RECEIVED
Feb 11 2025
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Appellate Panel
SCWCC File No. 2207846

Appellate Case No. 2024-000822

Sonya Parks, Claimant……Appellant,

v.

Cintas Corporation, Employer, and
Farmington Casualty Company, Carrier……Respondents.

FINAL BRIEF OF RESPONDENTS

Matthew C. LaFave
LaFave Bagley, LLC
2019 Park Street
Columbia, South Carolina 29201
803.724.5727
matt@lafavebagley.com

Attorney for Respondents

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

Page

STATUTES

STATEMENT OF ISSUE ON APPEAL

I. DID THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERR IN FINDING THAT, SUBJECT TO S.C. CODE ANN. § 42-9-35, CLAIMANT DID NOT SUSTAIN A COMPENSABLE INJURY THROUGH AN ALLEGED AGGRAVATION OF A PRE-EXISTING CONDITION.

STATEMENT OF THE CASE

This claim involves a purported injury to Appellant's left shoulder she claims occurred on June 15, 2022, while she was lifting garments during her job as a folder at Employer, a position she has held since 1998.[1] Specifically, Appellant maintains that she, pursuant to S.C. Code Ann. § 42-9-35, sustained an aggravation of a pre-existing condition.

On June 15, 2022, Appellant contends that she was lifting heavy[2] and long coveralls as part of her job duties when she lifted her arm above her shoulder and heard a "pop" in her left shoulder followed by pain. Although depositions were taken from other Cintas employees, none directly observed the incident, and Appellant herself provided inconsistent information as to exactly how the injury occurred. The record shows that at various times and to various people, Appellant has reported that she was: lifting coveralls over her shoulder; lifting coveralls over her head; and moving coveralls across a table when the incident occurred. (R. pp. 51-188 and R. pp. 27-47). Appellant initially declined medical treatment, which was offered on June 15, 2022, nor did she ask to stop working. However, as it was near the end of her shift, she agreed to go home early to rest at management's suggestion. (R. pp. 34-35, 44-46; R. p. 283; R. pp. 264-265). Immediately

[1] Appellant began working at Cintas Corporation through Kelly Staffing in 1998 before being hired as a full-time employee on July 31, 2010, in the folding room.

[2] While Appellant has repeatedly characterized the particular garment she was lifting at the time of her purported injury as "heavy," the record also contained evidence from another employee that the garment in question (coveralls) was "very lightweight" and that the weight of the garments is subjective. (R. pp. 279-280) (Burton Deposition Tr. p. 8-9).

after the injury, Appellant reported to Human Resources Manager Kami Phillips that she knew the injury was her fault as she knew she needed to call a production lead or another employee for assistance based on prior injuries and limitations based on existing injuries. (R. p. 45; R. p. 264).

Appellant did not report to work the following day, and, thereafter, on June 17, 2022, Appellant contacted Human Resources to ask to be seen by a doctor regarding her purported left shoulder injury. (R. pp. 127-128). Because Appellant was already undergoing treatment for injuries to both shoulders with Dr. Stephen Pill, Employer attempted to have Appellant seen by Dr. Pill. As Dr. Pill was unavailable, Appellant was seen by Dr. Joel Anderson Smithwick from Prisma Health Occupational Health. (R. pp. 43; R. p. 127). During the first visit on June 17, 2022, Dr. Smithwick noted that Appellant reported having had ***bilateral torn rotator cuffs which need surgery***. (R. pp. 57-66) (***emphasis added***). No diagnostic testing was performed, but Appellant was diagnosed with a left shoulder strain. (R. pp. 57-66). Dr. Smithwick saw Appellant for one (1) additional visit on June 29, 2022. (R. pp. 57-66). Dr. Smithwick recommended Appellant have an MRI of her left shoulder, which she neglected to have performed prior to the hearing on this claim.[3] (R. pp. 57-66).

Thereafter, in September of 2022, Dr. Smithwick was provided with, and signed, a general medical questionnaire wherein he stated affirmatively that he believed Appellant had a "left shoulder injuries causally and directly related and/or directly aggravated by her June 15, 2022, lifting injuries with Cintas of Greenville." Dr. Smithwick did; however, explain that "for left shoulder, causality based on patient history." (R. pp. 64-65). Moreover, the questionnaire does not indicate the left shoulder issues Appellant had aggravated were dormant nor is there any indication

[3] Along with this appeal, Appellant also simultaneously filed a motion to admit new evidence and supplemental evidence which includes an MRI of her left shoulder that she obtained on March 17, 2023—well after the original hearing before Commissioner Taylor.

in the record that Dr. Smithwick was made aware that Appellant had been recommended for surgery more than one (1) year prior to June 15, 2022.

The record is replete with evidence of Appellant's long history of injuries, some of which she attributes to her employment at Cintas, including some for which no claim was reported or filed, and some from outside of her employment. At the time of this purported injury on June 15, 2022, Appellant had an active workers' compensation case pending based on a September 2021 injury wherein she sought compensation and treatment costs for her "right ***and left*** shoulder." Specifically, Appellant indicated on September 2, 2021, she injured her right shoulder lifting a heavy tote and "***reinjured her left shoulder***." Appellant further acknowledged that she "***previously injured left shoulder at work due to repetitive trauma injuries*** and also injured left arm in 2019 employer defendant." (R. p. 22) (emphasis added). Moreover, following this earlier injury at work in September of 2021, Appellant reported that her "left arm was already hurting from non-Cintas related injury." (R. p. 38; R. p. 93). Appellant also reported to her medical provider, Dr. Stephen Pill, that she was in a motor vehicle accident while she was undergoing treatment for ongoing problems with both her left and right shoulders. (R. pp. 181-183).

The record is also clear in that Appellant repeatedly failed to abide by and obtain the recommendations from medical professionals to have surgery on her left shoulder following previous injuries, which were active and for which she was still in treatment for at the time of this June 15, 2022, incident. (R. pp. 35-38, 41; R. pp. 132-188, 199-239).

On July 9, 2022, after Cintas denied her claim, Appellant, by and through her counsel, filed a Form 50, Employee's Request for Hearing (R. p. 22), requesting a hearing, alleging that she sustained injury to her "left shoulder, left arm, and hand" which purportedly resulted from "lifting a heavy and long garment" during her employment with Cintas. Appellant reported that she had

previously injured her left shoulder at work due to repetitive trauma from 2019 and 2021 incidents. On August 3, 2022, Cintas, by and through its counsel, responded with a Form 51, Employer's Answer to Request for Hearing (R. p. 25), contending that Appellant failed to present sufficient evidence of the existence of a repetitive trauma injury as required by S.C. Code Ann. § 42-1-172 and § 42-9-35, amongst other defenses.

The hearing in this case took place before Commissioner Aisha Taylor on October 25, 2022, in Greenville, South Carolina. At the hearing, Appellant testified on her own behalf and presented no other witnesses. Employer presented Human Resources Manager Kami Phillips as its sole witness. Various APA submissions were also admitted into evidence, as outlined on the record as the hearing.[4]

On April 15, 2023, Commissioner Taylor issued an order in this matter. Specifically, Commissioner Taylor found "Claimant failed to meet her burden of proving an aggravation of a pre-existing condition resulting from the June 15, 2022 work incident." Commissioner Taylor acknowledged, "although Dr. Smithwick's medical opinion regarding causation is not directly refuted in the record, I find Dr. Smithwick's opinions are limited in that they are based exclusively on the 'patient history.' Neither the questionnaire nor Dr. Smithwick's answers address whether Appellant's pre-existing left shoulder condition was dormant, which is required by South Carolina case law." Commissioner Taylor further noted, "Claimant's pre-existing left shoulder condition was not dormant and that she fails to satisfy the requirements of S.C. Code Ann. § 42-9-35." Commissioner Taylor then concluded, "Claimant failed to satisfy the requirements of S.C. Code Ann. § 42-9-35 in that she failed to establish her pre-existing condition was dormant prior to the

[4] Notably, Appellant's own deposition was ***not*** introduced into evidence, as was discussed at the hearing (R. pp. 40, 46) (Hearing Tr. pp. 50-51, 76-77). Despite this, Appellant's brief improperly repeatedly cites to that deposition as evidence.

June 15, 2022, work incident. *See Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454 (Ct. App. 2011); *Frampton v. S.C. Department of Natural Resources*, 432 S.C. 247, 851 S.E.2d 714." After the Decision and Order of the Single Commissioner (R. pp. 2-12) was filed, Appellant appealed the ruling to the Full Commission. The Full Commission heard oral arguments on November 21, 2023, and filed its Decision and Order on May 8, 2024 (R. pp. 13-20), affirming the Single Commissioner in full. Appellant filed her Notice of Appeal to this Court on May 17, 2024.

STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers' Compensation Commission." *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 288, 599 S.E.2d 604, 610 (Ct. App. 2004); (*See Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981); *Gibson v. Spartanburg Sch. Dist. No. 3,* 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000)). "A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions or decisions of that agency are 'clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.'" *Id.*; (*quoting Bursey v. South Carolina Dep't of Health and Envtl. *289 Control,* Op. No. 3813, 360 S.C. 135, 600 S.E.2d 80, (Ct. App. filed June 1, 2004) (Shearouse Adv. Sh. No. 24 at 47); S.C. Code Ann. § 1-23-380(A)(6)(e) (Supp.2003). "Under the scope of review established in the APA, this Court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact but may reverse where the decision is affected by an error of law." *Id.*, 360 S.C. at 289; (*See Frame v. Resort Servs., Inc.,* 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); *Stephen v. Avins Constr. Co.,* 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996); S.C. Code Ann. § 1-23-380(A)(6)(d) (Supp.2003)).

"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." *See Supra Hargrove*, 360 S.C. at 289; (*See Etheredge v. Monsanto Co.,* 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002); *Broughton v. South of the Border,* 336 S.C. 488, 520 S.E.2d 634 (Ct. App. 1999)). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." *Id.* at 290; (*See Sharpe v. Case Produce, Inc.,* 336 S.C. 154, 519 S.E.2d 102 (1999); *Muir,* 336 S.C. at 282, 519 S.E.2d at 591). "Where there are conflicts in the evidence over a factual issue, the findings of the Appellate Panel are conclusive." *Id.*; (*See Etheredge,* 349 S.C. at 455, 562 S.E.2d at 681).

ARGUMENTS

I. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION CORRECTLY APPLIED S.C. CODE ANN. § 42-9-35 IN REACHING ITS CONCLUSION THAT APPELLANT'S PRE-EXISTING CONDITION WAS NOT DORMANT.

In a workers compensation case, "[t]he claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture or speculation." *Frampton v. S.C. Dep't of Nat. Res.*, 432 S.C. 247, 257, 851 S.E.2d 714, 719 (Ct. App. 2020). This requires a claimant to present substantial evidence to prevail on his or her claims. *Id.*; *see also Clark v. Phillips Electronics/Shakespeare*, 433 S.C. 186, 192, 857 S.E.2d 378, 380 (Ct. App. 2021) (noting the workers compensation panel must anchor its ruling on evidence substantial enough to provide a reasonable basis for its findings). In this context, the South Carolina Supreme Court has defined substantial evidence as "not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but . . . evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the

administrative agency reached or must have reached in order to justify its action." *Frampton*, 432 S.C. at 257, 851 S.E.2d at 719 (internal citations omitted). Appellant would have this Court reverse the Appellate Panel simply on account of her contention that there was substantial evidence in the record to lead to a contrary conclusion favoring a ruling in favor of compensability. However, "[t]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's conclusion from being supported by substantial evidence." *Bursey v. South Carolina Dept. of Health and Environmental Control*, 360 S.C. 135, 600 S.E.2d 80 (Ct. App. 2004); (*see also Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 519 S.E.2d 102 (1999); *Grant v. South Carolina Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995); *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 282, 519 S.E.2d 583, 591 (Ct. App. 1999) "[T]he burden is on Appellants to prove convincingly that the agency's decision is ***unsupported by the evidence***." *Waters v. South Carolina Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996); *Tennis v. South Carolina Dep't of Soc. Servs.*, 355 S.C. 551, 558, 585 S.E.2d 312, 316 (Ct. App. 2003).

For an injury to be recoverable in a workers' compensation action, the injury must be "by accident arising out of and in the course of employment." S.C. Code Ann. § 42-1-160(A) (2015); *see also Turner v. SAIIA Constr.*, 419 S.C. 98, 105, 796 S.E.2d 150, 154 (Ct. App. 2016) ("For an accidental injury to be compensable, it must "arise out of and in the course of employment." "An injury arises out of employment if it is proximately caused by the employment." *Id*.

The present claim is governed by S.C. Code Ann. § 42-9-35, which provides:

> (A) The employee shall establish by a preponderance of the evidence, including medical evidence, that:
>
> > (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or
> >
> > (2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury.

> (B) The commission may award compensation benefits to an employee who has a permanent physical impairment or preexisting condition and who incurs a subsequent disability from an injury arising out of and in the course of his employment for the resulting disability of the permanent physical impairment or preexisting condition and the subsequent injury.

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 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) (***emphasis added***). It is irrefutable that Appellant's condition was not dormant in that she had been diagnosed with a traumatic tear of her left rotator cuff the year prior to the June 15, 2022, incident. Further, Appellant had been recommended for surgery and had made multiple attempts to schedule the surgery, prior to June 15, 2022, but was unsuccessful due to a number of personal factors.

The Appellate Panel correctly determined that Appellant's claim for a left shoulder injury resulting for a June 15, 2022, incident fails because the condition claimed to be aggravated was not dormant on the date of the purported incident. There was substantial evidence in the record that Appellant had an active condition which was in need of surgical intervention and that said was not aggravated on that June 15, 2022. Because the condition that was claimed to have been aggravated was not dormant, this claim must fail.

Appellant admitted on cross-examination that she was diagnosed with a "complete tear" of her left shoulder in 2021. (R. p. 37). She further admitted medical professionals recommended surgery—medical recommendations that she failed to comply with for a litany of personal reasons that did nothing to lessen the medical need for such intervention or alleviate her active injury to the left shoulder. (R. pp. 37-38). Appellant testified that she was suffering from an active injury to her left shoulder, stating "my left shoulder always bothered me." (R. p. 32). Further, Appellant's counsel readily acknowledged during her questioning of Appellant that, "we've already established it looks like a 2010, 2011, 2019, 2021, 2022, that you were having left shoulder problems." (R. p. 34). Appellant then admitted the current issues with her left shoulder had previously happened but "not for a while" because she was intentionally avoiding using, or otherwise limiting use of, her left arm due to an active injury. (R. p. 34). She further testified she avoided doing anything (work or personal related) that involved lifting anything over her head due to her active injury to her left shoulder. (R. p. 38). Appellant's testimony alone provides sufficiently substantial evidence to support the Appellate Panel's finding that she failed to establish the pre-existing condition to her left shoulder was dormant prior at the time of the alleged June 15, 2022, work incident.

Beyond Appellant's own testimony clearly establishing she had an active injury to her left shoulder on June 15, 2022, her own evidence presented in her APA submission further reinforces the holding that she had an active injury to her left shoulder. Crucially, Dr. Pill's deposition, which taken on June 1, 2022—***before*** this work incident on June 15th—is teeming with references to her active left shoulder injury. Dr. Pill reports that he first began treating Appellant for left shoulder pain in April of 2021 and recommended MRI and surgery at that time (neither of which Appellant did). (R. pp. 138, 145-146). Dr. Pill reported that he removed the restriction for light duty at

Appellant's request because "she said the light duty actually made her hurt more." (R. pp. 138, 145-146).[5]

In addition to evidence offered through live testimony and deposition, Respondents APA submissions plainly establish that her issues with the left shoulder were not dormant. Specifically, medical records from Blue Ridge Orthopedics-Powdersville and Blue Ridge Ortho Easley that highlight a very clear pre-existing history of a "nontraumatic complete tear of the left rotator cuff" for which surgery was recommended. The record established that Appellant sought on three (3) separate occasions to have surgery to repair the left rotator cuff tear. Importantly, Appellant's final attempt at undergoing surgery for her left shoulder was cancelled as a result of her injuring her right shoulder. The record establishes the injury to her right shoulder was a result of her overcompensating due to active issues with her left shoulder.

Finally, it cannot be overstated that Appellant's own submissions to the Commission in July of 2022 for a separate incident clearly reference an active injury to her left shoulder that she describes as repetitive in nature. (R. p. 22). In fact, it would stand that Appellant should be judicially estopped, based on this filing, from taking the position she now takes that her left shoulder issues were dormant. The fact that Appellant unfortunately suffered another injury to her right shoulder that was arguably more severe than her pre-existing injury to her left shoulder does nothing to weaken the substantial evidence that clearly establishes an active injury to her left shoulder.

The record clearly contains substantial evidence that supports the Single Commissioner's determination that Appellant's injury to her left shoulder was not dormant on June 15, 2022, and,

[5] Critically, Dr. Pill never testified, nor did Appellant present any evidence, that her removal from light duty was due to an improvement of her on-going injury to either shoulder, including her left shoulder.

accordingly, she failed to establish she suffered a compensable work-related injury pursuant to S.C. Code Ann. § 42-9-35.

Despite the abundant evidence in the record supporting the Single Commissioner's ruling, Appellant nevertheless argues this ruling was in error because she presented evidence that established she was not under any type of work restriction on the day of the incident. However, as discussed above, this argument is neither persuasive nor dispositive when the uncontroverted evidence establishes the reason, she was under no work restrictions owed to her request that they be lifted because of her perceived onerousness of the light duty work by comparison to her regular duties. The mere fact that Appellant was not under any type of restrictions by a treating physician at the time of the incident does not establish the condition of her left shoulder was dormant. The record plainly establishes that despite working her regular duties, Appellant actively avoided a full range of motions with her left arm and relied more on her right arm due to her on-going injury to her left shoulder and limitations arising therefrom. In fact, the evidence tends to establish that Appellant's right shoulder injury was directly related to her overreliance on her right arm.

Appellant next argues that because she presented expert medical testimony from Dr. Smithwick that the June 15, 2022, work incident aggravated her shoulder injury, the Single Commissioner erred in denying her claim. Specifically, Appellant rests this argument on Dr. Smithwick's response to a questionnaire prepared and submitted by Appellant's counsel, wherein Dr. Smithwick affirmatively answered "yes" to the following question, "[d]oes Sonya Melissa Parks have left shoulder and arm pain and injuries causally and directly related and/or directly aggravated by her June 15, 2022, lifting injuries with Cintas of Greenville?" However, as the Decision and Order correctly noted, Dr. Smithwick, who had only seen Appellant twice following this June 15, 2022, incident, noted on the same questionnaire in response to this question, "for left

shoulder, causally based on patient history." The inference that was reasonably drawn from this response is that he was not made privy to Appellant's medical history. Furthermore, as already discussed above, contrasting medical evidence from Dr. Pill, who had been Appellant's treating provider before this June 15, 2022, incident, established Appellant had a pre-existing injury to her left shoulder that pre-dated June 15, 2022, which had not been resolved through recommended treatment.[6] Appellant's assertions that she is entitled to workers' compensation merely because she was able to present some medical evidence to support her claim fails as a matter of law. *See Hargrove v. Titan Textile Co.*, 360 S.C. 276, 294, 599 S.E.2d 604, 613 (Ct. App. 2004) ("Although medical testimony is entitled to great respect, the fact finder may disregard it if there is other competent evidence in the record"; *Tiller v. National Health Care Ctr.*, 334 S.C. 333, 340, 513 S.E.2d 843, 846 (1999) (stating that medical testimony should not be held conclusive irrespective of other evidence); *Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 519 S.E.2d 102 (1999) (noting that whether substantial evidence supports a finding of causation, it is appropriate to consider both the lay and expert evidence). Appellant's argument that an affirmative, qualified answer to a medical questionnaire should trump the ample evidence in the record establishing a contrary position is unpersuasive and should be rejected by the Court.

II. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION DID NOT DISREGARD OR REFUSE TO ACCEPT ANY EVIDENCE IN RENDERING ITS DECISION AND ORDER.

Appellant argues the Commission failed to consider, or otherwise disregarded, medical evidence. Specifically, Appellant claims the Commission disregarded the opinion of Dr.

[6] Appellant's arguments that Dr. Pill established that her left shoulder injury was resolved on June 15, 2022, are unsupported by the record. It also cannot be overemphasized that the testimony from Dr. Pill was from a deposition taken ***before*** this June 15, 2022, injury and focused primarily on an injury to her right shoulder.

Smithwick. Appellant, however, undermines her own argument by providing direct reference to the Single Commissioner's careful and measured evaluation of the weight and impact to be afforded to Dr. Smithwick's opinion in rendering her decision. This evaluation of the evidence is actually contradictory to an argument that it was disregarded.

Further, in an attempt to support this assertion Appellant incorrectly attempts to establishing overbroad limitations on the Commission's ability to disregard medical evidence. Appellant contends that the Court, in *Brailey v. Michelin North America, Inc.*, held that "the fact finder [can] disregard it [only] if there is other competent evidence in the record." 438 S.C. 77, 88, 882 S.E.2d 172, 178 (Ct. App. 2022). The Court, in *Brailey*, was not so limiting as to a fact finder's ability to disregard medical testimony as to permit it ***only*** if there is other competent evidence in the record. The Court, quoting from *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 340, 513 S.E.2d 843, 846 (1999), stated "[W]hile medical testimony is entitled to great respect, the fact finder may disregard it if there is other competent evidence in the record." *Id.* In actuality the case at bar is strikingly similar to *Brailey*, in that Dr. Smithwick's opinion was not given greater weight because it was based solely on Appellant's history. Dr. Smithwick was found to have been unaware of the extent of Appellant's pre-existing condition as to her left shoulder. The Commission did not disregard the opinion of Dr. Smithwick it was simply found to be flawed in that it was made without the full history of Appellant's left shoulder issues.

III. APPELLANT DID NOT PROPERLY PRESERVE THE ISSUE OF HER JOB DUTIES BEING REPETITIVE IN NATURE AS A BASIS UPON WHICH TO FIND COMPENSABILITY.

Respondents contend that Appellant did not preserve the final issue argued in her initial brief. Specifically, Appellant argued the Commission committed an error by failing to consider the repetitive nature of Appellant's job duties. On April 18, 2023, Appellant filed a Form 30, Request

for Commission Review wherein she provided three (3) bases as the grounds for her request, which are set out as follows:

> 1) Did the Single Commissioner err by disregarding the claimant's hearing testimony and numerous co-worker and management witnesses' deposition testimony and evidence that the claimant was not complaining of any significant problems with her left shoulder and left arm until lifting a very heavy garment overhead at work?
>
> 2) Did the Single Commissioner err by disregarding and not properly considering the expert medical testimony of the employer-defendant's treating doctor that her June 15, 2022, lifting injuries at work aggravated and worsened her left shoulder and arm to a reasonable degree of medical certainty pursuant to South Carolina Code Annotated 42-9-35.
>
> 3) Did the Single Commissioner err by disregarding and not considering the greater weight of the medical evidence, claimant's testimony, co-worker and the defendant-employer's management deposition evidence that the claimant did not complain of any pain nor problems with her left shoulder and left arm until her June 15, 2022, work-related lifting injuries.

As evidenced by the above grounds, taken verbatim from Appellant's Form 30, Request for Commission Review, it is plain to see that the "repetitive nature" of Appellant's job duties was not one of the grounds for consideration by the Appellate Panel. "As a general rule, an issue may not be raised for the first time on appeal but must have been raised to the trial judge to be preserved for appellate review. Issues not raised in the trial court will not be considered on appeal." *Doe v. S.B.M.*, 327 S.C. 352, 356, 488 S.E.2d 878, 880 (Ct. App. 1997); (*see also State v. Hudgins*, 319 S.C. 233, 460 S.E.2d 388 (1995), *cert. denied*, 516 U.S. 1096, 116 S.Ct. 821, 133 L.E.2d 764 (1996). It is irrefutable that Appellant failed to raise, as a grounds for review by the Appellate Panel, or argue the issue of her job duties being repetitive as a basis for compensability. Therefore, this assertion by Appellant constitutes an effort to raise the issue for the first time on appeal thereby resulting in it not having been properly preserved. Moreover, Appellant has repeatedly argued this

as an injury by accident claim in accordance with S.C. Code Ann. § 42-1-160 by claiming her left shoulder was injured when she was lifting a garment overhead on June 15, 2022.

CONCLUSION

For the reasons stated herein, this Court should affirm the Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel in full.

Respectfully submitted,

February 11, 2025

s/ Matthew C. LaFave

Matthew C. LaFave
LAFAVE BAGLEY, LLC
2019 Park Street
Columbia, South Carolina 29201
803.724.5727
matt@lafavebagley.com

Attorney for Respondents

RECEIVED
Feb 11 2025
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Appellate Panel
SCWCC File No. 2207846

Appellate Case No. 2024-000822

Sonya Parks, Claimant……Appellant,

v.

Cintas Corporation, Employer, and
Farmington Casualty Company, Carrier……Respondents.

PROOF OF SERVICE

I certify that I have caused to be served the **Final Brief of Respondents** on the Appellant by having a copy of it electronically mailed to lawfirm@richeyandrichey.com, and by having a copy of it deposited in the United States Mail, postage prepaid, on February 11, 2025, addressed to Lola S. Richey, Esquire, Richey and Richey, P.A., P.O. Box 10916, Greenville, SC 29603.

February 11, 2025

s/ Matthew C. LaFave

Matthew C. LaFave
LAFAVE BAGLEY, LLC
2019 Park Street
Columbia, SC 29201
803-724-5727
matt@lafavebagley.com