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October 22, 2023

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

RECEIVED

Oct 23 2024

SC Court of Appeals

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.

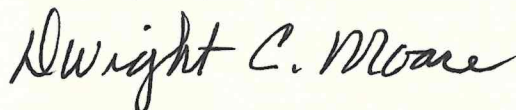
DOCUMENT TRANSMITTED IN EMAIL NO. 1

- 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- SC Court of Appeals Unpublished Opinion No. 2023-UP-223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

DCM:dmm

Enclosures

Ms. Eugenia Hollmon
October 22, 2024
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c: The Honorable Patricia A. Howard, Clerk
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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.

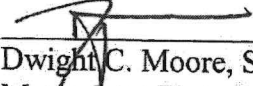
The substantial evidence in the record supports Appellant's entitlement to additional medical treatment. Dr. Alexander's note reflects that **her leg condition improved but only after she was administered epidural injections.**(Emphasis supplied) (R. pp. 262-264, *App. APA 9, pp. 145-147*)

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,

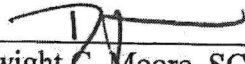
v.

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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May 11, 2020

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 ‘malingering’ 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 provided”). 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
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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

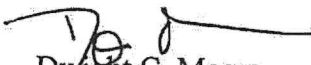
Dear Ms. Kitchings:

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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