THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 0606817

Court of Appeals Case No. 2025-000852

Sharonda Love, Claimant .....Appellant,

v.

Fresenius Medical Care Holding, Employer,
and American Casualty Co. of Reading, Pennsylvania, Carrier .....Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Full Commission properly affirmed the Hearing Commissioner's Finding of Fact #7 that EthosRisk was not the Appellant's Insurance Carrier.
2. Whether the Full Commission properly affirmed the Hearing Commissioner's finding that Appellant is not entitled to lifetime medical benefits.
3. Whether the Full Commission properly applied S.C. Code Ann. Section 42-15-60(B)(3)(A).

STATEMENT OF THE CASE

This is a workers' compensation appeal by Sharonda Love ("Appellant") from the Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel (the "Full Commission"), filed on April 7, 2025, which unanimously upheld the Decision and Order of the Hearing Commissioner, Commissioner Aisha Taylor, entered November 11, 2024.

This claim arises out of an admitted accident that occurred on April 21, 2006, and resulted in an injury to the Appellant's back. Appellant contends she is entitled to lifetime medical treatment pursuant to a Consent Order of Settlement dated May 17, 2013 (the "Consent Order"). At the Hearing before the Hearing Commissioner, Respondents took the position that the Consent Order did not contemplate the provision of lifetime medical benefits because it specifically states that Respondents would provide "continued causally related medical treatment" pursuant to Section 42-15-60. Further, Respondents contend the Appellant's last authorized medical visit occurred on October 14, 2022, and Respondents did not withhold medical treatment from that date onward pursuant to the above-referenced statute.

STATEMENT OF FACTS

The authorized treating physician, Dr. Michael A. Cowan, provided the opinion that the Appellant reached Maximum Medical Improvement ("MMI") as of November 13, 2007, with 10% impairment of her back. (ROA, pp. 89-91). The parties then reached a settlement agreement which was memorialized and approved in a Consent Order dated May 17, 2013. (*Id.*). That agreement stated the following, in relevant part:

1. "A lump sum payment in the amount of $34,352.94, resolving all future possible indemnity liability; and

2. Continued causally related medical treatment for the back only as recommended by Dr. Domagoj Coric, pursuant to Section 42-15-60 of the South Carolina Code of Laws."

(*Id.*).

Appellant continued regularly scheduled authorized care thereafter. She attended visits at Dynamic Health Medical Group between January 11, 2021, and September 10, 2021. (ROA pp. 27-56). She then returned on October 14, 2022, reporting a pain level of 4 out of 10 in her lower back, and received an SI injection. (ROA pp. 99-100). This was her last authorized visit.

Appellant then underwent unauthorized treatment with Expressed Health Spine and Wellness Center, LLC. Her first visit was on July 19, 2023, where she was diagnosed with cervicalgia and lumbago after she reported 9 out of 10 pain in her back. (ROA pp. 59-61). She continued to treat with Expressed Health through March 25, 2024, and was recommended to continue with therapeutic exercise. (ROA pp. 62-81). Again, none of this treatment was known or authorized by the Respondents.

On March 28, 2023, Christina Futrell from EthosRisk contacted Appellant's counsel asking to "conduct an alive and well check" on the Appellant. (ROA p. 107). Then, in December of 2023, counsel for the respective parties exchanged emails where it was communicated that Appellant could contact the adjuster herself. (ROA pp. 108-110). The Appellant also received a voicemail stating that "Christina…on behalf of CNA," was reaching out for a "virtual alive and well check." (ROA p. 111).

During the Hearing, Appellant testified that in June or July of 2023, she had a conversation with an "adjuster for Fresenius." (ROA p. 139). After her treatments stopped, she said she continued to attempt to contact someone about her treatment, even calling an adjuster in 2022 and 2023 to remedy the situation. (ROA pp. 140-141). She said she left a message and tried several

times to get through, but no one ever answered her call. (ROA pp. 142, 144). Despite this, she said she did not have anything in writing that showed there had been any denial of renewal of her treatment with Dynamic. (ROA p. 155).

STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act (APA) gives judicial review of decisions by the Commission." *Hartzell v. Palmetto Collision, LLC*, 415 S.C. 617, 622, 785 S.E.2d 194, 197 (2016). "An appellate court's review is limited to the determination of whether or not the Commission's decision is supported by substantial evidence or is controlled by an error of law." *Id.* "In workers' compensation cases, the Commission is the ultimate fact finder." *Id.*

"Although it is logical for the Full Commission, which did not have the benefit of observing the witnesses, to give weight to the Hearing Commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Hearing Commissioner." *Muir v. CR Bard, Inc.*, 336 S.C. 266, 282, 519 S.E.2d 583 (Ct. App. 1999). "The findings of the Commission are presumed correct and will be set aside only if unsupported by substantial evidence." *Id.* Appellate courts must affirm the Commission's factual findings if they are supported by the evidence. *Holmes v. Nat'l Serv. Indus., Inc.*, 395 S.C. 305, 308, 717 S.E.2d 751, 752 (2011).

"A court may not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agency's findings are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." *Muir*, 336 S.C. at 282, 519 S.E.2d at 591. "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached." *Id.* "[T]he substantial evidence test need not and must not be either judicial fact-

finding or a substitution of judicial judgment for agency judgment; and a judgment upon which reasonable men might differ will not be set aside." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981) (internal citations omitted).

ARGUMENT

I. THE FULL COMMISSION PROPERLY UPHELD THE HEARING COMMISSIONER'S FINDING THAT ETHOSRISK WAS NEITHER THE CARRIER NOR THE EMPLOYER.

Appellant challenges the Hearing Commissioner's Finding of Fact No. 7, which held that EthosRisk was neither the workers' compensation carrier nor the employer for Appellant's 2006 injury. (App. Brief, p. 2; ROA p. 7). Appellant's argument is difficult to follow, but appears to rest on three assertions: (1) Appellant testified that she corresponded with an EthosRisk representative during the year in which Respondents allege she failed to pursue treatment, (2) Appellant submitted supplemental exhibits allegedly supporting this testimony, and (3) despite this testimony and documentation, and without specific rebuttal evidence from Respondents, the Hearing Commissioner nevertheless found that EthosRisk was neither Appellant's carrier nor her employer. (App. Brief, p. 2). This argument lacks merit.

It is well established that "the Commission is the ultimate fact finder" in workers' compensation cases, and its findings "must be affirmed if they are supported by substantial evidence." *Holmes v. Nat'l Serv. Indus.*, 395 S.C. 305, 308, 717 S.E.2d 751, 752 (2011); see also *Jordan v. Kelly Co.*, 381 S.C. 483, 674 S.E.2d 166 (2009); *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). Substantial evidence is evidence which, when viewed as a whole, "would allow reasonable minds to reach the conclusion the agency reached." *Id.* This standard does not permit substitution of judicial judgment

for agency judgment; a finding "upon which reasonable men might differ will not be set aside." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981).

Here, substantial evidence supports the Hearing Commissioner's finding. Appellant herself admitted she was employed by Fresenius—not EthosRisk—at the time of her 2006 injury. (ROA p. 139). She presented no testimony or documentation establishing that EthosRisk was her workers' compensation carrier. The entirety of Appellant's evidence regarding EthosRisk consists of: (a) testimony that an unidentified male left a business card at her home regarding an "alive and well" check (ROA pp. 140-141, 157-158); (b) testimony that Christina Futrell of EthosRisk left her a voicemail stating she was calling "on behalf of CNA" to schedule a virtual "alive and well" check (*Id.*; ROA p. 111); and (c) an email from Futrell to Appellant's counsel advising that EthosRisk, "on behalf of CNA," needed to conduct such a check. (ROA p. 107). None of this evidence establishes that EthosRisk was either Appellant's employer or her carrier. To the contrary, it shows that EthosRisk acted as a third-party vendor engaged by the actual carrier, CNA, to perform administrative tasks such as an "alive and well" check.

While Appellant testified that the unidentified male suggested he was with the carrier, she produced no corroborating evidence. By contrast, Futrell's email clearly originated from an EthosRisk address and expressly stated that she was acting "on behalf of CNA." Thus, the record contains substantial evidence to support the Commissioner's conclusion that EthosRisk was neither the carrier nor the employer.

II. THE FULL COMMISSION PROPERLY UPHELD THE HEARING COMMISSIONER'S DECISION THAT THE CONSENT ORDER DID NOT PROVIDE LIFETIME MEDICAL TREATMENT.

"In South Carolina jurisprudence, settlement agreements are viewed as contracts," and it is the "court's duty to enforce the contract...regardless of its wisdom or folly." *Nichols Holding, LLC v. Divine Capital Grp.*, 416 S.C. 327, 335, 785 S.E.2d 613, 615 (Ct. App. 2016). When the "language is plain and capable of legal construction, that language alone determines the instrument's force and effect." *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 577, 762 S.E.2d 696, 700 (2014) (quoting *Jordan v. Sec. Grp., Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993)).

Here, the Consent Order of Settlement clearly and unequivocally states the "parties agree that *pursuant to Section 42-15-60 of the South Carolina Code of Laws*, the claimant is entitled to continued causally related medical treatment for her back only as recommended by Dr. Coric." (ROA p. 89-91) (emphasis added). There is nothing ambiguous or unclear about this term of the agreement. It specifically lays out the scope and limitations of the agreement for treatment. Specifically, it limits the continued treatment to within the bounds of § 42-15-60, and then even further by the treatment only as recommended by Dr. Coric. It does not provide for unfettered treatment, or treatment from unauthorized providers. Indeed, the clause in question is unambiguous as to what treatment is contemplated.

Moreover, the Consent Order does not state anywhere therein that the Appellant is entitled to lifetime medical care pursuant to Section 42-15-60(3), which provides for lifetime medical treatment regardless of any lapses because of a finding of permanent and total disability. (ROA pp. 89-91). This is consistent with the indemnity portion of the settlement, which was clearly not an agreement of permanent and total disability. The fact the Appellant treated consistently for more

than 10 years does not establish an entitlement to lifetime benefits. The Act still requires she comply with (B)(1-3) of Section 42-15-60 to avoid losing her right to continued treatment. As mentioned above, the clause does not provide for any medical treatment, but instead treatment recommended by Dr. Coric pursuant to § 42-15-60, which provides the one-year requirement of continued treatment. Considering South Carolina's jurisprudence, the Consent Order's language itself is controlling, and it should be given the force of law. It is this Court's duty to enforce the plain language of the agreement, which is that the Appellant is only entitled to lifetime medical treatment as recommended by Dr. Coric that does not lapse beyond the one-year requirement per § 42-15-60. It is further the Court's duty to uphold the decision of the Full Commission, which found for the Respondents based on sufficient evidence, as detailed throughout this brief.

In sum, the Consent Order states she is entitled to medical care pursuant to § 42-15-60 and does not contemplate irrevocable lifetime medical treatment. Therefore, the Full Commission's unanimous decision affirming Commissioner Taylor's ruling that the Consent Order does not provide for lifetime medical care, and § 42-15-60(B) applies, should be upheld.

III. THE FULL COMMISSION PROPERLY UPHELD THE HEARING COMMISSIONER'S DECISION THAT THE APPELLANT DID NOT MEET HER BURDEN OF PROOF DEMONSTRATING REASONABLE ATTEMPTS TO OBTAIN AUTHORIZED MEDICAL TREATMENT.

Under § 42-15-60(B)(3), Respondents are not required to provide "medical treatment or modalities" where there is a lapse of treatment for more than one year, unless: "(a) the settlement agreement...provides otherwise; or, (b) the employee has made reasonable attempts to obtain further treatment or modality from an authorized physician, but through no fault of the employee's own, is unable to obtain such treatment or modalities." The first exception has already been addressed in Section II above. The Appellant also fails on the second exception because she did

not meet her burden of proof in showing she was unable to obtain authorized treatment through no fault of her own.

While it is true she did obtain medical treatment, the treatment was not authorized as is required by the Act to meet the exception. Further, there is no evidence she made a reasonable effort to communicate with her employer or the insurance carrier regarding seeking additional treatment in the year following her final authorized appointment on October 14, 2022. The Hearing Commissioner properly held that EthosRisk was not the insurance carrier, nor was it the employer. Instead, it was a third-party service performing "well-checks," as was explained in the communications themselves. This is not speculation on the part of the Hearing Commissioner, nor the Full Commission. Instead, it was a finding based on the substantial evidence as outlined in Section I above.

Despite Appellant's testimony that she requested additional treatment within the necessary timeframe, none of those alleged conversations on the record reflect a request for treatment and instead are solely focused on the well-check. This fact is not in dispute. In fact, the record reflects that Respondents' counsel informed Appellant's counsel that Appellant could contact the adjuster directly to schedule additional medical treatment within the one-year time frame. (ROA p. 110). However, there is no evidence she ever did so. Instead, the Appellant sought unauthorized medical treatment, which is not considered under the Act as a reasonable attempt required to continue treatment authorized by Respondents. In fact, it is contrary to a reasonable attempt to secure authorized treatment from the carrier. Therefore, there is not sufficient evidence on the record to support a finding that she made reasonable attempts, making the Hearing Commissioner and Full Commission's decision correct.

Through her own inaction, Appellant failed to comply with the Act and allowed the one-year window to lapse before bringing the claim, filed on March 15, 2024, with her last authorized treatment taking place on October 14, 2022 – well beyond the time laid out in the Act. There is substantial evidence to support the Hearing Commissioner's initial decision, and the unanimous decision of the Full Commission. While Appellant may argue that she did make some attempts to obtain additional treatment, the fact that some evidence may support that idea, despite Respondents' position it does not, that alone is insufficient for this Court to substitute its judgment for the Full Commission. Because substantial evidence exists to support the finding that Appellant did not make reasonable efforts to obtain further medical treatment within the one-year window provided by the statute, the Full Commission's decision should be affirmed.

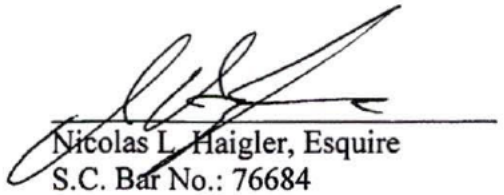
IV. MEDICARE SET ASIDE HAS NO IMPACT ON THE CONSENT ORDER.

Interestingly, the Appellant attempts to equate the subsequent provision of the Consent Order governing the Respondents' right to offer a Medicare Set-Aside (MSA) to resolve future medical treatment with an admission of irrevocable lifetime medical treatment. This attempt is without merit, for two reasons. First, a claimant is entitled to irrevocable lifetime medical treatment under the Act only if the claimant is found permanently or totally disabled, or if the parties specifically agree to such. Neither is the case here. Second, the requirements to comply with the Centers for Medicaid and Medicare Services (CMS), as it pertains to securing an approved Medicare Set-Aside, include determining the possible lifetime treatment that Medicare could be responsible for if not for the MSA. The fact CMS requires such a consideration does not mean the Respondents are necessarily required to provide lifetime treatment under the Act.

CONCLUSION

For the reasons set forth above, the Full Commission's Decision and Order should be affirmed in all respects. The record contains substantial, competent evidence supporting the Hearing Commissioner's factual findings — including Finding of Fact No. 7 that EthosRisk was neither the Appellant's employer nor the workers' compensation carrier — and this Court may not substitute its judgment for that of the Commission. The plain language of the Consent Order limits medical benefits to "continued causally related medical treatment for the back only as recommended by Dr. Coric, pursuant to Section 42-15-60," and does not grant irrevocable lifetime medical care absent a finding of permanent and total disability or an explicit contractual provision to that effect. Finally, Appellant failed to carry her burden under § 42-15-60(B)(3) to prove she made reasonable attempts to obtain authorized treatment through no fault of her own; unauthorized treatment does not satisfy the statutory exception.

Although the outcome is undoubtedly unfortunate for the Appellant, the Commission faithfully applied the governing statute and the plain terms of the Consent Order. Regrettable hardship, standing alone, cannot override the statutory scheme or transform an otherwise unambiguous settlement term into a grant of lifetime, irrevocable benefits.



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CERTIFICATE OF COUNSEL

Counsel certifies that the Final Respondents' Brief of Respondents/Appellants complies with Rule 211(b), SCACR.

Respectfully submitted,

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