THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2013-CP-10-1223

Sandra A. Kearse, Appellant,

v.

Charleston County School District, Respondent,

RETURN TO NOTICE OF APPEAL AND
MOTION TO QUASH ANY SUBPOENAS THAT MAY BE ISSUED

YOUNG CLEMENT RIVERS LLP

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Attorneys for the Respondent Charleston County School District

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Comes now the Respondent, Charleston County School District, and respectfully requests responds to the *pro se* Appellant Sandra A. Kearse's Notice of Civil Appeal. To the extent that Appellant requests a thirty day extension of time to file her Initial Brief and Designation of Matter, Respondent has no objection to such an extension of time.

Respondent respectfully requests that the *pro se* Appellant not be allowed to serve subpoenas in this matter as this is an appeal from the South Carolina Workers' Compensation Commission to the Circuit Court to this Court. The South Carolina Administrative Procedures Act governs judicial review of the Commission's decisions and establishes the "substantial evidence rule" as the standard for reviewing the Commission's factual findings. S.C. CODE ANN. § 1-23-380 (Supp. 2009); Lark v. Bi-Lo, Inc., 276 S.C. 130, 133, 276 S.E.2d 304, 305 (1981). An appellate court can reverse or modify the Commission's decision only if the Claimant's "substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Shealy v. Aiken County, 341 S.C. 448, 454, 535 S.E.2d 438, 442 (2000); see § 1-23-380(5)(d),(e). As such, no additional documents are necessary for this Court's evaluation of the matter on appeal.

Finally, Respondent notes that the Form 4 Judgment attached to the Notice of Civil Appeal has been altered from what is on file with the Clerk of Court's office. A copy of the Form 4, filed August 22, 2013, without any additional information filled in, is attached as Exhibit 1. On August 22, 2013, the Honorable R. Markley Dennis, Jr. denied

the appeal. On September 10, 2013, a formal order denying the appeal was filed. This order is attached as Exhibit 2.

CONCLUSION

Respondent has no objection to the *pro se* Appellant being granted an additional thirty days to file her Initial Brief and Designation of Matter. Respondent respectfully requests that Appellant not be allowed to serve subpoenas as this appeal should be decided on the record which was before the Workers' Compensation Commission and the Circuit Court.

Respectfully submitted,

YOUNG CLEMENT RIVERS LLP

By: _____

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Attorneys for the Respondent Charleston County School District

Charleston, South Carolina

Dated: October 21, 2013

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-1223

Sandra Kearse
PLAINTIFF(S)

Charleston County School District
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Court denied Appeal.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2060
Judge Code

8/22/13
Date

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-CP 1223

SANDRA A. KEARSE
PLAINTIFF(S)

CHARLESTON COUNTY SCHOOL DISTRICT
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2013 SEP 10 AM 11:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☒ See attached order (~~formal order to follow~~) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

R. Markley Dennis

Circuit Court Judge | 2060 Judge Code | 09/05/13 Date

EXHIBIT 2

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO. 2013-CP-10-1223
SANDRA A. KEARSE,	)	
APPELLANT/CLAIMANT,	)	
v.	)	
	)	**ORDER**
CHARLESTON COUNTY SCHOOL DISTRICT,	)	
EMPLOYER/SELF-INSURED, RESPONDENT/DEFENDANT	)	

This matter came before the undersigned by way of appeal filed by the Employee/Claimant, from an Order of the Appellate Panel of the South Carolina Workers' Compensation Commission dated February 12, 2013, wherein the Appellate Panel unanimously affirmed the Order of the Single Commissioner in full. Commissioner Gene McCaskill heard this matter in Summerville, SC on May 18, 2012, pursuant to notice timely and properly given to all parties of record. The purpose of this hearing was to determine issues set forth on Forms 50 and 51. The Claimant alleged injuries to her neck and back, along with disfigurement to her forehead, as a result of an admitted slip and fall accident on January 3, 2007. The Claimant also asserted that she had not received medical treatment recommended by Dr. Timothy Zgleszewski, and had not reached maximum medical improvement. She also asserted that she was entitled to temporary total disability benefits from the date of her resignation from the Employer on November 30, 2007, and continuing. The Employer/Self-Insured admitted only a minor injury to the Claimant's neck. The Employer/Self-Insured argued that the Claimant had reached maximum medical improvement, and was not entitled to any further medical treatment. The Employer/Self-Insured also denied the Claimant was entitled to temporary total disability

benefits. Finally, the Employer/Self-Insured requested a credit for a $325 cancellation fee related the Claimant's failure to attend a scheduled medical appointment.

The hearing Commissioner issued a Decision and Order on June 21, 2012, in which he found that the Claimant sustained 5% permanent partial disability or loss of use of her back, and was therefore entitled to 15 weeks of PPD at the rate of $225.30. The hearing Commissioner also awarded the Employer/Self-Insured a $325 credit for the charge incurred when the Claimant did not appear for a medical appointment. The Claimant's alleged injuries to other body parts were denied, as was her request for temporary total disability benefits. The Claimant filed a Form 30, Request for Full Commission Review on July 24, 2012. The Claimant's attorney did not file this appeal within 14 days of the date of Single Commissioner's Order, but the Commission allowed the appeal to proceed, based on the Claimant's attorney's assertion that the Single Commissioner's Order was not served on him until July 11, 2012.

The parties submitted briefs, and oral arguments were held on December 17, 2012. At the time of oral argument, the Claimant was no longer represented by counsel, and confirmed to the Full Commission that she wished to proceed *pro se*. Upon thorough consideration of the evidence in the record, as well as the legal briefs submitted and the positions outlined at oral argument, the Appellate Panel unanimously affirmed the Order of the Single Commissioner in full.

The Claimant thereafter filed an appeal to this Court. The Employer/Self-Insured filed a Motion to Dismiss, asserting it had not been properly served with the Claimant's appeal. Oral arguments were heard before the undersigned on August 9, 2013. The undersigned considered the Employer/Self-Insured's Motion to dismiss the present appeal, and hereby denies the same, based upon insufficient proof to establish the Employee/Claimant's failure to properly serve

notice of the appeal on the Employer/Self-Insured. After having thoroughly reviewed the Workers' Compensation Commission's file, the evidence on record at the hearing before the Single Commission, and having heard oral argument of counsel and reviewed supporting briefs, in accordance with the standard of judicial review set forth in S.C. Code Ann. Section 1-23-310 et seq., I now affirm the Order of the Full Commission dated February 12, 2013 in its entirety.

STANDARD OF REVIEW FOR THE CIRCUIT COURT

In accordance with the terms of the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310, et seq., the Circuit Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The Workers' Compensation Commission is the fact-finder and makes the final determination of witness credibility and the weight to be given evidence. An administrative order may be reversed or modified if substantial rights of the appellant are prejudiced because the administrative findings are: (1) in violation of constitutional or statutory provisions; (2) made upon unlawful procedure; (3) affected by other error of law; (4) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (5) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion. S.C. Code Ann. § 1-23-380 (Law. Co-op. 1986).

The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. Hicks v. Piedmont Cold Storage, Inc., 335 S.C. 46, 515 S.E.2d 532 (1999). An award of the Commission can be set aside only if it is unsupported by substantial evidence. Brown v. R.L. Jordan Oil Co., 291 S.C. 272, 353 S.E.2d 280 (1987); Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). The possibility that two inconsistent conclusions could be drawn from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Brown, 291 S.C. at 275, 353 S.E.2d at

282; Boggs v. State Board of Medical Examiners, 288 S.C. 144, 341 S.E.2d 635 (1986). South Carolina courts have held that "[w]hen evidence is in conflict, someone has to determine the true facts. That chore is assigned to the Worker's Compensation Commission." Fair v. Fluor Daniel, 309 S.C. 520, 521, 424 S.E.2d 541, 542 (Ct. App. 1992). Specifically, in order for a court to hold that the judgment of the lower court resulted from an abuse of discretion, there must be a showing by the Appellant that the conclusions reached were without reasonable factual support, resulted in prejudice to the right of the Appellant, and therefore, in the circumstances, amounted to an error of law. Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974). In the case at hand, the findings of the Appellate Panel are wholly supported by the great weight of the facts and probative evidence in the record, and are substantiated by the law of this state.

STATEMENT OF FACTS

The Claimant in this matter fell in an admitted accident on January 3, 2007. She was the only witness to testify at the hearing before the single Commissioner. She testified that she moved to Florida in 2010 and that she never received any treatment after her move. (Hrg. Tr. p.13). However, she admitted that the Employer/Self-Insured sent her to Dr. Goll, Dr. Imfeld, and Dr. Gerber after she moved to Florida. (Hrg. Tr. p.14-15). She described her neck pain as "horrible," with a constant cracking noise. She said that when she preached, she got a "wave of pain" in her back. (Hrg. Tr. p.16). She said that the pain in her neck increases when she attempts to lift her grandchildren.

The Claimant alleged that she had disfigurement on her "entire head" that "looks kind of like a burn." She alleged that initially after her fall her head became very swollen. She removed her makeup and testified that her forehead was a "totally different color" from the rest

of her face. (Hrg. Tr. p.18-19). However, the Hearing Commissioner noted in his Order that he did not observe anything discolored or disfigured on the Claimant's face or forehead.

The Claimant testified that she received about three weeks of temporary total disability benefits after her initial injury. She admitted that she returned to work thereafter, but alleged that she stopped when she did not feel able to work anymore. (Hrg. Tr. p.20). The Claimant then stated that she recently began working as a mentor, taking children to museums and other cultural venues. She began the job about six weeks prior to the hearing and had been working 12 hours per week. (Hrg. Tr. p. 21). She is earning $12 per hour. (Hrg. Tr. p. 26).

The Claimant did go to a chiropractor on her own, but she did not know whether her bills had been paid. The chiropractor is "aligning" her spine. (Hrg. Tr. p.25). She testified "[m]ost of the time I'm good," though she alleged that her shoulder and back hurt if she bends. (Hrg. Tr. p.22).

On cross examination, the Claimant said that she had felt able to work even before she started at her most recent job and that she also felt able to work when she was deposed in January of 2009. (Hrg. Tr. p. 26-27). The Claimant admitted that she is able to work at a computer, sitting at a desk, and she admitted that she as a bachelor's degree in religion, psychology, and child studies. She owned a company called Sask Productions to promote books and songs that she had written, and she is certified to write grants. (Hrg. Tr. p. 28). She helped her husband write grants for his business after her accident. She was a nursing assistant and had also worked as a CNA. (Hrg. Tr. p. 30).

When she worked with the Employer/Self-Insured, the Claimant taught a special education class, and she was also a preacher. (Hrg. Tr. p. 28-29). She continues to provide spiritual counseling and teach Sunday School. She has also continued to do "a lot" of work

researching and writing books and sermons. (Hrg. Tr. p. 29). She is able to do research on the internet, and she edits her church newsletter. (Hrg. Tr. p. 29-30).

When asked about her three prior motor vehicle accidents where she had whiplash, the Claimant said she did not remember them. (Hrg. Tr. p. 30). The Claimant admitted that she saw Dr. Privett in May of 2003 (APA p. 90), and she admitted that according to that record she had these motor vehicle accidents. (Hrg. Tr. p. 30-31).

The Claimant denied that she had chronic neck pain before her fall. When presented with a report from Dr. Fink in October of 2006 indicating that she had chronic neck and upper back pain (APA 3, p.21), the Claimant denied that the report was accurate. (Hrg. Tr. p. 31-32). She also denied that she treated for lower back issues prior to her fall, even when presented with records from Dr. Weisglass saying otherwise. (APA #1; Hrg. Tr. p. 32-33). She said she did not remember getting an MRI to her neck prior to her work injury despite a medical record from April 21, 2006 indicating that she brought her MRI to Dr. Gunter for review because of her complaints of neck pain (APA 1, p.8; Hrg. Tr. p. 33).

The Claimant admitted that she began seeing Dr. Jervey shortly after her fall at work, but she denied that she told him that her neck was no longer hurting a couple of months later, despite the medical record stating this. (Claimant's December 2010 APA p. 22; Hrg. Tr. p. 34).

The Claimant admitted that she resigned from the Employer/Self-Insured on November 29, 2007. (Hrg. Tr. p. 34-35). At the hearing, the Claimant testified that her job was quite physical, which contradicted her prior testimony in deposition, that her job was "not really" physical. (Hrg. Tr. p. 35-36; Depo. P. 17). At the hearing, the Claimant testified that part of her job was to lift students, but in her deposition when asked "were you required to lift students?" she responded "No." (Hrg. Tr. p. 36-37 & Depo. p. 17).

Medical Evidence

After the Claimant's fall on January 3, 2007, she was initially treated for facial pain and vertigo. (Clm. Dec. 2010 APA #1-4). Her facial pain resolved, and she treated with Dr. Scott in relation to her issues with vertigo. (APA 16; Clm. Dec. 2010 APA 4). In his deposition of November 11, 2008, Dr. Scott noted that the Claimant had documented vertigo prior to her fall at work that increased after the work injury, but then returned to baseline. (Dr. Scott Depo. p. 10-11).

Within a few months after her work accident, the Claimant began complaining of neck pain. (Clm. Dec. 2010 APA p. 21). Though the Claimant insisted at the hearing that she had not ever had neck pain prior to January 3, 2007, a review of the prior medical records indicates that the Claimant had similar complaints prior to her fall. In relation to the cervical injury, the Claimant had neck pain with left arm numbness in 2003 (e.g., APA 12, p. 68), and her MRI from May of 2003 indicated disc protrusions to the left at the C3-C4, C4-C5, and C5-C6 levels. (APA p. 18). The Claimant continued to treat for her neck pain over the next four years. (See APA #2, 3, 12, & 14). In a report dated October 27, 2006, Dr. Fink indicated that the Claimant told him that she had chronic neck pain. (APA p. 21). At this appointment, Dr. Fink did not have access to the Claimant's cervical MRI, but his report indicates that the Claimant told him that "on some MRI scans in the past she has had some bulging discs." (APA p. 25).

On October 29, 2007 and again on September 23, 2008, Dr. Jervey assigned the Claimant a 0% impairment rating regarding the neck and other issues. He indicated that he was unable to explain her "variety of symptoms" (APA #9).

The Claimant's personal doctor, Dr. Obong, referred her to Dr. Jones on March 31, 2008. (Clm. Dec. 2010 APA p. 70). In April of 2008, Dr. Jones recommended cervical injections, but

the claimant "declined [the] cervical epidural option." (Clm. Dec. 2010 APA p. 74). The Claimant treated with Dr. Dubick in relation to her cervical complaints on September 8, 2008. (Clm. Dec. 2010 p. 87). He noted disc protrusions and bulges to the left in the C3-C4, C4-C5, and C5-C6 levels. He then related the Claimant's current symptoms to her fall on January 3, 2007 and recommended physical therapy. (APA p. 89). In September of 2009, Dr. Zgleszewski recommended the injections the Claimant had previously refused with Dr. Jones. (Clm. Dec. 2010 APA #23). Thereafter, the Claimant moved to Florida.

On September 23, 2010, the Employer/Self-Insured sent the Claimant to Dr. Goll, an orthopedist in Florida, for an evaluation, but the Claimant did not show for this evaluation, and the Employer/Self-Insured was charged $325 for the cancellation fee. (Def. Ex. F). The Employer/Self-Insured then rescheduled this appointment, which went forward on October 14, 2010. (APA #5). Dr. Goll reviewed the Claimant's medical records, including her MRIs and x-rays, and found that she had soft tissue injuries to the cervical spine and that she was at Maximum Medical Improvement from an orthopedic standpoint. The Claimant then saw Dr. Imfeld, as physiatrist in Florida, on November 22, 2010. (APA #8). Dr. Imfeld found that no further treatment to the Claimant's neck was medically necessary and that she had reached Maximum Medical Improvement.

Thereafter, the parties went forward to a hearing on December 22, 2010. At that time, Commissioner Barden found that the parties were to consult Dr. Zgleszewski to refer the Claimant to a doctor in Florida, and her Order was affirmed by the Appellate Panel. (See Order dated January 25, 2011 and Full Commission Order dated September 22, 2011). The parties then consulted Dr. Zgleszewski, pursuant to the order, and Dr. Zgleszewski recommended Dr. Marc Gerber (Def. Ex. E). Dr. Gerber then evaluated the Claimant on November 30, 2011. (APA #4).

Dr. Gerber opined that the Claimant's pre-injury symptoms were almost exactly the same as post injury (APA p. 31) and that her diagnostic test results were the same pre and post injury (APA p. 31). He then concluded that the Claimant needed no further treatment relative to her work injury (APA p. 34-35). He did not assign an impairment rating or work restrictions.

There are no medical records indicating that the Claimant had low back issues relative to her work injury. In fact, the Claimant went on her own to Dr. Forrest on March 18, 2009, (Clm. Dec. 2010 APA #19), and Dr. Forrest could not "find any connection" between the Claimant's low back complaints and her work injury. (Clm. Dec. 2010 APA, p. 105). He then noted that he "would not be able to say that those particular symptoms relate directly back in any way to the January '07 incident with any reasonable degree of medical certainty."

Although the Claimant did not allege a brain injury at the hearing, a review of the reports of Dr. Mark Wagner and Dr. Mark Williams, both neuropsychologists, provides insight into the issues in this matter. Dr. Wagner saw the Claimant on October 9, 2008. (APA #17). After performing numerous tests and reviewing the Claimant's medical file, Dr. Wagner noted that "many of her subjective complaints. . .are found extremely similar to subjective complaints before the injury." (APA p. 127). Dr. Wagner also noted that the Claimant did much better on her concentration test after she was given a "pep talk" and found that her original "poor performance was effort related." (Id.) Dr. Wagner concluded that the Claimant has pre-existing somatoform disorder. (Id.)

The Claimant saw Dr. Williams on July 17, 2009. (APA #19). Dr. Williams stated that there "is evidence consistent with intentional effort to magnify her complaints and reports of disability. This may be consistent with a Malingering diagnosis." (APA p. 161). Later, Dr. Williams noted that "there is substantial evidence consistent with an intentional effort to magnify

disability complaints. The claimant's MMPI-2 is quite similar to that found commonly among personal injury claimants who are found to be exaggerating disability claims." (APA p. 162).

The Claimant previously submitted a vocational assessment from Jean Hutchinson dated May 4, 2009 (Clm. Dec. 2010 APA #21). Ms. Hutchinson noted that the Claimant believed that she could not lift more than five pounds. However, there is no doctor's report to this effect. She then discussed the report of Dr. Burke (a rehabilitation doctor who saw the Claimant once) (Clm. Dec. 2010 APA #20), and the independent medical examination report of Dr. Forrest (Clm. Dec. 2010 APA #19), neither of which specified restrictions, and then concluded that Claimant was unable to work. In an updated report dated December 13, 2010, (Clm. Dec. 2010 APA p. 124), Ms. Hutchinson rewrote her previous report exactly, but then mentioned an independent report from Dr. Weisglass that is not in evidence. (Id.)

The Employer/Self-Insured submitted a vocational evaluation from Dr. Flora Ann Pinder dated December 16, 2010 (APA #13). Dr. Pinder's report noted the Claimant's lack of restrictions and then listed numerous jobs in the Claimant's area that she would be qualified to perform. Dr. Pinder, who is from Florida, also mentioned that Dr. Goll does not have a reputation in that area for being biased towards either claimants or employers. (Id.)

DECISION/LEGAL ANALYSIS

The Full Commission's Order is supported by substantial evidence in the record, and therefore I find that the Order must be affirmed in its entirety.

Extent of Injuries and Disfigurement

The Commission determined that the Claimant's only compensable injury was to her neck. The Claimant now alleges a myriad of other injuries that she asserts are causally related to the January 3, 2007 accident, including injuries to her back, trunk, right hip, sciatic nerve,

dysphagia or shortness of breath, sleep apnea/asphyxiation, brain, head, migraines, jaw/TMJ, heart, blood pressure/hypertension and hypotension, vertigo, ears, mastoid area, tinnitus, eyes, and throat, among other injuries. However, there is absolutely no evidence in the record whatsoever to support a finding of compensable injuries to any body part other than the Claimant's neck.

As to the Claimant's lower back, she did not raise this issue in her Form 30 request for Full Commission Review, and therefore this issue was not preserved for appeal. Brunson v. Am. Koyo Bearings, 367 S.C. 161, 165-66, 623 S.E.2d 870, 872 (Ct. App. 2005). However, even if she had properly raised this issue on appeal, there is no record of any physician ever finding that the Claimant had low back issues relative to her work injury. In fact, the Claimant went on her own to Dr. Forrest on March 18, 2009, (Clm. Dec. 2010 APA #19), and Dr. Forrest could not "find any connection" between the Claimant's low back complaints and her work injury. He then noted that he "would not be able to say that those particular symptoms relate directly back in any way to the January '07 incident with any reasonable degree of medical certainty." In short, there is no evidence that the Claimant's low back problems are in any way connected to the work injury.

Furthermore, the only injuries the Claimant alleged on her hearing request were to her neck, head, back and permanent disfigurement. (See Form 50). The Claimant later withdrew her allegation of a head injury. (Hrg. Tr. p. 15-16). Therefore, in addition to the fact that there is no medical evidence whatsoever to support the Claimant's alleged injuries to body parts other than her neck, these issues were not even raised and ruled upon at the original hearing, and therefore were not properly preserved for appeal. See Wilder Corp. v. Wilke, 300 S.C. 71, 76, 497 S.E.2d

731, 733 (1998) (holding that an issue must be raised and ruled upon by the trial judge to be preserved for appellate review).

With regard to the Claimant's alleged disfigurement, S.C. Code Ann. section 42-9-30(21) allows a Claimant to recover only for "serious permanent disfigurement" of body parts normally exposed in employment, or "serious burn scars or keloid scars." Here, the Single Commissioner did not see any visible discoloration or disfigurement of any kind on the Claimant's forehead, much less "serious permanent disfigurement" or "serious burn scars or keloid scars." As a result, there was no basis for the Commission to award anything in relation to disfigurement, and the Commission correctly limited the Claimant's award to scheduled disability of the back relative to her neck injury. Accordingly, the Full Commission correctly determined the Claimant's only compensable injury was to her neck. This decision is supported by substantial evidence in the record and is affirmed.

Temporary Total Disability Benefits

The Full Commission's determination that the Claimant is not entitled to temporary total disability benefits (TTD) is supported by substantial evidence and is therefore affirmed. When a claimant misses work due to a work-related injury, he or she is entitled to weekly TTD benefits. S.C. Code Ann § 42-9-260 (2007). Here, the Claimant admitted that she resigned from the Employer/Self-Insured on November 29, 2007. Her letter of resignation is in evidence. The Claimant has presented no evidence whatsoever that she was taken out of work by any doctor after that date or that was unable to work. In fact, she testified that she was working at the time of the hearing as a mentor, taking children to museums and other cultural venues. Therefore, substantial evidence supports a denial of TTD benefits, and the Full Commission's Order is affirmed.

MMI and Future Medical Treatment

The Full Commission's determination that the Claimant has reached Maximum Medical Improvement (MMI) and is not entitled to further medical treatment is supported by substantial evidence and is therefore affirmed. The Claimant seeks further treatment pursuant to a prior Order of Commissioner Susan Barden dated January 25, 2011. However, there is no reliable medical evidence whatsoever indicating the Claimant needs further treatment. On October 14, 2010, the Claimant saw Dr. Goll, an orthopedist in Florida, for an evaluation. Dr. Goll reviewed the Claimant's medical records, including her MRIs and x-rays, and found that she had soft tissue injury to the cervical spine and that she had reached MMI from an orthopedic standpoint. The Claimant then saw Dr. Imfeld, as physiatrist in Florida, on November 22, 2010. Dr. Imfeld found that no further treatment to the claimant's neck was medically necessary and that she had reached MMI.

This matter then went to a hearing before Commissioner Barden, who ordered the Employer/Self-Insured to consult with Dr. Zgleszewski to find another doctor in the Orlando area to examine and treat the Claimant. The Employer/Self-Insured complied with this Order and Dr. Zgleszewski recommended Dr. Gerber. Upon examination of the Claimant, Dr. Gerber agreed with Dr. Goll and Dr. Imfeld that the Claimant did not require any further medical care related to the work injury of 2007. Accordingly, the Employer/Self-Insured has now sent the claimant to three different doctors in Florida, all of whom found that the Claimant has reached MMI and needs no further treatment. No doctor has given a different in opinion since 2009.

Based on the foregoing, substantial evidence supports the Full Commission's determination that the Claimant has reached MMI and is not entitled to future medical treatment. Therefore, the Full Commission's Order is affirmed.

RMC/13

PPD Award

The Full Commission's award of 5% disability or loss of use to the back is supported by substantial evidence in the record and is therefore affirmed. Although the Claimant's IME physician assigned 10% impairment in September, 2009, four other doctors have examined the Claimant and determined she does not have any impairment whatsoever. On October 29, 2007 and again on September 23, 2008, Dr. Jervey assigned 0% impairment regarding the neck and other issues, and indicated that he was unable to explain her "variety of symptoms." Dr. Goll assigned 0% to the neck on October 14, 2010, Dr. Imfeld assigned 0% to the neck on November 22, 2010, and Dr. Gerber assigned 0% to the neck on November 30, 2011.

Furthermore, an impairment rating is only one factor the Commission uses to consider a Claimant's disability. All of the medical evidence in the record indicates that the Claimant has no permanent work restrictions. This is the consensus of the only three doctors who have seen the Claimant since 2010. The Claimant has returned to work, she has a bachelor's degree in religion, psychology, and child studies, she is certified to write grants, and she has continued to provide spiritual counseling and teach Sunday School.

Additionally, the Claimant's inconsistent and contradictory testimony raises questions about the validity of her complaints. The Claimant denied that she had chronic neck pain before her fall. However, the record is filled with numerous prior complaints of and treatment for chronic neck and upper back pain. She also denied that she treated for lower back issues prior to her fall, even though there are medical records to the contrary. The Claimant alleged at the hearing that her job with the Employer was quite physical, but in her deposition she denied that it was physical at all. At the hearing, the Claimant testified that she sometimes had to physically lift students at work, but in her deposition when asked "were you required to lift students?" she responded "No."

RWM

Finally, medical reports from Dr. Mark Wagner and Dr. Mark Williams further call into question the Claimant's pain complaints and alleged physical impairment. Dr. Wagner indicated that the Claimant's "poor performance" on her concentration tests "was effort related," and he concluded that the Claimant has pre-existing somatoform disorder, which is a mental disorder characterized by physical symptoms that suggest physical illness or injury, but which cannot be explained fully by a general medical condition, direct effect of a substance, or attributable to another mental disorder. Dr. Williams found "evidence consistent with intentional effort to magnify her complaints and reports of disability. This may be consistent with a Malingering diagnosis." He also noted that "there is substantial evidence consistent with an intentional effort to magnify disability complaints. The claimant's MMPI-2 is quite similar to that found commonly among personal injury claimants who are found to be exaggerating disability claims." Therefore, the Full Commission's 5% PPD award is supported by substantial evidence and is affirmed.

ORDER

IT IS THEREFORE ORDERED, that the Full Commission Order dated February 12, 2013 is affirmed in its entirety.

R. Markley Dennis, Jr.
Judge, Ninth Judicial Circuit

Charleston, SC

Date Sept 5, 2013

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August 30, 2013

R. Markley Dennis, Jr.
Charleston County Circuit Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Sandra A. Kearse v. Charleston County School District

Case No.:	**2013-CP-10-1223**
WCC File Number:	0700666
Claim Number:	07 07 000014
Date/Accident:	1/03/2007
YCR File:	6959 20070594

Dear Judge Dennis:

Per your request from the hearing held before you on August 9, 2013, please find enclosed an Order in connection with the above referenced matter. If you find this Order to be satisfactory, I would appreciate your signing it and returning it to me. I have enclosed a stamped, self addressed envelope for your convenience. I will ensure that the signed Order is properly filed and that a copy is provided to the opposing party.

Thank you for your time and attention to this matter. Please do not hesitate to contact me if there are any questions.

With kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Leslie M. Whitten

LMW/jsm
Enclosure
cc: Sandra A. Kearse **via certified mail R/R/R**
Heather Erdmann, CorVel Corporation **via e-mail**
Ms. Dana S. Enck, CPSI, Charleston County School District **via e-mail**

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2013-CP-10-1223

Sandra A. Kearse, Appellant,

v.

Charleston County School District, Respondent,

PROOF OF SERVICE

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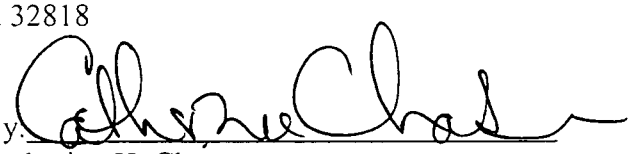
Attorneys for the Respondent Charleston County School District

I, Catherine H. Chase, do hereby certify that a copy of the *Return to Notice of Appeal and Motion to Quash Any Subpoenas That May Be Issued* submitted by the Respondent was sent to the *pro se* Appellant on October 21, 2013 via United States Mail, postage pre–paid and addressed as follows:

Rev. Dr. Sandra A. Kearse
1725 London Crest Drive #301
Orlando, Florida 32818

By: 
Catherine H. Chase

Charleston, South Carolina

Dated: October 21, 2013