THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE FULL COMMISSION
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

APPELLATE CASE NUMBER: 2024-000822

Sonya Parks, Claimant and Appellant,

v.

Cintas Corporation, Employer and Respondent,

and

Farmington Casualty Company, Carrier and Respondent.

FINAL BRIEF OF APPELLANT

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OVERVIEW AND STATEMENT OF THE CASE

This is an appeal against the Decision and Order of the Full Commission. (See Full Commission Decision and Order, May 8, 2024). The Claimant Sonya Parks ("Claimant" or "Ms. Parks") is a 54-year-old single woman who worked with Cintas Corporation ("Employer" or "Cintas") since July 31, 2000, as a "Folder" in the folding department. The essential function of her job duties involved lifting heavy totes full of laundry and heavy garments at work. R. 114.

On June 15, 2022, while Ms. Parks was folding and lifting garments, she tried to reach too high to pull a heavy coverall out of one of the bins in the cleanroom. R. 129. During this time, Ms. Parks' left arm popped, and she experienced acute and aggravating pain in her left shoulder because the garments were very heavy, and she lifted them extremely high. R. 129; R. 33 (Hearing Tr. 24:11-19; 25: 4). After this incident, Ms. Parks had a tightening and worsening feeling in her left shoulder and arm that did not exist before June 15, 2022. R. 34 (Hearing Tr. 26:2-4).

The Claimant's coworkers informed the quality manager Linda Saniewski ("Ms. Saniewski") and brought her to the scene. R. 34 (Hearing Tr. 26:6-11). Ms. Saniewski notified the production manager Tanner Burton ("Mr. Burton") about the incident, and he sent Ms. Parks home. R. 129; R. 34; R 368 (Hearing Tr. 26:16-19; Ms. Parks Dep. Tr. 59:19-23). Ms. Parks did not report to work on June 16, 2022, and on June 17, 2022, Ms. Parks informed the HR Manager Kami Phillips ("HR") that her left shoulder and left arm was still sore. She also requested Human Resources to set up a doctor's appointment for her. R. 369 (Ms. Parks Dep. Tr. 60:8-11). On June 17, 2022, Ms. Parks went to the authorized treating physician Occupational Health Doctor Joel Anderson Smithwick, M.D. ("Dr. Smithwick"). R. 370 (Ms. Parks Dep. Tr. 61:11-15). Dr. Smithwick recommended light duty to Ms. Parks and advised that she see the orthopedic doctor

Stephen Geoffrey Pill M.D. ("Dr. Pill") for MRI. R. 370 (Ms. Parks Dep. Tr. 61:16-19). However, Dr. Pill was unavailable, and she could not see him. R. 370, 371 (Ms. Parks Dep. Tr. 61:20-25; 62:1-3). Ms. Parks still worked on light duty, and Dr. Smithwick restricted her from doing overhead lifting and working only by her waist side. R 373 (Ms. Parks Dep. Tr. 64:22-24).

Much before the incident of June 15, 2022, Ms. Parks had an underlying rotator cuff issue in her left shoulder that originated from an April 2019, injury. R. 30 (Hearing Tr. 11:12-16). However, this issue did not have any effect on her current duties and responsibilities. Her existing workers' compensation matter related to her September 2, 2021, on-the-job injury also did not affect her current work as she used her left shoulder and arm for lifting while her right shoulder and arm were in a sling. (Id.).

Notably, on or about November 1, 2021, Ms. Parks was working on light duty, lifting, and pulling goggle straps through a tight space with a jerking motion. This activity aggravated and worsened her work-related bilateral shoulder injuries and pain. R. 29 (Hearing Tr. 9:15-19). Ms. Parks underwent shoulder injections for her work-related shoulder injuries without lasting pain relief. Thereafter, Ms. Parks continued to work until June 15, 2022, without any other complications. R. 30 (Hearing Tr. 10:9-13). The Commission did not find that June 15, 2022, injury aggravated Ms. Parks' left shoulder injury even after there is evidence that she did not have any significant complaints nor limitations about her left shoulder before this lifting injury.

STANDARD OF REVIEW

The Court must affirm the factual findings of the Commission if they are supported by substantial evidence. South Carolina Code Annotated §1-23-380(5) (2005 & Supp. 2020); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 132-33, 276 S.E.2d 304, 305 (1981). Like any other finder of fact, the Commission may not rest its findings on speculation or guesswork. *Tiller v. Nat'l Health*

Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ("Workers' compensation awards must not be based on surmise, conjecture or speculation."). Instead, the Commission must anchor its ruling on evidence substantial enough to provide a reasonable basis for its findings. *Hutson v. S.C. State Ports Auth*., 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012). The Court may reverse the Commission's decision if its findings are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; the result of an error of law; or arbitrary, capricious, or an abuse of discretion resulting in prejudice to Parks' substantial rights. South Carolina Code Annotated §1-23-380(5).

ARGUMENT

I. The Commission committed an error in not properly considering the hearing and deposition testimony and the medical records regarding the Claimant's present and previous injuries and the fact that she did not have any significant complaints about her left shoulder until June 15, 2022, injury.

Ms. Parks injured her left shoulder on June 15, 2022, at Cintas while on duty. There is evidence that shows Ms. Parks had pre-existing health conditions. However, there is further evidence to show that June 15, 2022, work injury accelerated and aggravated this pre-existing health condition. The Commission, however, disregarding the hearing testimony, including the deposition transcripts of Ms. Parks' coworkers, and the medical records, entered an order based upon her own opinion without medical support nor medical evidence that her pre-existing conditions were not dormant and her June 15, 2022, injury did not aggravate her prior conditions.

Factual determinations by the Commission are upheld on review only if supported by substantial evidence. *Curiel v. Envtl. Mgmt. Servs*., 376 S.C. 23, 29, 655 S.E.2d 482, 485 (2007). "An appellate court's review is limited to the determination of whether the Commission's decision is supported by substantial evidence or is controlled by an error of law." *Brailey v. Michelin N. Am. Inc.*, 438 S.C. 77, 85, 882 S.E.2d 172, 177 (Ct. App. 2022) (citing *Clemmons v.*

Lowe's Home Ctrs., Inc.-Harbison, 420 S.C. 282, 287, 803 S.E.2d 268, 270 (2017)). Substantial evidence is the "evidence which, considering the record as a whole, would allow reasonable minds" to reach the same conclusion reached by the administrative agency to justify its action. *Mullinax v. Winn-Dixie Stores*, 318 S.C. 431, 435, 458 S.E.2d 76, 78 (Ct. App. 1995).

When a pre-existing condition or disease is accelerated or aggravated by injury or accident "arising out of and in the course of the employment," the resulting disability is a compensable injury. *Brown v. Jordan Old Company*, 291 S.C. 272, 275, 353 S.E.2d 280, 282 (1987); *Arnold v. Benjamin Booth Co*., 257 S.C. 337, 185 S.E.2d 830 (1971); see also *Sturkie v. Ballenger Corporation*, 268 S.C. 536, 541, 235 S.E.2d 120, 121 (exacerbation of pre-existing disease or injury arising out of or in course of employment is compensable).

The right of a claimant to compensation for aggravation of a pre-existing condition arises only where there is a dormant condition which has produced no disability, but which becomes disabling by reason of the aggravating injury. *Hines v. Pacific Mills*, 214 S.C. 125, 51 S.E.2d 383 (1949). See also *Burnette v. City of Greenville*, 401 S.C. 417, 427, 737 S.E.2d 200, 205-06 (Ct. App. 2012) ("An injured employee `who 259*259 has a permanent physical impairment or preexisting condition' may receive benefits for a subsequent work-related disability if he establishes by a preponderance of the evidence that `the subsequent injury aggravated the preexisting condition or permanent physical impairment.'" (quoting § 42-9-35)). "The claimant's right to compensation for aggravation of a preexisting condition arises when the claimant has a dormant condition that becomes disabling because of the aggravating injury." *Murphy v. Owens Corning*, 393 S.C. 77, 86, 710 S.E.2d 454, 458 (Ct. App. 2011). The claimant's right to compensation for aggravation of a pre-existing condition arises when the claimant has a dormant condition that becomes *disabling* because of the aggravating injury. *Anderson v. Baptist Med.*

Ctr., 343 S.C. 487, 493, 541 S.E.2d 526, 528 (2001). Where a latent or quiescent weakened but not disabling condition resulting from a disease or condition is by accidental injury in the course and scope of employment is aggravated, accelerated, or activated, with a resulting disability, such disability is compensable. *Mullinax v. Winn-Dixie Stores*, 318 S.C. 431, 458 S.E.2d 76, (Ct. App. 1995); *Glover v. Columbia Hospital of Richland County*, 236 S.C. 410, 114 S.E.2d 565 (1960). The aggravation, acceleration, or lightening up of a preexisting condition or latent infirmity or weakened physical condition may constitute a disability of such a character as to come within the meaning of workers' compensation, when the accident is caused by an external force at work and not the natural result or progression of a disease. *Ferguson v. State Highway Department*, 197 S.C. 520, 15 S.E.2d 775 (1941); *Radcliffe v. Southern Activation School*, 209 S.C. 411; 40 S.E.2d 626 (1946). Even if a worker previously had an injury, a worker is entitled to workers' compensation benefits for an aggravation or acceleration of the preexisting condition, where medical evidence showed that the worker was injured in a work-related accident and the work injury accelerated the previous condition. *Sharpe v. Case Produce Co.*, 329 S.C. 534, 495 SE2d 790 (Ct. App. 1997). In *Brown v. Jordan Oil Co*., 291 S.C. 272, 353 SE.2d 280 (1987), the South Carolina Supreme Court has held:

> It is no defense that the accident, standing alone, would not have caused the claimant's condition, because the employer takes the employee as he finds him. If the accident accelerates or aggravates a preexisting condition, the resulting injury is compensable.

In *Gordon v. E.I. Du Pont Nemours & Co*., 228 S.C. 67, 88 S.E.2d 844 (1955), the Court held:

> The rule is well established that where a latent or quiescent weakened, but not disabling, condition resulting from disease is by accidental injury in the course and scope of employment aggravated or accelerated or activated, with resulting disability, such disability

is compensable. The same principle is equally applicable where the latent, but not disabling, condition has resulted from a prior accidental injury. If the disability is proximately caused by the subsequent 580*580accidental injury, compensability is preferable to that, and not the earlier one.

In *Geathers v. 3V, Inc*., 371 S.C. 570, 579-80, 641 S.E.2d 29, 34 (2007), the Court held when an employee with a preexisting, but non-disabling prior injury suffers a subsequent, disabling injury that aggravates or activates the preexisting condition, compensability is limited to the second injury, not the first). Thus, when a pre-existing condition or disease is accelerated or aggravated by injury or accident arising out of and in the course of the employment, the resulting disability is a compensable injury." *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 295, 599 S.E.2d 604, 614 (Ct. App. 2004) (internal quotation and citation omitted). See also *Sturkie v. Ballenger Corp.*, 268 S.C. 536, 541, 235 S.E.2d 120, 122 (1977) (exacerbation of pre-existing injury resulting from or during employment is compensable). In the context of aggravation of a pre-existing condition, "[t]he claimant's right to compensation for aggravation of a pre-existing condition arises when the claimant has a dormant condition that becomes disabling because of the aggravating injury." *Murphy v. Owens Corning*, 393 S.C. 77, 86, 710 S.E.2d 454, 458 (Ct. App. 2011) (citing *Anderson v. Baptist Med. Ctr.*, 343 S.C. 487, 493, 541 S.E.2d 526, 528 (2001). Notably, the South Carolina Supreme Court has held even where a worker's osteoarthritis in both knees probably existed prior to his fall in the court of his employment, the fall at work aggravated and accelerated the formerly dormant condition and the resulting disability is compensable. *Daley v. Public Sav. Life Insurance Company*, 236 S.C. 236, 113 S.E.2d 758 (1960).

An employee can establish with a preponderance of evidence including medical evidence that "the subsequent injury aggravated the preexisting condition or permanent physical impairment; or . . . the preexisting condition or the permanent physical impairment aggravates the subsequent injury." S.C. Code Ann. § 42-9-35(A). See *Burnette v. City of Greenville*, 401 S.C. 417, 427, 737 S.E.2d 200, 205-06 (Ct. App. 2012) "A determination of whether a claimant's condition was accelerated or aggravated by an accidental injury is a factual matter for the Appellate Panel." *Hargrove*, 360 S.C. at 295.

Likewise, in *Hargrove*, the court affirmed the Appellate Panel's decision in favor of the employee. In *Hargrove,* the employee's supervisor testified that the employee had problems with her hand and arm before joining the job, but she never informed him about it before joining the job. The employee only complained about the problem after one of her job shifts. The court here noted that "[i]n deciding whether substantial evidence exists, it is appropriate to consider both the lay and expert evidence." Id. at 296. The court also observed that "[a]lthough there is evidence from which the Appellate Panel could have gone the other way, there is clearly evidence which would allow reasonable minds to reach the conclusion the Panel reached." Id.

In Ms. Park's case, the Commission based its decision only on a few facts in the records about Ms. Parks' prior injury to her left shoulder. Ms. Parks previously injured her left shoulder in a 2019 injury at Cintas and in 2020, Dr. Pill diagnosed a complete tear of Ms. Parks' rotary cuff. R. 344, 345 (Ms. Parks Dep. Tr. 35:22-25; 36:1-2). Even though Dr. Pill previously recommended surgery for Ms. Parks' left shoulder issues he did not impose any restrictions or limitations on her left shoulder while scheduling the surgery. R. 357, 358 (Ms. Parks Dep. Tr. 48:22-25;49:1-7). Ms. Parks is right-hand dominant and worked with her right hand. R. 349 (Ms. Parks Dep. Tr. 40:11-19). Due to several reasons, Ms. Parks could not undergo her surgery and

meanwhile, she also injured her right shoulder in September 2021. Ms. Parks had no issues with her left arm or shoulder, and it did not hurt her, and she was able to do her regular work at Cintas after the earlier injury. R. 358 (Ms. Parks Dep. Tr. 49:16-18).

In the hearing testimony, Ms. Parks made it clear that until the injury on June 15, 2022, her left hand did not cause her problem. R. 34 (Hearing Tr. 27:20-22). According to Ms. Parks, her left hand never popped in the same manner as it did on June 15, 2022, while she lifted the garments hurting her from shoulder to elbow. R. 34 (Hearing Tr. 27:10-18). Even on the day of the accident, Ms. Parks worked on full duty without any restrictions or limitations on her left arm. R. 35 (Hearing Tr. 31:15-22; 33:10-12). After the June 15, 2022, injury, Ms. Parks was unable to do many things that she did before, including working overtime. R. 35 (Hearing Tr. 32:9-13).

Ms. Parks did light duty only when she suffered injuries to her right shoulder in September 2021. When asked about not doing overhead lifting after the September 2021 injury, Ms. Parks only said that she tried to avoid doing it. R. 38 (Hearing Tr. 44:21-23). This statement by Ms. Parks cannot be misinterpreted because that does not mean that she did not do overhead lifting or try to avoid doing it because of her left shoulder pain. Ms. Parks repeatedly stated that she was on regular duty on June 15, 2022, and did things that are done for regular duty. R. 38 (Id.). Here, Ms. Parks did not deny having problems with her left shoulder. However, her claim here relates to compensation for the aggravation of her pre-existing condition due to the June 15, 2022, injury.

Ms. Parks' deposition testimony makes it clear that she experienced tremendous and accelerated pain after the June 15, 2022, incident, which was *different* from her previous experience. Even though she did not perform the recommended surgery, she did not have any

issues until June 15, 2022. But the June 15, 2022, incident is now forcing Ms. Parks to have the surgery at the earliest. Moreover, Mr. Burton testified that before June 15, 2022, Ms. Parks was on full job duty and performed her work without any difficulties. R. 282 (Mr. Burton Dep. Tr. 11:16-23). He also said that before June 15, 2022, Ms. Parks never complained to him about her left shoulder. R. 284 (Mr. Burton Dep. Tr. 13:18-19). Apart from Mr. Burton, Ms. Parks' co-workers also testified that she was on full duty until June 15, 2022, used her arms and shoulders without any difficulty, and she never complained about having any issues with her left shoulder before the June 15, 2022, incident. R. 304; R. 306 (Wanda Gayle Jefferson Dep. Tr. 9:4-7; 11:21-23); R. 249; R. 250 (Gerrit Jims Kurtycz De. Tr. 9:3-10, 21-24; 10:1-4); R. 293 (Linda Lee Saniewski Dep. Tr. 8:19-22).

The Commission, however, did not consider the *relevant* parts of the hearing testimony and the deposition of Mr. Burton and Ms. Parks' co-workers who testified that *Ms. Parks never complained about left shoulder pain before the June 15, 2022, incident*. The Commission only relied on Ms. Parks' statement that her left shoulder bothered her, to conclude that the left shoulder issues were not dormant. As observed in *Hargrove* and *Daley*, the evidence in the record discussed above will allow reasonable minds to conclude that the June 15, 2022, lifting injury of Ms. Parks lead to aggravating, activated, and accelerated her pre-existing condition of the left shoulder and arm. The Commission erred in neglecting and ignoring the co-worker testimony and the medical evidence on record and based the findings on statements that do not have much evidentiary value and neglected the substantial evidence and prevailing case law that Ms. Parks' June 15, 2022, work-related lifting injuries aggravated, accelerated, and activated her left shoulder to the point that her left shoulder had become disabling.

II. The Commission committed an error in disregarding the expert medical testimony of the employer defendant's treating doctor.

"Expert medical testimony is designed to aid the Commission in coming to the correct conclusion . . .." *Tiller v. Nat'l Health Care Ctr.*, 334 S.C. 333, 340, 513 S.E.2d 843, 846 (1999). S.C. Code Ann. § 42-9-35(C) defines medical evidence as "expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider . . .." Id. "[W]hile medical testimony is entitled to great respect, the fact finder [can] disregard it [only] if there is other competent evidence in the record." *Brailey v. Michelin N. Am. Inc.*, 438 S.C. 77, 88, 882 S.E.2d 172, 178 (Ct. App. 2022) (internal quotation and citation omitted).

Ms. Parks' injury to her left shoulder on June 15, 2022, was a result of her on-job heavy lifting of long garments. This injury affected her bilateral shoulders, arms, hands, and neck. Because of severe pain, Ms. Parks had to go to Dr. Smithwick on June 17, 2022. Dr. Smithwick found that the deltoid insertion and the anterior capsule areas were tender, and her range of motion was limited to about 90 degrees globally. R. 62 . Dr. Smithwick placed limitations on her left shoulder activities and recommended limiting activities by keeping the left hand and arm activities at waist level and restricting shoulder movements until July 1, 2022. R. 61. Dr. Smithwick also suggested avoiding forceful grasping with the left hand. R.61.

During the follow-up visit on June 29, 2022, Dr. Smithwick again noted persistent pain and recommended orthopedic care. Dr. Smithwick's medical questionnaire noted that Ms. Parks' June 15, 2022, lifting accident aggravated and accelerated her left shoulder pain. R. 64-65. Dr. Smithwick also noted that Ms. Parks had a long history of bilateral shoulder pain. R. 62. Moreover, the deposition of orthopedic surgeon Dr. Pill dated June 1, 2022, related to Ms. Parks' September 2021 injury, shows that Ms. Parks had complained of her left shoulder after the work-related injury in 2011. R. 140 (June 1, 2022, Dr. Pill Dep. Tr. 9:3-17). Previously, in April 2019,

Ms. Parks sustained a left forearm and contusion injury due to an accident at Cintas. R. 141 (Dr. Pill Dep. Tr. 10:1-7). After these two injuries, Ms. Parks never did complaint about left shoulder issues because her left shoulder issues were aggravated and accelerated only after the June 15, 2022, lifting injury.

In September 2021, Ms. Parks had a sharp pain in her bicep area. R.145-146 (Dr. Pill Dep. Tr. 14:23-25; 15:1-3). Dr. Pill recommended an MRI of the shoulder in two instances. R. 147; R. 149 (Dr. Pill Dep. Tr. 16:13-15; 18:20-25). According to Dr. Pill, Ms. Parks' September 2021 lifting injury aggravated the partial thickness tearing and fraying. R. 149 (Dr. Pill Dep. Tr. 18:8-12). Ms. Parks had restrictions with no lifting, pushing, and pulling more than five pounds with the right arm, and no overhead work. R. 152 (Dr. Pill Dep. Tr. 21:14-25). However, pulling the goggle straps made her right shoulder hurt worse aggravating it. R. 152-153 (Id.; Dr. Pill Dep. Tr. 22:1-4).

Thus, the aforesaid deposition of Dr. Pill would show that Ms. Parks did not have any issues with her left shoulder after April 2019. She did not have any complaints or issues or aggravation of pain in her left shoulder. Her September 2021 injury affected her right shoulder and caused pain and aggravation to her right shoulder. Also, Ms. Parks was on regular duty in November 2021. R. 155 (Dr. Pill Dep. Tr. 24:7-10). Ms. Parks had no restrictions on her left shoulder. R. 159 (Dr. Pill Dep. Tr. 28:2-4). The testimony of Dr. Pill establishes that Ms. Parks' left shoulder issues were dormant after the September 2021, injury and that she only had issues in her right shoulder after the September 2021 injury. It was after June 15, 2022, injury Ms. Parks started experiencing further problems with her left shoulder as it was an aggravation of her pre-existing condition.

The Commission failed to consider the opinion of Dr. Smithwick and the medical records and opined that Ms. Parks' left shoulder condition was not dormant. The Commission neglected the opinion of Dr. Smithwick by making a conclusory statement that his opinion was only based on the patient's past medical history. Dr. Smithwick's answer to the questionnaire does not specifically state that the pre-existing condition was dormant, but it specifically states that *the June 15, 2015, incident, aggravated Ms. Parks' pre-existing condition*. Dr. Smithwick's opinion read along with Dr. Pills' testimony establishes with a reasonable degree of medical certainty that Ms. Parks' left shoulder issues aggravated and accelerated after the June 15, 2022, lifting injury and that the left shoulder did not bother her after her September 2021 injury. The Commission disregarded the expert medical opinion without any sufficient basis or reasoning. The Commission rejected Dr. Smithwick's opinion and ruled against it without citing any competent evidence.

Therefore, the Commission erred in disregarding the expert opinion and ruling in favor of the employer that June 15, 2022, the injury did not aggravate Ms. Parks' pre-existing condition.

III. The Commission committed an error by disregarding and not considering the greater weight of the medical evidence, the claimant's testimony co-worker, and the defendant-employer's management deposition evidence.

"Findings of fact based upon a 'preponderance' of the evidence are those supported by the greatest 'weight, amount, credibility or truth' as reflected by the whole of the evidence before the court, or 'evidence which convinces as to its truth.'" Janasik v. Fairway Oaks Villas Horizontal Prop. Regime, 307 S.C. 339, 346, 415 S.E.2d 384, 388 (1992). "While the Commission may refuse to accept even uncontradicted medical evidence, it must base its refusal on a valid reason supported by competent evidence in the record. Otherwise, the refusal is arbitrary and capricious and warrants reversal." *Brooks v. Benore Logistics Sys.*, 437 S.C. 376,

384, 879 S.E.2d 1, 5 (Ct. App. 2022) (citing *Baker v. Graniteville Co.*, 197 S.C. 21, 28-29, 14 S.E.2d 367, 371 (1941))

"'The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence.'" *Brailey*, 438 S.C. at 86 (quoting *Liberty Mut. Ins. v. S.C. Second Inj. Fund*, 363 S.C. 612, 620, 611 S.E.2d 297, 301 (Ct. App. 2005)).

The Commission in Ms. Parks' case failed to consider the medical evidence on record and the hearing testimony, and the testimony of Ms. Parks' co-workers to determine the aggravation of her pre-existing conditions. The Commission erroneously found that Ms. Parks' pre-existing condition was not dormant and that she failed to satisfy the requirements of South Carolina Code Ann. § 42-9-35.[1] However, Ms. Parks did establish that her June 15, 2022, injury aggravated her pre-existing left shoulder condition that was dormant.

The deposition testimony of Ms. Parks and Dr. Pill shows that she was not under any restrictions or limitations on using her left shoulder. Ms. Parks was on her regular duty and performed all her job responsibilities without restrictions. This fact itself would prove that she did not have any issues before the injury. Also, her co-workers, including the production manager, Mr. Burton testified that Ms. Parks did not complain of left shoulder issues before the June 15, 2022, incident. Even though Ms. Parks had issues with her left shoulder in 2019 and 2020, those issues were not physically impairing and affecting her work at Cintas. The only restriction or limitation that Ms. Parks had was from the September 2, 2021, injury to her right shoulder. This did not have any impact on Ms. Parks' pre-existing condition of the left shoulder.

[1] The Commission erroneously referred to as South Carolina Code Annotated §42-9-25. (Decision and Order, p. 9).

Moreover, Dr. Pill also confirmed that Ms. Parks' September 2, 2021, injury only aggravated her right shoulder issues and that Ms. Parks never complained about her left shoulder after 2019.

Thus, it is clear from the testimonies of her co-workers and Mr. Burton that Ms. Parks actively performed her job duties without complaining about her left arm or left shoulder before June 15, 2022. However, the Single Commission misinterpreted the testimony of Ms. Parks, where she stated that her left shoulder gave her problems after the September 2021 injury. The Commission did not give any weight to the medical evidence and testimony of Ms. Parks' treating physicians' opinion. The greater weight of evidence on record shows that Ms. Parks' left shoulder injury was dormant and aggravated and accelerated after the June 15, 2022, incident. After this incident, it became difficult for Ms. Parks to perform activities with her left hand. She started experiencing and continues to experience severe pain in her left arm that has resulted in fixing the left shoulder surgery for an earlier date. The Commission did not consider the testimony that Ms. Parks was on regular duty on June 15, 2022, without any limitations. The Commission, thus, erred in completely disregarding the substantial evidence on record which includes the statements from Dr. Smithwick and the testimony of Ms. Parks' co-workers. If the Commission had considered the greater weight of evidence, the Commission ought to have found that Ms. Parks is entitled to compensation for her aggravated injury.

In this case, the greater weight of evidence on record establishes that Ms. Parks' June 15, 2022, lifting injury aggravated and accelerated her pre-existing left shoulder issues to a level of disability.

IV. The Commission committed an error by failing to consider the repetitive nature of the Claimant's job duties?

"It is self-evident that, to receive compensation for a repetitive trauma injury, a claimant must first prove his or her job is in fact *repetitive*." *Brooks v. Benore Logistics Sys.*, 442 S.C. 462,

477-78, 900 S.E.2d 436 (2024) (original emphasis). Under §42-1-172, a claimant must show that "(1) the nature of the claimant's work is repetitive; and (2) as a result of that repetitive employment, and as established by a preponderance of the evidence, there is a causal link between the repetitive work and the claimant's injury." *Id*. "Section 42-1-172 requires causation of a repetitive trauma injury to be proven by 'medical evidence,' which is defined as 'expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material *that is offered by a licensed and qualified medical physician*.'" *Id*. at 481 (quoting S.C. Code Ann. §42-1-172(B)-(D) (emphasis in original).

The common movements that put a worker at risk for repetitive trauma injury include repetitive pushing, pulling, grasping, and lifting. The shoulders, elbows, wrists, and hands are more susceptible to repetitive trauma injury and have the highest prevalence of injuries. The most common injuries are rotator cuff injuries, tendinitis/bursitis, elbow epicondylitis, and carpal tunnel syndrome.

Ms. Parks' employment with Cintas involved highly repetitive tasks, as evidenced by her job duties which included strenuous lifting, repetitive lifting, grabbing, gripping, overhead reaching, and handling heavy totes. These activities were integral and essential to her role and were performed daily. Ms. Parks has been performing the same repetitive motions of pushing, pulling, and lifting heavy garments and cartons filled with heavy garments for the past 20 years. Thus, the nature of Ms. Parks' work was undeniably repetitive. As a result of these repetitive tasks, Ms. Parks developed significant pain and injury in both her shoulders. She has a repetitive trauma or strain injury to bilateral shoulders. Thus, under *Brooks* and South Carolina Code Annotated §42-1-172, Ms. Parks has demonstrated that her job involved repetitive tasks and provided medical

evidence to prove the causal link between her repetitive work and the injuries she sustained. Therefore, Ms. Parks is entitled to compensation for her repetitive trauma injury.

CONCLUSION

For the foregoing reasons, the Appellant requests the Court to reverse the Decision and Order of the Full Commission to award proper compensation for the Appellant's accelerated and aggravated injury.

Dated: Tuesday, February 4, 2025
Greenville, South Carolina

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