

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Court of Appeals Opinion No. 2023-UP-223
(Filed June 7, 2023; Rehearing denied August 25, 2023)
Appeal No. 2023-001515

Mary Hickman, Employee, Respondent,

v.

Ruiz Foods, Employer, and Safety
National Casualty Corporation c/o
York Risk Services Group, Carrier, Petitioners.

PETITION FOR WRIT OF CERTIORARI

MCANGUS GOUDELOCK & COURIE
Helen F. Hiser
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
helen.hiser@mgclaw.com
Attorneys for Petitioners

Other Counsel of Record:

Dwight C. Moore, Esq.
MOORE LAW FIRM, L.L.C.
P.O. Box 1229
Sumter, South Carolina 29151-1229
moorelawfirm@ftc-i.net
Counsel for Respondent

INDEX

CERTIFICATE OF COUNSEL	1
QUESTIONS PRESENTED	1
STATEMENT OF THE CASE	1
STANDARD OF REVIEW	4
ARGUMENTS	
I. The Court of Appeals applied an incorrect standard of review	5
II. The Court of Appeals erred by misapplying <i>Crane</i> to the facts of this case.....	7
A. The Commission properly found Claimant is not credible.....	7
B. The Court of Appeals erred in awarding additional medical treatment pursuant to this Court's ruling in <i>Crane</i>	8
III. The Court of Appeals erred by making its own finding of fact that Claimant has not reached MMI for her low back	10
IV. The Court of Appeals erred by incorrectly requiring Petitioners to disprove that Claimant is entitled to additional medical treatment.....	14
V. The only proven compensable injury at the time of the hearing was to Claimant's back	21
VI. The Court of Appeals erred by directing the Commission to reinstate TTD.....	24
CONCLUSION.....	25

CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that their Petition for Rehearing was filed on June 20, 2023, (Appx. 3-26), and finally ruled on by the Court of Appeals on August 25, 2023. (Appx. 1-2).

QUESTIONS PRESENTED

- I. DID THE COURT OF APPEALS APPLY AN INCORRECT STANDARD OF REVIEW?
- II. DID THE COURT OF APPEALS ERR BY MISAPPLYING THIS COURT'S RULING IN *CRANE V. RABER'S DISC. TIRE RACK*, 429 S.C. 636, 842 S.E.2D 349 (2020) TO THE FACTS OF THIS CASE?
- III. DID THE COURT OF APPEALS ERR BY FAILING TO FIND THAT SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSION'S FINDING THAT CLAIMANT REACHED MAXIMUM MEDICAL IMPROVEMENT WITH RESPECT TO HER LOW BACK BY SEPTEMBER 28, 2017?
- IV. DID THE COURT OF APPEALS ERR BY REQUIRING PETITIONERS TO DISPROVE THAT CLAIMANT IS ENTITLED TO ADDITIONAL MEDICAL TREATMENT?
- V. DID THE COURT OF APPEALS ERR IN FAILING TO FIND THAT SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSION'S FINDING THAT THE ONLY COMPENSABLE INJURY AT THE TIME OF THE HEARING WAS CLAIMANT'S LOW BACK?
- VI. DID THE COURT OF APPEALS ERR IN ORDERING THE COMMISSION TO REINSTATE TEMPORARY TOTAL DISABILITY PAYMENTS?

Pursuant to Rule 242, SCACR, Petitioners Ruiz Foods and Safety National Casualty Corporation c/o York Risk Services Group hereby petition this Court to grant a writ of certiorari, reverse the Court of Appeals Opinion in the above-captioned case, Opinion No. 2023-UP-223 (Ct. App. filed June 7, 2023), and affirm the Commission Decision in its entirety. This case present novel issues of law, and the Court of Appeals' decision is in conflict with prior decisions of this Court. Rule 242(b)(1)&(3), SCACR.

STATEMENT OF THE CASE

This proceeding was initiated by Respondent Mary Hickman, claimant below, ("Claimant") filing a Form 50 with the South Carolina Workers' Compensation

Commission dated May 8, 2018 alleging compensable injury to her back, head, right knee, forearm, and elbow as the result of a workplace accident that occurred on August 22, 2016. Claimant sought additional medical treatment, as well as temporary total disability (“TTD”) benefits and permanent disability benefits. (R. 90). Petitioners filed a Form 51 denying both that Claimant’s current condition is related to her work accident, and that she is entitled to additional medical treatment. (R. 91).

The parties were heard by Single Commissioner Avery B. Wilkerson, Jr. on September 24, 2018.¹ The Single Commissioner issued his Decision and Order on January 4, 2019 finding, among other things, that Claimant sustained an injury by accident to her back, but no other alleged body parts, when she fell at work on August 22, 2016. In addition, the Single Commissioner found Claimant reached maximum medical improvement (“MMI”) as of September 28, 2017, giving “greater weight to Dr. Scott Boyd and Dr. Bill Edwards over Dr. Leonard Forrest’s one time independent medical evaluation conducted on August 15, 2018.” The Single Commissioner concluded that “Claimant’s current condition of her back is unrelated to her compensable accident sustained on August 22, 2016, as Claimant failed to meet her burden of proof.” Finally, the Single Commissioner determined that Claimant “was not honest in her medical history at the independent medical evaluation with Dr. Edwards,” and that her testimony was not credible. (Decision and Order, dated January 4, 2019, R. 8-16).

Claimant timely appealed to the Full Commission which affirmed in part and reversed in part the Single Commissioner’s Decision and Order. Whereas the Single

¹ At the hearing, Claimant’s counsel stated that Claimant was not seeking an award for permanency, (R. 24:4-12), even in the event the Commission ruled that she was no longer entitled to TTD. That was a strategic decision on Claimant’s part.

Commissioner had held that there was “no mention of injuries to the Claimant’s head, right forearm or should[er], right knee, or right leg,” in the medical records, the Full Commission found, based on the medical evidence, that “any injury to the head, right forearm or shoulder, right knee, or right leg resolved.” The Full Commission affirmed the credibility determination, and found that Claimant: 1) suffered a compensable injury to her back only; 2) reached MMI on September 28, 2017; 3) failed to meet her burden of proving that the current condition of her back is related to her compensable August 22, 2016 accident; and, 4) is not entitled to any additional medical treatment. The Full Commission also afforded greater weight to Dr. Boyd and Dr. Edwards than to Dr. Forrest. (Appellate Panel Decision and Order, filed October 28, 2019, R. 1-7) (“Commission Decision”).

Claimant appealed to the Court of Appeals which, without oral argument, issued an unpublished opinion on June 7, 2023. The Court of Appeals reversed the Commission, holding that Claimant is “entitled to continued medical treatment for her back injury with radiating leg pain.” In reaching this conclusion, the Court of Appeals relied on this Court’s opinion in *Crane v. Raber’s Disc. Tire Rack*, 429 S.C. 636, 842 S.E.2d 349 (2020), discounting the Commission’s evaluation of Claimant’s credibility and finding that the objective medical evidence demonstrated that Claimant’s back pain “was real and ongoing at the time of the hearing.” (Appx. 34-35). The Court of Appeals also reversed the Commission’s finding that all of Claimant’s injuries to other body parts had resolved, and awarded her further medical treatment to her right knee. (Appx. 35-37). The Court of Appeals found that Claimant is not at MMI, was unable to work as a tortilla stacker

because of her back and right knee, and ordered that TTD benefits be reinstated. (Appx. 37-38).

BACKGROUND FACTS

Petitioners incorporate by reference the Background Facts set forth in their Brief to the Court of Appeals. (Appx. 69-80).

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. 2016). *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 or is affected by an error of law. *Lark*, 276 S.C. at 136, 276 S.E.2d at 307. 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. *Frame v. Resort Servs. Inc.*, 357 S.C. 520, 527-528, 593 S.E.2d 491, 495 (Ct. App. 2004). “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 it is not within the appellate court’s purview to reverse findings of the Full Commission which are supported by substantial evidence. *Frame*, 357 S.C. at 528, 593 S.E.2d at 495.

The Full Commission is the ultimate fact finder in workers' compensation cases. *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 289, 599 S.E.2d 604, 611 (Ct. App. 2004). "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). 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. *Id.*; *Nettles v. Spartanburg Sch. Dist. #7*, 341 S.C. 580, 592, 535 S.E.2d 146, 152 (Ct. App. 2000) ("[w]here there is conflicting medical evidence ... the findings of fact of the commission are conclusive"). 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); *Shealy v. Aiken County*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) ("[t]he final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission").

ARGUMENTS

I. The Court of Appeals applied an incorrect standard of review.

While it is understandably tempting in sympathetic cases, the Court of Appeals exceeded the proper scope of review and engaged in independent fact finding in order to reach a result it apparently felt was more just. Indeed, the Court of Appeals accepted Claimant's invitation to review the record "and make its independent assessment of what transpired in this case," making independent factual findings and, based on those independent findings of fact, reaching conclusions contrary to those reached by the

Commission. In other words, the Court of Appeals impermissibly accepted Claimant's invitation to serve as a "Monday morning quarterback." And, while the findings and conclusions reached by the Court of Appeals may arguably be supported by the record—which is not necessarily conceded—under the proper standard of review, the Full Commission is the ultimate fact finder in workers' compensation cases. *Hargrove*, 360 S.C. at 289, 599 S.E.2d at 611. "The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission." *Brunson*, 395 S.C. at 455, 718 S.E.2d at 758. Notably, 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 must be affirmed. *Id.*; see also *Nettles*, 341 S.C. at 592, 535 S.E.2d at 152 ("[w]here there is conflicting medical evidence ... the findings of fact of the commission are conclusive").

Patently, "[t]he possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence." *Sharpe*, 336 S.C. at 160, 519 S.E.2d at 105. Instead, the findings of the Full Commission are *presumed correct*, and it is not within the appellate court's purview to reverse findings of the Full Commission that are supported by substantial evidence. *Frame*, 357 S.C. at 528, 593 S.E.2d at 495. In short, and with all due respect, the Court of Appeals improperly exceeded the proper scope of review—by engaging in independent fact finding and drawing its own conclusions from the medical evidence—in order to reverse the Commission.

Here, each of the Commission's findings and conclusions that the Court of Appeals reversed is supported by substantial, probative evidence, as is discussed in more

detail below. As a result, this Court should grant the Petition and affirm the Commission Decision in its entirety.

II. The Court of Appeals erred by misapplying *Crane* to the facts of this case.

A. The Commission properly found Claimant is not credible.

As an initial matter, the Court of Appeals correctly did not—nor could it reasonably—dispute the accuracy of the Commission’s finding that Claimant lacks credibility. *See, e.g., Rogers*, 312 S.C. at 381, 440 S.E.2d at 403 (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”); *Shealy*, 341 S.C. at 455, 535 S.E.2d at 442 (“[t]he final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission”). The record is replete with evidence of Claimant’s obfuscation and failures to testify truthfully. For example, Claimant testified that her back pain had never improved since her August 2016 fall but, instead, “It’s got worse.” (R. 43:1–44: 8). However, medical notes indicate a steady improvement in her back condition. *See* R. 202-206 (Claimant reporting on October 27, 2016 a “great benefit” from physical therapy and that “[h]er back sx are much-improved); R. 208-212 (Claimant reporting on November 14, 2016 her “back sx are again much-improved” and she “has been performing restricted duty without difficulty”); R. 289-292 (Dr. Storick’s notes from June 20, 2017 noting Claimant reported that, following the physical therapy, she “overall is substantially better”).

Claimant attempted to explain the fact that she did not tell Dr. Edwards about her most recent car accident by asserting that, “He didn’t ask,” (R. 56:13–59:2), even after being presented with Dr. Edwards’ deposition testimony demonstrating that he *did* ask

about prior back problems. (R. 61:4-8; 62:23-63:17) (R. 301:22-302:21; *see also* 302:22-308:4). Dr. Boyd observed that Claimant exhibited “quite a bit of pain and Waddell signs.” (R. 237).²

Claimant denied at the hearing that her knee had improved, (R. 69:18-20), despite medical records reflecting that, as of September 28, 2017, she admitted “that her knee has improved.” (R. 198, 205, 216, 241, 293). In fact, Claimant disagreed with and/or took issue with “every doctor’s record that [she] saw.” (R. 72:2-74:2; *see also* 80:16-81:6 (noting that Claimant had disagreed with every doctor that she had seen, even her own IME doctor)). Additional instances of Claimant’s lack of truthfulness are discussed below. Thus, the Commission’s credibility determination is supported by substantial evidence and must be affirmed on appeal.

B. The Court of Appeals erred in awarding additional medical treatment pursuant to this Court’s ruling in *Crane*.

Having properly left the Commission’s credibility determination undisturbed, the Court of Appeals proceeded to dismiss it, erroneously, under the rule set forth in *Crane*. There, the Commission found the claimant’s hearing testimony concerning hearing loss following an explosion was not credible and, on that basis alone denied benefits. However, an otolaryngologist examined the claimant’s ears and noted that both eardrums were perforated. In addition, at least three hearing tests indicated “severe to profound hearing loss in both ears.” 429 S.C. at 647-648, 842 S.E.2d at 355. Thus, this Court held

² “Waddell’s non-organic physical signs are a group of physical signs that may indicate a non-organic or psychological component to chronic low back pain,” and that “[d]octors have used these signs to detect ‘malinger’ patients with back pain.” *Fishburne v. ATI Sys. Int’l*, 384 S.C. 76, 81 n.2, 681 S.E.2d 595, 598 n.2 (Ct. App. 2009). “Malingering is a medical term that refers to the act of intentionally feigning or exaggerating physical or psychological symptoms for personal gain.” *Id.* Dr. Boyd’s notation thus supports the Commission’s credibility determination.

that, regardless of whether the claimant was “credible” at the hearing, there was objective medical evidence that proved he had suffered a compensable injury. 429 S.C. at 646, 842 S.E.2d at 354.

Subsequently, in *Rummage v. BGF Indus.*, 434 S.C. 441, 865 S.E.2d 380 (Ct. App. 2021), the Court of Appeals addressed and distinguished the parameters of *Crane*, upholding a denial of benefits based on the claimant’s lack of credibility. Although the Court of Appeals found the Single Commissioner’s assessment of the claimant’s credibility in *Rummage* “unforgiving,” it nonetheless held that the claimant’s alleged psychological deterioration “was not objectively measurable like the employee’s hearing loss in *Crane*.” 434 S.C. 459, 865 S.E.2d at 390. After reciting the claimant’s misleading and dishonest answers at the hearing, and being “[e]ver mindful of our limited standard of review in workers’ compensation cases,” the Court of Appeals affirmed the Commission because the opinions of the claimant’s expert witnesses were “substantially weakened in light of the credibility findings of the Appellate Panel as the opinions rely, at least in part, on” the claimant accurately relating her symptoms.

The same result should obtain here. There are no objective medical tests—like the hearing tests and, critically, the otolaryngologist exam that revealed perforations in both eardrums in *Crane*—that prove Claimant is entitled to continued medical treatment for her back, let alone her right knee, despite her lack of credibility. Drs. Edwards and Forrest noted her allegations of ongoing pain and numbness, both of which are subjective symptoms. And, while there are two post-injury MRIs, at best, they show that Claimant injured her low back but do not prove that her current condition is related to her workplace fall or that she is entitled to additional medical treatment. (*See* R. 308:11-20;

313:4–314:1). Specifically, when asked whether there was any way to determine with a reasonable degree of medical certainty that the injuries shown on the January 25, 2017 MRI were caused or aggravated by her work accident, Dr. Edwards responded, “Not but what the patient tells us,” (R. 313:4-9), placing Claimant’s credibility squarely at issue. While this discussion was with regard to the January 25, 2017 MRI, it applies equally, if not more so, to any conclusion regarding the October 2017 MRI. Moreover, there is absolutely no objective medical test or evidence that any other body part—specifically her knee—is in need of additional medical treatment as a result of her workplace fall. The mentions in the medical records of her knee or other body parts are based entirely on Claimant’s subjective and self-serving testimony and statements to the medical professionals she saw. *Rummage*, 434 S.C. at 460, 865 S.E.2d at 390-391 (noting that expert opinions were “substantially weakened in light of the credibility findings of the Appellate Panel as the opinions rely, at least in part, on” the claimant accurately relating her symptoms).

Because substantial evidence supports the Commission’s finding that Claimant was not credible, and that finding is “a reasonable and meaningful basis on which to make a factual determination” that Claimant has reached MMI and is not entitled to any additional medical treatment, this Court should grant the Petition and affirm the Commission Decision.

III. The Court of Appeals erred by making its own finding of fact that Claimant has not reached MMI for her low back.

The Court of Appeals erred by reversing the Commission’s finding that Claimant reached MMI for her work injury as of September 28, 2017. MMI “is a term used to indicate that a person has reached such a plateau that in the physician’s opinion there is

no further medical care or treatment which will lessen the degree of impairment.” *Gadson v. Mikasa Corp.*, 368 S.C. 214, 222, 628 S.E.2d 262, 267 (Ct. App. 2006). “MMI is a factual determination left to the discretion of the” Commission. *Hall v. United Rentals, Inc.*, 371 S.C. 69, 89, 636 S.E.2d 876, 887 (Ct. App. 2006).

Here, the evidence before the Commission showed that, on June 20, 2017, Dr. Storick, Claimant’s authorized treating physician, found that her condition had improved substantially after physical therapy. “Overall the patient has improved with conservative treatments. She will need to continue with her daily home exercises for her back. The patient is capable of returning back to work without restrictions. She will not need long-term medications and should utilize OTC as needed.” Using the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition*, Dr. Storick opined that Claimant “has a 2% whole person impairment lumbar spine based on the low back pain and lumbar spondylosis.” Claimant was to follow up on an “as needed” basis. (R. 289-292).

Claimant then saw Dr. Edwards for an IME on September 28, 2017. While Dr. Edwards disagreed with Dr. Storick that Claimant had reached MMI, stating that she “does not appear to be at maximum medical improvement,” his opinion was based, in part, on information supplied by Claimant, again, placing her credibility at issue. Claimant denied “any previous problems related to her spine,” which clearly was untrue. In addition, Claimant’s complaint of ongoing, subjective pain is dependent on her being a credible witness. Dr. Edwards suggested a new MRI “should probably be obtained to determine if any localized treatment at L4-5 on the right side could be offered such as an epidural steroid injection.” (R. 260-261). After reviewing Claimant’s prior medical records and the subsequent MRI performed in October 2017, Dr. Edwards testified that

he could not state to any degree of medical certainty whether the changes shown on the later MRI were caused by Claimant's workplace accident, age, stress, or arthritis. He explained "I've seen these problems, that is the spondylolisthesis, emanate from all three of these potential causes, arthritic, traumatic, or stress related." (R. 299:19-301:12). The causal link between her work place fall and her back condition was Claimant's burden to prove, not Petitioners' burden to disprove.

Moreover, Dr. Edwards agreed that it is quite possible that Claimant's continued back pain "is related to [her] chronic history of arthritis, disc bulges, disc herniations that are mentioned in the[] prior medical reports." (R. 308:5-10). Dr. Edwards also stated that, "[b]ased on this available information regarding the long history of preexisting back conditions, it would be challenging to say within any reasonable degree of medical certainty that the [August 22, 2016] accident made this condition worse." (R. 308:11-20). Dr. Edwards testified:

Q: Okay. Is there any way to say with any reasonable degree of medical certainty that the injuries shown at L4-5 on the January 25, 2017 [MRI] were either caused by or aggravated by the work accident at Ruiz Foods?

A: **Not but what the patient tells us.**

Q: Okay. And we have already determined what the patient has already told you one time was not correct. Is that right?

A: Well, there wasn't any reference to this previous episodes of back pain that dated quite a long period of time, you are correct.

Q: Not only was there not a mention, **there was a specific denial of it?**

A: **Yes, that's correct.**

Q: Okay. And again, the change from the condition shown on January 25, 2017 and October 30, 2017 showed a progression of that injury even more, correct?

A: It did.

Q: Okay. And January 25th, 2017, if you had just seen that MRI, would you have recommended the surgery at that time based on that condition?

A: No.

Q: Okay. The surgery is based on the recommendations based on the conditions shown on October 30, 2017. Is that correct?

A: That's correct.

Q: And again, I believe you testified that not only the original condition you can't say shown on January 25, 2017 was related to the accident either by causation or accident? **You also can't state that the progression of the conditions shown on the later MRI was anyway related to, caused by, or aggravated by the work-related accident at Ruiz Foods. Is that correct?**

A: **Yes, that is correct.**

Q: And is that your opinion to a reasonable degree of medical certainty?

A: Yes.

(R. 313:4-314:18) (emphases added). Dr. Edwards was asked whether Claimant's prior medical records showed "other causative events" that could be responsible for her current back pain such that, "[b]ased on those, there's no way to determine to any reasonable degree of medical certainty of causation or aggravation as a result of the Ruiz Foods accident," to which he responded, "That's correct. It would be helpful to have some imaging studies from those areas, from those time frames of the earlier injuries or symptoms." (R. 316:12-23).

Thus, there is substantial evidence in the record to support the Commission's finding that Claimant had reached MMI as of September 28, 2017 for her lower back problems stemming from her August 22, 2016 fall. This is because, although Dr. Edwards indicated that another MRI would be helpful, the October 2017 MRI does not constitute objective evidence that Claimant's current condition is related to her workplace fall but, instead, any conclusions regarding the later MRI depend on Claimant's reports to

her medical providers which, in turn depend on her credibility. *Rummage*, 434 S.C. at 460, 865 S.E.2d at 390-391. The desire to have another MRI performed was the only reason Dr. Edwards gave for not finding Claimant had reached MMI. The fact that the Court of Appeals pointed to select pieces of evidence that allegedly support a finding that Claimant had not reached MMI does justify it overruling the Commission on this point. Where “medical evidence conflicts, the findings of fact of the Commission are conclusive.” *Brunson*, 395 S.C. at 458, 718 S.E.2d at 760 (internal citations omitted); *see also Nettles*, 341 S.C. at 592, 535 S.E.2d at 152 (specifically with regard to whether a claimant has reached MMI, “[w]here there is conflicting medical evidence ... the findings of fact of the commission are conclusive”). The combination of Dr. Storick’s opinion and Dr. Edwards’ deposition testimony, cited above, constitute substantial evidence supporting the Commission Decision.

This Court should grant the Petition and affirm the Commission Decision.

IV. The Court of Appeals erred by incorrectly requiring Petitioners to disprove that Claimant is entitled to additional medical treatment.

As an initial matter, Claimant’s argument that she is entitled to additional medical treatment should be treated as abandoned for failure to cite any legal authority. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (mere allegations without argument *and* legal support are deemed abandoned); *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) (“[a]n issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority”). Again, rather than reject her argument as abandoned, the Court of Appeals searched the record in order to find support for a conclusion at odds with the Commission Decision, thus exceeding the proper scope of review.

While it is undisputed that the mere fact that a claimant has reached MMI does not preclude a finding that she is entitled to additional medical treatment, *Hall*, 371 S.C. at 82, 636 S.E.2d at 883; *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 574, 581, 514 S.E.2d 593, 596 (Ct. App. 1998), whether or not she is so entitled is, again, a factual matter for the Commission to determine. Section 42-15-60 authorizes the Commission to order medical treatment “for an additional time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty.” S.C. Code Ann. § 42-15-60. However, it is also true that any medical treatment ordered pursuant to Section 42-15-60 “must be causally related to the ‘injury by accident’ arising out of and in the course of employment.” *Munn v. Nucor Steel*, 336 S.C. 28, 32, 518 S.E.2d 289, 290 (Ct. App. 1999).

Here, the Commission’s determination that Claimant is not entitled to any additional medical treatment is supported by substantial evidence and should have been upheld. For example, Dr. Storick determined on June 20, 2017 that Claimant was “capable of returning back to work without restrictions,” that she would “not need long-term medications and should utilize OTC as needed.” He released her from care with a 2% whole person rating to her back. (R. 249-250). Although Dr. Edwards expressed some doubt in his September 28, 2017 notes as to whether Claimant was at MMI, and suggested she might need additional treatment based on the result of a new MRI, (R. 261), he reviewed that later MRI at his deposition and did not recommend any additional treatment for injuries resulting from her August 22, 2016 fall. Indeed, even Dr. Forrest, Claimant’s hand-picked IME physician stated, after reviewing both the January and

October 2017 MRIs, that he did not “see anything significant in this regard or significantly different comparing the studies.” (R. 263).

Again, whether the Court of Appeals can point to select evidence that arguably supports the position that Claimant is entitled to additional medical treatment is not the proper framework for review. Here, where the evidence on this point is in conflict, and the Commission Decision is supported by substantial, probative evidence, (R. 249-250; 313:4–314:18), it should be upheld. *See, e.g., Brunson*, 395 S.C. at 458, 718 S.E.2d at 760 (where “medical evidence conflicts, the findings of fact of the Commission are conclusive”); *Rogers*, 312 S.C. at 381, 440 S.E.2d at 403 (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”).

Here, the Commission clearly found Drs. Boyd, Edwards and Storick more persuasive than Dr. Forrest’s one-time IME. Moreover, while the Court of Appeals focused exclusively on Dr. Edward’s September 28, 2017 IME statement that Claimant should have another MRI scan performed and may benefit from “localized treatment” in the form of an epidural steroid injection, Dr. Storick released her on June 20, 2017 with no restrictions to her low back. (*Compare* R. 291-292 *with* R. 261).³ Moreover, Dr. Edward stated in his deposition that he could not opine to a reasonable degree of medical certainty that the condition shown on the October 2017 MRI was causally related to her employment.

³ And, while Dr. Storick stated that Claimant “*may* need to see an orthopedist regarding the popping and pain in the right knee,” (R. 291) (emphasis added), he was not treating and did not order any medical treatment for her knee, only using the speculative “*may*.”

It is axiomatic that the claimant in a workers' compensation case bears "the burden of proving the facts essential to his right to compensation, and an award may not be based upon conjecture or speculation." *Shealy v. Algernon Blair, Inc.*, 250 S.C. 106, 110, 156 S.E.2d 646, 648 (1967); *see also Clade v. Champion Labs*, 330 S.C. 8, 11, 496 S.E.2d 856, 858 (1998) (the "claimant has the burden of proving facts that will bring the injury within the workers' compensation law"). This includes whether a claimant is entitled to additional medical treatment. *See, e.g.*, S.C. Code Ann. § 42-15-60(A) (providing that an employer "shall" provide medical treatment for an initial ten-week period, and "for an additional time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty"); *Fishburne*, 384 S.C. at 85, 681 S.E.2d at 599 (the Commission's decision "must be affirmed if supported by substantial evidence in the record"); *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"); *Frame*, 357 S.C. at 528, 593 S.E.2d at 495 (the findings of the Full Commission are presumed correct, and it is not within the appellate court's purview to reverse findings of the Full Commission which are supported by substantial evidence). Patently, the burden is not on the employer to disprove that a claimant is entitled to benefits, including additional medical treatment, but on the claimant to prove she is so entitled.

The evidence cited above in Section III in support of the Commission's determination that Claimant has reached MMI also supports its conclusion that she failed to meet her burden of proving her current low back condition is causally related

to her August 22, 2016 workplace accident, and is incorporated herein by reference. In brief, Dr. Edwards' testimony constitutes substantial evidence supporting the Commission's findings and conclusions on this issue:

Q: And again, I believe you testified that not only the original condition you can't say shown on January 25, 2017 was related to the accident either by causation or accident? You also can't state that the progression of the conditions shown on the later MRI was anyway related to, caused by, or aggravated by the work-related accident at Ruiz Foods. Is that correct?

A: Yes, that is correct.

Q: And is that your opinion to a reasonable degree of medical certainty?

A: Yes.

(R. 313:4-314:18). Dr. Edwards was asked whether Claimant's prior medical records showed "other causative events" that could be responsible for her current back pain such that, "[b]ased on those, there's no way to determine to any reasonable degree of medical certainty of causation or aggravation as a result of the Ruiz Foods accident," to which he responded, "That's correct." (R. 316:12-23). Moreover, when asked whether there was any way to determine to a reasonable degree of medical certainty that the injuries shown on the January 25, 2017 MRI were caused or aggravated by her work accident, Dr. Edwards responded, "Not but what the patient tells us." (R. 313:4-9). As noted above, while that discussion was with regard to the January 25, 2017 MRI, it applies equally, if not more so, to any conclusion regarding the October 2017 MRI. Furthermore, while Petitioners accepted the lower back injury as compensable, again, that does not detract from Dr. Edwards' clear statement that the only way one can relate the cause of Claimant's back issues as of, say October 2017, is by "what the patient tells us," again putting her credibility squarely at issue.

In addition, the Court of Appeals ignored the fact that the record contains evidence of an intervening event that may well have contributed to Claimant's back condition as of the time of the hearing. Although Claimant initially testified that she had not had any other traumatic event since her workplace fall, (R. 83:15–84:5), when confronted with her deposition testimony, she had to admit that she had fallen down her steps, stating "I told him about that day on the welcome mat."⁴ (R. 87:17–88:11). And, while it is true that Claimant testified on redirect that she was trying to go down the steps to her house when her "knee gave out," and, when prompted by her counsel, testified that it was her right knee that gave out, (R. 88:23–89:5), this version of events depends entirely on her credibility. The bottom line is that the record reflects that an intervening fall did occur and the only way to link that fall to her workplace accident depends entirely on Claimant's credibility.

This is not a matter of ongoing pain medication or maintenance of a prosthetic. In fact, there is no evidence beyond Claimant's self-serving statements—both to the Commission and to her IME physicians—that she needs additional medical treatment in order to be gainfully employed. Again, Claimant's statements—both to the Commission and to her physicians—regarding her condition depend entirely on her credibility.

Relying on a March 15, 2018 medical note, the Court of Appeals held that "Dr. Edwards took her out of work," and that all of the evidence indicates she was unable to work as a tortilla stacker until she received additional medical treatment. In so finding,

⁴ This is a further obfuscation, as Claimant's prior testimony regarding the welcome mat did not mention a fall at all but, instead, that she "went to pick the key up from up under the mat; I had to bend down to pick the key up from up under my doormat And I had trouble getting back up." She also agreed with her counsel that that event had occurred in 2011, not after her workplace fall at Ruiz. (R. 35:15–36:17).

the Court of Appeals disregarded the fact that Dr. Edwards only took Claimant out of work for two weeks after she received the injection. (R. 257). She received that lumbar epidural on April 18, 2018, (R. 258-259), after which she saw Dr. Edwards in September 2018 for an IME. Critically, although Dr. Edwards recommended treatment to her low back, he later confirmed that there was no way to tell whether the condition he was addressing in the spring of 2018 was caused by her workplace fall or by her pre-existing back condition. (R. 313:4–314:18). Although he did not agree with Dr. Storick that Claimant had reached MMI for her low back, he also did not write her permanently out of work.

In addition, although Dr. Edwards disagreed with him, Dr. Storick found that Claimant had reached MMI as of June 20, 2017, and could return to work without restrictions. Dr. Storick's only recommendation was for her to continue her home exercises and to "utilize OTC as needed." (R. 289-292). Thus, it simply is not true that there is no evidence to support the Commission Decision. Again, Claimant's subjective complaints of pain are entirely dependent on her being a credible witness, which she is not. She was untruthful in providing her medical history, (R. 307:24–308:4), making the descriptions of pain in all of her medical records suspect.⁵ Notably, Dr. Boyd observed that Claimant exhibited "quite a bit of pain and Waddell signs." (R. 237). Again, it is up to the Commission to resolve conflicts in the evidence, which this Court is bound to accept. *Brunson*, 395 S.C. at 455, 718 S.E.2d at 758; *Nettles*, 341 S.C. at 592, 535 S.E.2d at 152. Moreover, an MRI simply is not objective evidence of pain. It is well-accepted that two people can have similar MRIs and one experiences a great deal of pain whereas

⁵ Indeed, Claimant disputed the records of every single medical provider she saw. (R. 66:8-11; 73:4–74:2).

the other is able to continue a normal life. (R. 313:4-9). In concluding the MRIs constitute objective evidence of the veracity of her pain complaints, the Court of Appeals violated the prohibition set out in *Burnette v. City of Greenville* that neither the Commission nor the Courts can render independent medical conclusions that are not stated by a medical expert. 401 S.C. 417, 428, 737 S.E.2d 100, 206 (Ct. App. 2012). This is particularly true in light of Dr. Edwards' testimony.

Because the Commission's judgment that Claimant is not entitled to any additional medical treatment is supported by substantial evidence, this Court should grant the Petition and affirm the Commission.

V. The only proven compensable injury at the time of the hearing was to Claimant's back.

In overturning the Commission's finding that Claimant proved a compensable injury to only her back, the Court of Appeals appears to have adopted Claimant's invitation to make an "independent assessment" of the facts of this case. However, as is discussed above, the question for a reviewing court is whether the Commission's findings and conclusions are supported by substantial evidence and *not* whether some outcome other than the one reached by the Commission potentially is supported by substantial evidence. *See, e.g., Fishburne*, 384 S.C. at 85, 681 S.E.2d at 599 (Ct. App. 2009) (the Commission's decision "must be affirmed if supported by substantial evidence in the record"); *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"). Here, substantial evidence supports the Commission's finding that, "any injury to [Claimant's] head, right forearm or shoulder,

right knee or right leg resolved” by the time of the hearing before the Single Commissioner. (R. 3).

Following Claimant’s fall, Respondents provided medical treatment to all the body parts alleged by Claimant. (R. 148-223). Beginning in September 2016, Claimant reported reduced symptoms in her knee after a course of physical therapy, (R. 216), and by January 2017, Claimant’s primary problem was her back. In fact, notes from the January 6, 2017 and February 2, 2017 doctor’s visits, when she was released to “[a]ll activities on and off the job within limits of comfort,” do not mention her knee, right arm or head at all. (R. 224-233).

The notes from Dr. Boyd’s March 23, 2017 appointment do not reflect any mention of Claimant’s knee, arm or head but, instead, focus only on her back symptoms. (R. 235-237). Although Dr. Storick’s May 2, 2017 notes indicate Claimant complained of right arm and right knee pain, in addition to lower back pain, he states that “[t]he majority of her complaints have improved or resolved with physical therapy and time.” (R. 239-242). At a June 20, 2017 follow-up appointment, after physical therapy directed to Claimant’s low back pain, Dr. Storick noted that she “overall is substantially better,” although she complained of intermittent “popping” in her right knee. As noted above, Dr. Storick’s statement that she *may* need to see an orthopedist for her knee is nothing more than a suggestion as to a body part he was not treating. It plainly is not a diagnosis of ongoing knee issues caused by her workplace accident. (R. 249-256, 291).

In addition, there is no evidence that any symptoms related to her right knee caused or contributed to any ongoing disability. Beyond popping⁶ and alleged pain in her knee, which are subjective and entirely dependent on her credibility, all the evidence supports the Commission's finding that any injuries to her other body parts had resolved and/or improved to the point they no longer contributed to any disability. At her appointment on September 28, 2017, Dr. Edwards noted that Claimant had injured her right knee in the August 22, 2016 fall, but also noted that "[s]ymptoms have improved from that standpoint ..." (R. 260-261). At her follow-up appointment with Dr. Edwards, there is no mention of any injury to her knee, right arm or head. (R. 251-253). Clearly, he did not order or even recommend any treatment for any of those body parts.⁷ The mere fact that various doctors recorded or even "discussed" Claimant's "non-back injuries in their notes," does not render those body parts compensable.

Thus, while there were early complaints of pain, contusions and symptoms related to Claimant's head, right knee and right arm/shoulder, those symptoms resolved and, by January 2017 were no longer a major complaint or being treated. As a result, the Commission's conclusion that, "any injury to [Claimant's] head, right forearm or shoulder, right knee or right leg resolved," (Commission Decision, R. 3), is supported by substantial evidence and should be affirmed by this Court.

⁶ <https://www.conehealth.com/services/orthopedics/why-do-my-knees-pop/#:~:text=This%20sound%20is%20called%20%E2%80%9Ccrepitus,that%20causes%20knuckles%20to%20crack.>

⁷ The Court of Appeals took issue with the fact that Dr. Edwards used the term "improved" rather than "resolved" with regard to her right knee. However, there are no "magic" words required to demonstrate that an injury has healed to the point that it is no longer compensable.

VI. The Court of Appeals erred by directing the Commission to reinstate TTD.

Finally, the Court of Appeals erred by directing the Commission to reinstate TTD payments. As is discussed above, the Court of Appeals' finding that Claimant has not reached MMI is erroneous and exceeds the proper standard of review. Typically, when a claimant reaches MMI, temporary benefits are stopped and permanent benefits are awarded. "Essentially, workers' compensation benefits accrue along a time continuum: TTD benefits are available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member. [citation omitted] Accordingly, the date of maximum medical improvement signals the end of entitlement to temporary total benefits." *Curiel v. Env't'l Mgmt. Servs.*, 376 S.C. 23, 29, 655 S.E.2d 482, 485 (2007). Because the Court of Appeals erroneously held that Claimant had not reached MMI as of September 28, 2017, its conclusion that Claimant is entitled to ongoing TTD benefits is also erroneous. As noted above, Claimant's counsel made the strategic decision to not seek a finding of permanent benefits, (R. 24:10-12), even in the event the Commission denied her claim. That was Claimant's strategic decision, and should not serve as the basis for reinstating TTD benefits.

Because the Commission properly terminated TTD payments at the time Claimant reached MMI, this Court should grant the Petition and affirm the Commission.

CONCLUSION

For all the reasons set forth herein, Petitioners request that this Court grant their Petition, reverse the Court of Appeals Opinion No. 2023-UP-223, and affirm the Commission Decision in its entirety.

McANGUS GOUDELOCK & COURIE, LLC

September 27, 2023

s/Helen F. Hiser

Helen F. Hiser, S.C. Bar No.: 76124

735 Johnnie Dodds Blvd., Suite 200 (29464)

P.O. Box 650007

Mount Pleasant, South Carolina 29465

(843) 576-2900

helen.hiser@mgclaw.com

*Attorneys for Petitioners Ruiz Foods and Safety
National Casualty Corporation c/o York Risk
Services Group*