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S.C. SUPREME COURT

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)

Mary Hickman, Employee, ...Respondent,

v.

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

Appendix

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The South Carolina Court of Appeals

Mary Hickman, Employee, Appellant,

v.

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

Appellate Case No. 2019-001944

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.¹



J.



J.



A.J.

Columbia, South Carolina

¹ It was brought to this Court's attention in the petition for rehearing that the second-to-last paragraph of the opinion contained a typographical error where Dr. Edwards' note was cited incorrectly as the September 28, 2016 note. The typographical error has been corrected and the opinion now correctly refers to Dr. Edwards' note as the September 28, 2017 note throughout.

FILED
Aug 25 2023

cc:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appeal No. 2019-001944

Mary Hickman, Employee, ...Appellant,

v.

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

PETITION FOR REHEARING

Pursuant to Rules 221(a) and 240, SCACR, Petitioners Ruiz Foods and Safety National Casualty Corporation c/o York Risk Services Group petition this Court to rehear its 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. Petitioners received this Court's Opinion No. 2023-UP-223 on June 7, 2023.

With all due respect, this Court overlooked and/or misconstrued: 1) the proper standard of review; 2) the proper application of *Crane v. Raber's Disc. Tire Rack*, 429 S.C. 636, 842 S.E.2d 349 (2020), to the facts of this case; 3) that substantial evidence supports the Commissions' finding that Claimant reached maximum medical improvement ("MMI") with respect to her low back by September 28, 2017; 4) that this Court erroneously flipped the burden of proof, requiring Petitioners to disprove that

Claimant is entitled to additional medical treatment; 5) that substantial evidence supports the Commission's finding that the only compensable injury at the time of the hearing was Claimant's low back; and, 6) that it is error to order the Commission to reinstate temporary total disability ("TTD") payments. Petitioners respectfully request that the Court grant rehearing and affirm the Commission Decision.

ARGUMENTS

I. This Court misunderstood or misconstrued the proper standard of review.

While it is understandably tempting to do in sympathetic cases, this Court overlooked and/or misconstrued the fact that appellate review is limited to determining whether the Commission Decision is supported by substantial evidence and not whether another outcome could be supported by that same evidence. Here, this Court appears to have accepted Claimant's invitation to review the record "and make its independent assessment of what transpired in this case," reaching conclusions and making independent factual findings contrary to those reached by the Commission. In other words, this Court accepted Claimant's invitation to serve as a "Monday morning quarterback." And, while the findings and conclusions reached by this Court may arguably be supported by the record, which is not conceded, under the proper standard of review, 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). 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.*; *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”).

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 v. Case Prod., Inc.*, 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999); *O’Banner v. Westinghouse Elec. Corp.*, 319 S.C. 24, 30, 459 S.E.2d 324, 327-328 (Ct. App. 1995) (same). 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 v. Resort Servs. Inc.*, 357 S.C. 520, 528, 593 S.E.2d 491, 495 (Ct. App. 2004). In short, and with all due respect, this Court improperly exceeded the proper scope of review in order to reach a result that it believes is more just.

Here, each of the findings and conclusions with which this Court takes issue is supported by substantial, probative evidence, as is discussed in more detail below. As a result, this Court should grant rehearing and uphold the Commission decision in its entirety.

II. This Court erred by misapplying *Crane* to the facts of this case, where the Commission’s credibility determination properly served as a reasonable and meaningful basis for denying Claimant’s request for additional medical treatment.

A. The Commission properly found Claimant is not credible.

As an initial matter, this Court correctly does not—nor could it reasonably—dispute the accuracy of the Commission’s finding that Claimant lacks credibility. *See, e.g., Rogers v. Kunja Knitting Mills, Inc.*, 312 S.C. 377, 381, 440 S.E.2d 401, 403 (Ct.

App. 1994) (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 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”). The record is replete with evidence of Claimant’s obfuscation and failures to testify truthfully. For example, Claimant testified that her back pain never improved since her August 2016 fall but, instead, “It’s got worse.” (R. p. 43, line 1 – p. 44, line 8). However, medical notes indicate a steady improvement in her back condition. See R. pp. 202-206 (Claimant reporting on October 27, 2016 a “great benefit” from physical therapy and that “[h]er back sx are much-improved); R. pp. 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. pp. 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. p. 56, line 13 – p. 59, line 2), even after being presented with Dr. Edwards’ deposition testimony demonstrating that he did ask about prior problems. (R. p. 61, lines 4-8; p. 62, line 23 – p. 63, line 17) (R. p. 301, line 22 – p. 302, line 21; see also p. 302, line 22 – p. 308, line 4). Dr. Boyd observed that Claimant exhibited “quite a bit of pain and Waddell signs.” (R. p. 237).¹

¹ This Court has recognized that, “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

Claimant denied at the hearing that her knee had improved, (R. p. 69, lines 18-20), despite medical records reflecting that, as of September 28, 2017, she admitted “that her knee has improved.” (R. pp. 198, 205, 216, 241, 293). In fact, Claimant disagreed with and/or took issue with “every doctor’s record that [she] saw.” (R. p. 72, line 2 – p. 74, line 2; *see also* p. 80, line 16 – p. 81, line 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. This Court overlooked or misapprehended that *Crane* is neither applicable nor controlling given the facts of this case.

Having accepted the Commission’s credibility determination, this Court dismissed it, erroneously, under the rule set forth in *Crane*. In *Crane*, 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, the Supreme Court held 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), this Court addressed and distinguished the parameters of *Crane*, upholding a

feigning or exaggerating physical or psychological symptoms for personal gain.” *Id.* Dr. Boyd’s notation thus supports the Commission’s credibility determination.

denial of benefits based on the claimant's lack of credibility. Although this Court found the Single Commissioner's assessment of the claimant's credibility "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," this Court 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. 434 S.C. at 460, 865 S.E.2d at 390-391.

The same is true here. There are no objective medical tests that prove Claimant's case 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 in the August 22, 2016 workplace fall but do not confirm that her current condition is related to that fall or that she is entitled to additional medical treatment. (*See* R. p. 308, lines 11-20; p. 313, line 4 – p. 314, line 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. p. 313, lines 4-9), placing Claimant's credibility squarely at issue. While this discussion was with regard to the January 25, 2017 MRI, it applies 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 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.

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 rehearing and affirm the Commission.

III. This Court erroneously found as a matter of fact that Claimant has not reached MMI for her low back.

The Commission’s finding that Claimant reached MMI for her work injury as of September 28, 2017 is supported by substantial evidence and should be upheld on appeal. “Maximum medical improvement 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), *citing Gadson*, 368 S.C. at 224, 628 S.E.2d at 268.

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. The patient may need to see an orthopedist regarding the popping and pain in the right knee.” 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. pp. 289-292).

Claimant then saw Dr. Edwards for an IME on September 28, 2017.² While Dr. Edwards did not concur at that time 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 that highlights her credibility problem. In particular, Claimant denied “any previous problems related to her spine,” which clearly was untrue. In addition, Claimant’s subjective complaint of ongoing pain is subjective, again placing her credibility at issue. 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. pp. 260-261). However, 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. p. 299, line 19 – p. 301, line 12).

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

² This Court’s Opinion discusses a September 28, 2016 note, which is assumed to be a scrivener’s error.

are mentioned in the[] prior medical reports.” (R. p. 308, lines 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. p. 308, lines 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. p. 313, line 4 – p. 314, line 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. p. 316, lines 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. The desire to have another MRI performed was the only reason Dr. Edwards gave for not finding Claimant had reached MMI. The fact that this Court can point to select pieces of evidence that allegedly support a finding that Claimant had not reached MMI does not mean the Commission Decision is in error in this respect. 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.

The Commission resolved the conflicting evidence on the issue of whether Claimant had reached MMI for her lower back and, because its finding is supported by substantial evidence, this Court should grant rehearing and affirm the Commission Decision.

IV. This Court misunderstood or misapprehended that the Commission’s determination that Claimant is not entitled to future medical treatment for he low back is supported by substantial evidence.

A. This Court overlooked or misapprehended that Claimant’s argument regarding ongoing treatment to her low back is unpreserved.

As an initial matter, this Court should have deemed Claimant’s argument that she is entitled to additional medical treatment as abandoned for failure to cite any legal authority. *See First Sav. Bank*, 314 S.C. at 363, 444 S.E.2d at 514; *Bryson*, 378 S.C. at 510, 662 S.E.2d at 615. Again, rather than reject her argument as abandoned, this Court searched the record in order to reach a conclusion at odds with the Commission Decision, thus exceeding the proper scope of review.

Because Claimant’s argument that she is entitled to additional treatment to her low back is unpreserved for appellate review, this Court should grant rehearing and affirm the Commission Decision.

B. This Court erred in finding that Claimant is entitled to additional medical treatment for her low back.

While it is true that the mere fact that 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. 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. pp. 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. p. 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 p. 263).³

Again, whether Claimant and this Court can point to select evidence that arguably supports the position that she is entitled to additional medical treatment is not the proper framework for review. Here, there is conflicting evidence that is both substantial and probative that supports the Commission Decision. (R. pp. 249-250; R. p. 313, line 4 – p. 314, line 18). Where the medical evidence conflicts, the resolution of that conflict by the Commission must be upheld on appeal. *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”). Patently, an award, including an award of additional medical treatment, cannot be based on speculation. *E.g., Shealy*, 250 S.C. at 110, 156 S.E.2d at 648 (the claimant bears “the burden of proving the facts essential to his right to compensation, and an award may not be based upon conjecture or speculation”).

This Court’s reversal depends entirely on its independent review and balancing of the medical evidence; however, it is the Commission’s prerogative to weigh the evidence, including expert evidence. *See, e.g., Brunson*, 395 S.C. at 455, 718 S.E.2d at 758 (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); *Nettles*, 341 S.C. at

³ While Petitioners certainly disagree with Dr. Forrest’s overall conclusions and recommendations, they point this out simply as an additional conflict in the medical evidence in this case.

592, 535 S.E.2d at 152 (“[w]here there is conflicting medical evidence ... the findings of fact of the commission are conclusive”). Here, the Commission clearly found Drs. Boyd, Edwards and Storick more persuasive than Dr. Forrest’s one-time IME. Moreover, while this Court focused exclusive 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. pp. 291-292 *with* R. p. 261).⁴ 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.

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

C. By ordering further treatment to Claimant’s low back, this Court improperly placed the burden on Petitioners to disprove Claimant’s current low back condition is causally related to her August 22, 2016 fall.

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

⁴ And, while Dr. Storick stated that Claimant “*may* need to see an orthopedist regarding the popping and pain in the right knee,” (R. p. 291) (emphasis added), he was not treating and did not order any medical treatment for her knee, instead using the speculative “*may*.” In addition, as noted below the notations of alleged popping and pain in Claimant’s right knee depend entirely on her subjective reports to physicians which, in turn, depend on her being a credible, reliable witness.

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 produce "expert medical evidence stated to a reasonable degree of medical certainty."

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. p. 313, line 4 – p. 314, line 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. p. 316, lines 12-23). Moreover, 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. p. 313, lines 4-9). As noted above, while that discussion was with regard to the January 25, 2017 MRI, as noted above, 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 is by "what the patient tells us," again putting her credibility squarely at issue.

In addition, this Court overlooked 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. p. 83, line 15 – p. 84, line 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.”⁵ (R. p. 87, line 17 – p. 88, line 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. p. 88, line 23 – p. 89, line 5), this version of events depends entirely on her credibility. The bottom line is the record reflects that an intervening fall did occur and the only way to link that fall to her workplace accident depends entirely on her 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 remain gainfully employed. Again, these statements—both to the Commission and to her IME physicians—depend entirely on her credibility.

Relying on a March 15, 2018 medical note, the Opinion states 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. What this Court overlooked or misunderstood is that Dr. Edwards only took Claimant out of work for two weeks after she received the injection. (R. p. 257). She received that lumbar epidural on April 18, 2018, (R. pp. 258-259), after which she saw Dr. Edwards in September 2018 for an IME. Critically, although Dr. Edwards recommended this treatment to her low back, he later confirmed that there was no way to tell whether the condition he was addressing

⁵ 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. p. 35, line 15 – p. 36, line 17).

in the spring of 2018 was caused by her workplace fall or by her pre-existing back condition. (R. p. 313, line 4 – p. 314, line 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. pp. 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. p. 307, line 24 – p. 308, line 4), making the descriptions of pain in all of her medical records suspect.⁶ Notably, Dr. Boyd observed that Claimant exhibited "quite a bit of pain and Waddell signs." (R. p. 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 the other is able to continue a normal life. That this Court concluded the MRIs constitute objective evidence of the veracity of her pain complaints violates the prohibition set out in *Burnette v. City of Greenville* that neither the Commission nor the Courts can render independent medical conclusions that

⁶ Indeed, Claimant disputed the records of every single medical provider she saw. (R. p. 66, lines 8-11; p. 73, line 4 – p. 74, line 2).

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 correctly determined that Claimant failed to meet her burden of proving the current condition of her back is causally related to her August 22, 2016 compensable accident, *see, e.g., Shealy*, 250 S.C. at 110, 156 S.E.2d at 648; *Clade*, 330 S.C. at 11, 496 S.E.2d at 858, and that conclusion is supported by substantial evidence, *see, e.g., Frame*, 357 S.C. at 528, 593 S.E.2d at 495, this Court should grant rehearing and affirm the Commission's findings and conclusions that she is not entitled to additional medical treatment.

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 only to her back, this Court 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 is potentially 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. p. 3).

Following Claimant's fall, Respondents provided medical treatment to all the body parts alleged by Claimant. (R. pp. 148-223).⁷ Beginning in September 2016, Claimant reported reduced symptoms in her knee after a course of physical therapy, (R. p. 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. pp. 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. pp. 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. pp. 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 speculative suggestion. It plainly is not a diagnosis of ongoing knee issues caused by her workplace accident. (R. pp. 249-256, 291).

⁷ As this Court points out, Petitioners did not contest that Claimant may have injured her knee, forearm, elbow and/or head in her workplace fall; however, they denied and continue to deny that any of those other body parts were compensable at the time of the hearing. Substantial evidence supports the Commission's conclusion that Claimant is not entitled to further medical treatment or compensation payments for any of those body parts.

In addition, there is no evidence that any symptoms related to her right knee caused or contributed to any ongoing disability. Beyond popping⁸ and alleged pain in her knee, the latter of which is 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. pp. 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. pp. 251-253). Clearly, he did not order or even recommend any treatment for any of those body parts. 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.⁹

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. p. 3), is supported by substantial evidence and should be affirmed by this Court.

⁸ <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.>

⁹ This Court appears to take 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. This Court erred by directing the Commission to reinstate TTD.

Finally, this Court erred by directing the Commission to reinstate TTD payments. As is discussed above, this Court's 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: temporary total disability 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'tl Mgmt. Servs.*, 376 S.C. 23, 29, 655 S.E.2d 482, 485 (2007). Because this Court overlooked or misapprehended that there is substantial evidence in the record supporting the Commission's factual determination that Claimant reached MMI as of September 28, 2017, its conclusion that Claimant is entitled to ongoing TTD benefits is also erroneous. Here, Claimant's counsel made the strategic decision to not seek a finding of permanent benefits, (R. p. 24, lines 10-12), even in the event the Commission found she was at MMI.

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

CONCLUSION

For all the reasons set forth herein, Petitioners respectfully request that this Court rehear its decision in this case, and affirm the Commission Decision in its entirety.

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June 20, 2023

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appeal No. 2019-001944

Mary Hickman, Employee, ...Appellant,

v.

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

PROOF OF SERVICE

I certify that on the 20th day of June 2023, I served Respondents' **Petition for Rehearing** on Appellant Mary Hickman by email addressed to her attorney of record as follows:

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Mary Hickman, Employee, Appellant,

v.

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

Appellate Case No. 2019-001944

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2023-UP-223
Submitted November 1, 2022 – Filed June 7, 2023

REVERSED AND REMANDED

Dwight Christopher Moore, of Moore Law Firm, LLC, of
Sumter, for Appellant.

Helen F. Hiser, of McAngus Goudelock & Courie, LLC,
of Mount Pleasant, for Respondents.

PER CURIAM: On August 22, 2016, Mary Hickman fell at work and sustained injuries to her head, arm, knee, leg, and back. After receiving medical care for two years for these injuries through workers' compensation, she filed a Form 50 asking

for additional medical care and treatment, as well as a finding of temporary total disability benefits. Her employer denied the claim, asserting her current medical condition was not related to her work accident. After a hearing, the single commissioner found Hickman was at maximum medical improvement, was not entitled to further medical care, and had failed to prove her current condition was caused by her accident. After review, the appellate panel affirmed as modified the single commissioner's order, changing some of the findings of fact but none of the conclusions of law.¹ We reverse the denial of compensation to Hickman and remand for an award of temporary total disability benefits and continued medical treatment.

I.

Hickman, a forty-nine-year-old mother of seven, worked in the bakery at Ruiz Foods, stacking tortillas on a conveyer belt for nine hours a day. On August 22, 2016, she was walking to the front of the tortilla machine to remove clogged dough when she slipped in a puddle of oil and water, falling hard onto the concrete floor—and knocking her arm and head on some trays on the way down. Hickman went to the ER, where her knee and elbow x-rays showed no broken bones but did show a small joint effusion to her knee.

The next day, Hickman was evaluated at McLeod Occupational Health where she was prescribed prescription-strength ibuprofen and assigned to restricted duty at work. Over the following months, Hickman began a course of physical therapy for her arm and knee injuries. She reported that, while her symptoms from these injuries did improve, her knee popped occasionally and she continued to experience back pain. In December 2016, Hickman returned to regular duty at work. In early January 2017, Hickman's doctor at McLeod Occupational Health, Dr. Brooks, noted Hickman's back pain had not improved with physical therapy and ordered an MRI. On January 18, 2017, Hickman returned to the ER, this time reporting acute back pain radiating down her right leg. The next week, she underwent the MRI Dr. Brooks had ordered, and it showed a bulging disc at L5-S1. In her follow-up to the MRI at McLeod Occupational Health, Dr. Brooks noted, "[Hickman] has been working regular duty by toughing it out." As a result of the MRI findings, Dr. Brooks referred Hickman to an orthopedist. Hickman was evaluated by the

¹ The appellate panel's order stated "affirmed in part and reversed in part." However, we are convinced this was a scrivener's error because the result of the order was to affirm the single commissioner's ruling as modified. Like the single commissioner, the appellate panel did not award Hickman any medical treatment or disability benefits.

orthopedist, Dr. Boyd, at Lexington Brain and Spine Institute. After examining Hickman, Dr. Boyd noted:

Low back and RIGHT leg pain in her lower radicular pattern. She states this has occurred since her described work injury. She exhibits quite a bit of pain and Waddell signs. Her MRI scan does show a facet effusion on the RIGHT at L5-S1.

Dr. Boyd did not think Hickman was a surgical candidate and referred her to a pain management specialist. Dr. Boyd wrote Hickman's employer a note, stating she should not return to work until evaluated by pain management. Dr. Storick, the pain management specialist, evaluated Hickman in May 2017, noting the date of her onset of pain was August 22, 2016, and the symptoms had been continuous since onset. Dr. Storick noted, "[Hickman's] right knee is better and only bothers her every now and then." He also noted "[Hickman] denies any pre-existing history of back problems[;]" however, "medical records reviewed from her [primary care physician] indicated chronic back pain in 2013." Noting her previous physical therapy was limited to her shoulder and knee, Dr. Storick prescribed Hickman four more weeks of physical therapy; this time focusing on back symptoms and stated, "I would expect she should be at maximum medical improvement when she completes physical therapy." Dr. Storick believed Hickman would likely be able to return to work as a tortilla stacker at Ruiz Foodss after her physical therapy but assigned her work status as sedentary duty until follow-up.

On June 20, 2017, Dr. Storick again evaluated Hickman, this time finding that, while she appeared substantially better after physical therapy, her back periodically bothered her and her knee was still popping every few days. Dr. Storick assigned Hickman a "2% whole person impairment lumbar spine based on the low pain and lumbar spondylosis" and indicated she may need to see an orthopedist regarding the popping in her right knee. Dr. Storick returned Hickman to regular duty status at work.

On September 28, 2017, per Ruiz Foods's request, Hickman underwent an independent medical evaluation by orthopedist Dr. Willie S. Edwards, whose note stated:

[Hickman] was felt to be at maximum medical improvement by Dr. Storick on June 20, 2017 and was felt by him to have no specific need for restrictions for her back. He opined that she had a 2% whole person

impairment of her body related to her low back injury. She denies any previous problems related to her spine. Her continued pain has been localized in the low back area radiating to the right leg though she admits that her knee has improved . . . [Hickman] does not appear to be at maximum medical improvement. A new MRI scan 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.

Per Dr. Edwards' order, Hickman underwent another MRI in October 2017, showing a substantial change in the condition of her back. Significantly, the new MRI showed a bulging disc at L3-4 and some instability at L4-5.

In February 2018, Dr. Edwards prescribed Hickman a brace and epidural injections to help with her pain. On March 15, 2018, Hickman still had not received any epidural injections; and Dr. Edwards wrote a note stating, "We would still like for her to receive an L4-5 epidural when authorized by her workers comp. I would like her to remain out of work until she follows up 2 weeks after injection." Hickman received her first (and only) injection on April 18, 2018.

In June 2018, Hickman filed a Form 50 claim for temporary total disability benefits because she had been out of work from Ruiz Foods since Dr. Edwards took her out of work on March 15, 2018. She also claimed she needed continued medical treatment for the injuries sustained on August 22, 2016 to her right knee, back, right forearm, elbow, and head.

On July 10, 2018, Hickman underwent another independent medical evaluation, this time with Dr. Forrest at the Southeastern Spine Institute. Dr. Forrest's note described Hickman's patient history, stating:

Prior to the injury 08/22/16, Ms. Hickman recalls having a couple episodes of low back pain. By her recollection, the symptoms she had in the past before this accident were primarily in the middle part of the low back and not the right side or right buttock. She recalls having had an injection procedure done in approximately 2013. She does not recall any other treatment that was needed. She relates that, prior to the incident 08/22/16, she was asymptomatic and working 8 to 10 hours per day.

Dr. Forrest opined that, to a reasonable degree of medical certainty, Hickman's current back pain was caused by the August 22, 2016 accident at work and she was not at maximal medical improvement—and may even need surgery to resolve her pain. Dr. Forrest concluded his note by stating Hickman should remain out of work until receiving further treatment for pain, including a series of epidural injections. Ten days later, Ruiz Foods filed a Form 51, admitting Hickman sustained "right knee, back, right forearm, elbow, [and] head" injuries on August 22, 2016, but denying that her current condition was related to the August 22, 2016 work accident.

In August 2018, Dr. Forrest filled out a Form 14B Physician's Statement for the worker's compensation commission, opining: Hickman was not at maximum medical improvement; Hickman had a 14% medical impairment to her "low back and SI joint"; and Hickman should continue to receive medical treatment for her injuries, including injections or surgery. Dr. Forrest also opined, as a result of Hickman's accident, Hickman was "disabled from meaningful gainful employment."

In preparation for the hearing, Ruiz Foods collected Hickman's pre-accident medical records and deposed Dr. Edwards. Hickman's medical records revealed that, in 2001 and 2005, she reported to the ER with low back pain, and, in 2012 and 2013, Hickman's primary care doctor treated her for back pain. During Dr. Edwards' deposition, he stated he did not believe Hickman was at maximum medical improvement. He also noted there was substantial change in her back condition between January 2017 and October 2017, as depicted by the two MRIs. When asked what could cause Hickman's back's worsening condition, Dr. Edwards explained there was no way to tell with any degree of medical certainty whether the evolution from inflammation to instability in her back was "arthritic, traumatic, or stress related." Dr. Edwards testified that, when examining her, Hickman denied any back pain prior to her August 22, 2016 accident, but that, even if she did have chronic back pain in 2001, 2005, and 2012-2013, this earlier pain did not make it more or less likely that her August 22, 2016 accident caused her current condition, since "the presence of a preexisting condition, whether it's symptomatic or not, can be made symptomatic by an industrial injury." Dr. Edwards stated he would agree "within a reasonable degree of medical certainty, L4-L5, that particular disc area was injured by a trauma caused by the fall[.]"² Dr. Edwards admitted the only way to determine whether a traumatic event caused the onset of pain is to rely on the patient's own description of the onset of pain; however, he later stated that, in Hickman's case, "based on the patient history and the findings on that initial MRI scan that there was a traumatic event, and for the absence of any other causative event, it would be my

² A pre-accident MRI showed problems to a different area of Hickman's spine.

opinion that that would be most likely a significant factor in the production of symptoms in that area."

At the hearing on Hickman's claim for temporary total disability benefits and continued treatment, Ruiz Foods admitted Hickman sustained injuries to her head, shoulder, knee, and back on August 22, 2016. However, Ruiz Foods claimed that, according to Dr. Storick, Hickman had reached maximum medical improvement for those injuries on June 20, 2017. Ruiz Foods then stated that, according to Dr. Edwards' deposition testimony, it could not be proven that the deterioration of Hickman's back condition—as observed between the January 2017 and October 2017 MRIs—was caused by the August 22, 2016 accident and not the natural progression of prior injuries or age. Ruiz Foods asked the commissioner to give more weight to Dr. Edwards' testimony regarding Hickman's injuries than to Dr. Forrest's 14% impairment rating, stating Dr. Edwards was a spinal surgeon and Dr. Forrest was merely an orthopedist. Finally, Ruiz Foods asked the commissioner to find Hickman was not a credible claimant.

Hickman testified regarding her August 22, 2016 accident and previous medical history. Hickman explained she had been involved in car accidents in both 2001 and 2015, and that, in 2011 or 2012, she hurt her back one time while bending over to pick up her house key from under her door mat. Hickman explained she had received an epidural injection after that earlier back injury, and it had resolved by the time of her August 22, 2016 accident at work. Hickman testified that, as a result of her August 22, 2016 accident, she was still having trouble with her knee popping occasionally, and she could not lift her shoulder all the way. Hickman testified she was still experiencing sharp and throbbing pain in her back, explaining that, when she went from light/sedentary duty back to regular duty at work, her back pain got much worse. Hickman asserted her shoulder and knee pain had not resolved, and her back pain "never did stop." Hickman testified the epidural injection she had received in 2018 helped with the pain running down her leg, but the pain came back.

The single commissioner denied Hickman's claim, finding Hickman was not credible or truthful. The single commissioner found none of Hickman's doctors mentioned any non-back injuries in their notes, but Ruiz Foods admitted Hickman sustained an injury on August 22, 2016, to her back, and, as to that injury, "maximum medical improvement was reached as of Dr. Edwards' last medical report on September 28, 2017." The single commissioner found Dr. Boyd's and Dr. Edwards' opinions should be given greater weight than Dr. Forrest's opinion and, by the greater weight of the evidence, "[a]ll issues currently suffered by the Claimant are not related to the workers compensation case of August 22, 2016."

The single commissioner ruled Hickman suffered a compensable injury only to her back on August 22, 2016, but: 1) she had reached maximum medical improvement for her back; 2) she had received all appropriate medical treatment for the back injury; and 3) she failed to meet her burden of proof that her current back condition was related to the accident sustained on August 22, 2016. Hickman was not awarded any further medical treatment or temporary total disability benefits. Hickman appealed, and after a hearing, the appellate panel issued an order substantially adopting the commission's conclusions of law but modifying the single commissioner's factual findings. This appeal follows.

II.

The court of appeals must affirm the factual findings of the worker's compensation commission if they are supported by substantial evidence. S.C. Code Ann. § 1-23-380(5) (Supp. 2022); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 132–33, 276 S.E.2d 304, 305 (1981). However, "[t]he court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions" are affected by an error of law or are "[c]learly erroneous in view of the reliable, probative and substantial evidence on the whole record." § 1-23-380(5).

Continued Medical Treatment for Back Injury with Radiating Leg Pain

Under the South Carolina Workers' Compensation Act, an employer is not liable to provide continued medical care to an employee injured at work for a period greater than ten weeks after the date of injury unless the commission determines additional medical treatment 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(A) (2015). Because § 42-15-60 refers to "disability" and makes no reference to maximum medical improvement, whether an employee is at maximum medical improvement has no bearing on the determination of whether the employer is liable to provide medical treatment beyond the ten-week time period. *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 574, 581, 514 S.E.2d 593, 596 (Ct. App. 1999). Under workers compensation law, "[m]aximum medical improvement 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." *O'Banner v. Westinghouse Elec. Corp.*, 319 S.C. 24, 28, 459 S.E.2d 324, 327 (Ct. App. 1995). "[T]he fact a claimant has reached maximum medical improvement does not preclude a finding the claimant still may require additional medical care or treatment[, because, while] medical care or treatment may not reduce the claimant's degree of physical impairment, it may 'tend to lessen the period of

disability." *Dodge*, 334 S.C. at 581, 514 S.E.2d at 596–97 (quoting § 42-15-60(A)). "Disability" is defined in the South Carolina Workers' Compensation Act as the 'incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.'" *Id.* at 580, 514 S.E.2d at 596 (quoting S.C. Code Ann. § 42-1-120 (2015)).

We find the commission erred as a matter of law in concluding Hickman is not entitled to continued medical treatment for her back injury with radiating leg pain. First, whether Hickman reached maximum medical improvement as to the injury is not dispositive of whether she is entitled to continued medical treatment under § 42-15-60. *See id.* at 581, 514 S.E.2d at 596–97 ("The fact a claimant has reached maximum medical improvement does not preclude a finding the claimant still may require additional medical care or treatment[, because, while] medical care or treatment may not reduce the claimant's degree of physical impairment, it may 'tend to lessen the period of disability.'" (quoting § 42-15-60)). Rather, the inquiry as to whether continued medical treatment is appropriate turns on whether the treatment will tend to lessen her period of disability. Accordingly, to the extent the commission found she was not entitled to continued medical treatment because she reached maximum medical improvement, this was error.

Next, all objective medical evidence, including two MRIs and two independent medical evaluations, demonstrate Hickman's back condition with radiating leg pain was real and ongoing at the time of her hearing. Therefore, to the extent the commission found Hickman was not entitled to continued medical treatment for her injuries because her testimony regarding current pain was not believable, this was error. *See Crane v. Raber's Discount Tire Rack*, 429 S.C. 636, 646, 842 S.E.2d 349 354 (2020) (finding employee's credibility could not be a proper basis for deciding whether employee was injured or disabled when all objective medical evidence relevant to those facts demonstrated he was).

Causation is also not a reason to deny benefits here. There is no dispute Hickman injured her back on August 22, 2016, and there is no dispute Hickman's back condition was preventing her from working as a tortilla stacker at the time of her hearing. Furthermore, there is no evidence in the record indicating an interruption in the causal chain from the August 22, 2016 injury to the disability experienced in 2018. *Tims v. J.D. Kitts Const.*, 393 S.C. 496, 504, 713 S.E.2d 340, 344 (Ct. App. 2011) ("Every natural consequence that flows from a work-related compensable injury is also compensable unless the consequence is the result of an independent, intervening cause sufficient to break the chain of causation."). Accordingly, Hickman was entitled to compensation in 2018 for the back injury with radiating leg pain she sustained in August 2016. *See Turner v. SALLA Constr.*, 419 S.C. 98, 105,

796 S.E.2d 150, 154 (Ct. App. 2016) ("An injury arises out of employment if it is proximately caused by the employment."); *Owings v. Anderson Cnty. Sheriff's Dep't*, 315 S.C. 297, 299, 433 S.E.2d 869, 871 (1993) ("An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury."); *cf. Frampton v. S.C. Dep't of Nat. Res.*, 432 S.C. 247, 262–63, 851 S.E.2d 714, 722–23 (Ct. App. 2020) (finding claimant failed to prove he was entitled to compensation for initial work-related spine injury, when claimant had seen doctor for exact same injury six months before he was allegedly injured at work).

Finally, there is no evidence in the record to support the conclusion that Hickman's period of disability would not be shortened by continued medical treatment. Rather, all evidence indicates Hickman was told by her doctors that, as of March 15, 2018, Hickman was unable to work as a tortilla stacker until her back and radiating leg pain were treated, either by surgery or epidural injections. Accordingly, we remand the case for an award of continuing medical treatment for Hickman's back injury with radiating leg pain. *See Dodge*, 334 S.C. at 583–84, 514 S.E.2d at 598 (finding there was a question of fact as to whether the claimant was entitled to continued medical treatment when treatment meant the difference between the claimant "being able to work and not being able to work" and remanding the issue to the worker's compensation commission for consideration).

Continued Medical Treatment for Non-Back Injuries

The single commissioner's order states, "Based on the greater weight of the evidence by all doctors including her IME doctor, there is no mention of injuries to [Hickman's] head, right forearm or should[er], right knee, or right leg." The order then states, "Pursuant to S.C. Code Ann. § 42-1-160, [Hickman] sustained an admitted injury by accident to her back on or about August 22, 2016," and Hickman "suffered a compensable injury to only her back for which she received all appropriate medical treatment."

However, Ruiz Foods admitted, both in its Form 51 and at the hearing in front of the single commissioner, that Hickman injured her "right knee, back, right forearm, elbow, head" during the August 22, 2016 accident. Moreover, every one of Hickman's doctors discussed her non-back injuries in their notes. Accordingly, the single commissioner's finding and conclusions as to Hickman's non-back injuries are patently contradicted by the record. *See Burnette v. City of Greenville*, 401 S.C. 417, 427–28, 737 S.E.2d 200, 206 (Ct. App. 2012) ("[W]hile a finding of fact of the [c]ommission will normally be upheld, such a finding may not be based upon

surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." (quoting *Edwards v. Pettit Constr. Co., Inc.*, 273 S.C. 576, 579, 257 S.E.2d 754, 755 (1979))).

The appellate panel recognized this error and changed the single commissioner's finding regarding the non-back injuries to state: "Based on the greater weight of the evidence from all doctors including [Hickman's] IME doctor, any injury to the head, right forearm or shoulder, right knee, or right leg resolved." The appellate panel did not, however, change the single commissioner's corresponding conclusion of law. Instead, the appellate panel adopted the single commissioner's exact wording from the conclusion section of his order, which stated: "[Hickman] suffered a compensable injury to only her back for which she received all appropriate medical treatment." This was an error: the appellate panel's conclusion that Hickman injured only her back on August 22, 2016, is not supported by the record or its own finding of fact. Because the medical evidence, Ruiz Foods's own admissions, and the appellate panel's factual finding indicate Hickman injured her "right knee, back, right forearm, elbow, head" on August 22, 2016, there is no question Hickman's non-back injuries are compensable under the workers' compensation act. See S.C. Code Ann. § 42-1-160 (2015) (defining injury by accident); *Jennings v. Chambers Dev. Co.*, 335 S.C. 249, 254-55, 516 S.E.2d 453, 456 (Ct. App. 1999) ("For an injury to be compensable, it must be by accident arising out of and in the course of employment. . . . 'An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury.'" (quoting *Clade v. Champion Lab*, 330 S.C. 8, 11, 496 S.E.2d 865, 857 (1998))).

Because the non-back injuries are compensable injuries as defined by § 42-1-160, the appellate panel was required to determine whether Hickman was entitled to further medical treatment for those injuries as claimed in her Form 50. See § 42-15-60(A) (providing employer is liable for continued medical treatment if it will lessen period of employee's disability due to injury). We hold the appellate panel's finding that Hickman's non-back injuries, particularly those to her knee, had "resolved" by the time of the hearing in front of the commissioner is not supported by substantial evidence in the record, nor is it an adequate disposition regarding whether she is entitled to further medical treatment. See *Dodge*, 334 S.C. at 581, 514 S.E.2d at 596 (holding the fact a claimant has reached maximum medical improvement does not preclude a finding the claimant still may require additional medical care or treatment to lessen period of disability); *Lark*, 276 S.C. at 136, 276 S.E.2d at 307 ("The substantial evidence rule, prescribed in the statute, means that [an appellate court] will not overturn a finding of fact by an administrative agency

'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" (quoting *Independent Stave Co. v. Fulton*, 476 S.W.2d 792, 793 (Ark. 1972))). While there is scant evidence in the record regarding the necessity for ongoing treatment to Hickman's shoulder, head, and arm injuries, she testified at the hearing that her knee was still popping in pain. Regardless of whether Hickman's own testimony was credible, her doctors provided statements that Hickman's knee injury was, in fact, not resolved. On June 20, 2017, a month after his May 2017 note stating Hickman's knee injury was better, Dr. Storick stated that, while he believed Hickman was close to maximum medical improvement for her back injury—she "may need to see an orthopedist regarding the popping and pain in the right knee." Dr. Edwards' September 28, 2017 note only stated Hickman's knee injury/pain had "improved," not that it had "resolved." Thus, there is not substantial evidence to support the full commission's finding that Hickman's knee injury was "resolved," and we remand to the commission for an award of continued medical treatment for this injury.

Temporary Total Disability Benefits

"When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages[.]" S.C. Code Ann. § 42-9-10(A) (2015). Payments for temporary total disability cease when an employee is able to return to work or has reached maximum medical improvement. S.C. Code Ann. § 42-9-260 (B), (D) (2015). "The rationale for ceasing temporary benefits upon a finding of [maximum medical improvement] is to permit entry of a permanent award." *Smith v. SC Dep't of Mental Health*, 335 S.C. 396, 399, 517 S.E.2d 694, 695 (1999). "Clearly, if an employee has reached [maximum medical improvement] and remains disabled, then his injury is permanent[; t]his is precisely the reason to terminate temporary benefits in favor of permanent benefits upon a finding of [maximum medical improvement]." *Id.* at 399, 517 S.E.2d at 695–96.

There is no dispute that, as of March 15, 2018, Hickman was unable to work as a tortilla stacker until her back and radiating leg pain were treated, either by surgery or epidural injections. Furthermore, the commission's finding that Hickman is at maximum medical improvement for her back injury is not supported by the record. Dr. Edward's September 28, 2016 note, which the single commissioner and the appellate panel cited as the basis for their conclusion, contradicts this finding. The September 28, 2016 note states: "[Hickman] does not appear to be at maximum medical improvement. A new MRI scan 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." Dr. Edwards repeated this opinion in his deposition testimony. Accordingly, we remand this case for an award of temporary total disability benefits. *See* S.C. Code Ann. § 42-9-260 (2015) (providing employer may pay portion of wages when employee is out of work due to total temporary disability resulting from injury until the date employee has returned to work or reached maximum medical improvement, or if more than 150 days have passed since the date the injury was reported, until the commission "provide[s] by regulation the method and procedure by which benefits may be suspended or terminated for any cause"); *Burnette*, 401 S.C. at 427–28, 737 S.E.2d at 206 ("[W]hile a finding of fact of the [c]ommission will normally be upheld, such a finding may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." (quoting *Edwards*, 273 S.C. at 579, 257 S.E.2d at 755)).

In light of our disposition of the case at this time, it is not necessary for this court to address any remaining issues. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating appellate court need not address remaining issues when disposition of prior issue is dispositive).

REVERSED AND REMANDED.³

GEATHERS and MCDONALD, JJ., and HILL, A.J., concur.

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From The
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
Appellate Panel

Appellate Case Number 2019-001944

Mary Hickman, Employee, ... Appellant,

v.

Ruiz Foods, Employer, and
Safety National Casualty Corporation
C/O York Risk Services Group, Carrier, ... Respondents.

AMENDED FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Whether or not the Appellant suffered a compensable injury to only her back for which she received all appropriate medical treatment;
2. Whether or not the Appellant reached maximum medical improvement on September 28, 2017;
3. Whether or not the Appellant's current condition to her back is unrelated to her compensable accident sustained on August 22, 2016, as Appellant failed to meet her burden of proof; and
4. Whether or not the Appellant is entitled to any additional medical treatment.

STATEMENT OF THE CASE

The Appellant suffered on-the-job injuries during the evening hours of August 22, 2016, when she slipped and fell in an accumulation of water and oil on the floor of her worksite. The incident was admitted by the Respondents. The Appellant states that she fell onto her right side, striking some metal trays with her right arm and head as she fell to the floor. She complained of pain and bruising to the right upper arm, right lateral knee, midline thoracolumbar region and right scalp. She was treated at the KershawHealth Medical Center on August 23, 2016, she was seen on August 23, 2016, by Keith Farrell, APRN, at McLeod Occupational Health for injuries diagnosed as follows:

1. Contusion of right upper arm
2. Abrasion of right upper arm
3. Contusion of scalp
4. Contusion of right knee
5. Strain of muscle and tendon of back wall of thorax

Her activity restrictions "General: Seated duty only, Rotate stand/walk/sit as needed for comfort PRN."

(R. p. 148; *App. APA 1*, p. 1; R. pp. 175-176; *App. APA 2*, pp. 28-29).

On March 23, 2017, the Appellant was seen by Dr. Scott B. Boyd at Lexington Brain and Spine Institute for a "workman's comp evaluation regarding a fall that occurred at work (Ruiz Foods) 08/22/2016. Since that time she has had a considerable amount of pain in the right side of her low back that extends into the buttock with tingling and numbness down the side of the right leg to the foot. The pain in her back is constant. Her leg symptoms are intermittent. Activity tends to aggravate her symptoms overall. She denies any left leg symptoms. She tried to work but was unable to do so. She was unable to tolerate light duty as well. They sent her to physical therapy but that seemed to aggravate her symptoms. An MRI scan was then ordered which showed some abnormalities prompting visit today. She has not been to pain management." Dr. Boyd's Assessment follows. "Low back and right leg pain in her lower radicular pattern. She states this has occurred since her described work injury. She exhibits quite a bit of pain and Waddell signs. Her MRI scan does show a facet effusion on the right at L5-S1. I don't believe any of this surgical and she was not able to tolerate physical therapy. Therefore I have recommended referral to pain management to consider further treatment is likely to include facet blocks or epidural sterile injections. Once again I do not believe that there is a surgical alternatives here so I will release her to pain management and keep her out of work until they're evaluation." Dr. Boyd wrote the Appellant out of work from March 23, 2017, until she could be evaluated by pain management. (R. pp. 235-236, 238; *App. APA 5*, pp. 118-121)

Appellant was referred to Dr. Steven B. Storick of Midlands Orthopaedics and Neurosurgery on May 2, 2017, for evaluation of her right knee, right arm/elbow, back and head. His Discussion Notes Follow:

Ms. Hickmon presents with multiple complaints from her work-related injury that seemed to be improving except for her persistent right low back pain. She only

occasionally has pain down the right leg and numbness in the foot. The patient had no neurological deficits and did not appear myelopathic. Her physical exam due to mostly localized tenderness. The lumbar MRI findings were most degenerative of uncertain age. Patient has significant elevated Oswestry and verbal pain scores. Her old medical records were also reviewed indicating issues with chronic back pain and headaches. Conservative treatments would be the most appropriate. The patient reports minimal physical therapy for her back and the previous treatments most focused on over-the-counter medication if needed. I would expect she should be at maximum medical improvement when she completes physical therapy. Ms. Hickmon described working at a food processing plant where she is a "stacker" moving tortillas from one line to another for 9 hours a day. Once she is at MMI, I believe she should be capable of returning to that type of work. She will follow-up when she completes physical therapy. The patient may return to work in sedentary duty for now. Treatment plan was reviewed with Ms. Hickmon. All of my opinions are based upon a reasonable degree of medical certainty.

On June 20, 2017, Dr. Storick recorded the following Discussion Notes:

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. The patient may need to see an orthopedist regarding the popping and pain in the right knee. Using the AMA Guides to the evaluation of Permanent Impairment, Fifth Edition, the patient has a 2% whole body impairment lumbar spine based on the low back pain and lumbar spondylosis. She is to follow up as needed. Treatment plan was reviewed with the patient. All my opinions are based upon a reasonable degree of medical certainty.

(R. pp. 239, 242, 249-250; *App. APA 6, pp. 122, 125, 132-133*)

The Appellant was seen by Dr. W. S. (Bill) Edwards, Jr., Spine Surgeon, of Pee Dee Orthopaedic Associates, P.A., on September 28, 2017, on referral for a Lumbar Independent Medical Evaluation; the chief complaint being low back pain and right leg pain. In pertinent part, Dr. Bill Edwards' History of Present Illness is as follows:

The 50 year old black female sustained a work related injury in August of 2016 on her job as a food process worker at Ruiz Foods. She noted the immediate onset of pain in her back without any dermatomal pattern of pain in legs but states that she injured her right knee at the same time. Symptoms have improved from that standpoint though her back continues to bother her significantly. She was seen at Occupational Medicine Clinic at McLeod initially and physical therapy

was started and subsequently was referred to Dr. Scott Boyd in Columbia who did not feel she was a surgical candidate and referred her to Pain Management under the direction of Dr. Storick. Conservative treatment has consisted of physical therapy and medication and initially she was out of work for awhile but has been on a light duty environment since that time. She was felt to be at maximum medical improvement by Dr. Storick on June 20, 2017 and was felt by him to have no specific need for restrictions for her back. He opined that she had 2% whole person impairment of her body related to her low back injury. She denies any previous problems related to her spine. Her continued pain has been localized in the low back area radiating to the right leg though she admits that her knee has improved. She describes some paresthesias in the right foot and ankle since this injury that have not improved. She drives approximately one hour each way to work which she feels aggravates her symptoms at times....

DISCUSSION:

Patient does not appear to be at maximum medical improvement. 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. I made no reappointment to see her but I will be happy to assume her care if the involved parties desire and I will be happy to help facilitate obtaining a new MRI scan and therapeutic injection before final statements are made.

(R. pp. 260-261; App. APA 8, pp. 143-144)

On February 15, 2018, the Appellant was seen by Dr. Willie S. Edwards of McLeod Spine Center. Dr. Edwards recorded the following under his Spine Notes: "Patient presents with back pain radiating down bilateral lower extremities she states she has been experiencing these symptoms since August 2016 when she had a fall at work. She describes her symptoms as a numbness sensation radiating down both of her lower extremities to her toes with the right side being much worse than her left. She states her symptoms are aggravated with extended walking, standing and better with heat. She did previously undergo physical therapy which offered her no relief. She does continue her work as a food process worker at Ruiz foods. She rates the severity of her condition as an 8 out of 10." Dr. Black provided the Appellant with a brace to assist with her discomfort and recommended epidural injections to assist with her discomfort in the lower extremities.

Dr. Edward's notes from Appellant's follow-up visit with him on March 15, 2018, states: "Patient presents in follow-up with continued complaints of back pain radiating down both of her extremities. Upon her last visit she was provided with a brace which she does wear she states provides her some relief when walking for any extended period of time. We did also refer her for an injection which unfortunately has not been completed at this time. She states her symptoms are constant and worsening in nature."

Pursuant to referral by Dr. Edwards, the Appellant was administered an epidural steroid injection on April 18, 2018, by Dr. Anthony W. Alexander of McLeod Physician Associates. Dr. Alexander's notes reflect the following: "The patient presents today to undergo her first transforaminal epidural steroid injection. The patient rates her low back pain as a 10/10 and right leg to the toe pain 10/10. ..." (R. pp. 251, 253, 256, 258; *App. APA 7, pp. 134, 136, 139, 141*)

On July 10, 2018, the Appellant was seen by Dr. Leonard Forrest of the Southeastern Spine Institute on referral for an Independent Medical Evaluation. The pertinent part of his notes follow:

Today I had an opportunity evaluate Ms. Mary Hickman. ... She presents at this time with pain that is in her low back and right buttock.

Ms. Hickman relates the onset of her symptoms to a work injury that occurred 08/22/16. She states she was working for Ruiz Foods and walking around a corner when she slipped and fell hard. She relates there was water and oil on the ground. She recalls falling onto her low back and buttock area onto a brick and concrete surface. Ms. Hickman relates that, in addition to falling onto her back, her arm somehow got caught. She relates having an injury to her right shoulder and she also reports that her head hit the ground. She also had pain in the right knee following this incident.

Ms. Hickman relates initially being treated in the safety office at work with ice, and she recalls being sent home from work. Ms. Hickman reports that the following day her symptoms were more prominent. She was directed to go to McLeod occupational health. She subsequently had treatment for the shoulder

and knee as well as her back. Her treatment included primarily physical therapy. She relates having one recent injection procedure done. Prior to that injection, she was having leg pains in addition to the pains in her back and buttock. She reports that the injection procedure resolved the leg pains. However, she remains with prominent pain in her low back and right buttock. Ms. Hickman relates she has been offered surgery by a doctor and she would like to understand her other options.

Currently, Ms. Hickman reports pain in the low back and buttocks. The pain includes aching, burning, and pins and needles. Her level of pain currently varies from 6 to 10 on a scale of 0 to 10. Walking, standing, and lifting make her symptoms feel worse. Sitting with a pillow behind her back, and also lying down with a pillow under her legs are helpful. Medication is also helpful.

Prior to the injury 08/22/16, Ms. Hickman recalls having a couple of episodes of low back pain. By her recollection, the symptoms she had in the past before this accident were primarily in the middle part of the low back and not the right side or right buttock. She recalls having an injection procedure done in approximately 2013. She does not recall any other treatment that was needed. She relates that, prior to the incident 08/22/16, she was asymptomatic and working 8 to 10 hours a day.

...

Ms. Hickman relates that, following her injury in August 2016, she was off work for approximately one month. She then went back to light duty work. She reports that, over the interval following that, she has worked light duty, but needed to be off work at times. She relates that, since this past March, she has been off work entirely.

...

... She has tenderness over the low back and right buttock including over the right S1 joint. Stress of the right S1 joint reproduces some of her symptoms. No tenderness over the midback, upper back, or neck. ...

Ms. Hickman has had 2 lumbar MRI scans done. The first was done in January 2017 and the second one was done in October 2017. I reviewed both studies and also have the official reports from the radiologist for both. The January 2017 study shows facet arthropathy with effusion at L5-S1 on the right. There is facet arthropathy present L-5, right greater than left, also. At that time there was marrow edema in the L4 and L5 pedicles on the right. The study from October 2017 continues to show significant facet arthropathy. The radiologist reports a disc bulge at L3-4 and a listhesis at L4-5 on this October study. I don't see anything significant in this regard or significantly different comparing the two studies.

Impression:

Ms. Hickman has pain in her low back, particularly on the right side, and also her right buttock. She also had pain down the right leg, but she had good improvement with these leg symptoms following a lumbar transforaminal injection that was recently done. To a reasonable degree of medical certainty, Ms. Hickman's low back and buttock pains were caused by the 08/22/16 incident.

With regard to the scan findings, the likelihood is that the facet arthropathy predated the 08/22/16 work incident, but the incident aggravated this condition causing the facet effusion as well as the edema that was seen on the initial MRI in January 2017. Her most recent MRI done in October shows less of the acute findings, but the significant facet arthropathy in the low lumbar spine, particularly on the right, persists. To a reasonable degree of medical certainty, the incident caused an injury to the low lumbar spine including an aggravation of the underlying spondylosis changes.

I also suspect that there may have been an injury to the S1 joint as a result of the 8/22/16 incident.

In my opinion, Ms. Hickman is not at maximal medical improvement.

Recommendation:

Ms. Hickman states she has been discussing surgery with Dr. Edwards. Dr. Edwards' notes, that are available to me, don't discuss surgery, but my opinion is that surgery may prove to be needed, including potentially a two level fusion. However, I don't believe that we know this will be necessary, or will be the best treatment, yet. Ms. Hickman has only had a single injection procedure done to date, and, according to my review, this was a transforaminal injection. This type of injection is best for treating the associated leg symptoms as opposed to treatment for the back and buttock pain. Indeed, Ms. Hickman relates she did have good improvement of her leg symptoms from this injection.

At this time, my specific recommendation for Ms. Hickman is to initiate treatment for the back with an intralaminar epidural injection. If she does not respond adequately to one or two such injections, I would recommend proceeding with treatment of the lumbar facet joints, possibly bilaterally, but particularly the right L45(sic) and L5S1 facets. Also, to my exam, there is a likelihood that the S1 joint was injured, and is a contributing factor to Ms. Hickman's symptoms at the present time, as well. As such, an S1 injection should be a consideration for treating that component of her symptoms. Of note, spine surgery won't address the S1 joint at all.

Ms. Hickman has been off work recently. She reports her activities have been very limited by her pain. She notes she cannot even go to church now. I

recommend Ms. Hickman continue to be off work. With treatment, ideally she will improve functionally as well as symptomatically.

...
(R. pp. 262-264; *App. APA 9, pp. 145-147*)

Dr. Forrest also completed Form 14B, Physician's Statement, dated August 5, 2018, in which he diagnosed Appellant's injury as significant aggravation of facet joints based upon facet effusion and edema and disc bulging; injury to the low back at right SI joint, right buttock, leg and back; and determined that she sustained a permanent physical impairment of 14% medical impairment to the low back and SI joint; and that as a result of the injury, the Appellant was disabled from meaningful gainful employment. He recommended additional treatment in the form of injections and possible surgery that would tend to lessen the period of disability or maintain the current level of function.

(R. p. 265; *App. APA, Exhibit A*)

Appellant filed Form 50, Request For Hearing, dated June 20, 2018, claiming injury to her right knee, back, right forearm, elbow and head, seeking additional medical treatment, and temporary total disability benefits. (R. p. 118)

Respondents' Form 51, Employer's Answer To Request for Hearing, was filed July 20, 2018, asserting *inter alia* that the Appellant's current condition is not related to her work accident, denied that she is entitled to additional medical treatment and denied that she is totally disabled as a result of her compensable injury. (R. p. 119)

The case was heard on September 24, 2018, in Florence, South Carolina, before Single Commissioner Avery B. Wilkerson, Jr., who filed his Decision and Order on January 4, 2019, ordering:

That Appellant suffered a compensable injury to only her back for which she received all appropriate medical treatment;

That Appellant reached maximum medical improvement on September 28, 2017;

That Appellant's current condition to her back is unrelated to her compensable accident sustained on August 22, 2016, as Appellant failed to meet her burden of proof; and

That the Appellant is not entitled to any additional medical treatment.
(R. pp. 8-16)

On January 23, 2019, Appellant filed Form 30, Request for Commission Review. (R. p. 120) The Appellate Panel Review was held in Columbia, South Carolina, on April 29, 2019, before Commissioners Melody James, Aisha Taylor and Susan Barden. The Appellate Panel's Decision and Order filed October 28, 2019, Ordered as follows:

That the Appellant suffered a compensable injury to only her back for which she received all appropriate medical treatment;

That the Appellant reached maximum medical improvement on September 28, 2017;

That Appellant's current condition of her back is unrelated to her compensable accident sustained on August 22, 2016, as Appellant failed to meet her burden of proof; and

That Appellant is not entitled to any additional medical treatment.
(R. pp. 1-6)

Appellant filed Notice of Appeal to this Court on November 22, 2019.

STANDARD OF REVIEW

The Standard of Review in this case is set forth by the Administrative Procedures Act, S.C. Code Ann. 1-23-310, et seq. (2005). "The Appellate Panel is the ultimate fact finder in Workers' Compensation cases and is not bound by the single commissioner's findings of fact." The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. Hall v. United Rentals, Inc., 371 S.C. 69, 80, 636 S.E.2d 876, 882 (Ct. App. 2006). (*Internal cites omitted*) However, its findings must be supported by substantial

evidence. "This Court's review is, therefore, limited to determining whether the Appellate Panel's decision is unsupported by substantial evidence or controlled by an error of law." Mungo v. Rental Uniform Service of Florence, Inc., 383 S.C. 270, 277, 678 S.E.2d 825, 829 (Ct. App. 2009); reh'g denied June 25, 2009, cert. denied April 8, 2010. "Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached." Mungo, 383 S.C. at 279, 678 S.E.2d at 830.

STATEMENT OF FACTS

The Appellate Panel affirmed in part and reversed in part the Single Commissioner's Decision and Order. A careful review of the differences between the Findings of Fact in the Decision and Order of the Single Commissioner dated January 4, 2019, and the Decision and Order of the Appellate Panel filed six (6) months later on October 28, 2019 are as follows:

Findings 1 – 4 in both Decisions and Orders are the same.

Finding 5 in the Single Commissioner's Decision

Based on the greater weight of the evidence by all doctors including her IME doctor, **there is no mention of injuries to the Claimant's head, right forearm or should(sic), right knee, or right leg.**

Finding 5 in the Appellate Panel's Decision:

Based on the greater weight of the evidence by all doctors including Claimant's IME doctor, **any injury to the head, right forearm or shoulder, right knee, or right leg resolved**

Finding 6 in the Single Commissioner's Decision

Claimant provided two different testimonies depending on who was asking her the questions. Claimant was clear in her answers when asked by her attorney, and unclear and **prone to rambling** when asked by the Defense. Until recently everything had cleared up except her back pain. (R. p. 44, ln. 4-8, p. 47, ln. 2-10, p. 51, ln.15-20, p. 73, ln. 14 – p. 74, ln. 2, p. 74, ln. 19-25, p. 75, ln. 18 p. 76, ln. 2, p. 86, ln. 18 – p. 87, ln. 3; *Hearing Tr. Pp. 26 Ln. 4-8; Pp.29 Ln. 2-10; Pp. 33 Ln. 15-20; Pp. 55 Ln. 14 – Pp. 56 Ln. 2; Pp. 56 Ln. 19-25; Pp. 57 Ln. 18 – Pp. 58 Ln. 2; Pp. 68 Ln. 18 – Pp.69 Ln. 3)*

Finding 6 in the Appellate Panel's Decision

Claimant provided two different testimonies depending on who was asking her the questions. Claimant was clear in her answers when asked by her attorney, and **unclear** when asked by the Defense. Until recently everything had cleared up except her back pain. (R. p. 44, ln. 4-8, p. 47, ln. 2-10, p. 51, ln.15-20, p. 73, ln. 14 – p. 74, ln. 2, p. 74, ln. 19-25, p. 75, ln. 18 p. 76, ln. 2, p. 86, ln. 18 – p. 87, ln. 3; *Hearing Tr. Pp. 26 Ln. 4-8; Pp. 29 Ln. 2-10; Pp. 33 Ln. 15-20; Pp. 55 Ln. 14 – Pp. 56 Ln. 2; Pp. 56 Ln. 19-25; Pp. 57 Ln. 18 – Pp. 58 Ln. 2; Pp. 68 Ln. 18 – Pp.69 Ln. 3*)

Findings 7 and 8 in both Decisions and Orders are the same.

Finding 9 in the Single Commissioner's Decision

I do not find the testimony by the Claimant consistent with the medical evidence presented at the hearing. (R. p. 73, ln. 4- p. 74, ln. 2; *Hearing Tr. Pp. 55, Ln. 4 - Pp. 56 Ln. 2*) **Based on the request of Defense**, I do not find the Claimant to be credible or truthful with her testimony.

Finding 9 in the Appellate Panel's Decision

I do not find the testimony by the Claimant consistent with the medical evidence presented at the hearing. (R. p. 73, ln. 4- p. 74, ln. 2; *Hearing Tr. Pp. 55, Ln. 4 - Pp. 56 Ln. 2*) We do not find the Claimant to be credible or truthful with her testimony.

Findings 10, 11, 12, and 13 in both Decisions and Orders are the same.

Finding 14 in the Single Commissioner's Decision

All issues currently suffered by the Claimant are not related to the workers compensation case of August 22, 2016. This is based on the greater weight of the evidence.

Finding 14 is omitted from the Appellate Panel's Decision.

Appellant respectfully suggests that the purported reversal of the Single Commissioner's Decision and Order by the Appellate Panel reflects an absence of a substantive review of the case and that the review, on appeal to the Full Commission, resulted in a mere "cleaning up" of his Findings of Fact by the Appellate Panel.

With regard to the Appellate Panel's affirmance of the Single Commissioner's acrimonious characterization of the Appellant as providing "two different testimonies depending upon who was asking her the questions", that she "was not honest in her medical history at the IME with Dr. Edwards," and the blatant statement that "[w]e do not find the Claimant to be

credible or truthful with her testimony,” Appellant urges the Court to consider the citations to excerpts from the Transcript of Record of the September 24, 2018, hearing, consider the psychological position of the Appellant in discussions with Respondent’s doctors and under cross examination by Respondent’s counsel, and make its independent assessment of what transpired in this case.

Dr. Boyd noted in his report that “[s]he exhibits quite a bit of pain and Waddell signs.” (R. pp. 235-237; *App. APA 5*, pp. 118-121) Dr. Storick reported that the [p]atient has significant elevated Oswestry and verbal pain scores.” (R. pp. 239, 242, 249-250; *App. APA 6*, pp. 122, 125, 132-133) Together with the Appellate Panel’s finding of a lack of credibility and dishonesty on the part of the Appellant, its finding that she reached MMI on September 28, 2017, and Ordering that she is not entitled to any additional medical treatment despite the documentation that she continues to complain of pain and seeks medical help long thereafter, this Court may look beyond the Decision and Order to the substantial evidence in the record.

The Decision and Order is unsupported by the evidence in the record. To the extent the Appellate Panel bases its findings and conclusions upon the reported “elevated Oswestry and verbal pain scores” and the fact that “[s]he exhibits quite a bit of pain and Waddell signs” opined by its physicians, such reliance is in error. Suspected malingering or exacerbated pain in a worker’s compensation claimant is addressed in our case law. Likewise, the same applies to prior events that might have led to the existence of pre-existing conditions. “A work-related accident which aggravates or accelerates a pre-existing condition, infirmity, or disease is compensable. A condition is compensable unless it is due solely to the natural progression of a pre-existing condition. It is no defense that the accident, standing alone, would not have caused

the claimant's condition, because the employer takes the employee as it finds him or her."

Hargrove v. Titan Textile Co. 360 S.C. 276, 295, 599 S.E.2d 604, 613 (Ct. Appeal 2004).

ARGUMENT

1. Whether or not the Appellant suffered a compensable injury to only her back for which she received all appropriate medical treatment

The Appellate Panel determined that the Appellant suffered a compensable injury to only her back for which she received all appropriate medical treatment.

Appellant asserts that there is substantial evidence in the record that, in addition to the compensable injury to her back, she suffered compensable injuries to her right knee, right forearm, elbow and head as set forth in her Form 50, Employee's Notice of Claim and Request for Hearing filed September 29, 2016, and in her Form 50 filed June 25, 2018. (R. pp. 17, 118.) These injuries are referenced in the records, history, and notes from each of the medical providers from August 23, 2016, the date of the accident, and continuing throughout this process. She was seen on August 23, 2016, by Keith Farrell, APRN, at McLeod Occupational Health for injuries diagnosed as:

1. Contusion of right upper arm
2. Abrasion of right upper arm
3. Contusion of scalp
4. Contusion of right knee
5. Strain of muscle and tendon of back wall of thorax

(R. pp. 148, 175-176; *App. APA 1*, p. 1; *App. APA 2*, pp. 28-29).

On March 23, 2017, the Appellant was seen by Dr. Scott B. Boyd for a "workman's comp evaluation regarding a fall that occurred at work (Ruiz Foods) 08/22/2016. Since that time she has had a considerable amount of pain in the right side of her low back that extends into the buttock with tingling and numbness down the side of the right leg to the foot. The pain in her back is constant. Her leg symptoms are intermittent. Activity tends to aggravate her symptoms

overall. She denies any left leg symptoms. She tried to work but was unable to do so.” Dr. Boyd noted: “Low back and right leg pain in her lower radicular pattern. She states this has occurred since her described work injury. She exhibits quite a bit of pain and Waddell signs.” (R. pp. 235-238; *App. APA 5, pp. 118-121*)

Appellant was referred to Dr. Steven B. Storick on May 2, 2017, for evaluation of her right knee, right arm/elbow, back and head. His Discussion Notes reflect that:

Ms. Hickmon presents with multiple complaints from her work-related injury that seemed to be improving except for her persistent right low back pain. She only occasionally has pain down the right leg and numbness in the foot. ...

On June 20, 2017, Dr. Storick recorded in his Discussion Notes that “The patient may need to see an orthopedist regarding the popping and pain in the right knee.”

(R. pp. 239, 242, 249-250; *App. APA 6, pp. 122, 125, 132-133*)

The Appellant was seen by Dr. W. S. (Bill) Edwards, Jr., on September 28, 2017, on referral for a Lumbar Independent Medical Evaluation; the chief complaint being low back pain and right leg pain. The pertinent part of Dr. Bill Edwards’ History of Present Illness follows:

The 50 year old black female sustained a work related injury in August of 2016 on her job as a food process worker at Ruiz Foods. She noted the immediate onset of pain in her back without any dermatomal pattern of pain in legs but states that she injured her right knee at the same time. Symptoms have improved from that standpoint though her back continues to bother her significantly. Her continued pain has been localized in the low back area radiating to the right leg though she admits that her knee has improved. She describes some paresthesias in the right foot and ankle since this injury that have not improved. She drives approximately one hour each way to work which she feels aggravates her symptoms at times....

(R. pp. 260-261; *App. APA 8, pp. 143-144*)

On February 15, 2018, the Appellant was seen by Dr. Willie S. Edwards who recorded the following under his Spine Notes: “Patient presents with back pain radiating down bilateral lower extremities she states she has been experiencing these symptoms since August 2016 when

she had a fall at work. She describes her symptoms as a numbness sensation radiating down both of her lower extremities to her toes with the right side being much worse than her left. She states her symptoms are aggravated with extended walking, standing and better with heat. She rates the severity of her condition as an 8 out of 10." Dr. Black provided the Appellant with a brace to assist with her discomfort and recommended epidural injections to assist with her discomfort in the lower extremities.

Dr. Edward's notes from Appellant's follow-up visit with him on March 15, 2018, states: "Patient presents in follow-up with continued complaints of back pain radiating down both of her extremities. Upon her last visit she was provided with a brace which she does wear she states provides her some relief when walking for any extended period of time. She states her symptoms are constant and worsening in nature."

Pursuant to referral by Dr. Edwards, the Appellant was administered an epidural steroid injection on April 18, 2018, by Dr. Anthony W. Alexander whose notes reflect the following: "The patient presents today to undergo her first transforaminal epidural steroid injection. The patient rates her low back pain as a 10/10 and right leg to the toe pain 10/10. ..." (R. pp. 251, 253, 256, 258; *App. APA 7, pp. 134, 136, 139, 141*)

On July 10, 2018, the Appellant was seen by Dr. Leonard Forrest. The pertinent part of his notes follows:

Ms. Hickman relates the onset of her symptoms to a work injury that occurred 08/22/16. She states she was working for Ruiz Foods and walking around a corner when she slipped and fell hard. She relates there was water and oil on the ground. She recalls falling onto her low back and buttock area onto a brick and concrete surface. Ms. Hickman relates that, in addition to falling onto her back, her arm somehow got caught. She relates having an injury to her right shoulder and she also reports that her head hit the ground. She also had pain in the right knee following this incident.

....

She subsequently had treatment for the shoulder and knee as well as her back. Her treatment included primarily physical therapy. She relates having one recent injection procedure done. Prior to that injection, she was having leg pains in addition to the pains in addition to the pain in her back and buttock. She reports that the injection procedure resolved the leg pains.

.....

She also had pain down the right leg, but she had good improvement with these leg symptoms following a lumbar transforaminal injection that was recently done.

Recommendation:

Indeed, Ms. Hickman relates she did have good improvement of her leg symptoms from this injection.

(R. pp. 262-264; *App. APA 9, pp. 145-147*)

2. Whether or not the Appellant reached maximum medical improvement on September 28, 2017

Following the finding of the Single Commissioner, the Appellant Panel concurred with his finding in giving greater weight to Dr. Scott Boyd and Dr. Bill Edwards over Dr. Leonard Forrest's opinion. The Appellate Panel found that the Appellant reached maximum medical improvement ("MMI") as of Dr. Bill Edwards' last medical report on September 28, 2017.

(*Single Commissioner's Decision And Order, dated January 4, 2019, Findings of Fact No. 10-11; (R. p. 15). Appellate Panel' Decision And Order, dated October 28, 2019, Findings of Fact No. 10-11; R. p. 4*)

"MMI is a term used to indicate that a person has reached such a plateau that, in the physician's opinion, no further medical care or treatment will lessen the period of impairment. ... MMI is a factual determination left to the discretion of the [Appellate] [P]anel." Hall, at 371 S.C. 89, 636 S.E.2d 887. Appellant respectfully asserts that the Appellate Panel erred in deciding that Appellant reached MMI on September 28, 2017. Notwithstanding the medical notes and opinions of Dr. Forrest and the other treating physicians who determined that the Appellant could benefit from further medical care and treatment and, therefore, had not reached MMI, the Appellate Panel chose to give greater weight to Dr. Boyd and to Dr. Bill Edwards.

According to the Appellate Panel, MMI was reached as of Dr. Edwards' last medical report on September 28, 2017. The history recorded by Dr. Edwards on the 28th of September 2017 directly contradicts such a finding. His notes from this particular visit states that "her work-related injury seemed to be improving **except for her persistent right low back pain**. She only occasionally has pain down the right leg and numbness in the foot." The patient reports minimal physical therapy for her back and the previous treatments most focused on over-the-counter medication if needed. I would expect she **should** be at maximum medical improvement **when she completes physical therapy**. ... **Once she is at MMI**, I believe she should be capable of returning to that type of work. She will follow-up when she completes physical therapy. The patient may return to work in sedentary duty for now. (Emphasis added) Clearly, Dr. Edwards did not find her to be at MMI on September 28, 2017, based upon the terminology used in his history. Additionally, she was to see him after she completed physical therapy and in the interim, he restricted her to sedentary duty. The following excerpt from his records on September 28, 2017, is called to the attention of this panel.

DISCUSSION:

Patient does not appear to be at maximum medical improvement. 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. I made no reappointment to see her but I will be happy to assume her care if the involved parties desire and I will be happy to help facilitate obtaining a new MRI scan and therapeutic injection before final statements are made. (Emphasis Added)

(R. pp. 260-261; *App. APA 8, pp. 143-144*)

"Generally, even though a claimant has reached maximum medical improvement (MMI), if additional medical care or treatment would "tend to lessen the period of disability," then the Appellate Panel may be warranted in requiring such treatment to at least maintain the claimant's degree of physical impairment." Hall, at 371 S.C. 82, 636 S.E.2d 883.

Considering the fact that the Appellate Panel gives the greater weight to Dr. Bill Edwards, and uses the date of his last visit with her as the basis for finding that the Appellant has reached MMI, it is inconceivable and a travesty of the Worker's Compensation Act, case law, and Commission Regulations how the findings of the Single Commissioner and Appellate Panel can be reconciled with the established law governing MMI in this case.

3. Whether or not the Appellant's current condition to her back is unrelated to her compensable accident sustained on August 22, 2016, as Appellant failed to meet her burden of proof

The Appellate Panel determined that the Appellant's current condition to her back is unrelated to her compensable accident sustained on August 22, 2016, as Appellant failed to meet her burden of proof.

"The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. ... Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." (Internal Cites Omitted) Hall, 371 S.C. 80, 636 S.E.2d 882.

Appellant submits that the record is replete with substantial evidence that the current condition of her back is related to the compensable accident she sustained on August 22, 2016. First, the back was an admitted compensable injury as a result of the slip and fall accident on August 22, 2016. Second, any questions concerning the causal connection between Appellant's continuing disability resulting from the injury to her back and the subject slip and fall is addressed in the record. She has suffered pain in the right side of her lower back and buttocks continuously since the accident. Prior to the accident, she did not complain of back pain, worked

her regular hours, and did not miss work on account of back pain. (R. p. 37, ln. 15 – 38, ln. 9, p. 263; *Tr. p. 19, ln. 15 – p. 20, ln. 9; App. APA 9, p. 146*)

Appellant was seen on February 15, 2018, by Dr. Willie S. Edwards. Under his Spine Notes, Dr. Willie S. Edwards wrote the following: “Patient presents with back pain radiating down bilateral lower extremities she states she has been experiencing these symptoms since August 2016 when she had a fall at work. She describes her symptoms as a numbness sensation radiating down both of her lower extremities to her toes with the right being much worse than her left. . . . She rates the severity of her condition as an 8 out of 10.” Dr. Black provided the Appellant with a brace to assist with her discomfort and recommended epidural injections to assist with her discomfort in the lower extremities.”

The back problems have continued, have become more severe and, Appellant contends, are compensable as a disability for which she should be compensated and provided appropriate medical treatment.

4. Whether or not the Appellant is entitled to any additional medical treatment.

The Appellate Panel ordered that the Appellant is not entitled to any additional medical treatment.

Appellant argues that the record before this Panel proves that the injuries she sustained as a result of the admitted accident on August 22, 2016, arose out of and in the course of her employment consisted of injuries to her right knee, back, right forearm, shoulder and head. These injuries are referenced in the forms generated by the Appellant and records, history, and notes from each of the medical providers from the date of the accident and continuing throughout this process.

Dr. Edward's notes from Appellant's follow-up visit with him on March 15, 2018, states: "Patient presents in follow-up with continued complaints of back pain radiating down both of her extremities. Upon her last visit she was provided with a brace which she does wear she states provides her some relief when walking for any extended period of time. We did also refer her for an injection which unfortunately has not been completed at this time. She states her symptoms are constant and worsening in nature."

The Appellant was administered an epidural steroid injection as late as April 18, 2018, by Dr. Anthony W. Alexander of McLeod Physician Associates. Dr. Alexander's notes reflect the following: "The patient presents today to undergo her first transforaminal epidural steroid injection. The patient rates her low back pain as a 10/10 and right leg to the toe pain 10/10. ..." (R. pp. 251, 253, 256, 258; *App. APA 7, pp. 134, 136, 139, 141*).

On July 10, 2018, the Appellant was seen by Dr. Leonard Forrest of the Southeastern Spine Institute on referral for an Independent Medical Evaluation. The pertinent part of his notes follow:

Today I had an opportunity evaluate Ms. Mary Hickman. ... She presents at this time with pain that is in her low back and right buttock.

Ms. Hickman relates the onset of her symptoms to a work injury that occurred 08/22/16. She states she was working for Ruiz Foods and walking around a corner when she slipped and fell hard. She relates there was water and oil on the ground. She recalls falling onto her low back and buttock area onto a brick and concrete surface. Ms. Hickman relates that, in addition to falling onto her back, her arm somehow got caught. She relates having an injury to her right shoulder and she also reports that her head hit the ground. She also had pain in the right knee following this incident.

Ms. Hickman relates initially being treated in the safety office at work with ice, and she recalls being sent home from work. Ms. Hickman reports that the following day her symptoms were more prominent. She was directed to go to McLeod occupational health. She subsequently had treatment for the shoulder and knee as well as her back. Her treatment included primarily physical therapy. She relates having one recent injection procedure done. Prior to that injection,

she was having leg pains in addition to the pains in her back and buttock. **She reports that the injection procedure resolved the leg pains.** However, she remains with prominent pain in her low back and right buttock. Ms. Hickman relates she has been offered surgery by a doctor and she would like to understand her other options.

Currently, Ms. Hickman reports pain in the low back and buttocks. The pain includes aching, burning, and pins and needles. Her level of pain currently varies from 6 to 10 on a scale of 0 to 10.

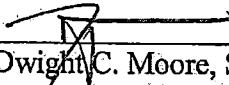
The substantial evidence in the record supports Appellant's entitlement to additional medical treatment. Dr. Alexander's note reflects that **her leg condition improved but only after she was administered epidural injections.**(Emphasis supplied) (R. pp. 262-264, *App. APA 9, pp. 145-147*)

Appellant respectfully submits that the facts surrounding her injuries, the medical records, and the well-documented medical history constitutes substantial evidence in the record to show that she is entitled to additional medical treatment.

CONCLUSION

For the foregoing reasons, Appellant prays that this Court reverse the Decision and Order of the Appellate Panel, Order that the injuries she sustained to her right knee, back, right forearm, elbow and head are compensable injuries; Order that she be awarded appropriate additional continuing treatment for these injuries; and Order that she be awarded temporary total disability compensation for her injuries as provided by the Workers Compensation Act.

Sumter, South Carolina
May 11, 2020


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From The
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
Appellate Panel

Appellate Case No. 2019-001944

Mary Hickman, Employee, ... Appellant,

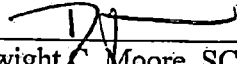
v.

Ruiz Foods, Employer, and
Safety National Casualty Corporation
C/O York Risk Services Group, Carrier, ... Respondents.

AMENDED CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Amended Final Brief of Appellant complies
with Rule 211(b), SCACR.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appeal No. 2019-001944

Mary Hickman, Employee, ...Appellant,

v.

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

BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE COMMISSION CORRECTLY HELD THAT CLAIMANT PROVED A COMPENSABLE INJURY TO HER BACK ONLY, FOR WHICH SHE HAS RECEIVED ALL APPROPRIATE MEDICAL TREATMENT?
- II. WHETHER THE COMMISSION CORRECTLY FOUND THAT CLAIMANT REACHED MMI AS OF SEPTEMBER 28, 2017?
- III. WHETHER THE COMMISSION CORRECTLY DETERMINED THAT CLAIMANT FAILED TO MEET HER BURDEN OF PROVING HER CURRENT LOW BACK CONDITION IS CAUSALLY RELATED TO HER AUGUST 22, 2016 FALL?
- IV. WHETHER THE COMMISSION CORRECTLY DETERMINED THAT CLAIMANT IS NOT ENTITLED TO ANY ADDITIONAL MEDICAL TREATMENT?
- V. WHETHER CLAIMANT'S OTHER ISSUES WITH THE COMMISSION DECISION ARE MERITLESS?

STATEMENT OF THE CASE

Claimant Mary Hickman ("Claimant") initiated proceedings before the South Carolina Workers' Compensation Commission by filing a multiple Form 50s, with the most recent dated May 8, 2018 and filed under cover of letter dated June 20, 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 benefits and permanent disability benefits. (R. p. 90). Respondents Ruiz Foods ("Employer") and Safety National Casualty Corporation c/o York Risk Services Group (jointly "Respondents") filed a Form 51 denying both that Claimant's current condition was related to her work accident, and that she was entitled to additional medical treatment. (R. p. 91).

The parties were heard by Single Commissioner Avery B. Wilkerson, Jr. on September 24, 2018.¹ Claimant was the only witness to testify on her behalf. 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 not the 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

¹ At the hearing, Claimant's counsel confirmed that she was not seeking an award for permanency. (R. p. 24, lines 4-12).

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. pp. 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 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 gave greater weight to Dr. Boyd and Dr. Edwards than to Dr. Forrest. (Appellate Panel Decision and Order, filed October 28, 2019, R. pp. 1-7) (“Commission Decision”).

Claimant timely appealed to this Court.

BACKGROUND FACTS

A. Lay Testimony.

Claimant testified that, in January 2016, she began working at Employer’s bakery as a “a Stacker and a Packer,” explaining that a “Stacker receives the tortillas from ... the conveyer line ... and the Packer, they packs them out in different containers ... to be loaded out to the next area.” (R. p. 30, lines 3-18). She testified that, on August 22,

2016, "I was going down on the end of the machine to help remove dough from the end of the machine," when she fell. (R. p. 30, line 25 – p. 31, line 1) (*see also* R. pp. 241, 262). She alleged that she injured her right knee, her right shoulder, arm, her lower back on the right and her head on the right side. (R. p. 31, lines 23-25).

Claimant acknowledged having been in car accidents in 2000 and 2015. (R. p. 32, line 1 – p. 35, line 14; p. 37, lines 16-24). She also admitted a prior episode of back pain sometime in 2011 when she reached down to pick a key up from under a mat, after which she had an MRI and received injections. (R. p. 35, line 18 – p. 37, line 7).

With regard to her alleged head injury, Claimant testified that she had headaches, for which she takes over-the-counter pain medications and that, whereas she previously did not need glasses, now she does and she cannot drive at night. (R. p. 40, line 4 – p. 41, line 7). Claimant also testified that she had pain and "popping" in her knee. (R. p. 41, lines 8-24). As for her right arm, Claimant testified that she could not reach all the way up, although she did acknowledge she had received physical therapy for her arm/shoulder. (R. p. 42, lines 3-25).

Claimant also testified that she still had back pain on both sides, with pain going down her right leg, claiming that her back pain had not gotten any better since her August 2016 fall but, instead, "It's got worse." (R. p. 43, line 1 – p. 44, line 8). She testified that her back never improved following her work accident. (R. p. 51, lines 15-20). Claimant testified that, after her work accident, she was not able to return to full duty without making her back worse, and described light duty as "just terrible." (R. p. 46, line 14 – p. 47, line 19).

On cross-examination, Claimant admitted that she had not revealed her most recent automobile accident during her prior deposition, first asserting that she simply had given an incorrect date, but then acknowledging she did not mention the recent accident at all in her deposition. She also admitted she did not tell Dr. Edwards about that car accident asserting, "He didn't ask," (R. p. 56, line 13 – p. 59, line 2), even after being presented with Dr. Edwards' deposition testimony that he did ask about prior problems. (R. p. 61, lines 4-8; p. 62, line 23 – p. 63, line 17). Claimant acknowledged that she had been treated for arthritis in her hip, right shoulder and back prior to her workplace accident. (R. p. 68, lines 1-16). Claimant denied that her back improved through treatment with Dr. Storick, (R. p. 64, line 8 – p. 66, line 11), despite medical records from his office indicating she was "substantially better" overall and her back had improved with conservative treatment. (R. p. 291). Claimant denied that her knee had improved, (R. p. 69, lines 18-20), despite medical records from Dr. Edwards reflecting that, as of September 28, 2017, she "admits that her knee has improved." (R. p. 293). In fact, Claimant disagreed with and/or took issue with "every doctor's record that [she] saw." (R. p. 72, line 2 – p. 74, line 2; *see also* p. 80, line 16 – p. 81, line 6 (noting that Claimant had disagreed with every doctor that she had seen, even her own IME doctor)).

Despite testifying on re-direct that she had not suffered any other falls or "some other traumatic experience" since her August 2016 workplace fall, (R. p. 83, lines 15-25), when confronted with her prior deposition testimony, Claimant admitted she had fallen down her step one day. (R. p. 87, line 17 – p. 88, line 11).

B. Medical Evidence.

Claimant's medical records prior to her 2016 workplace fall reveal that, in July 2001, Claimant was seen at the Kershaw County Medical Center for "[s]evere low back pain." She was given an out-of-work note. (R. pp. 267-270).

In January 2005, she was again seen at Kershaw County Medical Center for "low back pain." The medical records note a past medical history for "rheumatoid arthritis, herniated disc L spine," as well as a history of "chronic back pain," and indicate Claimant was taking Darvacet and Neurontin. (R. pp. 271-278).

Claimant was seen at Kershaw Health in April 2011 for "hip and back pain." While her hip x-rays were normal, her lumbar and cervical spine x-rays suggested "subtle early spondylotic change." (R. p. 279).

Claimant returned to Kershaw Health on September 21, 2012, at which time the assessment included back pain and degenerative disc disease. Her physical examination revealed "bilateral grinding of both knees w/moderate pain w/walking." (R. pp 280-282).

On March 19, 2013, Claimant continued to complain of "low back pain: chronic condition-lumbar-constant-dull ache-HAS-intermittent-sharp, shooting pain-aggravated with movement." Her past medical history on that date notes "R SHOULDER PAIN." (R. pp. 283-285).

On March 2, 2015, Claimant presented to Kershaw Health "WITH PAIN IN NECK AND LOW BACK AFTER MVA LAST NIGHT WHEN HE[R] CAR LEFT THE ROAD AND FELL DOWN AN EMBANKMENT AND LANDED HARD UPRIGHT." In addition to back pain, Claimant complained of headaches. She was

diagnosed with cervical sprain and lumbar sprain, prescribed medications and told to return if her symptoms worsened. (R. pp. 286-288).

Following Claimant's August 22, 2016 fall, she was seen at Kershaw Health, where it was noted "PT PRESENTS WITH PAINFUL RIGHT KNEE AND ELBOW AND STATES IT'S A RESULT FROM FALLING EARLIER TODAY WHILE AT WORK." She also complained of a headache. The severity of her symptoms was reported as "mild." (R. pp. 150-153).

Claimant was seen at McLeod Occupational Health on August 23, 2016, where she complained of pain in her right knee, right arm, and back. She was diagnosed with contusion of her right upper arm, scalp and right knee, and "[s]train of muscle and tendon of back wall of thorax." She was prescribed Ibuprofen 600 mg. (R. pp. 175-181).

On September 1, 2016 and again on September 29, 2016, Claimant's diagnoses included contusions to her right upper arm, scalp and right knee, she was restricted to "seated duty only," and a course of physical therapy was ordered. The notes indicate her knee pain "is improved with knee sleeve States taht [sic] the knee is much-improved, but that her back sx are still limiting her activities quite a bit." (R. pp. 189-195).

On October 13, 2016, Claimant's upper arm examination was normal and, although she continued to have knee pain, it was noted, "[m]uch-improved sx in the knee today." (R. pp. 197-199). On a return visit on October 27, 2016, Claimant reported a "great benefit" from physical therapy and that "[h]er back sx are much-improved, and she is tolerating her 45 minutes per hour standing/walking well ... and has been performing restricted duty without difficulty." She reported that, although her knee was "much-improved," she also reported "that when she removes her knee sleeve, she still

experiences some 'popping' in the knee with twisting movement at the knee." (R. pp. 202-206).

At a follow-up appointment on November 14, 2016, Claimant reported her "back sx are again much-improved" and she "has been performing restricted duty without difficulty." The notes indicate the "popping" in her knee would be addressed in physical therapy with strengthening exercises. (R. pp. 208-212).

On November 30, 2016, Claimant reported reduced symptoms in her knee following physical therapy. Additional physical therapy was ordered to continue to strengthen her right knee. "We will maintain current minimal restrictions for the next 2 weeks as she continues with PT/HEP to strengthen the R knee, then we will have her resume regular duty at that time while continuing another 2 weeks of PT EE voices agreement." (R. pp. 214-217).

On December 20, 2016, Claimant was released to "[a]ll activities on and off the job within limits of comfort" as she continued with physical therapy. Claimant reported some intermittent popping "if she twists the R knee as she works." (R. pp. 220-223).

On January 6, 2017, Claimant's "primary problem is pain located in the back," which she reported as "intense." Claimant reported "that PT does not help." She requested a referral to another physician for her back. Dr. Douglas Brooks indicated he would order an MRI and then evaluate referral to a back specialist. (R. pp. 224-227).

On February 2, 2017, Claimant's primary problem again was her back. Her MRI "showed facet arthropathy with effusion at L4-S1," and she was referred to an orthopedist noting she had "[f]ailed PT and other conservative measures." (R. pp. 229-234).

Claimant was seen at Kershaw Health for her back pain on March 9, 2017. There is no mention of her right knee, right arm or shoulder, or her head and she was released to return to work on March 11, 2017. (R. pp. 164-169).

Claimant returned to Kershaw Health on March 14, 2017 complaining of low back pain that radiated to her buttocks and legs, but with no mention of her right knee, arm/shoulder or her head. She was released to return to work on March 15, 2017. (R. pp. 171-174).

On March 23, 2017, Claimant saw Dr. Scott Boyd who diagnosed her with low back pain and sacroiliitis, noting that “[s]he exhibits quite a bit of pain and Waddell signs.” Dr. Boyd reviewed the January 2017 MRI and concluded that “[t]here is no nerve root compression on the RIGHT side at any level. There actually is some moderate nerve root compression and exiting neural foramen on the LEFT at L5-S1.” Dr. Boyd did not believe her symptoms required surgery and recommended a referral to pain management. (R. pp. 235-238).

Claimant next saw Dr. Steven Storick on May 2, 2017. Dr. Storick’s notes indicate that, although Claimant initially injured her “head, neck, right arm, low back and right knee[, t]he majority of her complaints have improved or resolved with physical therapy and time ... Her major complaint today is ... constant low back pain that intermittently may radiate down her right leg with numbness into the foot.” Dr. Storick’s notes indicate Claimant reported to him that she had “fracture[ed] her right arm but was treated with physical therapy and currently improved.” She also reported that “[h]er right knee is better and only bothers her every now and then. Her headaches have improved.” Claimant denied “any pre-existing history of back problems or headaches. There is no

history of any spine surgeries or injections.” However, Dr. Storick noted that medical records from Claimant’s primary care physician “indicated issues with chronic back pain in 2013.” On physical exam, Claimant demonstrated “[f]ull range of motion of the upper and lower extremities without limitation ... [n]o shoulder impingement.” Dr. Storick concluded that Claimant’s “lumbar MRI findings were mostly degenerative of uncertain age,” and that the “multiple complaints from her work-related injury ... seemed to be improving except for her persistent right low back pain,” for which she had not undergone physical therapy. As a result, he ordered physical therapy directed at her low back pain. (R. pp. 239-246).

Dr. Storick saw Claimant again on June 20, 2017, at which time she reported that, following the physical therapy, she “overall is substantially better. Periodically her back may bother.” Dr. Storick concluded that, “[o]verall 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. The patient may need to see an orthopedist regarding the popping and pain in the right knee. Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, the patient 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. pp. 289-292).

Claimant first saw Dr. W. S. (Bill) Edwards, Jr., on September 28, 2017 for a “Lumbar IME Examination.” Claimant reported to Dr. Edwards that she injured both her right knee and her back in her workplace fall, but that “[s]ymptoms have improved from that standpoint though her back continues to bother her significantly.” Dr. Edwards

noted that Dr. Storick had placed Claimant at MMI on June 20, 2017; however, Dr. Edwards did not concur and 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." As she had with Dr. Storick, Claimant "denied any previous problems related to her spine." Dr. Edwards noted that Claimant "admits that her knee has improved." (R. pp. 260-261).

Claimant saw Dr. Edwards again on February 15, 2018, at which time she reported back pain and that the prior physical therapy had "offered her no relief." He assessed her with lumbar spondylolisthesis and degenerative disc disease. Dr. Edwards provided Claimant with a back brace and recommended an epidural injection. (R. pp. 251-253).

Claimant returned to Dr. Edwards on March 15, 2018 reporting that the back brace provided "her some relief when walking for any extended period of time," but that she had not yet had the injection. (R. pp. 256-257). The injection was performed on April 18, 2018. (R. pp. 258-259).

On July 10, 2018, Claimant presented to Dr. Leonard Forrest with Southeastern Spine Institute for an independent medical evaluation. Claimant reported treatment for her shoulder, back and knee consisting of physical therapy and one injection for her back which "injection procedure resolved the leg pains," although she continued to have pain in her back and buttocks. Claimant also reported to Dr. Forrest an earlier "injection procedure done in approximately 2013." Dr. Forrest compared the results of the MRI taken in January 2017 to one done in October 2017, noting that the "most recent MRI done in October shows less of the acute findings, but the significant facet arthropathy in

the low lumbar spine, particularly on the right persists.” Dr. Forrest opined that Claimant was not at MMI. He noted that, although Claimant reported to him that Dr. Edwards had discussed surgery with her, he did not see any such discussion in Dr. Edwards’ notes. Nonetheless, he opined that surgery “may prove to be needed, including potentially a two level fusion.” (R. pp. 262-264).

Dr. Forrest filled out a Form 14B dated August 15, 2018 in which he opined that Claimant had suffered a 14% medical impairment to the low back and SI joint, and was “disabled from meaningful gainful employment.” Dr. Forrest stated Claimant required further treatment in the form of injections and possibly surgery. (R. p. 265).

Dr. Edwards was deposed on May 29, 2018. Dr. Edwards noted that he saw Claimant on September 28, 2017 for an independent evaluation. Dr. Edwards confirmed that Claimant reported no prior back problems at the initial evaluation. (R. p. 301, line 13 – p. 302, line 21). After reviewing Claimant’s medical records from before her workplace fall, Dr. Edwards agreed that her statement to him that she had no history of low back pain was not an accurate statement. (R. p. 302, line 22 – p. 308, line 4).

Dr. Edwards confirmed that, on September 28, 2017, he did not find Claimant to be at MMI because he believed an updated MRI was necessary, which scan was performed on October 30, 2017. (R. p. 296, line 24 – p. 302, line 6). While Dr. Edwards noted changes on the October 2017 MRI from the prior scan, he could not state with any degree of medical certainty whether the changes were caused by Claimant’s workplace accident, or stress, or arthritis, explaining, “I’ve seen these problems, that is the spondylolisthesis, emanate from all three of these potential causes, arthritic, traumatic, or stress related.” (R. p. 299, line 19 – p. 301, line 12).

Dr. Edwards agreed that Claimant's continued back pain "is related to this chronic history of arthritis, disc bulges, disc herniations that are mentioned in the[] prior medical reports." (R. p. 308, lines 5-10). Furthermore, Dr. Edwards 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. p. 308, lines 11-20). Although Dr. Edwards agreed with Claimant's counsel that the x-ray of Claimant's spine from April 2011 referenced her L2 and L3 discs and none of her prior medical records chronicling her persistent lower back pain specifically mentioned her L4 and L5, such that it would be reasonable to opine that her current disc injury was caused by her work-related fall, (R. p. 309, line 6 – p. 310, line 19), Dr. Edwards revised that opinion on re-direct examination. Dr. Edwards agreed that, following the 2011 x-ray, there were continued complaints of back pain and, in addition, he would expect her pre-existing arthritis "to progress up and down the spine." (R. p. 312, lines 10-19). Dr. Edwards also agreed that it was possible that the facet symptoms at L4-L5 shown on the January 2017 MRI were "a progression of her arthritis or th[e 2015] motor vehicle accident." (R. p. 312, line 23 – p. 313, line 3).

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. p. 313, line 4 – p. 314, line 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. It would be helpful to have some imaging studies from those areas, from those time frames of the earlier injuries or symptoms." (R. p. 316, lines 12-23).

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. 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”).

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").

ARGUMENTS

The crux of Claimant's appeal consists of an invitation to this Court to second guess the Commission or, in other words, to engage in "Monday morning quarterbacking." This is evidenced by the fact that, as is explained in more detail below, Claimant does not even attempt to argue that substantial evidence does *not* support the Commission Decision but, instead, suggests there is other evidence in this Record that might support a different outcome, one more in her favor. None of the arguments put forth by Claimant warrant reversing the Commission Decision, which this Court should affirm.

As an initial matter, several of Claimant's argument are cursory and lack any legal support whatsoever. Consequently, they should be deemed abandoned on appeal. *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"). This includes Claimant's Argument Nos. 1 and 4, neither of which cite any statutory or other legal support for her arguments. As such, those arguments should be deemed abandoned and this Court should decline to address them.

In addition, Claimant's Statement of the Case consists of nearly seven pages of quotes lifted out of strategically selected medical notes in violation of Rule 208, SCACR, which admonishes that "[t]he statement shall not contain contested matters ..." As such, this Court should disregard or strike Claimant's Statement of the Case with the exception of the passage beginning with the first full paragraph on page 8 and carrying over to the middle of page 9.

I. The Commission correctly held that Claimant proved a compensable injury to her back only, for which she has received all appropriate medical treatment.

While Claimant's first argument should be deemed abandoned for failure to cite any legal authority, First Sav. Bank, 314 S.C. at 363, 444 S.E.2d at 514; Bryson, 378 S.C. at 510, 662 S.E.2d at 615, Respondents address the substance of her argument out of an abundance of caution. In any event, her argument lacks merit and does not provide any basis for reversing the Commission Decision.

Claimant argues that the Commission erred in finding only her back compensable because she presented substantial evidence that she suffered compensable injuries also to her right knee, right forearm, elbow and her head. As is noted above, Claimant's presentation of this issue either misunderstands or misstates the appropriate standard of review by this Court. 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 is potentially supported by substantial evidence. *See, e.g., Fishburne v. ATI Sys. Int'l*, 384 S.C. 76, 85, 681 S.E.2d 595, 599 (Ct. App. 2009) (the Commission's decision "must be affirmed if supported by substantial evidence in the record"). Indeed, "[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. As noted above, 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.

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." (Commission Decision, p. 3). Following Claimant's fall, Respondents provided medical treatment. (R. pp. 148-223). Beginning in September 2016, Claimant began reporting reduced symptoms in her knee after a course of physical therapy. (R. p. 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. (R. pp. 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. pp. 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 notes that "[t]he majority of her complaints have improved or resolved with physical therapy and time." (R. pp. 239-242). At a June 20, 2017 follow-up appointment, after physical

therapy directed to Claimant's low back pain, Dr. Storick noted she "overall is substantially better," although she complained of intermittent "popping" in her right knee. (R. pp. 249-256).

At her appointment on September 28, 2017, Dr. Edwards noted that Claimant had injured her right knee in the August 22, 2016 fall, but noted that "[s]ymptoms have improved from that standpoint ..." (R. pp. 260-261).² At her follow-up appointment with Dr. Edwards, there is no mention of any injury to her knee, right arm or head. (R. pp. 251-253).

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. p. 3), is supported by substantial evidence and should be affirmed by this Court.

II. The Commission correctly found that Claimant reached MMI as of September 28, 2017.

The Commission's finding that Claimant reached MMI for her work injury as of September 28, 2017 is supported by substantial evidence and should be upheld on appeal. "Maximum medical improvement 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,

² To the extent Plaintiff suggests that the pain radiating down her right leg is the same as complaints about her knee resulting from the fall, which it appears she is, (*see* App. Br. pp.14-15), Claimant herself distinguished between the pain that radiated down her leg and her knee pain. (*See* R. p. 86, line 18 – p. 87, line 2).

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), *citing* Gadson, 368 S.C. at 224, 628 S.E.2d at 268.

Here, the evidence before the Commission showed that, on June 20, 2017, Dr. Storick found that Claimant’s condition had improved substantially after physical therapy to address her low back issues. “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. The patient may need to see an orthopedist regarding the popping and pain in the right knee. Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, the patient 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. pp. 289-292).

Claimant then saw Dr. Edwards for an IME on September 28, 2017. While Dr. Edwards did not concur at that time 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 misinformation supplied by Claimant. In particular, she denied “any previous problems related to her spine.” 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. pp. 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 with any degree of medical certainty whether the changes shown on the later MRI were caused by Claimant’s

workplace accident, age, stress, or arthritis, explaining "I've seen these problems, that is the spondylolisthesis, emanate from all three of these potential causes, arthritic, traumatic, or stress related." (R. p. 299, line 19 – p. 301, line 12).

Moreover, Dr. Edwards agreed 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. p. 308, lines 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. p. 308, lines 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. p. 313, line 4 – p. 314, line 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. It would be helpful to have some imaging studies from those areas, from those time frames of the earlier injuries or symptoms." (R. p. 316, lines 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. The fact that Claimant points to select pieces of evidence that she asserts supports a finding that she had not reached MMI does not mean the Commission Decision is in error in this respect. 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 Commission resolved the conflicting evidence on the issue of whether Claimant had reached MMI and, because its finding is supported by substantial evidence, it must be upheld on appeal.

III. The Commission correctly determined that Claimant failed to meet her burden of proving her current low back condition is causally related to her August 22, 2016 fall.

As is the case with Claimant's first two arguments, Claimant applies an incorrect standard of review to her third issue. First, 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 ..."). Second, the question before this Court is not whether there is any evidence that might support her contention that her current condition is related to her August 2016 fall but, rather, whether the Commission's findings and conclusions are supported by substantial evidence. *See, e.g.*, 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).

The evidence cited above in Section II 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 connected to her August 22, 2016 workplace accident and is incorporated herein by reference. In brief, Dr. Edwards' following 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. p. 313, line 4 – p. 314, line 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. p. 316, lines 12-23).

Because the Commission correctly determined that Claimant failed to meet her burden of proving the current condition of her back is causally related to her August 22, 2016 compensable accident, *see, e.g., Shealy v. Algernon Blair*, 250 S.C. at 110, 156 S.E.2d at 648; *Clade*, 330 S.C. at 11, 496 S.E.2d at 858, and that conclusion is supported by substantial evidence, *see, e.g., Frame*, 357 S.C. at 528, 593 S.E.2d at 495, this Court should affirm the Commission on appeal.

IV. The Commission correctly determined that Claimant is not entitled to any additional medical treatment.

Like Claimant's first argument, her fourth argument should be deemed abandoned for failure to cite any legal authority. See First Sav. Bank, 314 S.C. at 363, 444 S.E.2d at 514; Bryson, 378 S.C. at 510, 662 S.E.2d at 615. Respondents address the substance of her argument out of an abundance of caution; however, her argument lacks merit and does not provide any basis for reversing the Commission Decision.

While it is true that the mere fact that 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, 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 additional 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 well-established 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. For example, Dr. Storick determined on June 20, 2017 that Claimant was "capable of returning back to work without restrictions" and that she would "not need long-term medications and should utilize OTC as needed." He released her from care and she was "to follow up as needed." (R. pp. 249-250). While 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. p. 261), he reviewed that later MRI and, at his deposition, did not recommend any additional treatment based on her August 22, 2016 fall.

Again, the fact that Claimant points to select evidence that arguably supports her position does not support overturning the Commission Decision. Indeed, where the medical evidence conflicts, the resolution of that conflict by the Commission must be upheld on appeal. *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”).

Furthermore, Claimant’s discussion of Dr. Edward’s March 15, 2018 notes and the epidural injection on April 18, 2018 assumes without specific support that that treatment was to address symptoms from her work-related accident. However, as is set forth above in Sections II and III, Dr. Edwards testified that Claimant’s continued low back condition was “related to [her] chronic history of arthritis, disc bulges, disc herniations that are mentioned in the[] prior medical reports.” (R. p. 308, lines 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. p. 308, lines 11-20). He testified:

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. p. 314, lines 7-18). Patently, an award, including an award of additional medical treatment, cannot be based on speculation. *E.g.*, Shealy v. Algernon Blair, 250 S.C. at 110, 156 S.E.2d at 648 ("the burden of proving the facts essential to his right to compensation, and an award may not be based upon conjecture or speculation").

Although Claimant quotes extensively from Dr. Forrest's medical records, as noted above, it is the Commission's prerogative to weigh the evidence, including expert evidence. *See, e.g.*, Brunson, 395 S.C. at 455, 718 S.E.2d at 758 (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); 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"). Here, the Commission clearly found Drs. Boyd, Edwards and Storick more persuasive than Dr. Forrest's one-time IME.

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

V. Claimant's other issues with the Commission Decision are meritless.

Claimant's Statement of Facts appears to raise three other issues, none of which are stated as one of her Issues on Appeal. "Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." Rule 208(b)(1)(B), SCACR; *see*

also Allen v. South Carolina Pub. Emp. Benefit Auth., 411 S.C. 611, 622 n.12, 769 S.E.2d 666, 676 n.12 (2015) (same). As a result, this Court should not consider these issues. In any event, none of these issues provide any basis for overturning the Commission Decision.

First, Claimant alleges that the Commission Decision is somehow defective or “reflects an absence of a substantive review of the case,” resulting “in a mere ‘cleaning up’ of [the] Findings of Fact by the Appellant Panel.” (App. Br. pp 10-11). Claimant appears to be arguing that, by affirming and repeating many of the Single Commissioner’s Findings of Fact and editing or revising those with which the Appellant Panel took issue, the Full Commission somehow abdicated its duty to perform a meaningful review of this case. However, because the Full Commission Decision contains all the specific findings of fact necessary to its legal conclusions, and those findings are sufficiently detailed to permit appellate review, it is not deficient and should be affirmed. *See, e.g., Airco, Inc. v. Hollington*, 269 S.C. 152, 160-161, 236 S.E.2d 804, 808 (1977) (affirming Commission decision that “stated its factual findings in a manner sufficient to support its conclusion”); Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 167-168, 584 S.E.2d 390, 397-398 (Ct. App. 2003) (finding Commission decision that simply incorporated by reference the single commissioner’s findings of fact and conclusions of law sufficiently detailed for appellate review).

Second, Claimant appears to take issue with the Commission’s credibility determination, going so far as to suggest that this Court should review the record “and make its independent assessment of what transpired in this case.” (App. Br. p 11). Again, however, it is the Commission’s role and prerogative to determine witness

credibility, which determination will not be overturned on appeal. *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 v. Aiken County*, 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”).

Furthermore, the record is replete with evidence of Claimant’s obfuscation and failures to testify truthfully. For example, Claimant testified that her back pain had not gotten any better since her August 2016 fall but, instead, “It’s got worse.” (R. p. 43, line 1 – p. 44, line 8). However, medical notes indicate a steady improvement in her back condition. *See* R. pp. 202-206 (Claimant reporting on October 27, 2016 a “great benefit” from physical therapy and that “[h]er back sx are much-improved”); R. pp. 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. pp. 289-292 (Dr. Storick’s notes from June 20, 2017 noting Claimant reported that, following the physical therapy, she “overall is substantially better”).

Claimant explained the fact that she did not tell Dr. Edwards about her most recent car accident by asserting that, “He didn’t ask,” (R. p. 56, line 13 – p. 59, line 2), even after being presented with Dr. Edwards’ deposition testimony that he did ask about prior problems. (R. p. 61, lines 4-8; p. 62, line 23 – p. 63, line 17) (R. p. 301, line 22 – p. 302, line 21; *see also* p. 302, line 22 – p. 308, line 4).

Claimant denied that her knee had improved, (R. p. 69, lines 18-20), despite numerous medical records reflecting that, as of September 28, 2017, she “admits that her

knee has improved.” (R. pp. 198, 205, 216, 241, 293). In fact, Claimant disagreed with and/or took issue with “every doctor’s record that [she] saw.” (R. p. 72, line 2 – p. 74, line 2; *see also* p. 80, line 16 – p. 81, line 6 (noting that Claimant had disagreed with every doctor that she had seen, even her own IME doctor)).³ Thus, the Commission’s credibility determination is supported by substantial evidence and must be affirmed on appeal.

Finally, Claimant appears to argue that her work-place accident aggravated a pre-existing condition, citing Hargrove. However, whether Claimant’s August 22, 2016 accident aggravated a pre-existing condition was not raised in Claimant’s Form 30. (Form 30). An issue that is not raised on a Form 30 appeal from the Single Commissioner to the Full Commission is not preserved for further appellate review. Clark v. Aiken County, 366 S.C. 102, 108, 620 S.E.2d 99, 102 (Ct. App. 2005) (an issue not raised in the application for review to the Full Commission is not preserved for appellate review); *see also* Brunson v. American Koyo Bearings, 367 S.C. 161, 165-166, 623 S.E.2d 870, 872 (Ct. App. 2005) (“[t]he findings of fact and law by the hearing commissioner become and are the law of the case, unless within the scope of the appellant’s exception to the full commission”) [internal citations omitted].

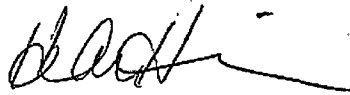
³ Claimant repeatedly references Dr. Boyd’s March 23, 2017 notation that she exhibit “quite a bit of pain and Waddell signs,” in support of her claim. (App. Br. pp. 2, 12, 13; *see also* R. p. 236). However, this Court has explained previously that, “Waddell’s non-organic physical signs are a group of 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 ‘malingerers’ patients with back pain.” Fishburne, 384 S.C. at 81 n.2, 681 S.E.2d at 598 n.2. 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 only supports the Commission’s credibility determination.

Even if this issue was preserved, which it is not, Claimant failed to present medical evidence of an aggravation of a pre-existing condition. *See* S.C. Code Ann. § 42-9-35 (requiring proof by a preponderance of the evidence, including medical evidence of aggravation of a pre-existing condition, defining “medical evidence as “expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider”). As a result, any suggestion that Claimant’s workplace injury aggravated a preexisting condition should be rejected.

CONCLUSION

For all the reasons stated herein, this Court should affirm the Commission Decision and dismiss Claimant’s appeal.

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April 24, 2020

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appeal No. 2019-001944

Mary Hickman, Employee, ...Appellant,

v.

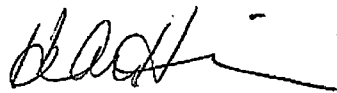
Ruiz Foods, Employer, and Safety
National Casualty Corporation c/o
York Risk Services Group, Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Respondents' Brief of Ruiz Foods and Safety National Casualty Corporation c/o York Risk Services Group complies with Rule 211(b), SCACR. The undersigned also certifies that this Respondents' Brief 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.

April 24, 2020

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May 12, 2020

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201
VIA ctappfilings@sccourts.org

RECEIVED

May 13 2020

SC Court of Appeals

Re: Mary Hickman vs. Ruiz Foods and Safety National Casualty Corporation c/o York Risk
Services Group
Appellate Case No.: 2019-001944
SC WCC File Number: 1613950
Moore File Number: 4678.4

Dear Ms. Kitchings:

Pursuant to Rule 208(b)(7), SCACR, I respectfully request to supplement the citations in the Amended Final Brief of the Appellant filed May 12, 2020, in the above-reference case by first withdrawing the opinion of the South Carolina Supreme Court in Crane v. Raber's Discount Tire Rack, et al. Op. No. 27951 (S.C. Sup. Ct., filed March 11, 2020)(Shearouse Adv. Sh. No. 10 at 8) previously submitted under cover of my letter addressed to you and dated March 24, 2020.

On Petition for Writ of Certiorari to the Court of Appeals, the foregoing opinion in Crane was withdrawn by the Supreme Court of South Carolina and superseded on denial of Rehearing by the new opinion entitled Crane v. Raber's Discount Tire Rack, et al. Op. No. 27951 (S.C. Sup. Ct., filed March 11, 2020, re-filed April 29, 2020)(Shearouse Adv. Sh. No. 17 at 24). I hereby submit the said most recent Crane Decision as a supplemental citation for consideration by this Court. The Opinion is attached.

Citing pertinent and significant holdings applicable to Mrs. Hickman's case, the Supreme Court addressed the issue of the Appellant's credibility in its consideration of Crane. The credibility of the Appellant is also at issue in our case, Mary Hickman v. Ruiz Food, et al., Appellate Case No. 2019-001944. Please see the Amended Final Brief of the Appellant, Pages 10-11 in particular. Finally, the Supreme Court's first Crane Opinion was filed March 11, 2020, a month after the Appellant's Initial Brief was filed and served on February 12, 2020, and this authority was not available for inclusion in Appellant's Initial Brief.

Yours very truly,



Dwight C. Moore

DCM:dmm

Enclosure

The Honorable Jenny Abbott Kitchings, Clerk
May 12, 2020
Page 2

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