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October 22, 2023

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SC Court of Appeals

Ms. Eugenia Hollmon
Judicial Docketing Director
South Carolina Workers' Compensation Commission
1333 Main Street
Columbia, SC 29202
VIA EMAIL: EHollmon@wc.sc.gov

Re: Mary Hickman v. Ruiz Foods and Safety National Casualty Corporation
C/O York Risk Services Group
W.C.C. File No.: 1613950
(S.Ct.) Appellate Case No.: 2023-001515
(Ct. App.) Appellate Case No.: 2019-001044
Moore File Number: 4678.4

Dear Ms. Hollmon:

Pursuant to your request by email on October 17, 2024, the following documents in the above referenced-case are transmitted in two emails under cover of this same letter. Both emails and attachments are also being provided to the Clerks of the Supreme Court and the Court of Appeals, and served upon opposing counsel.

DOCUMENT TRANSMITTED IN EMAIL NO. 1

- Petition for Certiorari

DOCUMENTS TRANSMITTED IN EMAIL NO. 2:

- Respondents' Petition for Rehearing
- SC Court of Appeals Unpublished Opinion No. 2023-UP-223
- SC Court of Appeals Order Denying Petition for Rehearing
- Supreme Court of South Carolina's Order denying Petition for Writ of Certiorari
- Remittitur from the SC Court of Appeals

Yours very truly,

Dwight C. Moore

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DCM:dmm
Enclosures

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Jun 20 2023
SC Court of Appeals

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 'malingering' 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

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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, line23 – 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).

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[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 popping[8] 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.

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[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. Envt'l 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.

McANGUS GOUDELOCK & COURIE, LLC

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:

Dwight C. Moore, Esq.
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RECEIVED
Jun 20 2023
SC Court of Appeals

June 20, 2023

Via S.C. Courts E-Filing & U.S. Mail
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Mary Hickman v. Ruiz Foods and Safety National Casualty Corporation c/o Sedgwick Claims Management
Date of Accident: August 22, 2016
WCC File No.: 1613950
Our File No.: 20757.16071
Claim No.: RFPK-0225
Appeal No.: 2019-001944

Dear Ms. Kitchings:

Enclosed please find the original of Respondents' Petition for Rehearing, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email.

We will send our firm's check in the amount of $50 for filing the Petition via U.S. Mail with a copy of this letter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Helen F. Hiser

Enclosures

cc: Dwight C. Moore, Esq. (via email only)

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

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[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. SAIIA 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.

Daisy Moore

From: Ritchie, Sierra <siritchie@sccourts.org>
Sent: Wednesday, June 07, 2023 10:23 AM
To: moorelawfirm@ftc-i.net; helen.hiser@mgclaw.com
Cc: Falin, Lynn; daisymoore@dwightmoorelaw.com; anna.yeandel@mgclaw.com
Subject: Mary Hickman v. Safety National // 2019-001944
Attachments: Hickman v. Safety National - 23-UP-223.pdf

Dear Counsel:

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Respectfully,

Sierra Ritchie
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The South Carolina Court of Appeals

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June 07, 2023

Mr. Dwight Christopher Moore, Esquire
Dwight C. Moore
26 North Main Street
Sumter SC 29150

Ms. Helen F Hiser, Esquire
PO Box 650007
Mount Pleasant SC 29465

Re: Mary Hickman v. Safety National
Appellate Case No. 2019-001944

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,
Catherine Harrison, deputy
CLERK

cc: Amy Bracy

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

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[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:
Dwight Christopher Moore, Esquire
Helen F Hiser, Esquire
Amy Bracy

Daisy Moore

From: Evans-Pryor, Khee'Asia <kpryor@sccourts.org>
Sent: Friday, August 25, 2023 2:28 PM
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Cc: Ritchie, Sierra; daisymoore@dwightmoorelaw.com; jake.markland@mgclaw.com
Subject: Mary Hickman v. Safety National- 2019-001944
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Respectfully,
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The South Carolina Court of Appeals

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October 04, 2024

The Honorable Amy Bracy
Worker's Compensation Commission
Post Office Box 1715
Columbia SC 29202

REMITTITUR

Re: Mary Hickman v. Safety National
Lower Court Case No. 1613950
Appellate Case No. 2019-001944

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Catherine Harrison, deputy

CLERK

Enclosure

cc: Dwight Christopher Moore, Esquire
Walter Hilton Barefoot, Esquire

The Supreme Court of South Carolina

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SC Court of Appeals

Mary Hickman, Employee, Claimant, Respondent,

v.

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

Appellate Case No. 2023-001515

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY Patricia A. Howard
CLERK

James, J., and Hill, J., not participating

Columbia, South Carolina
October 3, 2024

cc:
Dwight Christopher Moore, Esquire
Walter Hilton Barefoot, Esquire
Amy Bracy
The Honorable Jenny Abbott Kitchings