THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION APPELLATE PANEL

Appellate Case No. 2012-212972

W.C.C. File No. 0905068

Alison R. Morrett, Employee,.....Appellant,

v.

Capital City Ambulance of GA, Ltd., Employer, and
Companion Property and Casualty Group, Carrier,..... Respondents.

INITIAL BRIEF OF RESPONDENTS

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STANDARD OF REVIEW

South Carolina Code Ann. § 1-23-380 establishes the "substantial evidence" rule as the standard of review for decisions of the Workers' Compensation Commission. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). Pursuant to that rule, the circuit court reviewing an award or denial of benefits may only reverse or modify the agency's decision if the findings, rulings, and conclusions of the administrative agency are "clearly erroneous in view of the reliable and substantive evidence of the whole record." *Id.*, 276 S.C. at 135, 276 S.E.2d at 306. Substantial evidence is defined as:

> Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It must be enough to justify, if the trial went to a jury, refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. This is something less than the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.

Id., 276 S.C. at 135-136, 276 S.E.2d at 307.

Appellate courts are not at liberty to substitute their view of the evidence for that rendered by the Commission. Rather, "[t]he Circuit Court's role is appellate only, and is limited to deciding whether the Commission's decision is not supported by substantial evidence or is controlled by some error of law." *Rogers v. Kunja Knitting Mills Co.*, 312 S.C. 377, 440 S.E.2d 401 (Ct. App. 1994). When reviewing an appeal from the Workers' Compensation Commission, the appellate court may not weigh the evidence or substitute its judgment for that of the Full Commission as to the weight of the evidence and questions of fact. *Farrell v. Jerry's, Inc.*, 370 S.C. 22, 26, 633 S.E.2d 893, 894-895 (2006).

Moreover, "the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984). In workers' compensation cases, the Appellate Panel is the ultimate finder of fact. *Shealy v. Aiken County*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). When the evidence is conflicting over a factual issue, the findings of the Appellate Panel are conclusive. *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 290, 599 S.E.2d 604, 611 (Ct. App. 2004). The final determination of witness credibility and the weight to be accorded evidence is reserved for the Appellate Panel. *Bass v. Kenco Group*, 366 S.C. 450, 458, 622 S.E.2d 577, 581 (Ct. App. 2005).

STATEMENT OF THE CASE

Appellant Alison R. Morrett ("Morrett") initiated this workers' compensation claim following an admitted injury to her right knee in a work-related accident that occurred May 11, 2009. (Form 50) At the hearing before the single commissioner on February 6, 2012, Morrett took the position that her physical injuries and the surgeries that followed aggravated her pre-existing psychological condition as well as her pre-existing eating disorder, and she sought additional treatment for the psychological and eating disorders. (April 2, 2012 Decision and Order, p. 2) Respondents Capital City Ambulance of Georgia, Ltd. ("Employer") and Companion Property and Casualty Group ("Carrier") (collectively "Respondents") denied that Morrett's underlying pre-existing conditions were aggravated by her work-related injury. (Form 51)

In his April 2, 2012 Decision and Order, the single commissioner found that Morrett's injury did aggravate her psychological condition and eating disorder. (April 2, 2012 Decision and Order, p. 22, ¶¶ 8, 10) Going further, the single commissioner determined that Morrett's psychological overlay entitled her to treatment for her psychological and eating disorders and that Respondents are responsible for the costs of that treatment. (*Id.*, p. 23, ¶ 12) The single commissioner held "all other issues" in abeyance. (*Id.*, p. 23, ¶ 14)

Respondents filed a timely Form 30, Request for Commission Review, in which they challenged the single commissioner's determination that Morrett sustained her burden of proving an aggravation of her pre-existing psychological and eating disorders. (Form 30) Following a hearing on July 17, 2012, the appellate panel issued its August 28, 2012 Order in which it unanimously affirmed, in part, and reversed, in part, the decision and order of the single commissioner. (August 28, 2012 Order, pp. 10-11)

Specifically, the appellate panel reversed the decision of the single commissioner that Morrett sustained her burden of proving an aggravation of her preexisting psychological condition or eating disorder. (August 28, 2012 Order, p. 7, ¶ 8) Accordingly, the appellate panel's order concludes that "[t]he claim for aggravation of a pre-existing condition and eating disorder is denied in its entirety." (*Id.*, p. 10) The appellate panel also agreed that "Claimant has not reached maximum medical improvement and additional medical treatment for the right knee only would tend to lessen the Claimant's period of disability." (*Id.*, p. 7, ¶ 4) Likewise, the Appellate Panel did not disturb that portion of the single commissioner's Decision and Order hold all other issues in abeyance.

Morrett filed her notice of appeal in this Court on or about September 20, 2012, followed by her initial brief and designation of matter to be included in the record on appeal on or about October 22, 2012. Thereafter, on November 20, 2012, Respondents filed their motion to dismiss this appeal on the basis that the appellate panel order is a non-final, interlocutory order that is not subject to immediate review. *See Bone v. U.S. Food Service*, 404 S.C. 67, 744 S.E.2d 552 (2013). Morrett filed a timely reply in opposition to Respondents' motion on or about November 29, 2012, and Respondents filed their reply on December 5, 2012. Thereafter, via letter dated March 11, 2013, this Court advised the parties that Respondents' motion would be "held in abeyance pending the action of the [South Carolina] Supreme Court on the petition for rehearing in *Bone v. U.S. Food Serv.*, Op. No. 27153 (S.C. Sup. Ct. filed Aug. 1, 2012) (Shearouse Adv. Sh. No. 26 at 123)."

Respondents renewed their motion via letter to the Court dated July 26, 2013. In its Order filed August 9, 2013, the Court denied the motion to dismiss, noting that "[n]othing in this order prevents the parties from arguing the issue of appealability in their briefs."

STATEMENT OF THE FACTS

Morrett has a long and troubled history marked by significant eating disorder issues and psychological problems for which she has been admitted for inpatient treatment, both voluntarily and involuntarily, on numerous occasions beginning at the age of seventeen in 2000. (Hr'g Trans., p. 24, line 15 - p. 25, line 5) Morrett sustained an admitted work-related injury to her knee on May 11, 2009, which gives rise to the instant claim, as well as Morrett's allegation that the work-related injury aggravated her pre-existing psychological problems.

I. MORRETT'S LONGSTANDING EATING DISORDER AND PSYCHOLOGICAL CONDITION.

Morrett has a long-standing eating disorder[1] that began when she was either 12 or 14 years old. (Hr'g Trans., p. 23, lines 20-24; p. 24, lines 1-4) She began receiving treatment when she was approximately 17 or 18 years old. (*Id.*, p. 8, lines 6-7) Morrett also testified she was sexually assaulted on two occasions: once as a child and once as an adult. (*Id.*, p. 10, lines 1-5) She reports difficulties with her family, moving frequently as a child, and going through a divorce. (*Id.*, p. 9, lines 11-22; p. 10, lines 6-11)

Morrett's first inpatient treatment for her eating disorder occurred at Palmetto Health Baptist Hospital from February 20, 2000, through March 22, 2000, when she was 17 years old. (Hr'g Trans., p. 24, line 15 - p. 25, line 5) She was diagnosed with major depression and anorexia and went directly into a residential treatment program at Ramuda

[1] Morrett raises as her fourth issue on appeal her challenge to the admission of a medical summary prepared by Respondents and submitted to the Commission for its review. (Appellant's Initial Br., pp. 25-29) Morrett's challenge is baseless however, because she has failed to demonstrate any prejudice resulting from the Commission's consideration of this material. Contrary to Morrett's argument, the summary is not evidence. It is, rather, just that: a summary of the voluminous medical records actually entered into evidence that provided the substantial evidence that served as the basis for the Commission's order denying benefits for aggravation of Morrett's psychological condition.

Ranch in Arizona for approximately 75 days. (*Id.*, p. 24, line 25 - p. 25, line 2; p. 25, line 13 - p. 26, line 2) Morrett's third inpatient admission also occurred at Palmetto Health Baptist, where she was first diagnosed with self-mutilation. (*Id.*, p. 26, lines 18-22) Her fourth admission was at the Institute of Psychiatry from August 28, 2000, through September 7, 2000, where she was diagnosed with bulimia. (*Id.*, p. 27, lines 2-14)

Morrett's fifth inpatient treatment admission was at the Medical University of South Carolina. (Hr'g Trans., p. 27, lines 16-17) The sixth inpatient admission was at Palmetto Health Baptist in August of 2001, at which point she weighed only 70 pounds. (*Id.*, p. 27, lines 19-24) She returned to Palmetto Health Baptist from February 13, 2002, through March 20, 2002. (*Id.*, p. 27, line 25 - p. 28, line 3) Thereafter, she applied for treatment at Mercy Ministries but was not accepted into the program because of the long waitlist. (*Id.*, p. 28, lines 4-12) Instead, she was admitted to Richland Springs for inpatient treatment from April 8, 2002, through April 16, 2002. (*Id.*, p. 28, lines 12-14) Her admission to Richland Springs was followed by involuntary commitment to the Bryan Psychiatric Center for three days. (*Id.*, p. 28, line 19 - p. 29, line 7)

Morrett returned to Richland Springs from March 7, 2003, through March 27, 2003. (Hr'g Trans., p. 29, lines 8-10) Her twelfth inpatient treatment admission occurred at Palmetto Health Baptist June 1-3, 2004, where she was first diagnosed with obsessive compulsive disorder, and she treated again as an inpatient from June 17-25, 2004, and August 6-12, 2004. (*Id.*, p. 29, lines 11-25)

Morrett began treating with counselor Marjorie Hobbs ("Hobbs") on August 19, 2004, and was still treating with her as of the date of the hearing before the single commissioner. (Hr'g Trans., p. 10, lines 15-23; p. 30, lines 9-13) She reported weighing

101 pounds on her first visit with Hobbs in 2004. (*Id.*, p. 47, lines 12-15) On March 23, 2005, Morrett reported to Hobbs that her bulimia was improving but that she had suffered a setback while on a trip to the beach. (*Id.*, p. 32, lines 8-12)

Morrett joined the United States Air Force in October 2005, started basic training in January 2006. As a result of her enlistment, she did not see Hobbs for eleven months. (Hr'g Trans., p. 32, lines 17-25) At her first appointment with Hobbs after joining the Air Force, Morrett reported she was throwing up sometimes, and she reported the next month that she was throwing up two times a week and restricting her diet. (*Id.*, p. 33, lines 1-7) On January 31, 2007, Morrett reported to Hobbs that she was still restricting her diet and purging daily. (*Id.*, p. 33, lines 11-13) She rejected Hobbs' advice to seek more intensive treatment. (*Id.*, p. 34, lines 18-24)

On July 17, 2007, Morrett denied she had a real problem despite a 30 to 40 pound weight loss in a six month period. (Hr'g Trans., p. 34, line 25 - p. 35, line 5) Thereafter, she ceased treating with Hobbs on September 11, 2007, and did not return until February 2008, when she admitted daily vomiting, restricting her diet, weight loss, and depression. (*Id.*, p. 35, lines 6-23) She once again refused inpatient treatment. (*Id.*, p. 35, line 24 - p. 36, line 1) Morrett's husband, whom she married in April of 2008, informed her Air Force commander about her eating disorder. (Hr'g Trans., p. 36, lines 11-23) She deployed one month later, and the couple separated when Morrett returned home. (*Id.*, p. 37, lines 1-6)

On January 12, 2009, Morrett reported to Hobbs that she needed and "intervention," and she once again began inpatient treatment at the Ridgeview Institute from January 26 - February 17, 2009. (Hr'g Trans., p. 13, lines 1-25; p. 37, lines 16-24)

Morrett denies she was required by the Air Force to attend inpatient treatment but admitted that her job could have been in jeopardy if she declined treatment. (*Id.*, p. 37, line 25 - p. 38, line 25) On February 17, 2009, prior to her discharge from Ridgeview Institute, Morrett was transported to Cobb Hospital, where she was diagnosed with a collapsed lung. (Resp'ts' APA 12, p. 1305) At the same time, the Ridgeview Institute recommended a local day program for one to two weeks and weekly therapy with information on depression and bulimia. (*Id.*, p. 905) Morrett was released from Cobb Hospital February 23, 2009. (*Id.* p. 1300)

Following Morrett's treatment at the Ridgeview Institute, she skipped an appointment with her dietician. (Hr'g Trans., p. 40, lines 3-5) She did not participate in a local day program as recommended by the Ridgeview Institute, and she did not see Hobbs again until March 9, 2009. (*Id.* p. 40, lines 14-22) During her March 23, 2009 visit, Hobbs noted Morrett was purging a lot and refused to see a dietician. (*Id.*, p. 40, lines 14-22) Morrett met with Hobbs again on April 6, 2009, when she complained of being stressed about money. (*Id.*, p. 40, line 23 - p. 41, line 4)

II. MORRETT'S WORK-RELATED INJURY AND CONTINUED PSYCHOLOGICAL PROBLEMS.

On May 11, 2009, Morrett sustained an admitted injury to her right knee when she tore her ACL as she attempted to move a patient on a stretcher. (Hr'g Trans., p. 15, lines 1-4) She continued to have purging problems throughout 2009, and Hobbs again recommended that Morrett see a dietician during their session on August 24, 2009. (*Id.*, p. 41, lines 14-23) Morrett returned to school in January 2010, attending classes both in person and on-line. (*Id.*, p. 42, lines 1-11) Morrett moved in with her boyfriend in April of 2010 and reported to Hobbs a month later that she was making friends at school. (*Id.*,

p. 42, lines 12-17) Morrett broke up with her boyfriend in October of 2010 and reported that she was not speaking with her mother. (*Id.*, p. 42, lines 18-24)

In 2011, Morrett reported anxiety about school resuming and admitted that she was still resistant to seeing a dietician and participating in inpatient treatment. (Hr'g Trans., p. 43, lines 10-23) Nevertheless, she passed her nursing board examination in March 2011, and she again declined inpatient treatment as recommended by Hobbs in May. (*Id.*, p. 43, line 12 - p. 44, line 5) She next sought treatment through the Veterans Hospital,where she reported seventeen prior inpatient psychiatric treatments for bulimia, anxiety, and depression. (*Id.*, p. 44, lines 6-14) At her first visit to the VA Hospital on October 18, 2011, Morrett weighed 112 pounds. (*Id.*, p. 45, lines 3-5) Her weight at the time of the hearing before the single commissioner was 109 pounds. (*Id.*, p. 47, lines 8-11) Morrett is still in school and working towards her bachelor of science in nursing. (*Id.*, p. 47, lines 18-24)

ARGUMENT

Morrett's underlying workers' compensation claim for injury to her right knee remains pending before the Commission; therefore, this appeal is interlocutory and should not be considered until a final judgment disposing of all issues has been rendered. The only issues addressed by the single commissioner and the appellate panel of the Full Commission were Morrett's compensable knee injury and whether she suffered an aggravation of previously existing psychological and eating disorders. The Commission has yet to address, among other things, whether Morrett has reached maximum medical improvement or whether she is entitled to any permanent disability impairment rating and compensation benefits, and it has specifically "all other issues" in abeyance pending a determination of maximum medical improvement. In addition, as Respondents are now required to provide causally related medical treatment, it is likely that issues regarding authorized treatment may arise. As the orders regarding continuing treatment for the admitted right knee injury (and denying additional benefits for psychological overlay) are interlocutory and do not constitute a final adjudication of all issues in this case, the appeal should be dismissed.

I. THE AUGUST 28, 2012 DECISION AND ORDER OF THE FULL COMMISSION IS AN INTERLOCUTORY ORDER THAT IS NOT SUBJECT TO IMMEDIATE APPELLATE REVIEW; THEREFORE, THIS APPEAL SHOULD BE DISMISSED PENDING THE COMMISSION'S FINAL ORDER AS TO ALL ISSUES.

South Carolina and the Workers' Compensation Commission "adhere to the final judgment rule. Accordingly, subject to certain exceptions, an appeal lies only from a final judgment." *Brunson v. American Koyo Bearings*, 367 S.C. 161, 165, 623 S.E.2d 870, 872 (Ct. App. 2005), *reh'g denied* (Jan. 19, 2006), citing *Hagood v. Sommerville*,

362 S.C. 191, 194-195, 607 S.E.2d 707, 708 (2005); S.C. Code Ann. § 1-23-380, -390; Rule 201(a), SCACR. "An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed." *Hagood*, 362 S.C. at 195, 607 S.E.2d at 709 (citing *Tatnall v. Gardner*, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002)).

A. The Appeal Is Interlocutory, And The Absence Of A Remand Provision Is Immaterial.

The order on appeal in the instant case is not a final order and does not prevent a final judgment. It simply makes no difference, as Morrett contends, that the Full Commission Decision and Order did not contain a provision remanding the case back to the single commissioner. Instead, the Court must look to the nature the order and whether it disposes of all issues before the Commission. A "final judgment" is an order that must dispose of the whole subject matter of the action or terminate the action, leaving nothing to be done but to enforce what already has been determined. *Bone*, 404 S.C at 75, 744 S.E.2d at 557 (internal citations and quotation omitted). Consistent with the holding of the supreme court in *Bone*, as well as the holding by this Court in *Long v. Sealed Air Corp.*, 391 S.C. 483, 706 S.E.2d 34 (Ct. App. 2011), the orders of the single commissioner and the appellate panel are limited to continuing treatment of Morrett's right knee injury and the denial of her claim for psychological overlay. All other benefits to which Morrett may be entitled are not addressed in these orders, including whether Morrett has reached maximum medical improvement, the course of medical treatment that might be necessary to lessen the period of her disability, and whether she is entitled to any permanent disability compensation.

Since no final judgment has been rendered, this appeal should be dismissed as interlocutory and remanded to the Commission for further proceedings consistent with the orders of the single commissioner and the appellate panel. Pursuant the line of cases culminating in *Bone*, dismissal and remand will preserve judicial resources and prevent piecemeal appeal of the various issues presented (and not yet decided) in this case.

Morrett argues the Full Commission order is final and subject to immediate review because it did not remand the matter back to the single commissioner. (Response to Mot. to Dismiss, pp. 3-4) Her argument is a red herring because it completely ignores the procedural realities of this case and because it subverts the supreme court's clear holding in *Bone*. As the *Bone* Court noted, "a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy . . . . [however, . . .] an adequate remedy [exists where the party] may raise the issue of compensability on appeal of a final award." *Bone*, 404 S.C. at 74, 744 S.E.2d at 556 (citing S.C. Code Ann. 1-23-380(A)).

Just as in *Bone*, where the issue of maximum medical improvement had not yet been addressed and no award had been made, the issues of whether Morrett has reached maximum medical improvement and whether she is entitled to any permanent disability award remain open. Since no final judgment has been rendered, this appeal should be dismissed as interlocutory and remanded to the Commission for further proceedings consistent with the orders of the single commissioner and the appellate panel. This is particularly true where Morrett may appeal the denial of compensation for aggravation of her psychological disorders once the Commission has made its final award. The holdings of *Bone* and related cases compel this result.

B. Failure To Apply *Bone* With Equal Force To All Parties Raises Equal Protection Concerns.

The court's analysis in *Bone* applies with equal force to the present case. Here, the order on appeal is not a final order for the same reasons that proved fatal to the appeal in *Bone*; to wit, the Commission has yet to decide the issues of maximum medical improvement and permanency. Furthermore, it is likely issues relating to ongoing medical treatment, temporary benefits, change of condition, and other potentially affected body parts will arise during the tenure of Morrett's workers' compensation claim. Permitting Morrett to pursue an immediate appeal of a non-final order, while employers and carriers have been denied the same opportunity, also raises the specter of violation of the Equal Protection Clauses of the United States and South Carolina Constitutions.

Morrett argues that if she cannot immediately challenge the Appellate Panel's determination that her work accident did not aggravate underlying psychological conditions that those conditions will continue to deteriorate. While that might be valid concern, this Court is nevertheless bound to follow the clear mandate of *Bone*: an appeal in workers' compensation cases will not lie unless the order "settles the rights of the parties and disposes of all issues in controversy, except for the award of costs . . . and enforcement of the judgment." *Bone*, 404 S.C. at 78, 744 S.E.2d at 558-559 (quoting *Black's Law Dictionary* 919 (9th Ed. 2009)). The petitioners in *Bone* must wait until a final agency decision has been rendered - whenever that might be and whatever that might look like - before seeking appellate review. It is only fair and equitable that inflexible standard announced in that decision be applied with equal force to employers and employees on the losing end of an intermediate Commission order.

Permitting employee appeals to proceed while restricting the ability of employers and carriers to seek immediate review of merits-determinative rulings violates the Equal Protection Clause of the United States and South Carolina Constitutions. *See* U.S. CONST. amend. XIV, § 1; S.C. Const. art. I, § 3. "The constitutional guarantee of equal protection of the laws requires that all persons be treated alike under like circumstances and conditions, both in privileges conferred and liabilities imposed." *GTE Sprint Comm'n. Corp. v. Public Service Com.*, 288 S.C. 174, 181, 341 S.E.2d 126, 129 (1986) (citing *Marley v. Kirby*, 271 S.C. 122, 123-124, 245 S.E.2d 604, 605 (1978)). "The requirements of equal protection are satisfied if (1) the classification bears a reasonable relation to the purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and 93) the classification rests on some reasonable basis." *Id.* at 181, 341 S.E.2d at 130 (citing *State ex rel. Medlock v. S.C. State Family farm Dev. Auth.*, 279 S.C. 316, 306 S.E.2d 605 (1983)).

To permit a claimant like Morrett to proceed on appeal because she might miss beneficial treatment while denying employers immediate review while they are required to pay benefits they will not be able to recoup if they ultimately prevail on appeal is injustice and unfair. It also would result in unequal application of S.C. Code Ann. § 1-23-380 and afford claimants superior access to the appellate courts than that available to employers and carriers. Morrett should be denied immediate review because the Commission has yet to determine whether the claimant has reached maximum medical improvement, whether she is entitled to permanent disability benefits, and other issues that likely will arise. No final judgment has been rendered, and the Commission has not disposed of the entirety of the action. Permitting her to appeal the non-final order of the

Commission while requiring employers and carriers to await final judgment while they continue to pay benefits in disputed cases.

II. TO THE EXTENT THE AUGUST 28, 2012 DECISION AND ORDER IS SUBJECT TO IMMEDIATE REVIEW, SUBSTANTIAL EVIDENCE SUPPORTS THE DENIAL OF BENEFITS FOR AGGRAVATION OF APPELLANT'S PSYCHOLOGICAL CONDITION.

Even assuming, arguendo, that the August 28, 2012 Decision and Order of the Full Commission is subject to immediate review, which it is not, substantial record evidence supports the denial of benefits for Morrett's alleged aggravation of her psychological condition. This is especially true given the Appellate Panel, as the final arbiter of factual disputes among the parties, gave little if any weight to Morrett's experts and found Respondents' expert to be especially qualified to opine that her condition was the same before and after the admitted work-related injury in this case. In light of the substantial record evidence, it was appropriate for the Commission to determine that Morrett failed to satisfy her burden of proving aggravation of her psychological condition, and that ruling should be affirmed.

The South Carolina General Assembly has established parameters governing Morrett's claim. To that end, a claim for stress, mental injury, or mental illness alleged to have been aggravated by a work-related accident is not compensable unless the claimant establishes that the aggravation is:

> (1) admitted by the employer/carrier; (2) noted in a medical record of an authorized physician that, in the physician's opinion, the condition is at least in part causally-related or connected to the injury or accident, whether or not the physician refers the employee for treatment of the condition; (3) found to be causally-related or connected to the accident or injury after evaluation by an authorized psychologist or psychiatrist; or (4) noted in a medical record or report of the employee's physician as causally-related or connected to the injury or accident.

S.C. Code Ann. § 42-1-160(D). In addition, "[t]he 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 impairment." S.C. Code Ann. § 42-9-35(A).

A. The Medical Records And Appellant's Own Testimony Provide Ample Substantial Evidence To Support The Appellate Panel's Denial Of Benefits For The Alleged Aggravation Of Appellant's Psychological Condition.

The greater weight of the substantial evidence in this case supports the determination by the Full Commission that Morrett failed to meet her burden of proving an aggravation of her preexisting psychological condition and eating disorder. (August 28, 2012 Decision and Order, p. 7, ¶ 8) Specifically, the Commission's decision was driven by several factors, including: (1) Morrett's extensive history of psychological treatment, both voluntary and involuntary, the last of which was just three months prior to her work injury; (2) she refused to participate in outpatient treatment and therapy and admitted continued purging even during her last inpatient treatment; (3) Morrett had "significant stressors" unrelated to her claim, including family problems, divorce, financial strain, school anxiety, and a history of sexual abuse; and (3) Morrett's military service admittedly exacerbated her condition, leading to obsessive exercising, abuse of diet pills and energy drinks, increased dietary restrictions and purging, obsession with body image and weight, and increased weight loss. (*Id.*, pp. 7-8, ¶¶ 8-10) In light of the overwhelming record evidence supporting the Commission's determination that Morrett's work-related injury did not exacerbate her underlying disorders, this Court should affirm.

Morrett admitted her eating disorder and depression were ongoing psychiatric problems both before and after her accident. Going further, she testified she had relationship problems, both with her family and with members of the opposite sex, financial strain, and anxiety about school. (Hr'g Trans., p. 42, lines 18-24) Morrett refused inpatient treatment as recommended by her counselor and declined treatment with a dietician before and after her accident. (*Id.*, p. 42, line 25 - p. 43, line 5) She admitted purging during her last week at the Ridgeview Institute and did not complete a recommended outpatient program. (Resp'ts' APA 16, p. 1348) She admitted to her counselor that she was still purging just seven weeks prior to the work-related accident.

While Morrett claims she had only one inpatient treatment for condition since 2005, the medical records tell a more complete story. In fact, she refused additional medical treatment on April 18, 2007, May 1, 2007, June 20, 2007, July 17, 2007, February 25, 2008, and March 23, 2009. (Resp'ts' APA 9, pp. 865-866, 869, 871, 874, 880) She also terminated her counseling relationship with Hobbs in September 2007, when Hobbs noted Morrett was "just not ready to change and doesn't feel ready to continue therapy." (*Id.*, p. 873) Prior to joining the Air Force, Morrett's bulimia was improving, and she was only purging every three to four weeks. (*Id.*, pp. 834, 844) After about a year of military service, however, Morrett was going to the gym six days a week for two hours a day, taking diet pills with energy drinks, obsessing about her weight and body image, restricting her diet, and purging two times a week. (*Id.*, p. 850) In early 2007, Morrett was purging daily, and by the end of 2008, she admitted her eating disorder symptoms increased when she was stationed in Washington, D.C. (*Id.*, pp. 853, 875) During her last appointment with Hobbs prior to her accident, Morrett admitted she was

purging a lot and was stressed about money. She also admitted being resistant to seeing a dietician. (Hr'g Trans., p. 42, lines 18-21; p. 43, lines 10-23)

While the Full Commission Decision and Order does not address Morrett's credibility, it is nevertheless clear that it disagreed with the single commissioner's determination that she "testified accurately and in line with the medical and counseling records in this case." (April 2, 2012 Decision and Order, p. 22, ¶ 9) Instead, the Full Commission correctly synthesized the medical records, the opinions and testimony of the experts identified by both sides, and, importantly, Morrett's own testimony and admissions relating to her underlying conditions to conclude that her "psychological condition and related behaviors have persisted because, up until this point, she has not had the adequate motivation to take advantage of the services that have been offered to her on numerous occasions." (August 28, 2012 Decision and Order, p. 8, ¶ 11)

The record is replete with Morrett's misstatements concerning her medical course. For example, she testified "I was discharged from [the Ridgeview Institute] on February 17, [and] I had completed the part of the program I had gone there for. And then instead of getting discharged home, I had to go straight to the WellStar Cobb [Hospital] because of my lung." (Hr'g Trans., p. 38, lines 21-25] Medical records from WellStar Cobb Hospital, however, reveal "[t]he patient presented to the ER today from Ridgeview Psychiatric Center for mild shortness of breath and generally not feeling well for the past few days. The patient was admitted to Ridgeview two to three weeks ago for bulimia and was set up to be discharged *tomorrow*." (Resp'ts' APA 12, p. 1305) (emphasis added) Thus, contrary to her testimony, Morrett was discharged prior to completing her treatment at the Ridgeview Institute. As such, while she did require treatment for a

collapsed lung, the fact remains that she missed at least two days of inpatient treatment.

Morrett also testified she was unable to participate in the outpatient treatment program at the Ridgeview Institute because her insurance would not pay for it. (Hr'g Trans., p. 38, lines 16-20) However, the Ridgeview discharge summary notes Morrett's discharge was to a local day program for one to two weeks and recommended weekly therapy with information on depression and bulimia. (Resp'ts' APA 10, p. 905) Morrett admits she was unable to accomplish the transitional step of a partial hospitalization after the inpatient treatment at the Ridgeview Institute. (Resp'ts' APA 16, p. 1348) Dr. Lind opined this outpatient treatment "is important as it is designed to transition the patient from the controlled hospital environment to the less structured 'real world.' The treatment that was initiated in the military was therefore never completed and, as a result, she was not able to adapt to the less structured world outside the hospital." (*Id.*, p. 1349) Despite the importance of additional therapy, Morrett did not seek any psychological treatment for twenty days after her discharge from WellStar Cobb Hospital and skipped an appointment a dietician. While she *almost* completed her inpatient treatment, Morrett declined necessary follow-up treatment necessary to recover from her psychological condition and eating disorder. Her treatment at the Ridgeview Institute was, therefore, a failure of her own making and not attributable to an insurance dispute.

Another example of the tension between reality and Morrett's version of events is her testimony relating to the Air Force's role in securing treatment for her disorders. Morrett testified she was not required by the Air Force to submit to inpatient treatment. (Hr'g Trans., p. 38, lines 2-4) This statement is flatly contradicted by the initial clinical assessment completed at the Ridgeview Institute, which reflects Morrett's statement that

"[m]y work told me I need to get help" when asked why she was seeking treatment. (Resp'ts' APA 10, pp. 937, 939)

The bottom line is that Morrett's testimony does not comport with the records and testimony presented to the single commissioner, and the Appellate Panel of the Full Commission correctly determined that her psychological condition suffered not because of her work-related leg injury but because of a conscious decision on her part to reject recommended treatment. As such, her psychological condition was the same at the hearing before the single commissioner as it was prior to her admitted work accident. Morrett, a mere three months before her injury, was refusing daily treatment followed by weekly therapy as recommended during her last inpatient treatment at the Ridgeview Institute.

The South Carolina Supreme Court has examined whether a claim for aggravation of preexisting depression is compensable. As that court has noted, "[t]he 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.*" *Anderson v. Baptist Medical Center*, 343 S.C. 487, 493, 541 S.E.2d 526, 528 (2001) (emphasis added) (citation omitted); *see also Doe v. SC Dep't. of Disabilities and Special Needs*, 377 S.C. 346, 351, 660 S.E.2d 260, 263 (2008). In *Doe*, claimant was a nurse in the special needs department and was required to care for a larger volume of passive-aggressive patients as the result of downsizing in her unit. *Id.* at 348, 660 S.E.2d at 261. She sought psychiatric care and filed a claim alleging work-related stress precipitated a relapse in her depression. *Id.* at 349, 660 S.E.2d at 261. The supreme court held that despite claimant's preexisting

depression seventeen years prior to the alleged accident, as well as her father's death the same year, her psychological condition was compensable. *Id.* at 351, 660 S.E.2d at 263. The court's holding was based upon its conclusion that no record evidence supported a finding that any outside stressors caused or contributed to claimant's mental injury leaving the work-related stress as the only evidence of causation. The facts of this care are entirely distinguishable.

Unlike the claimant in *Doe*, whose history of depression occurred seventeen years prior to her work-related injury, Morrett's condition was most certainly not dormant as she was receiving inpatient treatment for her psychiatric disorders a scant three months prior to her admitted injury. Further, Morrett took active steps to avoid treatment, refusing to participate in recommended daily therapy, missing a previously scheduled appointment with a dietician, and avoiding counseling following her release from WellStar Cobb Hospital. Another critical fact that distinguishes Morrett's case from *Doe* is her extensive course, which includes 17 inpatient psychiatric treatments as well as outpatient treatments dating back to 2000 for her ongoing, pre-existing psychiatric conditions.

Respondents certainly agree that six surgical procedures might slow recovery for an injured worker. Unlike the claimant in *Doe*, however, Morrett had multiple additional stressors that included her eating disorder, depression, family difficulties, military service, a failed marriage, and financial strain. At the time of her knee injury, she was suffering from severe, long-standing psychological issues made worse by her rejection of recommended treatment options. For all of these reasons, the Appellate Panel of the Full Commission correctly concluded Morrett failed to meet her burden of proving by a

preponderance of the evidence that her knee injury aggravated her underlying psychological condition and that her condition was, instead, merely a continuation of a long-standing, pre-existing, and on-going condition.

B. The Testimony By Morrett's Counselor And Treating Orthopaedic Surgeon Was Insufficient To Establish An Aggravation Of Her Pre-Existing Psychological Condition.

Morrett's counselor and her treating physician both opined that her psychological condition was aggravated by her work accident. In contrast, the only psychologist to review Morrett's medical records and extensive prior course of psychological treatment, Dr. Nicholas A. Lind, opined Morrett's psychological condition was not aggravated by the knee injury or her subsequent medical treatment for that injury. Inasmuch as neither Dr. Piesecki nor Counselor Hobbs were qualified to render an opinion with regard to Morrett's psychological condition, the Full Commission did not commit reversible error in finding those witnesses less credible than the only psychologist to testify at the hearing before the single commissioner, Dr. Lind. The August 28, 2012 Decision and Order should be affirmed on this basis.

1. Dr. Piascecki, Appellant's Treating Orthopaedic Surgeon, Was Not Qualified To Render Opinion Testimony With Regard To Appellant's Psychological Condition.

Dr. Piasecki, Morrett's treating orthopaedic surgeon, had only been in practice four years when he treated Morrett and admitted he had not reviewed any of her prior medical records relating to her psychological treatment. (Piasecki Dep. Trans., p. 6, lines 8-16) In fact, Dr. Piasecki only met with Morrett once after learning of her eating disorder. (*Id.*, p. 7, lines 11-24) He was not aware of Morrett's extensive psychological inpatient treatment prior to the accident, including her treatment at the Ridgeview

Institute three months prior to the accident. (*Id.*, p. 7, line 25 - p. 8, line 6) Dr. Piasecki also conceded he was not aware of Morrett's issues with her mother and men or the sexual abuse she suffered. (*Id.*, p. 10, line 10 - p. 11, line 3)

Despite his admitted lack of knowledge regarding Morrett's extensive course of treatment for her depression and eating disorder, Dr. Piasecki nevertheless offered his opinion that Morrett's psychological condition was aggravated by her knee injury and subsequent treatment, as well as his unsubstantiated opinion that a psychiatrist does not "understand[] the stress and anxiety psychologically that is entailed in the number of knee surgeries, the pain and the recovery. That process, I think, is probably not possible for a psychiatrist to appreciate." (Piasecki Dep. Trans., p. 10, lines 7-15) This statement is all the more puzzling since Dr. Piasecki is not a psychiatrist or a psychologist and is not trained to treat or even diagnose a patient's psychological conditions. *See Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 23, 716 S.E.2d 123, 126 (Ct. App. 2011) (the Commission should ascertain the proficiency of an expert and decide whether a "higher degree of expertise" is needed to render an opinion) (citing *McLeod v. Piggly Wiggly Co.*, 280 S.C. 466, 471, 313 S.E.2d 38, 41 (Ct. App. 1984)). Even more problematic is the fact that Dr. Piesecki rendered his opinion without even a passing familiarity with Morrett's extensive history of psychological treatment and therapy.

Dr. Piasecki's opinion is misguided, incorrect, and beyond the scope of his training and expertise. It was, therefore, appropriate for the Commission to give Dr. Piasecki's opinion little, if any, weight in its decisional analysis. In its Decision and Order, the Full Commission recognized its role in ascertaining the proficiency of an expert and determining whether a higher degree of expertise is necessary to offer an

opinion. (August 28, 2012 Decision and Order, p. 10, ¶ 9) (citing *Potter*, 395 S.C. at 23, 716 S.E.2d at 126) It also found as a matter of fact that

> Dr. Piasecki, [Morrett's] orthopaedic surgeon, does not have the higher degree of expertise needed to render an opinion on the issue of aggravation of [Morrett's] preexisting psychological condition and eating disorder. Dr. Piasecki opined [Morrett's] accident aggravated her psychological condition, but admitted he was not aware of [Morrett's] extensive preexisting psychological treatment and did not take her preexisting condition into account when rendering his opinion. Dr. Piasecki, who has only been in private practice four years, is also not a psychiatrist or psychologist.

(August 28, 2012 Decision and Order, p. 9, ¶ 15)

2. Marjorie Hobbs, Appellant's Treating Counselor, Was Not Qualified To Render Opinion Testimony With Regard To Appellant's Psychological Condition.

Like Morrett's treating physician, her counselor also opined that her psychological treatment was aggravated by her knee and subsequent medical treatment. Her opinion testimony is flawed and unpersuasive for the same reasons the Full Commission rejected Dr. Piasecki's aggravation opinion. Hobbs is not a psychologist or a psychiatrist. She did not go to medical school, is not a physician, and serves only as a counselor. Hobbs simply is unqualified to render an opinion regarding causation or aggravation of a psychiatric condition, and this issue is admittedly beyond her area of expertise. *Potter*, 395 S.C. at 23, 716 S.E.2d at 126.

The records prepared by Hobbs during her sessions with Morrett do not meet the statutory definition of "medical records or reports" pursuant to S.C. Code § 42-1-160(D) ("noted in a medical record of an authorized *physician*") (emphasis added). Like Dr. Piasecki, Hobbs never reviewed Morrett's pre-injury medical records and instead guessed that Morrett had five inpatient treatments prior to the accident when, in fact, Morrett actually had seventeen inpatient admissions. (Hobbs Dep. Trans., p. 10, lines 12-22; p.

13, lines 2-8) Hobbs opined that Morrett's eating disorder worsened after the accident; however, records indicate Hobbs encouraged Morrett to enter inpatient treatment just five months prior to the accident because her disorder was "out of control." (Resp'ts' APA 9, pp. 877, 880) Just two months prior to Morrett's injury, and after another inpatient treatment, Hobbs noted Morrett was purging a lot and that she refused to see a dietician. (*Id.*) Hobbs' testimony that Morrett had consistent weight loss after the accident also is refuted by the record: Morrett weighed 118 pounds when she was at the Ridgeview Institute shortly before her accident, 112 pounds at her last treatment through the VA Hospital on October 18, 2011, and 109 pounds at the hearing before the single commission, an aggregate difference of nine pounds. (Hr'g Trans., p. 45, lines 3-5; p. 47, lines 8-11; Resp'ts' APA 9, p. 901; Hobbs Dep. Trans., p. 28, lines 19-23)

Hobbs' opinion that Morrett's preexisting condition was aggravated was subjective, based upon sympathy, and driven by a desire for Morrett to seek treatment, which Hobbs recommended well before the admitted work injury. On this score, the Full Commission also noted Morrett's concession during oral argument that "Hobbs is not a physician qualified to render an opinion regarding causation or aggravation of a psychiatric condition as required by § 42-1-160(D)." It was appropriate for the Commission to make this finding, to reject Hobbs' unqualified opinion, and to conclude that Morrett failed to meet her burden of proving a causative link between the work related accident and the alleged worsening of her mental state.

C. Nicholas A. Lind, Psy.D, Was The Only Licensed Psychologist Qualified To Offer Opinion Testimony Regarding Appellant's Psychological Condition And Was Found By The Appellate Panel To Be The Most Credible Witness On This Issue.

The only psychologist to render a qualified opinion as to whether Morrett's preexisting psychological condition was aggravated by her work accident was Nicholas A. Lind, Psy.D. Dr. Lind received his license to practice clinical psychology in 2003. (Resp'ts' APA C, p. 4000) Since 2005, he has worked in private practice as a clinical psychologist with Post Trauma Resources. (*Id.*, p. 4001) Before entering private practice, Dr. Lind served as the Commander of the Mental Health Flight at Shaw Air Force Base, where he oversaw clinical services for all Shaw Air Force Base primary, secondary, and tertiary mental health programs while also serving as a staff psychologist. (*Id.*) In light of his experience, Dr. Lind is especially well qualified to render an opinion as to whether Morrett's preexisting psychological condition, which worsened during her time in the Air Force, was exacerbated by her work accident.

Dr. Lind met with Morrett and reviewed her extensive psychological records. Morrett admitted to Dr. Lind that her binging and purging behaviors worsened when she was deployed stateside as a flight medic. (Resp'ts' APA 16, p. 1348) She lost 30 to 35 pounds in three months while in the Air Force. (*Id.*) Morrett admitted her treatment at the Ridgeview Institute was not as successful as it could have been, and she was able to purge without being detected by the staff during the last week of her admission there. (*Id.*) Morrett also admitted that since her lung collapse, she was unable to accomplish the transitional step of partial hospitalization and that she in effect never completed treatment. (*Id.*) Based upon his review of the records, and his interview with Morrett, Dr. Lind opined that her psychological condition was no different before or after her

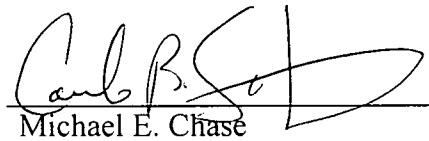
work-related injury. (Resp'ts' APA 16, pp. 1349-1350B; August 28, 2012 Decision and Order, p. 8, ¶ 12) (Ms. Morrett's symptoms appear to be consistent throughout her counseling with little impact from her work-related injury . . ..[and] Ms. Morrett's psychological condition is more likely than not, with as much certainty reasonable in the field of psychology, no different than before her 11 May 2009 work-related injury.")

As the Full Commission correctly noted, "Dr. Lind was the only psychologist to render an opinion as to whether [Morrett's] preexisting psychological condition and eating disorder were aggravated by the work accident. Dr. Lind was in an especially good position to render this opinion because of his experience as a psychologist in the Air Force." (August 28, 2012 Decision and Order, p. 8, ¶ 13) The Full Commission also made clear that "Dr. Lind's opinion [was] given much greater weight than both the opinions of Counselor Hobbs and Dr. Piasecki." (*Id.*, p. 9, ¶ 16)

Respondents take the position that Morrett's appeal is premature; however, to the extent this Court is inclined to proceed to the merits, it should affirm the order of the Full Commission denying benefits. Morrett's own testimony and medical records clearly reveal that her psychological disorders were in full bloom shortly before her admitted injury. Moreover, neither of the witnesses who testified on her behalf before the single commissioner was qualified to render opinion testimony concerning the alleged worsening of her mental state. Instead, the Full Commission gave greater weight to the testimony of the only psychologist to offer testimony in this matter, who testified that Morrett's condition was constant both before and after her work injury. For all of these reasons, and to the extent the August 28, 2012 Decision and Order is subject to review at this juncture, this Court should affirm.

CONCLUSION

For all of the reasons stated herein, Respondents submit that the instant appeal should be dismissed as the order appealed from is not a final order subject to immediate review. Should the Court proceed to the merits, Respondents respectfully submit that substantial evidence supports the August 28, 2012 Decision and Order and that the same should be affirmed in its entirety.

October 23, 2013 By: 

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