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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No. 2025-001282

Mary L. Davis, Claimant, ...Appellant,

v.

Ruiz Food Products, Inc., Employer, and
Safety National Casualty Corporation, Carrier, ...Respondents.

INITIAL BRIEF OF RESPONDENTS

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3. Whether the decisions by the Single Commissioner and the Full Commission were sufficient under the substantial evidence rule.

STATEMENT OF THE CASE

This matter involves two claims for compensable injuries. The first claim was initiated by Appellant, Mary L. Davis ("Appellant") filing a Form 50 on March 13, 2020 seeking workers' compensation benefits for injuries she alleged arose out of a work-related fall on November 16, 2019. (Form 50 dated March 13, 2020). Ruiz Food Products, Inc. ("Employer") and Safety National Casualty Corporation ("Carrier") (collectively "Respondents") accepted that Appellant had suffered a compensable injury to her low back.

On June 7, 2021, Commissioner Aisha Taylor concluded Appellant sustained compensable injuries to her low back, left hip and left knee arising out of the November 16, 2019 accident. (Decision and Order dated June 7, 2021). The issue of whether Appellant's neck was injured was not addressed or determined by Commissioner Taylor. Further, Commissioner Taylor's decision was not appealed to the South Carolina Workers' Compensation Commission (the "Full Commission"). Respondents have provided appropriate medical treatment for the claim and fully complied with Commissioner Taylor's June 7, 2021 order.

The second claim was initiated on June 27, 2023 when Appellant filed a Form 50 seeking additional workers' compensation benefits for injuries she alleged arose out of a November 4, 2022 assault by a fellow employee, including injuries to her neck. (Form 50 dated June 27, 2023). Further, Appellant alleged she was entitled to temporary total disability benefits as a result of her February 20, 2023 termination. Respondents denied that Appellant suffered a compensable injury from any alleged assault. Additionally, because Appellant was terminated for cause, she was not entitled to temporary total disability benefits.

The Appellant requested a hearing on both claims. A hearing was held on September 27, 2023 before Commissioner Taylor.

In a Decision and Order dated July 29, 2024, Commissioner Taylor found: (1) Appellant was receiving causally related medical treatment from the Respondents and that was to continue; (2) Respondents had accommodated Appellant's work restrictions; (3) Appellant would have continued to be accommodated for her work restrictions if she had not been terminated for cause for discarding company product; (4) Appellant is not entitled to temporary total disability; and (5) Appellant is not entitled to benefits related to the alleged November 4, 2022 assault. (Decision and Order dated July 29, 2024).

After Appellant's motions for reconsideration were denied, Appellant timely filed a Form 30. (Form 30 dated October 9, 2024). In Appellant's Brief to the Full Commission, Appellant argued Commissioner Taylor erred: (1) by failing to make findings of fact; (2) by not awarding temporary total disability benefits; (3) by not ordering Respondents to provide causally related medical care to Appellant; (4) by failing to determine Appellant suffered a compensable injury to her neck as a result of a November 4, 2022 assault; and (5) in her findings of fact numbers 1, 2 and 3. (Appellant's Brief to the Full Commission).

On April 15, 2025, the Full Commission affirmed the decision of Commissioner Taylor with amendments. (Appellate Panel Decision and Order). The Full Commission found: (1) Appellant is entitled to receive causally related medical treatment from the Respondents for injuries to her low back, left know, left hip and neck arising from the November 16, 2019 at-work accident; (2) Respondents had accommodated Appellant's work restrictions; (3) Appellant's restrictions would have continued to have been accommodated if she had not been terminated for cause for discarding company product; (4) Appellant is not entitled to temporary total disability; and (5) Appellant is not entitled to benefits related to the alleged November 4, 2022 assault. (Appellate Panel Decision and Order).

On June 25, 2025, after her motion for reconsideration was denied, Appellant filed her notice of appeal.

On November 5, 2025, Appellant filed with this Court a Motion for Hearing and an Order Ordering Medical Care and Compensation During the Pendency of the Appeal Before the Court pursuant to SC Cod §42-17-60; Such Medical Care having been Ordered by the SC Workers' Compensation Commission Involved in the Appeal ("Appellant's Motion"). Respondents filed an opposition to Appellant's Motion ("Respondents' Opposition").

STATEMENT OF THE FACTS

Prior to working for Employer, Appellant held a number of jobs. (Hr. T. 54:9-55:24). However, Appellant could not recall if she quit or was fired from most of them. (Hr. T. 54:9-55:24). On November 16, 2019, Appellant suffered a compensable injury to her low back, left hip and left knee arising out of a fall during the course and scope of her employment. (APA – 1923627 at 76-80). After her fall, Appellant went to the emergency room and saw multiple doctors for her treatment. (Hr. T. 56:16-57:5). Some of Appellant's medical care, such as MRIs, were delayed because Appellant did not attend or cancelled the appointments out of fear for the procedure. (Hr. T. 78:17-79:3)

Appellant was placed under work restrictions by her medical providers. (APA – both at 9, 23, and 28). All witnesses, including Appellant, testified that after her fall, the positions in which she was placed at Employer were within her medical restrictions. (Hr. T. 57:23-58:24; 70:20-70:22; Blackwell Dep. at 23:14-23:19).

On March 24, 2022, Appellant underwent a three and half hour functional capacity evaluation. (APA – 1923627 at 119-141). It was reported that "[t]he results of this evaluation show that Ms. Davis demonstrated submaximal effort. The test results and the referral diagnosis

do not correlate. Therefore this FCE is not a reliable indication of her true functional abilities at this time." (APA – 1923627 at 119). Appellant alleges the provider of the FCE "lied" about her effort. (Hr. T. 57:12-57:13).

Appellant alleges that on November 4, 2022 she "got assaulted by the other guy." (Hr. T. 32:20-32:22). She was "coming through the double doors…to go out into the hallway" when she encountered her assailant. (Hr. T. 33:14-34:1). He grabbed her and his hand was holding her wrist and he was shaking her. (Hr. T. 34:10-34:24). She was trying to get loose and to get away and bumped into another person but he would not let her go until someone told him to let her go. (Hr. T. 34:10-34:24).

Jonathan Holder, the Environmental Health & Safety Manager at the plant, reviewed video from November 4, 2022, which showed the doors and the hallway where Appellant alleged the assault took place. (Hr. T. 75:15-75:19; 100:2-100:8). There were approximately six to eight people in the area. (Hr. T. 99:2-99:8). Mr. Holder saw Appellant come through the doors into the hallway and passing people, including the person she alleged assaulted her. (Hr. T. 101:12-102:1). Mr. Holder did not see an assault of the Appellant. (Hr. T. 75:20-76:4). Opal Jones, the human resources supervisor, also reviewed the video and did not see any assault, pushing or shoving. (Jones Dep. at 21:7-21:24).

According to Appellant, the alleged assailant had previously threatened her and had made "a lot of threating" comments before this incident. (Hr. T. 35:10-35:22). Appellant never reported any of these threats. At no point, even after the alleged assault, did Appellant file a police report or even call the police to ask about filing a report. (Hr. T. 68:21-69:7).

After the alleged assault, Appellant reported to her supervisor and the superintendent, who told her to write out an incident report. (Hr. T. 37:17-37:25). Appellant alleges she needed

to see a doctor because she was hurt badly. (Hr. T.37:17-37:25). Appellant did not see any medical professional that day or in the days following the incident. (APA).

Appellant did see Dr. Rakesh Chokshi ten days after the alleged assault and testified that she mentioned the assault to Dr. Chokshi. (Hr. T. 65:11-65:24). Records indicate that on November 14, 2022, Appellant saw Dr. Chokshi. (APA – 2223041 at 76-78). The record gives no indication that Appellant was assaulted or injured on November 4, 2022 or that Appellant was suffering any neck pain. (APA – 2223041 atE 76-78). In fact, the record demonstrates that Dr. Chokshi had concluded Appellant had reached maximum medical improvement and noted a 5% permanent impairment rating. (APA – 2223041 at 78).

Appellant further testified that she told Dr. Rodney Alan about the assault and pain in her neck when she saw him in February of 2023. (Hr. T. 66:6-66:17). Records indicate that on February 27, 2023, Appellant saw Dr. Alan. (APA – 2223041 at 79-82). The record gives no indication that Appellant was assaulted or injured on November 4, 2022 or that Appellant was suffering any neck pain. (APA – 2223041 at 79-82).

On March 2, 2023, Appellant saw nurse practitioner Liston Weatherly, Jr. on an unrelated issue. (APA – 2223041 at 83-90). The record gives no indication that Appellant was assaulted or injured on November 4, 2022 or that Appellant was suffering any neck pain. (APA – 2223041 at 83-90). In fact, under the general examination, it was determined that Appellant's neck was supple with "full range of motion." (APA – 2223041 at 84).

On March 22, 2023, Appellant saw physician's assistant Laura Strickland with a complaint of neck pain which "Patient states…started after she was assaulted on the job and shook by a coworker." (APA – both at 12-17). This record, dated almost five months after the

assault and just over one month after she was terminated, is the first medical record that mentions the alleged assault.

According to Appellant, her neck, back, hip and knee "never stop hurting" and "hurt[] all the time." (Hr. T. 51:14-52:16). Appellant testified that "[o]n a scale of one to ten, with ten being pain so bad [she] need[ed] to go to the emergency room" Appellant's low back, neck, left knee and left hip are "always a ten." (Hr. T. 67:7-67:23). Despite her alleged constant extreme pain, she has not been to an emergency room. (Hr. T. 67:24-68:2).

In January and February 2023, Appellant's position at Employer was a sedentary job separating bad bread (i.e. tortillas) from good bread. (Hr. T. 44:11-44:15). Her job was to determine if any of the bad bread could be salvaged. (Hr. T. 90:18-91:12). According to Appellant, someone would put the bread on a table in front of her and then Appellant would "go through to see how many good and how many bad" and she would have a pile for the good and a trash can for the bad. (Hr. T. 44:21-45:13; 59:24-60:3). The tortillas would come in a stack of about 50 and Appellant agreed that "to figure out what need[ed] to be kept, [she] need[ed] to go through the stack." (Hr. T. 60:4-60:8; 81:4-81:10).

Despite the need to inspect the entire stack, in February 2023, a team member came to the human resources office and reported that when she would take tortillas to Appellant, Appellant would throw them straight in the garbage. (Jones Dep. 23:23-24:10). Accordingly, Ms. Jones asked Mr. Holder to look at the videos of Appellant's shift. (Jones Dep. 23:23-24:10).

The videos showed the team member giving Appellant large stacks of bread and each time she would throw the entire stack in the garbage without inspecting it. (Hr. T. 70:12-70:16; 74:7-74:11; 75:3-75:10; Jones Dep. 25:3-25:11; 31:7-31:12). Mr. Holder reviewed two days of tapes of Appellant's work to make sure her disposal of stacks of tortillas without inspecting them

was not just a snapshot in time. (Hr. T. 93:11-93:18). She was observed on multiple different occasions and on multiple days, throwing away an entire stack of bread without inspecting it. (Hr. T. 94:12-94:18; 95:14-95:24; Jones Dep. at 29:2-29:4; 29:11-29:15).

At the hearing, Appellant alleged that her Employer was "putting too much bread on the table" and forcing her to do more than she could do. (Hr. T 58:25-59:10). However, she never reported to anyone that too much was asked of her. (Hr. T 58:25-59:10). Additionally, the work she was assigned to do, inspecting and separating bad bread, was normally done by someone who stacked the bread in addition to inspecting and separating it. (Hr. T. 88:18-89:3).

According to Appellant, when she was informed that she was terminated for throwing away company product, she defended herself by stating it was her job to throw away company product and she was being terminated for doing her job. (Hr. T. 50:9-50:22). According to the human resources supervisor, when Appellant was informed there was an investigation into her throwing away bread, she did not say anything. (Jones Dep. at 29:16-30:2; 35:8-35:19; 37:4-37:10). During a second conversation when Appellant was informed she was terminated, she claimed that her supervisor told her to throw away the product, a claim her supervisor denied. (Jones Dep. at 35:8-35:19).

Appellant had been written up and suspended on numerous occasions. On at least two occasions before her November 16, 2019 fall, Plaintiff was written up. On October 24, 2019, Appellant was written up as having 7 points due to being absent from work. (APA – 1923627 at 185). On November 7, 2019, Appellant was written up as having 8 points for being absent from work. (APA – 1923627 at 186).

Her violations of company policies continued after her fall. On January 9, 2020, Appellant was written up as having 9 points due to being absent from work. (APA – 1923627 at

187). On January 24, 2020, Appellant was written up for punching in late on three separate occasions. (APA – 1923627 at 188). On March 11, 2020, Appellant was written up as having 11 points for being absent from work, which led to a three-day suspension. (APA – 1923627 at 189). On July 2, 2020, Appellant was written up as having 12 points for being absent from work and was again suspended for three days. (APA – 1923627 at 190). On August 4, 2020, Appellant was written up for failing to punch out, not having her badge and being late on three separate dates. (APA – 1923627 at 191). On July 8, 2022, Appellant was written up for leaving early. (APA – 1923627 at 192). On October 31, 2022, Appellant was written up for clocking in late on three separate dates. (APA – 1923627 at 193).

Appellant could have been terminated for her various and repeated violations of company policies, however was not. (Hr. T. 73:23-74:2). Appellant was not terminated until February 20, 2023 when it was reported and confirmed that she was intentionally destroying stacks of bread without inspecting it. There was no evidence to dispute that had she not thrown away the stacks of tortillas without inspecting them on multiple occasions, Employer would have continued to provide her suitable work. (Hr. T. 75:11-75:14).

APPELLATE JURISDICTION

Review by the Court of Appeals of decisions by the Full Commission are limited to review of final decisions by the Full Commission or decisions that cannot be adequately remedied unless reviewed prior to a final decision. *See* S.C. Code Ann. § 1-23-380 (2024); *Brown v. Se. Servs., HHI, LLC*, 446 S.C. 105, 114, 917 S.E.2d 925, 930 (Ct. App. 2025) ("[b]ecause the commission's order is neither a final decision nor is it the type of interlocutory order that has to be reviewed immediately to ensure adequate appellate review, we dismiss this case as not immediately appealable."). Here, the decision of the Full Commission was neither a

final decision nor a decision that cannot be adequately remedied unless reviewed prior to a final decision.

A. The decision of the Full Commission was not a final decision.

Final decisions are those judgments by the Full Commission finally disposing of the whole subject matter of the action. *See Bone v. U.S. Food Serv.*, 404 S.C. 67, 84, 744 S.E.2d 552, 562 (2013); *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dept. of Health & Env't Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010) ("[a] final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.").

Here, even Appellant implicitly acknowledges that the Full Commission did not dispose of the whole subject matter of the action given that she recently filed Appellant's Motion expressly stating that further proceedings were necessary, including an adjudication on Appellant's on-going medical care, a renewed argument for temporary total disability and whether Appellant is totally and permanently disabled. Thus, as the Full Commission has not ruled on whether Appellant is entitled to the relief being asserted in Appellant's Motion, the decision of the Full Commission being appealed to this Court is not a final decision or final judgment. *See Brown*, 446 S.C. at 111, 917 S.E.2d at 928 *citing Rose v. JJS Trucking*, 411 S.C. 366, 368, 768 S.E.2d 412, 413 (Ct. App. 2015).

B. The decision of the Full Commission can be adequately remedied after a final decision.

Similarly, the decision of the Full Commission can be adequately remedied after a final decision. This second category of immediate review represents a narrow exception. *See Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 252, 791 S.E.2d 719, 723 (2016) *quoting State v. Lytchfiled*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957) ("circumstances…that will permit the

immediate appeal of an interlocutory administrative decision under section 1-23-380(A) 'are about as rare as the proverbial hens' teeth.'"). This case is not one of those rare occasions.

As the Court in *Brown* noted, if the order in that case, which addressed an award of temporary benefits, were immediately appealable, "every order addressing compensability and awarding temporary benefits or medical treatment would be immediately appealable. Review of intermediate orders would cease to be a rare exception." *Brown*, 446 S.C. at 112, 917 S.E.2d at 929. Accordingly, this Court has expressly rejected immediate review of a decision by the Full Commission on the propriety of the very same temporary benefits Appellant sought.

Moreover, if, at the appropriate time, Appellant appeals and the Court of Appeals overturns the unanimous decisions of the Full Commission, Appellant will have an adequate remedy as she will receive the monies she was owed. Thus, an adequate remedy would exist even if this appeal is delayed until after a final determination.

Accordingly, Appellant's appeal is premature and must be dismissed.

STANDARD OF REVIEW

In the unlikely event this Court decides this appeal on the merits, the decision of the Full Commission should be affirmed.

In workers' compensation cases, the Full Commission is the ultimate finder of fact. *See Shealy v. Aiken Cnty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000); *Frame v. Resort Servs. Inc.*, 357 S.C. 520, 528, 593 S.E.2d 491, 495 (Ct. App. 2004) ("[t]he final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel."). The factual determinations by the Full Commission will not be overturned "unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981); *Jones v.*

Georgia-Pacific Corp., 355 S.C. 413, 416, 586 S.E.2d 111, 113 (2003) ("[t]his Court will not overturn a decision by the Commission unless the determination is unsupported by substantial evidence."). Accordingly, "an appellate court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, but may reverse when the decision is affected by an error of law." *Pollack v. Southern Wine & Spirits of America*, 405 S.C. 9, 747 S.E.2d 430 (2013) *citing* S.C. Code Ann. § 1-23-380(5).

ARGUMENT

Appellant makes four arguments. First, she argues Commissioner Taylor and the Full Commission in largely affirming the findings of Commissioner Taylor, failed to address all the essential issues. Second, she argues, she is entitled to temporary total disability. Third, she argues Respondents failed to approve medical care related to Appellant's left hip and leg. Fourth, she argues the findings of fact related to Appellant's light-duty work restrictions were incorrect. All four of Appellant's arguments are unavailing.

A. Commissioner Taylor and the Full Commission made appropriate findings of fact.

There is no dispute that Commissioner Taylor and the Full Commission were obligated to make findings of fact. That is exactly what they did. While Appellant takes issue with the amount of time Commissioner Taylor took to issue her findings, her findings and the findings of the Full Commission are supported by the record, adequately cite to the record and are not a basis for this Court to overturn the unanimous decision of Commission Taylor and the Full Commission. *See Jones*, 355 S.C. at 416, 586 S.E.2d at 113 *citing Lark*, 276 S.C. at 136, 276 S.E.2d at 307 ("[t]his Court will not overturn a decision by the Commission unless the determination is unsupported by substantial evidence."); *Howell v. Pacific Columbia Mills*, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987) ("[s]ubstantial evidence is evidence which,

considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached to justify its action.").

Appellant relies on *Hill v. Jones*, 255 S.C. 219, 178 S.E.2d 142 (1970) for the proposition that the findings of Commissioner Taylor and the Full Commission are inadequate. However, in *Hill*, the opinion of the Commission "contained only brief references to the testimony and no reasons were stated for the factual findings that the claim was compensable." *See id*. at 224, 178 S.E.2d at 145. Here, the Commissioner Taylor issued a ten-page decision with eight paragraphs describing the evidence, twenty paragraphs of findings of fact and eleven paragraphs of conclusions of law, most of which cite to cases, statutes or evidence in the record. Additionally, the Full Commission issued a fourteen-page decision with nineteen paragraphs of findings of fact and twelve paragraphs of conclusions of law, most of which cite to cases, statutes or evidence in the record.

Additionally, the two central issues were sufficiently addressed. The two main issues in dispute are whether Appellant is entitled to temporary total disability and whether Appellant suffered a compensable injury as a result of the alleged assault. On the first issue, Commissioner Taylor issued findings of fact five through seven, seventeen and eighteen, which included citations to the record and relevant case law. The Full Commission issued findings of fact five through eight and eighteen, which included citations to the record and relevant case law. Those citations support the determination that Appellant was less credible and the testimony of other witnesses and video evidence contradicted her allegations. Further, it supported the conclusion that Appellant was fired for cause and not entitled to temporary total disability as discussed in more detail below.

As to the second issue, Commissioner Taylor issued findings of fact nine through seventeen, which include citations to testimony, medical records and Appellant's credibility. The Full Commission issued findings of fact nine through seventeen and nineteen. Those findings support the conclusion that Appellant did not suffer a compensable injury as a result of an alleged assault as discussed in more detail below.

Whether Appellant agrees with the findings and decision of Commissioner Taylor or the Full Commission is irrelevant. It should be undisputed that Commissioner Taylor and the Full Commission adequately supported their conclusions with sufficient findings of fact and conclusions of law. Given that they did, this argument is not a basis to reverse or remand the decision of the Full Commission.

B. Appellant is not entitled to temporary total disability benefits.

Appellant makes two arguments in her quest to find reversible error on the denial of her temporary total disability claim. First, she argues that the Supreme Court's decision in *Pollack* was wrongly decided and must be strictly limited. Second, she argues she was fired for doing her job and not for cause. Appellant is incorrect on both counts.

Despite Appellant's arguments to the contrary, there is nothing in *Pollack* to suggest it is limited to situations where an employee violates a "specific written policy" and is not considered to be an aberration. As an initial matter, it must be noted that *Pollack*, a Supreme Court decision, has been cited at least 35 times since its issuance just over 10 years ago. It has not been questioned or criticized by any Court, let alone overruled. Put simply, the Supreme Court's decision remains good law.

In *Pollack*, an employee suffered an admitted injury to his back and returned to work as a drivers' supervisor with restrictions. *See id*. at 11, 747 S.E.2d at 431. While the employee was

investigating an accident involving a driver, he hit the side of another vehicle leaving only "a line of dirt on the vehicle" and no real property damage. *See id*. at 12, 747 S.E.2d at 431-432. The employee did not report his own minor accident in violation of the employer's policy. *See id*. at 12, 747 S.E.2d at 432. The employee was suspended, but reinstated by his local superiors, only to be terminated by the corporate office just over two months after having returned from injury. *See id*.

Thereafter, the employee filed a claim for temporary total disability. *See id*. The employer testified that, but for the employee's violation of the company policy in failing to report his accident, the employee would have continued to work with his restrictions. *See id*. at 13, 747 S.E.2d at 432. The hearing commissioner and the Full Commission found the employee was not entitled to temporary total disability because he was terminated for cause. *See id*.

The South Carolina Supreme Court held that S.C. Code Ann. § 42-9-260 provides that temporary total disability may begin when "an employee has been out of work *due to* a reported work-related injury…for eight days[.]…" *See id*. at 14, 747 S.E.2d at 433 (emphasis in original). The Court continued that when an employer offers suitable employment within the injured employee's restrictions, entitlement to temporary total disability benefits is based on whether the employee's inability to earn wages was the result of a work-related injury or termination for cause. *See id*. at 15-16, 747 S.E.2d at 433-434.

Here, Appellant was accommodated with her work restrictions for more than three years. She was written up numerous times resulting in several warnings and two multi-day suspensions. She was not terminated, even though she could have been, during that entire time. She was not terminated until there was a witness and video evidence that she was destroying company product by discarding stacks of approximately 50 tortillas without inspecting them. Put simply,

Appellant was terminated for cause and her status as being out of work was "due to" her for-cause termination and not a work-related injury. Under the holding in *Pollack* and the plain language of S.C. Code Ann. § 42-9-260, Appellant is not entitled to temporary total disability.

Finally, Appellant argues that the Supreme Court's decision in *Pollack* is contradicted by its earlier decision in *Last v. MSI Construction Co. Inc.*, 305 S.C. 349, 409 S.E.2d 334 (1991). Appellant misreads *Last*. In *Last*, the insurance carrier argued that benefits could be terminated for an employee who became incarcerated, and thus, could not appear for scheduled medical care. *See id*. at 352, 409 S.E.2d at 337. The Supreme Court noted that when a refusal of medical care is justified, a change in medical care may be allowed and there was no evidence that the employee refused medical care once a physician was designated. *See id*.

Last is not in conflict with *Pollack*. One deals with termination of benefits due to an alleged refusal to accept medical care, the other addresses entitlement to temporary total disability payments when an employee is terminated for cause. This case is clearly analogous to *Pollack* and not *Last*.

Appellant's second argument fares no better. While it is true that part of Appellant's job was to throw away bad product, she was to do so only after inspecting the product to confirm that it was in fact bad or unacceptable. Instead, a co-worker complained that Appellant was taking stacks of approximately 50 tortillas and immediately putting them in the trash. This complaint was verified by review of two days of video footage involving numerous incidents of Appellant failing to inspect the stacks of tortillas and simply depositing them directly in the trash. Unable to refute the fact that she disposed of entire stacks of 50 tortillas without inspecting them, Appellant offered two defenses. First, she claimed that too much bread was being delivered and she was not capable of keeping up. However, Appellant never reported that

she was unable to keep up. Moreover, that would not be a reason to dispose of good bread, but rather to report her concerns.

Second, Appellant has argued throwing away bread was her job and her supervisor told her to throw away the product. It borders on the absurd that Appellant takes the position that her supervisor would agree to the disposal of the Employer's product without inspection. Regardless, there was testimony from Mr. Holder and Ms. Jones that Appellant was not assigned to throw out stacks of tortillas without inspection and that her supervisor denied he had instructed her otherwise.

Ultimately, Appellant's suggestion is that Employer used Appellant's actions as a pretext for terminating her. As noted, Appellant was accommodated for over three years, had numerous warnings and two suspensions prior to her termination. Employer had many opportunities to terminate Appellant in the years before she was terminated. Thus, there is no basis to suggest she was terminated as a pretext. Put simply, Appellant was terminated for cause, which under *Pollock*, means she is not entitled to temporary total disability.

C. Respondents provided or authorized Appellant's medical care for her left hip and leg.

Appellant's allegation that Respondents failed to provide or approve medical care for Appellant's left hip and leg is confusing at best. It is undisputed that Appellant suffered a compensable injury to her low back, left hip and left knee. Appellant appears to make the argument that at a March 28, 2022 appointment, Dr. Alan concluded that Appellant would need injections in her hip and knee multiple times per year. Appellant then points out, Dr. Alan provided injections to Appellant on February 27, 2023. Appellant seems to argue that additional injections should have been, but were not, provided. However, even accepting as true that additional treatment was not provided, Appellant fails to demonstrate that some failure or

obstruction by Respondents was the cause of a lack of treatment as opposed to a decision by Appellant herself. Appellant, who bears the burden, must demonstrate through citations in the record, including possible testimony of Appellant herself, that Respondents prevented required medical care. *See, e.g.*, *Clade v. Champion Labs.*, 330 S.C. 8, 11, 496 S.E.2d 856, 848 (1998); *Cross v. Concrete Materials*, 236 S.C. 440, 446, 114 S.E.2d 828, 832 (1960) ("a claimant must establish by the preponderance of the evidence the facts which will entitle him to an award; the burden of proof is upon him. He cannot prevail by the resolution of doubts").

D. The findings of fact concerning Appellant's light-duty work restrictions were appropriate.

Finding of fact #3 by Commissioner Taylor and finding of fact #4 by the Full Commission provide: "Dr. Rodney Alan issued [Appellant's] light-duty work restrictions, which Employer was able to accommodate." Appellant's issue appears to be that Commissioner Taylor and the Full Commission failed to note that Dr. Chokshi also issued light-duty work restrictions, which Appellant alleges were stricter. As an initial point, Appellant's work restrictions were available to Commissioner Taylor and the Full Commission. (APA – both at 9, 23, and 28). However, more importantly, the level of Appellant's work restrictions was not a contested issue. Everyone, even Appellant, admitted that Employer accommodated her work restrictions. (Hr. T. 57:23-58:24). Thus, whether or not Employer accommodated Appellant's work restrictions was not an issue that had to be resolved. Accordingly, even if there were error or should have been better citations to the record, such error was harmless and not a basis for reversal or remand. *See In re Gonzalez*, 409 S.C. 621, 636, 763 S.E.2d 210, 217 (2014) ("[a] fundamental principle of appellate procedure is that a challenged decision must be both erroneous and prejudicial to warrant reversal.").

CONCLUSION

For the reasons stated herein, this Court should affirm the decision of the Full Commission.

Respectfully submitted,

November 21, 2025

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