11, 2015, R. pp. 213-214). Employer and its workers' compensation carrier, Respondents herein, filed a Form 51 denying that Claimant's "exposure was of such a degree to cause any lasting effects," and contending that she "developed minor temporary symptoms affecting her respiratory system which resolved without producing any disability." (Form 51, dated October 8, 2015, R. p. 222).[1]

The parties were heard by Single Commissioner Susan S. Barden on April 27, 2017. At that hearing, Claimant testified on her own behalf, and a former employee of Halocarbon Products, Todd Lawrence, also testified on Claimant's behalf. Three current employees, Ken McDowell, George Campbell and Lonnie Parsons, testified on behalf of Employer. Respondents objected to the inclusion of Claimant's APA #28, the expert report of Dr. Philip Edelman.

Commissioner Barden issued her Decision and Order on March 12, 2018, sustaining Respondents' objection to Claimant's APA #28 and excluding Dr. Edelman's expert opinion and CV. The Single Commissioner found and concluded that Claimant lacked credibility, and that she failed to meet her burden of proving she is entitled to any benefits under the Workers' Compensation Act ("Act"), assigning greater weight to

[1] Claimant later filed an amended Form 50 alleging injury to her "mind/psyche" as well. (Amended Form 50, dated December 5, 2016, R. pp. 217-218). Respondents again denied her claim on the same bases. (Form 51, dated January 5, 2017, R. p. 224).

Respondents' experts than to Claimant's. (Single Commissioner Decision and Order, filed March 12, 2018, R. pp. 76-143).

Claimant filed a timely Form 30, Request for Commission Review, listing 12 separate issues. (Form 30, as amended on March 28, 2018, R. pp. 247-252). An Appellate Panel of the Full Commission issued its decision on July 23, 2018. The Commission affirmed the Single Commissioner's Decision. (Appellate Panel Decision and Order of the South Carolina Workers' Compensation Commission, filed July 23, 2018, R. pp. 144-212).

Claimant timely appealed to this Court, which reversed solely on the issue of whether Dr. Edelman's report should have been admitted by the Commission. This Court remanded for the Full Commission to reconsider in light of Dr. Edelman's report. (Court of Appeals Unpublished Opinion No. 2021-UP-190, filed June 2, 2021, R. pp. 74-75).

On remand, the Commission fully considered Dr. Edelman's report but concluded it did not alter its prior opinion that Claimant had failed to prove she is entitled to any workers' compensation benefits. The Commission issued its Decision and Order on October 18, 2022 ("Commission Decision") (R. pp. 1-73). Among other things, the Commission found that Claimant was not credible. Conversely, the Single Commissioner found Mr. McDowell's, Mr. Campbell's and Mr. Parsons' testimony to be credible. Finding this to be a medically complex case, the Commission gave greater weight to Respondents' experts than to Claimant's experts. The Commission concluded that "Claimant's heart condition is not compensable," that any respiratory injuries Claimant suffered as a result of inhaling HF "were very minor," and that "[t]he greater

weight and preponderance of evidence simply does not establish that Claimant was exposed to HF in a quantity or for a duration that would result in any permanent injury."

Claimant timely appealed to this Court.[2]

BACKGROUND FACTS

I. Lay testimony and evidence.

At the time of the Single Commissioner hearing, Claimant was 57 years of age. (R. p. 284, lines 16-19). Claimant testified that she worked for Employer, a chemical manufacturing company located in North Augusta, South Carolina, as a Quality Control Laboratory Technician. In that position, she collected and tested chemical samples, and occasionally disposed of waste. (R. p. 284, lines 22-25; p. 286, line 15 – p. 287, line 12). When disposing of waste, she wore protective gear, which included her lab coat, a sleeved "acid apron" that came down to her shoes, neoprene "gauntlet gloves," safety glasses, a hard hat with a face shield, and safety shoes. (R. p. 290, lines 9-24).

Previously, Claimant had worked as an E.N.T., as a hospital admissions representative, a hospital discharge planner/utilization review coordinator, an office receptionist and medical records clerk and, for 28 years, at the Savannah River Site ("SRS"). At SRS, she initially worked in a clerical position, then as a lab technician, and later as an OSHA coordinator. She recounted that she has "seen a lot of terrible things happen to people working in an emergency room environment in my young formative

[2] Claimant includes argumentative and hyperbolic language in her Statement of the Case, in violation of Rule 208(b)(1)(C), SCACR. (*See* App. Br. p. 2, opining that HF "is one of the most lethal chemicals used in all of industry"). While Respondents have not and do not contest that HF is dangerous under certain circumstances, as is discussed in more detail below, there is no evidence showing that Claimant was exposed to anything remotely resembling a "lethal" level of HF.

years, and so I'm a very safety conscious person." (R. p. 288, line 24 – p. 289, line 23) (R. pp. 717-719).

Claimant testified that, prior to August 11, 2015 she felt her general health was "very good," and that, with respect to activities, she "did whatever I wanted to do that a girl with some overweight can do …. The only thing that I had had some problems was a hip, and I went to physical therapy. I had right osteoarthritis … and that resolved. It caused some muscle spasm, and so I was on some medication for that, and that has been it." (R. p. 315, lines 22-25; p. 318, lines 12-25).

The lab where Claimant worked is in a long room on the second floor of Employer's facility. The lab has a door at each end that goes out to the process area, which is where the chemicals are made. (R. p. 290, line 24 – p. 291, line 7; p. 292, lines 20-23). On August 11, 2015, in the early morning and near the end of her shift, Claimant was disposing of two containers of hazardous waste: a container of organic waste and a container of flammable waste. (R. p. 290, lines 10-12). She first went down the grated stairs and out a door to one end of what is referred to as the North Patio to dump the organic waste. (R. p. 292, lines 2-9).[3] At some point while dumping the organic waste, she saw Mr. Parsons in the process area. She went back upstairs to retrieve the container of flammable waste which she took downstairs. Claimant testified that, when she started to open the door at the other end of the "patio" to dump the flammable waste, she "got some resistance, and so I pushed harder, and as I opened the door … this air come in, and the air, you know, just come in and so I breathed, and when I breathed … it was awful awful pungent sharp chemical …. I coughed like a choking, and I got several breaths …

[3] Mr. McDowell explained that the "patio" area is covered by a roof but open to the air "similar to a carport." (R. p. 388, lines 9-19).

and so I'm trying to get the door pulled closed, and I get the door closed as I'm feeling as if I'm going to collapse." (R. p. 292, lines 11-14; p. 293, line 24 – p. 294, line 1; p. 295, lines 10-24; p. 298, lines 1-7/). She confirmed that she "took at least three, no more than four [breaths] because I was coughing and choking … and I felt as if I was going to collapse." (R. p. 297, lines 20-22; *see also* R. p. 475, lines 10-11 (Claimant testifying she "took three breaths of it, strong")). She did not open the door all the way or go through it. (R. p. 299, lines 13-17; *see also* R. p. 472, line 13 – p. 473, line 2; p. 474, lines 5-6 (Claimant stating the door was open only "seconds")).

Claimant felt that she had to get out of that area, so she "got the container, and I held my breath the best I could in going down the corridor to get to the other door that I had went out with the organic waste to get to where I saw that – Lonnie [Parsons] that was out there." (R. p. 298, line 24 – p. 299, line 10). She testified she needed to find someone because her heart was pounding and she was experiencing shortness of breath. She heard someone coming down the stairs, and it was Mr. Parsons. Claimant testified that she told Mr. Parsons that a draft of chemicals had come in through the door, which Mr. Parsons told her was HF. She testified she was in "shock," so Mr. Parsons offered to dump the flammable waste for her. Mr. Parsons was wearing personal protective equipment similar to that worn by Claimant. Mr. Parsons took the container back down the hall, dumped the flammable waste and brought the container back to Claimant. She testified that, at that point, she noticed a carboy was fuming, "billowing white smoke like up over two feet, and it was trailing off toward like where the door is …" (R. p. 300, line 9 – p. 303, line 3).

On cross-examination, although Claimant confirmed that when she first saw Mr. Parsons he was "down in that – in that general area," near where the "venting carboy" was, she insisted she did not see the two foot plume of white smoke coming from the carboy at that time. She confirmed that, when she first saw Mr. Parsons, he did not appear to be in any distress. (R. p. 341, line 3 – p. 342, line 25). She also acknowledged that, when she saw Mr. Parsons after she had breathed the HF fumes, he was not showing any signs of physical distress, even though he was coming from the direction of the "venting carboy." Claimant agreed that, in order to dump the flammable waste for her, Mr. Parsons had to walk by the "venting carboy" twice but when he handed the container back to her, he was not showing any signs of distress. (R. p. 345, line 13 – p. 348, line 4).

Claimant testified that she went back up the stairs slowly, coughing, heart pounding "and I'm having shortness of breath, and I just feel overwhelmed …" She saw Mr. Campbell coming up the other stairs. "I just went straight to the lab. And I notified my co-workers that I had inhaled HF …. I put the container up. I tell them that I have inhaled HF." She testified that, when she was told they were working on the 3-K system, she "was angry, and I said that 'somebody is going to get somebody killed down there … the way things are going. What's it going to take for somebody to get killed?'" (R. p. 305, line 10 – p. 306, line 24).

Claimant testified that she went to the control room and told the assistant Production Supervisor, Chip Babb, that she had inhaled HF "and that I needed an incident report." (R. p. 307, lines 1-11). Claimant testified that she asked for oxygen or a nebulizer treatment with calcium gluconate, but that Mr. Babb told her, "[n]o, you just

need to be in fresh air." She said she told Mr. Babb she was experiencing dryness and burning in her mouth and nose, starting to have a headache, "coughing and then my throat started feeling as if it was closing up." She asked for water, which she drank. (R. p. 309, line 17 – p. 310, line 14). She repeated to Mr. Babb, "'[w]hat's it going to take, is somebody going to have to get killed in this place for people to do the right thing," and expressed concern for Mr. Parsons. (R. p. 310, lines 18-24). On cross-examination, Claimant explained that she did not ask to be seen by a medical provider at that time because she was in "shock." (R. p. 349, lines 10-23).

Claimant testified that, after sitting for about 30 minutes, she was feeling better and asked to go back to the lab. Claimant alleges that a co-worker, Janice Tierney, told her that her face was red, which Claimant testified she confirmed in a bathroom mirror. (R. p. 311, lines 1-12; *see also* R. p. 470, line 22 – p. 471, line 7). Ms. Tierney was not called as a witness to confirm this statement.

Once back in the lab, Claimant penned an email to her assistant supervisor, Emily Parrish, telling her what had happened. (R. p. 312, lines 9-18). The email states that Claimant had been exposed to HF vapor and that she had asked Mr. Babb to write an incident report. She closed with, "I would like to discuss this incident with management and safety when possible. Thank you and have a great day!" (R. p. 695). She acknowledged that she did not ask Ms. Parrish for medical attention at that time. (R. p. 350, lines 18-23).

Claimant testified that she went home at the end of her shift but had difficulty sleeping. She testified that she experienced six bouts of diarrhea, abdominal pain and weakness, burning and dryness in her throat and sinuses, and a headache. Ms. Parrish

texted Claimant, at which point Claimant asked for medical treatment, which Ms. Parrish arranged with Urgent M.D. in North Augusta. Claimant testified that Urgent M.D. performed a physical, drew blood and sent her back to work without any restrictions. (R. p. 313, line 3 – p. 314, line 21).

Claimant went on to work that shift doing her normal job. (R. p. 476, lines 3-20). She returned to Urgent M.D. two days later on August 13, 2015. Claimant testified that she had lost her senses of smell and taste. Her voice was raspy, "[i]t comes and goes," and she had numbness and tingling in her hands and lower arms. She testified that she saw a P.A. named Julie Buird, correcting the spelling of Ms. Buird's name for her counsel. (R. p. 319, line 1 – p. 321, line 1). The providers at Urgent M.D. sent her to the University Hospital ER for a chest x-ray and blood tests. (R. p. 322, lines 17-20).

Claimant testified that she was tested at University Hospital and given an albuterol nebulizer treatment "by P.A. Velasquez." (R. p. 323, lines 12-23). She also was given something for her headaches, "the generic for Imitrex," but it made her condition worse so she discontinued it. She was released with light-duty restrictions of no fumes or vapors and was written out of work until August 19. (R. p. 324, lines 3-12).

Claimant testified that, between August 13 and August 19, her symptoms increased, with new symptoms of "femur bone pain, muscle spasms in these muscles atop my femurs … and the headache is excruciating." She testified that she had not had a bowel movement since the earlier diarrhea. (R. p. 324, line 18 – p. 325, line 22).

Claimant returned to her normal work duties on August 19, other than not being near any fumes or vapors. She met with "Ken McDowell and Harold Stein about the incident, and … spoke with them at length about how upset I was that – what had

happened to me …" (R. p. 326, lines 1-19). She testified that the nebulizer treatment helped with the shortness of breath but she still was coughing and in pain. After lunch, the pain "was overwhelming," so she asked if she could go to the emergency room. Claimant testified that Mr. McDowell told her she could go to Urgent M.D. instead, where she was seen by Timber Wages. She testified she was having pain in her feet, in her right toe, numbness on the side of her leg "and then it would go from like these tremendous pain to like a numbness on the bottom of my feet. And my ankles were hurting." She complained of raspiness and dry throat and sinuses. Claimant testified that, after testing, including two EKGs, the medical provider told Claimant that her lab work was within limits and her chest x-ray was good but that the EKG "had some conduction abnormality." (R. p. 327, line 3 – p. 328, line 22).

Claimant testified that, by the time she left Urgent M.D. that day, her shift was over so she went home. Although she was scheduled to work on August 20, she was weak and called out from work. She returned to work on August 21, still "very weak, symptoms very much strong …" She testified that she was unable to perform her normal duties and contacted her supervisor. Employer had set up an area away from any fumes where Claimant could perform light duty. She did her nebulizer treatment and then walked to the room where they had set up a phone and a computer for her to work with. After lunch, Claimant called her supervisor and told her she was in respiratory distress and then got down on the floor. Employer called an ambulance and she was taken to University Hospital. The EMTs administered a calcium gluconate treatment on the way there. (R. p. 329, line 7 – p. 336, line 11). Claimant was admitted and later a pacemaker was inserted because she was in total heart block. (R. p. 337, lines 16-19).

Claimant agreed that she was evaluated by a pulmonologist at the hospital, Dr. Alfred L. Brannen, and was instructed to follow up with him upon discharge. However, she testified she had been "told" that "he didn't take workman's comp." (R. p. 358, lines 4-21) (*see also* R. p. 599 (Dr. Brannen's notes indicate Claimant was diagnosed with "[m]ild to moderate restrictive defect. No airflow obstruction. Mild reduction in DLCO")). She acknowledged that she had expressed health concerns about traveling from North Augusta to Charleston to see Dr. John A. Mitchell when that appointment was arranged by Respondents, explaining that she has difficulty traveling long distances. Nonetheless, the pulmonologist she had been seeing and that she asked the Commission to assign as a treating physician, Dr. William F. Alleyne, is in Rock Hill, over two hours away. She explained that Dr. Alleyne took workers' compensation. When pressed as to who recommended Dr. Alleyne to her, she finally conceded it was her workers' compensation attorney. (R. p. 359, line 1 – p. 360, line 14). At the hearing, Claimant testified that her condition continues to deteriorate and that she still experiences shortness of breath and still coughs, "I still have – I have RADS, and so I still do cough." (R. p. 338, lines 9-24).

On cross-examination, Claimant had to be prompted to speak up normally, to continue to speak just as she had on direct examination. (R. p. 339, line 21 – p. 340, line 3). Claimant agreed that, at her deposition, she reported perceived safety issues to management "all the time." Nonetheless, she had not experienced any permanent health

issues from any of the prior incidents that she reported. (R. p. 340, lines 5-23; *see also* R. p. 468, lines 12-14; p. 469, lines 18-24).[4]

Mr. McDowell testified that he is the Director of Regulatory Affairs and Director of Safety for Employer. (R. p. 371, lines 14-25). Mr. McDowell testified that, at the time of Claimant's exposure, the HF "leak had been secured, but there was insulation on there that would have been saturated with the material that was H.F., sevoflurane and some H.F.I.P. It was more than H.F. that was in there." (R. p. 372, lines 13-22). Mr. McDowell later explained that the "billowing" Claimant alleged may have been because "there were other chemicals that also vaporize." (R. p. 389, lines 8-15). Furthermore, the presence or absence of white smoke from a carboy does not indicate the concentration of HF in whatever chemical is being vented. (R. p. 394, lines 14-19).

Mr. McDowell explained that the saturated insulation would have been about 12 feet from the door Claimant attempted to open, and the nearest venting carboy would have been 25 feet away. (R. p. 373, line 20 – p. 374, line 1). Mr. McDowell explained that the Incident Report, (R. p. 699), indicated that the release consisted of trace HF fumes, which meant the amount "would not really be measurable … you're going through in this case a carboy to attempt to neutralize that. So, what comes through that afterwards is generally very – generally very small amounts." (R. p. 374, line 22 – p. 376, line 8). An email from the plant manager confirmed that, while "[t]he material inside the equipment contained 40% HF[, t]he concentration of HF in the air several feet away will be much, much lower." (R. p. 377, lines 2-16) (R. p. 703). Mr. McDowell

[4] Todd Lawrence also testified on Claimant's behalf. Mr. Lawrence's testimony was assigned little weight as he was a disgruntled former employee with only a high school degree and no expertise in industrial hygiene or any related field of study. (R. p. 365 line 18 – p. 366, line 9; p. 367, lines 3-10; p. 369, line 16 – p. 370, line 5).

also explained that a worker would not be able to go near HF at 40% without respiratory protection: "the odor threshold is around point one part per million, and this is just – you're going to want to get away from it, and you're just – your body is just not going to allow that to happen." (R. p. 378, lines 8-16). A statement Mr. McDowell prepared on August 12, 2015 indicated that, when he met Claimant at Urgent M.D., Timber Wages asked him what percent HF Claimant potentially had been exposed to. Mr. McDowell, "called the plant and Chip and Lonnie stated that it could be up to 40%." (R. p. 696).

Mr. McDowell also testified about his experience with other employee exposures to HF, "both inhalation and skin … over the years." He testified that Claimant's lack of symptoms right after the exposure was very unusual. (R. p. 379, line 1 – p. 382, line 10). Mr. McDowell explained that, after any exposure, if there is distress, they would treat with a nebulizer. However, the first step would be to provide fresh air and see how the employee responded. Claimant's symptoms on August 11, 2015 did not trigger a more intensive response than the one provided. (R. p. 386, lines 7-19; p. 390, lines 20-24; p. 392, lines 7-14; p. 393, lines 14-21; p. 394, line 20 – p. 395, line 13).

Mr. McDowell testified that he asked Mr. Babb to make a written statement that evening. (R. p. 376, lines 9-16). Mr. Babb's written statement indicated that Claimant first complained that "she felt something in the back of her throat that was inducing a cough. She commented at the time that some things needed to change around here before someone really gets hurt and needed to know what she needed to do …. I went to check on Monica @ 06:34 hrs and she said she was doing better and that the coughing had subsided. This can be verified by Janice Tierney and Ruby Patterson." (R. p. 701).

Mr. McDowell testified that Claimant was a "competent employee," who presented management challenges in that she had difficulty getting along with coworkers. He testified that Claimant expressed concerns about safety issues frequently and that Employer investigated her concerns every time. Some of Claimant's concerns were "more suggestions and truly concerns and/or misunderstandings. Some of the complaints were certainly legitimate," such as odors in the lab, and led to actions by Employer. (R. p. 383, line 17 – p. 384, line 24). Mr. McDowell confirmed that Claimant did not pass her initial pulmonary function test ("PFT") test when she began working for Employer. (R. p. 386, line 20 – p. 387, line 3).

Mr. Campbell testified that he works as a Chemical Operator for Employer. His job requires him to dispose of organic or flammable slops periodically. (R. p. 396, line 16 – p. 397, line 1). He testified about his encounter with Claimant on the morning of August 11, 2015. He had just come inside from outside, where he had dumped some slops in the flammable storage drum. He testified that he had been outside for two or three minutes and encountered HF fumes. He testified that "[i]t took my breath away. It made my eyes start burning, the coughing. Of course, it makes you cough. So, that was about it. It was hard – hard to catch my breath." His symptoms lasted about five minutes and, after getting some air, "it cleared up." (R. p. 397, line 5 – p. 398, line 16). He testified that he had not developed any long-term health problems as a result of his exposure. (R. p. 399, line 21 – p. 400, line 4).

Mr. Parsons testified that he also works for Employer as a Chemical Operator. (R. p. 402, lines 19-22). Mr. Parsons testified that, on August 11, 2015, he was working on the patio on a piece of equipment and was near the venting carboy, "[t]wo or three feet

away, sometimes even standing over top of it, moving to and from." At times, he was working close to the HF-soaked insulation. (R. p. 403, line 6 – p. 404, line 21; p. 411, lines 2-11). He testified that he was in that area "probably right at eight hours during the night," but did not develop any adverse physical conditions as a result. (R. p. 406, line 18 – p. 407, line 8; p. 413, lines 18-24).

Mr. Parsons testified that he saw Claimant coming out a door and he stopped her and told her she should stay back, but she was not demonstrating any signs of distress, or coughing, shortness of breath or redness in her face. (R. p. 405, line 5 – p. 406, line 4). He offered to dump the flammable slops for her, which he did. In that process, he had to pass the carboy two times, once there and once back. (R. p. 406, lines 7-17).

II. Medical evidence and opinions.

Medical notes from Claimant's August 11, 2015 visit to Urgent M.D. at 7:20 p.m., indicate that Claimant reported symptoms of sore throat, dry nose, and headache. Her then-current medications included Flexeril and Triamterene-HCTZ. Not present were rash, cough, shortness of breath, chest pain or pressure, fluttering in chest, constipation, diarrhea, nausea or vomiting. Claimant's oxygen was "99% (Room air)." Her breath sounds were normal and her chest and lung exam revealed "normal excursion with symmetric chest walls and quiet, even and easy respiratory effort with no use of accessory muscles." She had "normal heart sounds, regular rate and rhythm with no murmurs." Her mental status was normal with appropriate mood and affect, and she was "able to articulate well with normal speech/language, rate, volume and coherence." She was diagnosed with headache, "[l]ikely caused by brief exposure to HF," which was reported by Mr. McDowell as "40% concentration." The healthcare provider

"[e]xplained to patient that symptoms usually occur immediately with such a high concentration." Claimant was "happy with care and management plan." Claimant was released "to return to regular duty." (R. pp. 549-552).

Medical notes from Urgent M.D. for August 13, 2015 indicate that Claimant stated "she is not feeling well, having shortness of breath and her voice 'comes and goes.'" Claimant reported that "[s]he took 3 breaths and believes she was exposed for approximately 3 minutes." She reported that her symptoms had worsened over the previous 24 hours, including shortness of breath with exertion and lying flat, sore throat with hoarseness, coughing, headache, nausea, weakness and numbness in her fingers. However, her oxygen level was 96% on room air. Her breathing and heart sounds were normal; however, her "mood and affect are described as – anxious (tearful)." Claimant was referred to the ER for further evaluation and treatment, but she "declined ambulance transport." (R. pp. 553-555).

Medical records from University Hospital indicate that Claimant was seen at the ER on August 13, 2015 with complaints of "cough, sore throat, SOB, lower abdominal pain, diarrhea, HA, feeling 'dry' mouth and nasal passage, numbness and tingling to hands." She was negative for chest tightness, wheezing, chest pain or rash. Her oxygen was 100%. Her mood and affect were normal, as were her speech, judgment, cognition and memory. Her potassium, calcium and alkaline phosphatase levels were within normal limits. An x-ray of Claimant's chest indicated "[c]hronic appearing pulmonary markings bilaterally without acute airspace consolidation." She was given an albuterol breathing treatment, after which Claimant "states she was feeling 'much better.'" Poison control was called and provided with Claimant's lab results "specifically ionized

calcium." After treatment, Claimant was noted to be stable, and was discharged. Her care and treatment was performed by a Physician's Assistant "in conjunction with Daniel McCall, MD." (R. pp. 564-584).

Notes from Urgent M.D. dated August 15, 2015 indicate that Claimant was out of work until August 19 and was "doing a follow up for workers comp inhalation injury." She reported being told that her lab tests from University Hospital were normal. She also reported that "[h]er sore throat, hoarseness, cough and shortness of breath have significantly improved." Not present were rash, shortness of breath, wheezing, chest pain or pressure, fluttering in chest, difficulty speaking or focal neurological symptoms. Symptoms noted included cough, mild hoarseness and "dry nose," but her lungs and heart were normal. (R. pp. 556-557).

Notes from Claimant's August 19, 2015 visit to Urgent M.D. indicate Claimant complained of "a constant cough which cause[s] her to feel nausea, headache, right jaw pain, the nausea come[s] in waves at times, pain in both legs and pelvis area. Patient feel[s] very weak, not able to taste food, can't smell and tingling feeling in her hand." Electrolyte levels had been evaluated on August 11, August 13 and August 15, and found to be normal each time. Claimant would not "answer clearly if [albuterol treatments] improve her condition," but only would state that they are "not as effective as oxygen." Her oxygen level was 99% on room air. Claimant specifically mentioned to the healthcare providers that "she might have pulmonary edema and/or cardiac arrhythmia secondary to HF exposure[.] Reassured patient that chest x-ray was normal … [and] [e]lectrolytes have been normal on three separate occasions …" Claimant demonstrated "[p]oor effort on strength testing of bilateral hip flexors and quadriceps[.] Patient

complains of exquisite tenderness to palpation with light touch of bilateral lower legs – disproportionate to exam findings …" Her heart and chest exams were normal; however, her EKG suggested "conduction abnormality that is chronic (i.e., non-industrial) in nature." She was referred to a toxicologist, "ENT and pulmonology for patient reassurance." (R. pp. 558-563).

At her deposition, Claimant testified that she still was in respiratory distress when she arrived at the hospital on August 21, 2015, and could not hold a full conversation. (R. p. 351, line 22 – p. 352, line 7; *see also* R. p. 478, line 21 – p. 479, line 14). However, medical records by Dr. Golam Chand note that, on Claimant's admission to University Hospital, "there was no evidence of respiratory distress at the time [o]f admission. Patient was comfortable and history was given by the patient without difficulty … Oxygen saturation 100% on room air. She did not require any oxygen." Spirometry tests showed Claimant had a mild to moderate restrictive defect. "There was no evidence of wheezing at that time." (R. p. 590). When asked about the discrepancy between her deposition testimony and Dr. Chand's notes, Claimant said, "I don't remember Dr. Chand." (R. p. 352, lines 12-21). She later explained that Dr. Chand "was a hospitalist. He was somebody that discharged me."[5] When confronted with notes taken 10 minutes after her admission that stated the same thing – that her oxygen saturation was

[5] Claimant also insisted that she had been admitted by Dr. Elgin Hobbs, "and he said he was admitting me for inhalation hypophosphatemia and a work up on the respiratory distress and shortness of breath …" (R. p. 353, line 25 – p. 354, line 5). Dr. Hobbs' notes indicate that Claimant's history was taken "from patient and Employer." He noted her symptom onset was "severe, now is moderate," that she was "well appearing, in no apparent distress," her chest was clear, no wheezes, rails or rhonchi, symmetric air entry. Good breath sounds." Her speech and behavior were normal. (R. pp. 587-588).

100% and she was able to speak in full sentences without any difficulty, (R. p. 592), she continued to dissemble. (R. p. 353, line 23 – p. 356, line 5).

Claimant, who was seen by numerous healthcare providers during her hospitalization, was monitored and found to have a third degree "atrioventricular block with associated junctional bradycardia." The notes reveal past medical history as including hypertension, osteoarthritis, struvite kidney stones, scoliosis, septicemia and rosacea, among other things. The hospital records also note that Claimant's past medical history was significant "for hypertension (originally treated with atenolol but switched to triamterene-HCTZ last year due to bradycardia)." (R. pp. 585-600). Dr. Kellie Lane, who also attended Claimant during her hospitalization, noted that Claimant reported a "previous episode of syncope while pregnant with her son … No known exposure that would cause this degree of heart block without an electrolyte abnormality. That is not present." (R. pp. 606-607). Dr. Patrick Aquilina performed the implantation of the pace maker on August 24, 2015. (R. pp. 601-606, 811-812). Notes from Dr. Brannen, with whom Claimant was told to follow up, indicate Claimant was diagnosed with "[m]ild to moderate restrictive defect. No airflow obstruction. Mild reduction in DLCO." (R. p. 599). As noted above, Claimant did not follow up with Dr. Brannen because someone told her he did not take "workman's comp." (R. p. 358, lines 4-21). Claimant was discharged on August 25, 2015. (R. p. 590). Claimant testified that she continued to treat with Dr. Aquilina, who monitored her pacemaker. (R. p. 357, lines 2-12).

Dr. Lane, a general cardiologist, (R. p. 451, lines 1-2), opined for the first time at her deposition that Claimant's heart block was caused by the "severe coughing that she had" in response to the HF exposure. (R. p. 455, line 13 – p. 456, line 25). She based her

opinion on Claimant's history of a vasovagal episode when she was pregnant with her son, which would have been many years prior. (R. p. 460, line 11 – p. 461, line 17).[6] Dr. Lane maintained this opinion despite acknowledging that she had not seen any medical documentation confirming a prior vasovagal episode. (R. p. 462, lines 1-17). On cross-examination, Dr. Lane admitted that she had discussed this case for "about 30, 40 minutes" with Claimant's counsel prior to her deposition. (R. p. 459, lines 16-22). She also listed a number of causes for heart block, including "having underlying renal disease, chronic kidney disease, having risk factors otherwise for blockage, or coronary artery disease, such as hypertension, smoking, diabetes." Dr. Lane could not recall whether Claimant had a history of hypertension, (R. p. 463, line 15 – p. 464, line 1), nor did she recall that Claimant's medication for her hypertension had been changed from Atenolol before her HF exposure. (R. p. 465, lines 1-23).

At his deposition, Dr. Aquilina, Claimant's treating cardiac electrophysiologist, (R. p. 497, line 21 – p. 498, line 8), flatly disagreed with Dr. Lane's causal opinion, stating that a vasovagal reflex is completely unrelated to the development of Claimant's heart block. If a vasovagal response had caused Claimant's heart block, it would have been a "transient" or "very intermittent heart block," for which Dr. Aquilina would not have inserted a pacemaker. (R. p. 504, line 17 – p. 506, line 1; p. 507, lines 3-14). Dr. Aquilina testified that the causes of heart block are unknown and, as a result, he could not testify as to what caused Claimant's heart block. (R. p. 499, line 22 – p. 502, line 2 ("we do see heart block in all age groups throughout patients' lives and we don't really know

[6] Claimant testified at the hearing that she has two children from her first marriage. (R. p. 285, lines 5-16). Her daughter was born in 1987 and her son was born in 1989. (R. p. 467, lines 10-12).

what causes them most of the time"); p. 503, lines 3-11). He testified that low phosphorus, or hypophosphatemia, rarely causes heart block, "not that I've ever seen actually." (R. p. 508, line 21 – p. 509, line 8).

Dr. Barry J. Feldman performed a review of Claimant's medical records and explained that "it is physiologically improbable that there is a causal relationship between Hydrofluoride inhalation exposure and high-grade heart block." He also opined that it was "of low medical certainty that a chronic vaso-inhibitory reflex would result in a chronic complete heart block," disagreeing with Dr. Lane's opinion that a vasovagal cause resulted in Claimant's complete heart block. (R. pp. 775-776).

Respondents submitted a January 27, 2017 expert opinion by Dr. Michael A. Mackinnon, an expert in HF exposure and treatment. Dr. Mackinnon based his opinion on his "more than 35 years as a physician at a plant that produced both 100 percent and 70 percent hydrofluoric acid," and "having developed medical protocol for treating HF injuries," as well as other professional experience dealing with HF exposure. (*See* R. p. 414, line 16 – p. 417, line 22) (R. pp. 784-810). Dr. Mackinnon explained that "the greatest controversy in this case is just how much exposure [Claimant] had to HF, both in length of time and in concentration of the alleged vapors." Dr. Mackinnon opined to a reasonable degree of medical certainty that, had Claimant "received any serious HF exposure, she would have had multiple other signs of injuries, such as painful skin burns to the head and neck region and severe respiratory distress, not just coughing spells…" Dr. Mackinnon explained that Claimant's prior PFTs performed at SRS showed pre-

existing restrictive lung disease that was exacerbated by her morbid obesity.[7] Dr. Mackinnon also explained that, while "[s]ignificant HF exposure can cause problems with the heart very early on [and c]hanges such as prolongation of the QT interval may occur due to rapid and severe reductions in the calcium and magnesium serum levels," there was no evidence this occurred. Furthermore, Claimant's heart problems did not arise until 10 days after the exposure. Based on his many years of experience in dealing with HF exposure and treatment, Dr. Mackinnon concluded that there was not "any significant exposure to HF, and … [found] the opinions connecting her multiple symptoms to HF to be incorrect." (R. pp. 742-745).

At his deposition, Dr. Mackinnon agreed that the effects of HF exposure can be delayed "up to 24, sometimes 48 hours. With mild, very weak acid, skin burns may not show up right away …. But cardiac problems, in my experience, show up because of changes in the chemistry of the blood: calcium and magnesium and potassium. And that happens with an acute exposure, and it's usually within the first 24 hours." (R. p. 428, lines 19-25; p. 427, lines 1-6; p. 435, line 17 – p. 436, line 19). When asked whether evidence of a prolonged QT interval was consistent with an HF exposure, Dr. Mackinnon agreed that, "[i]t could be," but "[t]here are other causes of QT interval changes … had there been … a significant exposure, yes, you're going to get QT interval changes." (R. p. 433, lines 12-22). Dr. Mackinnon agreed that he would defer to a cardiologist regarding the cause of Claimant's heart block. (R. p. 439, line 24 – p. 440, line 7). Dr. Mackinnon confirmed that none of the information Claimant's counsel presented to him

[7] Claimant is approximately 5'2" tall and, on August 11, 2015, weighed 206 pounds with a resulting Body Mass Index ("BMI") of 37.22. (R. p. 550). Her weight subsequently increased to over 220 pounds with a corresponding BMI of 40.6. (R. p. 740).

at his deposition changed his January 27, 2017 opinion. (R. p. 437, line 25 – p. 438, line 4).

Claimant was seen by Dr. Gordon Early for an Independent Medical Evaluation ("IME") on November 23, 2015. Dr. Early's notes reflect that Claimant told him a "co-worker eventually assisted her in escaping the fumes. She estimate that she was exposed to the irritant for 1-3 minutes." Claimant explained to Dr. Early that she did not seek medical care in the "first few hours after exposure … primarily because she did not know how to access care in the Worker's comp system." He confirmed that the "amount of HF needed to cause hypocalcemia or hypomagnesemia is substantial," whereas Claimant's exposure was very brief. And, while Dr. Early referenced a World Health Organization document that states that the effects of HF on the heart "include the prolongation of the QT interval," those "effects on the heart are due to hypocalcemia." He explained that "[e]lectrolyte abnormalities are usually noted in the first 24 hrs., after exposure, but sometimes can occur up to 48 hrs after exposure. It would be highly unusual to have normal electrolytes at 48 hours after exposure and then develop a phosphate of 1.1 on day 10 and have this be due to HF exposure." After reviewing her medical files and examining Claimant, Dr. Early concluded that Claimant's "8-21-15 arrhythmia and subsequent pacemaker are not attributable to or aggravated by her HF exposure." He also explained that RADS is diagnosed by pulmonary tests demonstrating obstructive changes, not restrictive changes. He noted that he did not have her prior PFTs and stated he wanted to review those. (R. pp. 746-754). Claimant's PFTs from 2008-2011 were provided to Dr. Early, after which he noted that Claimant "had restrictive lung disease with FVC and FEV1 in the 65-80% of expected in these tests." (R. p. 757).

On May 2, 2016, Claimant was seen for an IME by Dr. John A. Mitchell, who is board certified in internal medicine, pulmonary care, critical care, and sleep medicine. (R. p. 510, line 3; p. 511, lines 9-12). Among other things, Dr. Mitchell noted that Claimant reported "sensitivity to various odors and chemicals such as cleaners … the patient does have 2 cats at home … she is also sensitive to pollens outside and she will wear a mask when she goes outside." Dr. Mitchell concluded that Claimant "does not have an obstructive limitation in her pulmonary function test, she has restrictive limitation," some of which "could be related to her weight." After reviewing Claimant's historical PFTs, Dr. Mitchell observed that Claimant "has a restrictive pulmonary impairment dating back to at least 1993." Dr. Mitchell opined, to a reasonable degree of medical certainty, that there is no causal relationship between Claimant's HF exposure and her heart block. He also opined that Claimant's HF exposure did not result in permanent injury to her heart, lungs, bones, or neurological system. (R. pp. 768-769).

At his deposition, Dr. Mitchell confirmed that he believed Claimant's heart block was due to her pre-existing condition, (R. p. 511, line 17 – p. 512, line 9; p. 513, lines 14-20), but agreed that he would defer to a cardiologist with respect to a causal relationship between her HF exposure and her heart block. (R. p. 514, lines 2-6; p. 515, lines 15-24). Dr. Mitchell agreed that the patient's history is an important part of diagnosing RADS, but confirmed that Claimant's medical history did not indicate she had RADS. (R. p. 518, line 10 – p. 519, line 15; p. 520, line 5 – p. 521, line 15). Dr. Mitchell stated that nothing he had been presented with during his deposition changed his prior opinions in this case. (R. p. 522, line 1 – p. 525, line 25; p. 527, line 21 – p. 528, line 7).

Dr. Selwyn Spangenthal reviewed Claimant's medical records and also opined that Claimant has a long-standing restrictive lung condition, which is likely due to her morbid obesity. He opined that Claimant's history, physical examination and PFTs do not support a diagnosis of RADS, and that Claimant's "exposure to the hydrofluoric acid has not had a long-term negative impact on her pulmonary system." (R. pp. 770-774).

Claimant submitted medical records from Dr. Alleyne's treatment. Dr. Alleyne, who was hand-picked by Claimant's counsel, diagnosed Claimant with "RADS as a result of hydrofluoric acid exposure and inhalation." He also noted her complete heart block and need for a pacemaker, which he attributed to the HF exposure. Dr. Alleyne noted several times throughout Claimant's treatment that she has pets/animals in the home. (R. pp. 660-690).

At his deposition, Dr. Alleyne stated that a patient's "history is really the key to the diagnosis" of RADS. (R. p. 482, lines 14-17; *see also* p. 491, line 10 – p. 493, line 1 (dismissing objective evidence in the form of FEV1/FVC "[b]ecause RADS is really based on your history …")). He testified that RADS can present as either an obstructive or a restrictive disease. (R. p. 483, lines 4-8). Dr. Alleyne dismissed the importance of Claimant's PFTs from her years working for SRS because "her history is classic for RADS …" (R. p. 485, lines 6-21). Dr. Alleyne assigned Claimant a 30% impairment to each lung. (R. p. 489, lines 13-16). Although he is a pulmonologist, and not a cardiologist, (R. p. 494, lines 1-3), Dr. Alleyne opined multiple times that Claimant's heart block also was caused by her HF exposure. (R. p. 485, line 22 – p. 486, line 16; p. 487, line 20 – p. 488, line 4). Furthermore, despite the fact that his area of expertise is pulmonology, not cardiology, Dr. Alleyne insisted several times that he would *not* defer

to a cardiologist with regard to the causation of Claimant's heart block. (R. p. 494, line 18 – p. 496, line 16). On cross-examination, Dr. Alleyne admitted that he had talked with Claimant's counsel about this case three or four times prior to his deposition. (R. p. 490, lines 8-12).

Claimant submitted an expert report by Dr. John F. Setaro, who reviewed records but did not examine Claimant. Dr. Setaro opined that Claimant's HF exposure "was a substantial causative factor" in her heart block and need for a pacemaker. (R. pp. 712-716).

Claimant also submitted an evaluation report from Dr. Robert E. Hooper, a licensed counseling psychologist. Although he diagnosed Claimant with PTSD as a result of her HF exposure "and subsequent various injuries/effects," Dr. Hooper noted that her "thought processes were fully intact." Dr. Hooper recorded that Claimant "has very difficult feelings regarding the management of [Employer] and believes she was poorly protected before the incident … and poorly cared for since, primarily in the interest of the company 'always pushing for money.'" Her results on the "standardized psychological personality test indicate a number of extreme symptoms." Dr. Hooper stated that her profile was "probably valid but may reflect some exaggeration of symptoms due to her heightened level of psychological distress." 1 Claimant appeared "to be extremely angry and suspicious that others are taking advantage of her and is overly sensitive to criticism …. She appears to be somewhat aloof, detached and rigidly moralistic … blaming others and harboring grudges." (R. pp. 720-725).

Shortly before the Single Commissioner hearing, Claimant submitted a report by Dr. Philip Edelman, who reviewed some of Claimant's medical files but did not examine

her. From the outset, Dr. Edelman's opinion is based on his assumption that she "was exposed for up to three minutes before leaving the area." (R. p. 727). Dr. Edelman opined that the conduction abnormality noted on August 19, 2015 "was most likely complete heart block." (R. p. 728). Although Claimant's heart block was first diagnosed a full 10 days after her HF exposure, Dr. Edelman concluded that Claimant "developed heart block within days following the exposure." (R. pp. 729, 731 ("the effects were delayed for hours or a few days)). Although Dr. Edelman provided a lengthy explanation of how, with inhaled HF, "the transit is extremely short, a matter of inches" such that the heart "would receive a bolus of the chemical," and have "ample opportunity to react with calcium, magnesium, and proteins in the heart tissue," he was only able to provide an equivocal opinion "that it is biologically plausible that the direct toxicity of HF would have been a co-contributor to this process." (R. p. 730). Dr. Edelman concurred with Dr. Aquilina that "there is no test to prove or disprove" his theory that HF may have been a co-contributor" to her heart block. (R. p. 730).

Dr. Edelman discussed Dr. Alleyne's diagnosis of "RADS," (R. p. 728), opining to a reasonable degree of medical certainty that "HF contributed to the development of [Claimant's] asthma." (R. pp. 728-729). Finally, Dr. Edelman claimed that "the effects of HF are overwhelmingly delayed in their course." (R. p. 729).

Claimant was seen at the University Medical Center ER on July 17, 2016 for a suspected insect bite to her ear that caused swelling. No shortness of breath or coughing were observed. Her mood and affect were noted to be appropriate. (R. pp. 734-740).

STANDARD OF REVIEW

Judicial review of a Commission decision is directed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(5) (Supp. 2015). *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). A reviewing court should affirm the decision of the Full Commission unless it is clearly erroneous in view of the substantial evidence of the whole record. *Lark*, 276 S.C. at 136, 276 S.E.2d at 307. The reviewing court may not substitute its own judgment for that of the Full Commission as to the weight of the evidence on a question of fact, but may reverse if the decision is affected by an error of law. S.C. Code Ann. § 1-23-380(5). The Administrative Procedures Act "mandates that the commission take the evidence, judge the credibility and weight of that evidence, and from that judgment determine the facts of the case." *Rogers v. Kunja Knitting Mills, Inc.*, 312 S.C. 377, 381, 440 S.E.2d 401, 403 (Ct. App. 1994). It is not within the appellate court's purview to reverse findings of the Full Commission which are supported by substantial evidence. *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 same conclusion the administrative agency reached in order to justify its action. *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence." *Sharpe v. Case Prod., Inc.*, 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999). Instead, the findings of the Full Commission are presumed

correct and can be set aside only if unsupported by substantial evidence or based on an error of law. *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 186, 414 S.E.2d 162, 163 (1992).

"The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission." *Brunson v. American Koyo Bearings*, 395 S.C. 450, 455, 718 S.E.2d 755, 758 (Ct. App. 2011). Furthermore, it is the Commission's prerogative to believe or disbelieve expert testimony. *See Pack v. South Carolina Dept. of Transp.*, 381 S.C. 526, 536, 673 S.E.2d 461, 466-67 (Ct. App. 2009) (observing that the "Commission need not accept or believe medical or other expert testimony, even when it is unanimous, uncontroverted, or uncontradicted"). Where there is a conflict in the evidence, either by different witnesses or the testimony of the same witness, the factual findings of the Commission are conclusive. *Anderson v. Baptist Med. Ctr.*, 343 S.C. 487, 492-93, 541 S.E.2d 526, 528 (2001).

ARGUMENTS

I. The Commission properly found that Claimant failed to meet her burden of proving a compensable injury from her August 11, 2015 exposure.

As a preliminary matter, Claimant essentially has abandoned her entire first issue because she fails to cite any legal authority in support of her argument. Other than referencing *Lark* [8] and the standard of review portion of the Administrative Procedures Act, she has presented this court with "no legal authority to support her argument." *See Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011), *citing Pack*, 381 S.C. at 532, 673 S.E.2d at 464. Here, as was the case in *Potter*,

[8] The other case cited by Claimant, *Law v. Richland County Sch. Dist.*, 270 S.C. 492, 243 S.E.2d 192 (1978), not a workers' compensation case, was cited in *Lark* in its discussion of the "substantial evidence" rule, but adds nothing substantive to her Brief.

Claimant's Brief "suggests other facts that could have been considered by the Appellate Panel, [but she] gives this court no substantive legal authority upon which to rely." 395 S.C. at 24, 716 S.E.2d at 127. As a result, her first argument on appeal, which is no more than a biased recitation of highly selective evidence in an apparent attempt to convince this Court to abandon the proper standard of review by overturning the Commission's resolution of conflicting evidence, should be deemed abandoned.

Nonetheless, and out of an abundance of caution, Respondents address the substance of Claimant's first argument. Although Claimant pays lip service to the applicable standard of review, she then proceeds to cherry pick certain pieces of evidence or statements, in isolation, in order to argue that the evidence supports her claim. Claimant erroneously asserts that the Commission "mishandled" or "ignored" certain evidence favorable to her case and that, as a result, its Decision is not supported by substantial evidence. On the contrary, there is ample, substantive, reliable and probative evidence in this record to support the Commission's determination that Claimant failed to meet her burden of proving she suffered any compensable injuries from her August 11, 2015 exposure.

A. Claimant failed to prove a significant exposure to HF.

Claimant begins her argument by alleging that "contemporaneous memos of this incident for the most part indicate that it was pure HF to which Murphy was exposed." (App. Br. p. 11). However, it is entirely understandable that the memos in response to Claimant's allegations of HF exposure just reference "the HF leak" since that is what was being investigated. Furthermore, some of the contemporaneous documents mention "HF, TFAC, or TFA" in reference to the leak. (*See* R. p. 698). Critically, the Supervisor's

Incident Report, filled out by Mr. Babb on the date of the exposure indicates that Claimant was exposed to "Trace HF fumes." (R. pp. 699-700, 703). Thus, even if the HF was "pure," as Claimant suggests but which is not conceded, it was only a trace amount of vapor or fumes that she actually inhaled. As Mr. McDowell explained, the amount of HF in the air was so small that it was not measurable. (R. p. 375, lines 5-16). Furthermore, Claimant's argument disingenuously attempts to conflate the potential concentration of HF in the pipe with the level in the air to which she was exposed, many feet away. Finally, it is axiomatic that it is not Employer's burden to disprove her case; instead, it is Claimant's burden to prove she is entitled to benefits under the Act, including exposure and causation. *E.g.*, S.C. Code Ann. § 42-1-160(E) ("[i]n medically complex cases, an employee shall establish by medical evidence that the injury arose in the course of employment"); *Crisp v. SouthCo, Inc.*, 401 S.C. 627, 641, 738 S.E.2d 835, 842 (2013), *quoting Clade v. Champion Labs.*, 330 S.C. 8, 11, 496 S.E.2d 856, 848 (1998) (a "claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture or speculation"). Claimant has not and cannot prove she was exposed to "pure" HF.

Claimant argues that the Commission should have found her claim compensable because substantial evidence supports her claim, and that Employer's own documents "prove the case." Not only is her statement incorrect (Employer's own documents prove she was exposed to some trace levels of HF, but provide no support for her claim that she suffered serious or permanent injuries, (*see* R. pp. 699-701, 703)), but it is nothing more than an attempt to circumvent her failure to "establish by medical evidence that the injury arose in the course of employment." *See* S.C. Code Ann. § 42-1-160(E); *see also Smith*

v. Michelin Tire Corp., 320 S.C. 296, 299, 465 S.E.2d 96, 97 (Ct. App. 1995) (in a medically complex case, causation must be established by competent medical evidence).

B. Claimant failed to prove her heart block was caused by her HF exposure.

Claimant then offers up pieces of evidence that she argues support her claim that her heart block was caused by her exposure to HF, inviting this Court to abandon the proper standard of review and become the *defacto* fact-finder. (App. Br. pp. 13-37). However, what Claimant fails to acknowledge—in fact what she studiously avoids—is the substantial conflicting evidence in the record as well as the well-established rule that, where there is a conflict in the evidence, either by different witnesses or the testimony of the same witness, the factual findings of the Commission are conclusive. *E.g.*, *Anderson*, 343 S.C. at 492-93, 541 S.E.2d at 528; *Sharpe*, 336 S.C. at 160, 519 S.E.2d at 105; *see also Lockridge v. Santens of Am.*, 344 S.C. 511, 518, 544 S.E.2d 842, 846 (Ct. App. 2001) (upholding Commission denial of benefits where one expert attributed heart attack to work but the other expert "either would not or could not").

As was noted to the Commission, even Claimant's own experts disagree about whether there is any causal link between her HF exposure and her heart block. On one hand, Dr. Lane, who is a general cardiologist, testified that the heart block was due to the "severe coughing that [Claimant] had" in response to the HF exposure. (R. p. 455, line 13 – p. 456, line 25). Dr. Lane based this opinion, articulated for the first time at her deposition,[9] on Claimant's unsupported report of a vasovagal episode when she was pregnant with her son many years prior. (R. p. 460, line 11 – p. 461, line 17; *see also* R.

[9] Notably, on cross-examination, Dr. Lane admitted that she had discussed this case for "about 30, 40 minutes" with Claimant's counsel prior to her deposition. (R. p. 459, lines 16-22).

p. 467, lines 10-12 (Claimant's daughter was born in 1987 and her son was born in 1989)). Dr. Lane maintained this opinion despite acknowledging that she had not seen any medical documentation confirming a prior vasovagal episode. (R. p. 462, lines 1-17).

On the other hand, Dr. Setaro pointed to her low phosphorous levels and prolonged QT interval in arriving at his conclusion that Claimant's HF exposure "was a substantial causative factor in the development of life-threatening third degree electrical heart block." (R. pp. 714-716). Another of Claimant's experts, Dr. Edelman, opined that "HF cardiac complications are classically attributed to the low ionized calcium magnesium and other electrolyte abnormalities that occur." When presented with Dr. Lane's theory that "coughing was a contributing factor to the development of the complete heart block," he could only opine "that it is *biologically plausible* that" the HF exposure "was a co-contributor to this process." (R. p. 730) (emphasis added). Thus, even Claimant's own experts cannot agree on how her HF exposure allegedly caused or contributed to her heart block.

Moreover, Dr. Aquilina, Claimant's treating cardiac electrophysiologist, (R. p. 497, line 21 – p. 498, line 8), flatly disagreed with Dr. Lane's causal opinion, stating that a vasovagal reflex is completely unrelated to development of Claimant's heart block. If a vasovagal response causes a heart block, it would be a "transient" or "very intermittent heart block" for which he would not have inserted a pacemaker. (R. p. 504, line 17 – p. 506, line 1; p. 507, lines 3-14). Dr. Aquilina testified that the causes of heart block are unknown and, as a result, he could not testify as to what caused Claimant's heart block. (R. p. 499 line 22 – p. 502, line 2 ("we do see heart block in all age groups throughout patients' lives and we don't really know what causes them most of the time"); p. 503,

lines 3-11). He testified that low phosphorus, or hypophosphatemia, rarely causes heart block, "not that I've ever seen actually." (R. p. 508, line 21 – p. 509, line 8). Tellingly, Claimant does not even discuss Dr. Aquilina's deposition testimony.

Other experts agree with Dr. Aquilina. Dr. Feldman opined both that "it is physiologically improbable that there is a causal relationship between Hydrofluoride inhalation exposure and high-grade heart block," and that it was "of low medical certainty that a chronic vaso-inhibitory reflex would result in a chronic complete heart block," disagreeing with Dr. Lane's opinion that a vasovagal cause resulted in Claimant's complete heart block. (R. pp. 775-776). Dr. Early also concluded that Claimant's "8-21-15 arrhythmia and subsequent pacemaker are not attributable to or aggravated by her HF exposure." (R. p. 752).

Thus, not only do Claimant's treating physicians disagree as to the cause of her heart block, there is substantial evidence supporting the Commission's findings and conclusion that she failed to meet her burden of proving it arose from her HF exposure. *See, e.g.*, *Anderson*, 343 S.C. at 492-93, 541 S.E.2d at 528 (where there is a conflict in the evidence, either by different witnesses or the testimony of the same witness, the factual findings of the Commission are conclusive); *Sharpe*, 336 S.C. at 160, 519 S.E.2d at 105 (same); *see also Lockridge*, 344 S.C. at 518, 544 S.E.2d at 846 (same).

Apparently recognizing the weakness of her case, Claimant points to alleged "discrepancies" in Dr. Mackinnon's testimony and alleges that they prove her case. First, she mischaracterizes the testimony and evidence, asserting that "one of the most significant clinical factors associated with HF induced heart block is prolongation of the QT interval on electrocardiogram." (App. Br. p. 15). While Dr. Mackinnon agreed that a

prolonged QT interval would be "some evidence" of an HF exposure, he explained that "[t]here are other causes for QT interval changes," and that "had there been a significant exposure, yes, you're going to get QT interval changes." (R. p. 433, lines 16-22). He also testified that, if there had been a significant exposure to HF, the prolonged QT interval "should happen within a very relatively short time, a number of hours, after the exposure." (R. p. 434, lines 15-24).[10] Dr. Mackinnon's testimony falls short of establishing a prolonged QT interval as "one of the most significant clinical factors," and certainly does not prove either that Claimant "had a significant exposure" to HF,[11] or that her prolonged QT interval resulted from her minimal HF exposure. Second, Dr. Mackinnon readily agreed that he would defer to a cardiologist as to whether there was any causal link between Claimant's HF exposure and her heart block. (R. p. 439, line 24 – p. 440, line 7). Finally, despite Claimant's colorful language regarding incomplete medical records and evidence, (App. Br. pp. 18, 26), she had an opportunity at his deposition to present Dr. Mackinnon with whatever additional medical records, including Claimant's version of her exposure, she felt he should see. Importantly, Dr. Mackinnon

[10] The first mention of a "Prolonged QT" was in Dr. Hobbs' notes from August 21, 2015, (R. pp. 587-588), a full ten days after Claimant's exposure.

[11] Incongruously, Claimant asserts that Mr. Campbell's testimony establishes that her exposure to HF fumes was substantial because he testified that it took his breath away. (App. Br. p. 20). Mr. Campbell also testified that it made his eyes burn and caused him to cough. However, he explained that, "the worst part of it probably lasted about five minutes if that, but after that, after I got some air, it cleared up." (R. p. 398, lines 7-16). Furthermore, he testified that he experienced no long-term breathing, heart or any other health problems from his HF exposure. (R. p. 399, line 21 – p. 400, line 4). This is yet another instance of Claimant cherry picking evidence in an attempt to convince this Court to abandon proper application of the substantial evidence standard of review. Moreover, Mr. Parsons passed the "billowing" carboy twice when he dumped the slops for Claimant, without any ill effect. The fact that Mr. Campbell, who worked in the area for eight hours, and Mr. Parsons both were exposed far longer than was Claimant is further evidence that the concentration of HF on the patio on August 11, 2015 was not at a life-threatening level.

confirmed that none of the information Claimant's counsel presented at his deposition changed his January 27, 2017 opinion. (R. p. 437, line 25 – p. 438, line 4).

Claimant takes issue with Dr. Early's opinion, and the Commission's "heavy reliance on the lack of abnormal electrolyte findings …" (App. Br. p. 25). Dr. Early noted the references in the August 21-24, 2015 medical notes to a phosphate level of 1.1, but pointed out that that was ten days after her exposure. A number of experts, including Dr. Early, opined that a low phosphate (or other electrolyte level) found 10 days after the incident would not be due to Claimant's HF exposure. Dr. Early explained that "[e]lectrolyte abnormalities are usually noted in the first 24 hrs., after exposure, but sometimes can occur up to 48 hrs after exposure. It would be highly unusual to have normal electrolytes at 48 hours after exposure and then develop a phosphate of 1.1 on day 10 and have this be due to HF exposure." (R. pp. 748-750). Even Dr. Lane's notes indicate that "[n]o known exposure … would cause this degree of heart block without an electrolyte abnormality. That is not present." (R. p. 607). Dr. Aquilina, while acknowledging that phosphorous is an electrolyte, testified that he had never seen a case where one reading of low phosphorus caused an irregular rhythm. (R. p. 508, line 25 – p. 509, line 10 (adding, "I would not consider that one thing")).

Interestingly, having fought so hard to have Dr. Edelman's expert report included in the Commission record, Claimant allots only one short paragraph to his opinion. Apparently, even Claimant does not ascribe much weight to Dr. Edelman's opinion except to echo his ambivalent opinions that the onset of her heart block was "*probably* more rapid than was actually diagnosed initially," and that "it is *biologically plausible*

that that the direct toxicity of HF would have been a co-contributor to her complete heart block." (R. pp. 730-731) (emphasis added).

Dr. Edelman's opinion is, at best, equivocal and does not satisfy the standard required by S.C. Code Ann. § 42-1-160(E)&(G). Additionally, his opinion is contradicted by other, more reliable medical evidence. From the outset, Dr. Edelman's opinion is based on his assumption that she "was exposed for up to three minutes before leaving the area." (R. p. 727). This finding is in conflict with Claimant's own testimony, which is that she took three but no more than four breaths, did not fully open the door, which was open only "seconds," and she did not go all the way or go through it. (R. p. 297, lines 20-22; p. 299, lines 13-17; *see also* R. p. 475, lines 10-11; p. 472, line 13 – p. 473, line 2; p. 474, lines 5-6). Dr. Edelman opined that the conduction abnormality noted on August 19, 2015 "was most likely complete heart block." (R. p. 728). However, the medical records that suggested a conduction abnormality indicate that it was "*chronic* (*i.e., non-industrial*) in nature." (R. p. 560) (emphasis added). Clearly, Dr. Edelman did not have an opportunity to evaluate Claimant on August 19, 2015 and can only rely on the records of medical professionals who did.

Dr. Edelman concluded that Claimant "developed heart block within days following the exposure," (R. pp. 729, 731 ("the effects were delayed for hours or a few days")); however, the heart block was first diagnosed a full 10 days after her brief exposure to HF. And, while Dr. Edelman provided a lengthy explanation of how, with inhaled HF, "the transit is extremely short, a matter of inches" such that the heart "would receive a bolus of the chemical," and have "ample opportunity to react with calcium, magnesium, and proteins in the heart tissue," he was only able to provide a vague opinion

"that it is *biologically plausible* that the direct toxicity of HF would have been a co-contributor to this process." (R. p. 730) (emphasis added). Moreover, Claimant's treating cardio electrophysiologist, Dr. Aquilina, opined to a reasonable degree of medical certainty, that low phosphorous rarely causes heart block, (R. p. 508, line 21 – p. 509, line 8), and that there is no way to determine with certainty the cause of Claimant's heart block. (R. p. 499, line 22 – p. 502, line 2; p. 503, lines 3-11). In fact, Dr. Edelman concurred with Dr. Aquilina that "there is no test to prove or disprove" his theory that HF "may have been a co-contributor" to her heart block. (R. p. 730).

Notably, Dr. Edelman is the only expert claiming that "the effects of HF are overwhelmingly delayed in their course." (R. p. 729). In fact, Dr. Mackinnon testified that "cardiac problems … show up because of changes in the chemistry of the blood: calcium and magnesium and potassium. And that happens with an acute exposure, and it's usually within the first 24 hours." (R. p. 428, lines 19-25; p. 429, lines 1-6; p. 435, line 17 – p. 436, line 19). Dr. Early explained that "[e]lectrolyte abnormalities are usually noted in the first 24 hrs., after exposure, but sometimes can occur up to 48 hrs after exposure." (R. p. 750).

In summary, there is substantial, reliable and probative evidence supporting the Commission's determination that Claimant failed to meet her burden of proving her heart block was causally related to her August 11, 2015 HF exposure, which should be affirmed.

C. Claimant failed to prove her lung or other alleged injuries were caused by her HF exposure.

As to Claimant's pulmonary and other alleged problems, again, the evidence is in conflict, and substantial evidence supports the Commission Decision, which should be

upheld. While Dr. Alleyne diagnosed her with RADS, as well as HF-induced heart block and PTSD,[12] the Commission declined to afford his opinion much weight. The APA "mandates that the commission take the evidence, judge the credibility and weight of that evidence, and from that judgment determine the facts of the case." *Rogers*, 312 S.C. at 381, 440 S.E.2d at 403; *Brunson*, 395 S.C. at 455, 718 S.E.2d at 758 ("[t]he final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission").

First, Claimant implausibly testified that she could not find a pulmonologist in or near North Augusta, South Carolina who would accept workers' compensation patients. After much prodding, she reluctantly acknowledged that her legal counsel had selected Dr. Alleyne, located across the state in Rock Hill, even though she protested going as far as Charleston for an appointment with Dr. Mitchell. (R. p. 359, line 1 – p. 360, line 14) (R. p. 480, lines 6-24). Second, Dr. Alleyne admitted that he had discussed this case with Claimant's counsel three or four times prior to his deposition. (R. p. 490, lines 8-12). Finally, the Commission determined that "Dr. Alleyne's testimony comes across as the most outcome-determinative of any" expert in this case for all the reasons set forth in Finding of Fact No. 75, including that: 1) he stated Claimant's "alleged problems developed "immediately after the exposure," even though her own "theory of the case is that there was delayed onset regarding her heart"; 2) his explanation for the fact that Claimant's post-exposure RADS was "moderate" and the same as her pre-existing baseline, was simply "when you talk to the patient, her history is classic for RADS …"; 3) even though Claimant's FEV1/FVC tested in the normal range, he stated "that he

[12] There is no indication that Dr. Alleyne is trained in either cardiology or psychology.

'do[es] not see her working in the future,' even in a sedentary capacity within which Claimant has worked in the past"; 4) his testimony that RADS is diagnosed primarily on a subjective history, as opposed to objective tests; 5) although not a cardiologist, his refusal to defer to a cardiologist as to the cause of Claimant's heart block; 6) he admitted he had discussed this case at least three or four times with Claimant's counsel prior to his deposition; and, 7) his statement that, although he did not know the acceptable limit of HF exposure, there is no acceptable limit, despite the fact that Mr. Parsons and Mr. Campbell were exposed far longer than Claimant, with no lasting ill effect. (Commission Decision, R. pp. 52-54).

And, while Dr. Edelman discussed Dr. Alleyne's diagnosis of "RADS," (R. p. 728), he does not appear to have reviewed or given any explanation for the contrary opinions of Drs. Mitchell and Spangenthal. Dr. Mitchell stated, to a reasonable degree of medical certainty, that Claimant did not suffer any permanent injury to her heart or lungs, to her bones, or to her senses of smell or taste or other injury to her neurological system, that she had reached MMI from her exposure, and the only future medical treatment she needed was weight loss. (R. pp. 768-769). Dr. Spangenthal specifically opined that Claimant's "exposure to the hydrofluoric acid has not had a long-term negative impact on her pulmonary system," and that she had no permanent restrictions or need for additional medical treatment as a result of her HF exposure. (R. pp. 770-774). Thus, while Dr. Edelman opined to a reasonable degree of medical certainty that "HF contributed to the development of [Claimant's] asthma," (R. p. 729), that opinion is in direct conflict with other expert medical evidence that found Claimant's brief exposure to HF did not cause or contribute to the current condition of her lungs.

Finally, although Dr. Hooper diagnosed Claimant with PTSD related to her HF exposure, that opinion was based on his incorrect assumption that the effects of her exposure include "significant cardiac, orthopedic and pulmonary problems," (R. p. 720), which the Commission found she failed to prove. Thus, while the results of Claimant's MMPI-2, "a standardized psychological personality test," contributed to the PTSD diagnosis, they also revealed a profile of a person who was "quite disturbed psychologically. [Claimant] appears to be extremely angry and suspicious that others are taking advantage of her and is overly sensitive to criticism. Such clients may be overtly paranoid. She appears to be somewhat aloof, detached and rigidly moralistically, at times potentially using projection and rationalizing to deal with her problems, blaming others and harboring grudges." (R. pp. 723-724). While these observations of Claimant may well be accurate, they are not the result of any long-term/permanent effects of Claimant's brief HF exposure, as Dr. Hooper mistakenly believed.

It is well-accepted in South Carolina that, where the medical experts are in conflict, as is the case here, the Commission's findings are conclusive and should be upheld by this Court. *See, e.g.*, *Anderson*, 343 S.C. at 492-93, 541 S.E.2d at 528 (where there is a conflict in the evidence, either by different witnesses or the testimony of the same witness, the factual findings of the Commission are conclusive). The fact that Claimant can point to *some* evidence in the record that may support her claim does not mean she has met her burden of proof. *Sharpe*, 336 S.C. at 160, 519 S.E.2d at 105 ("[t]he possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence").

In the end, the isolated "nits" that Claimant picks with the expert opinions that do not support her case, and her (inaccurate) allegations that Respondents' experts actually *do* support her claim, are nothing more than an invitation to this Court to view the evidence through blinders that ignore any evidence that does not support her claim. That simply is the incorrect analytical approach under the substantial evidence standard of review. *Pierre*, 386 S.C. at 540, 689 S.E.2d at 618 (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 same conclusion the administrative agency reached in order to justify its action). While there may be *some* evidence that supports Claimant's claim that her brief HF exposure caused harm to her lungs, bones, smell and taste, neurological system, and/or psyche, there is other substantial, reliable and probative evidence that supports the Commission Decision.

As a result, this Court should affirm the Commission's determination that Claimant failed to meet her burden of proving she is entitled to workers' compensation benefits as the result of her August 11, 2015 exposure.

II. Claimant's attacks on the Commission's credibility findings are misplaced and do not warrant reversal.

Hoping to piggy-back on the Supreme Court's ruling in *Crane v. Raber's Disc. Tire Rack*, 429 S.C. 636, 842 S.E.2d 349 (2020), and this Court's opinion in *Clark v. Philips Electronics/Shakespeare*, 433 S.C. 186, 857 S.E.2d 378 (Ct. App. 2021), Claimant argues, incorrectly, that the Commission erred making *any* credibility findings, calling its findings "arbitrary" and "absolutist." Claimant appears to argue that the medical evidence in her favor in this case is "incontrovertible," which clearly it is not.

See Section I above.[13] She is correct, however, that the compensability of this case hinges on the weight of the medical evidence which, as properly evaluated and weighed by the Commission, fully supports the Commission's denial of her claim. Indeed, Claimant's contentions regarding disputes in the medical evidence support Respondents' position, because where the evidence is in conflict, the Commission's findings are conclusive and should be upheld by this Court. *See, e.g., Anderson*, 343 S.C. at 492-93, 541 S.E.2d at 528 (where there is a conflict in the evidence, either by different witnesses or the testimony of the same witness, the factual findings of the Commission are conclusive). This Court should decline Claimant's invitation to usurp the Commission's fact finding role and insert itself as the fact finder. Indeed, in *Crane*, the Supreme Court noted prior cases in which appellate courts have upheld findings of fact based on credibility determinations, including among others, *Langdale v. Harris Carpets*, 395 S.C. 194, 203, 717 S.E.2d 80, 84-85 (Ct. App. 2011), where the Commission's resolution of a conflict in testimony between two parties was upheld on appeal.

Claimant's underlying purpose in including a section regarding credibility appears to be to pile criticism on the Single Commissioner, Commissioner Barden, hoping this Court will simply discount those findings and reverse the Commission. However, unlike in *Crane* or *Clark*, here, the Commission's denial of benefits is based on its evaluation of the medical evidence, (Finding of Fact Nos. 61-76, R. pp. 46-55), and does not rest solely on its finding that Claimant lacked credibility. For example, in *Crane*, the Supreme

[13] Claimant's argument with respect to the scientific and medical evidence in this section of her Brief is nothing more than an argument that she disagrees with how the Commission weighed the expert evidence, along with an unwarranted attack on Respondents' experts as "bought and paid for opinion," which applies equally, if not more so, to her own experts.

Court overturned the Commission's denial of benefits, which was based solely on its credibility determination, in light of objective audiology tests that showed hearing loss. 429 S.C. at 646, 842 S.E.2d at 354. In *Clark*, this Court held that the Commission improperly denied benefits based on its conclusion that the claimant's lack of credibility undermined the medical evidence which the Commission found was "based upon self-serving assertions of the claimant." 433 S.C. at 192, 857 S.E.2d at 380-381. Here, in contrast, the Commission's denial of benefits is based on a host of medical evidence that firmly supports its findings and conclusions, along with its findings regarding Claimant's lack of credibility.

As this Court noted in *Rummage v. BGF Indus.*, in some cases, as in *Crane*, "the medical evidence and credibility determination can be tidily separated." 434 S.C. 441, 458, 865 S.E.2d 380, 389 (Ct. App. 2021). In other cases, such as this one and *Rummage*, they cannot be so easily separated. In *Rummage*, "credibility was a substantial issue because the deterioration in Claimant's psychological condition was not objectively measurable as was the employee's hearing loss in *Crane*. Therefore, the Appellate Panel could have properly given less weight to Claimant's doctor's opinions if it believed Claimant was untruthful in her self-reporting of symptoms or her presentation." 434 S.C. at 459, 865 S.E.2d at 390. Here, similarly, credibility is a substantial issue because the array of claimed symptoms from Claimant's HF exposure as reflected in contemporaneous medical records is at odds with Claimant's testimony. Moreover, here, unlike in *Crane*, there is objective medical evidence and credible medical opinions that support the Commission's conclusion that Claimant did not meet her burden of proving she is entitled to any additional workers' compensation benefits.

For example, among other discrepancies, the Commission found that Claimant claimed a loss of smell and taste while at the same time reporting to both Dr. Mitchell and Dr. Hooper that she is sensitive to various odors because of the exposure. (Finding of Fact No. 17). Claimant testified that she started opening the door to the patio and took "three, no more than four" breaths of HF (R. p. 297, lines 20-22; p. 343, line 21 – p. 344, line 11; *see also* R. p. 475, lines 10-11) (R. p. 695); however, she told various health care providers that she had been exposed for "three minutes" and/or "one to three minutes." (R. p. 746; R. p. 526, lines 18-19; R. p. 549; R. p. 660 (Dr. Allynne's notes indicting she had been exposed for "about 3 min")[14] (Finding of Fact Nos. 22-23, 50, R. pp. 33, 42).

In addition, Claimant's subjective complaints following her HF exposure are at odds with the objective medical evidence in the days following August 11, 2015. In particular, on August 11, 2015, she was found to have no cough or shortness of breath, no diarrhea, and both her heart and blood tests were normal. (R. pp. 549-551). In fact, her heart and blood work were found to be unremarkable up until August 19, 2015. (R. pp. 566-568) (Finding of Facts Nos. 47-49, 52, 56, R. pp. 40-42, 44). And, while Claimant testified that she was in respiratory distress and could not hold a full conversation when she arrived at the hospital on August 21, 2015, (R. p. 351, line 22 – p. 352, line 7; *see also* R. p. 478, line 21 – p. 479, line 14), the admission records note that she had no respiratory distress and was able to provide a full history "without difficulty." (R. p. 590). Claimant's lack of credibility on these and other points contributes directly to the Commission's finding that she failed to prove she is entitled to workers' compensation benefits.

[14] In fact, Dr. Edelman's opinion is based, in part, on his understanding that Claimant "was exposed for up to three minutes before leaving the area." (R. pp. 549, 727).

Moreover, like the claimant in *Rummage*, 434 S.C. at 450, 865 S.E.2d at 385, here, some of Claimant's medical providers found her report of symptoms unreliable. On August 19, 2015, P.A. Timber Wages indicated that she "[s]trongly suspect[ed] some of patient's reported symptoms are due to increased anxiety surrounding exposure." (R. p. 561). Wages also noted that Claimant put forth "[p]oor effort on strength testing of bilateral hip flexors and quadriceps[.] Patient complains of exquisite tenderness to palpation with light touch of bilateral lower legs – disproportionate to exam findings …" (R. p. 560). Dr. Hooper also noted Claimant's "very difficult feelings regarding the management of [Employer] and believes she was poorly protected before the incident … and poorly cared for since, primarily in the interest of the company 'always pushing for money.'" Dr. Hooper noted Claimant's results on the "standardized psychological personality test indicate a number of extreme symptoms," concluding that her profile was "probably valid but may reflect some exaggeration of symptoms due to her heightened level of psychological distress." Claimant appeared "to be extremely angry and suspicious that others are taking advantage of her and is overly sensitive to criticism …. She appears to be somewhat aloof, detached and rigidly moralistic … blaming others and harboring grudges." (R. pp. 720-724).

And, while it may be the case that the Single Commissioner's assessment of Claimant's credibility, adopted by the Full Commission, may have been "unforgiving" and/or "unduly harsh" in some aspects, which is not conceded as the Single Commissioner was able to observe the witnesses and judge their credibility first-hand, *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 156 S.E.2d 318 (1967), here, as was the case in *Rummage*, "the record is not without substantial evidence that Claimant lacked

credibility." 434 S.C. at 459, 865 S.E.2d at 390. Consequently, here, as was the case in *Rummage*, "Claimant's medical experts' opinions were substantially weakened in light of the credibility findings of the Appellate Panel as the opinions rely, at least in part, on" Claimant's credibility in reporting symptoms and history. 434 S.C. at 460, 865 S.E.2d at 391.

In the end, while the Commission determined Claimant lacked credibility and that the Defendants' witnesses were both reliable and credible, it specifically found that this is a medically complex case and relied "primarily upon the opinions from experts." In particular, the Commission relied primarily on the medical opinions and testimony of Dr. Feldman and Dr. Mitchell, Dr. Aquilina, Dr. Early, Dr. Spangenthal, and Dr. Mackinnon. (Finding of Fact Nos. 61-66, 98, R. pp. 46-48, 66). Its credibility findings are supported by substantial evidence, and the Commission's denial of benefits is based on consideration of all of the evidence, including conflicting expert medical evidence.[15]

The Commission concluded as a matter of fact and law that, in order for it "to rule in favor of the Claimant would require the evidence to be viewed entirely from her side," (Conclusion of Law No. 4, R. pp. 69-70), which is what Claimant invites this Court to do on appeal. Not only is that the antithesis of "substantial evidence," *e.g.*, *Pierre*, 386 S.C. at 540, 689 S.E.2d at 618 (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 same conclusion the administrative agency reached in order to justify its action), such an approach would

[15] Even if there are other credibility findings with regard to Claimant that this Court finds overly-harsh or not directly relevant to the above findings, which is not conceded, they do not warrant overturning the Commission Decision, which is supported by substantial medical evidence and should be upheld.

exceed the proper standard of appellate review. *E.g.*, *Rogers*, 312 S.C. at 381, 440 S.E.2d at 403 (it is the Commission's role to "take the evidence, judge the credibility and weight of that evidence, and from that judgment determine the facts of the case"); *Broughton*, 336 S.C. at 496, 520 S.E.2d at 637 (it is not within the appellate court's purview to reverse findings of the Full Commission which are supported by substantial evidence).

CONCLUSION

For the reasons stated herein, this Court should affirm the Commission Decision and dismiss this appeal with prejudice.

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January 9, 2023

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appeal No.: 2022-001546

Monica Murphy, Employee, ...Appellant,

v.

Halocarbon Products Corporation, Employer, and
Commerce & Industry Insurance Company
c/o AIG Claims, Inc., Carrier,..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondents Halocarbon Products Corporation and Commerce & Industry Insurance Company c/o AIG Claims, Inc., complies with Rule 211(b), SCACR. The undersigned also certifies that this Brief of Respondents complies with the South Carolina Supreme Court's April 15, 2014 Order re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.

January 9, 2023

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