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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

The Honorable Melody L. James, The Honorable Aisha Taylor,
and The Honorable Cynthia C. Dooley
Commissioners for the Appellate Panel

Appellate Case No. 2024-001822
S.C. W.C.C. File No.: 1925084

Remedy Intelligent Staffing, Inc., Employer, and
XL Insurance America, Inc., Carrier.....Appellants,

v.

Christina Walthour.....Respondent.

INITIAL BRIEF OF APPELLANTS

/s/Michael E. Patterson, Jr.
S.C. Bar No.: 78437
Patterson Law Group, LLC
15 State Street
Charleston, SC 29401
Telephone: (843) 202-0901
E-mail: michael@pattersonlawsc.com
Attorney for Appellants

Other counsel of record:
James G. Christmas, Esq.
Robert C. Limehouse, III, Esq.
250 Mathis Ferry Road, Ste. 102
Mt. Pleasant, SC 29464
Telephone: (843) 900-1499
E-mails: gc@christmaslaw.com; trey@christmaslaw.com
Attorneys for Respondent

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STATEMENT OF ISSUES ON APPEAL

1. THE COMMISSION ERRED AS A MATTER OF LAW BY COLLAPSING TWO DISTINCT INJURY EVENTS INTO A SINGLE COMPENSABLE INJURY DESPITE THE OBJECTIVE FACTUAL EVIDENCE, ABSENCE OF NOTICE, AND CONTRADICTORY CONTEMPORANEOUS MEDICAL RECORDS.
2. THE COMMISSION ERRED AS A MATTER OF LAW BY RELYING ON MEDICAL CAUSATION OPINIONS THAT LACKED A RELIABLE FACTUAL BASIS AND WERE FORMED ONLY AFTER RESPONDENT'S UNREPORTED AND UNAUTHORIZED MEDICAL TREATMENT.
3. THE COMMISSION ERRED AS A MATTER OF LAW BY EXCUSING RESPONDENT'S FAILURE TO PROVIDE NOTICE OF A CERVICAL INJURY AND BY IMPOSING LIABILITY FOR UNAUTHORIZED MEDICAL TREATMENT OBTAINED OUTSIDE OF APPELLANTS' CONTROL.
4. THE SINGLE COMMISSIONER'S DENIAL OF APPELLANTS' MOTION FOR CONTINUANCE COMPOUNDED RESPONDENT'S FAILURE TO NOTIFY THE EMPLOYER OF A NEW CERVICAL SPINE INJURY, RESPONDENT'S TREATMENT OUTSIDE OF APPELLANTS' KNOWLEDGE OR CONTROL, RESPONDENT'S FAILURE TO PARTICIPATE IN DISCOVERY, AND RESPONDENT'S 19-MONTH DELAY, RESULTING IN DEMONSTRABLE PREJUDICE TO APPELLANTS.

STATEMENT OF THE CASE

On August 18, 2020, Respondent filed first Form 50 Notice of Claim. Respondent then did not do anything to prosecute her claim, and the claim was closed on May 14, 2021, but on June 4, 2021, Respondent filed a Form 50 hearing request to reopen the claim. The hearing was set for October 20, 2021. The parties reached a consent order to conduct additional discovery, and on October 15, 2021, Respondent filed a new Form 50 hearing request, and a hearing was set for February 1, 2022, to determine the compensability of the claim. However, the day prior to the hearing, January 31, 2022, Respondent withdrew her hearing request.

Following this withdrawal, Respondent did not take any further actions to prosecute her claim, and on September 16, 2022, the claim was closed by the Commission. Following closure of the Commission's file, Respondent did not take any additional actions to prosecute her claim until she filed a new Form 50 hearing request on September 1, 2023. In total, from the date (January 31, 2022) Respondent withdrew her Form 50 until September 1, 2023, when Respondent filed a new Form 50 hearing request, Respondent went 19 months (which is the equivalent of 579 days or 1 year and 7 months) without taking any action to prosecute her claim.

On November 29, 2023, a hearing was conducted by Commissioner Avery B. Wilkerson.¹ The single commissioner determined that the claim was compensable, and Appellants filed a notice of appeal to the Appellate Panel. Oral arguments were heard by the Appellate Panel on July 15, 2024. The Appellate Panel issued its decision and order on October 3, 2024 (hereinafter the "Appellate Panel Order"). The Appellate Panel upheld the single commissioner's decision and found that Respondent's claim was compensable.

Subsequently, on October 25, 2024, Appellants timely filed a Notice of Appeal with the Court of Appeals for review of the Appellate Panel's decision and order.

¹ Commissioner Wilkerson is no longer a Commissioner with the South Carolina Workers' Compensation Commission.

However, on October 30, 2024, Justice Hewitt dismissed Appellants' Appeal as not being a final judgment under S.C. Code Ann. § 1-23-380. *See* Walthour v Remedy Intelligent Staffing, Inc., SC Ct. App. Order dated October 30, 2024. On November 14, 2024, Appellants filed a Petition for Rehearing and Reinstatement. *See* Walthour v Remedy Intelligent Staffing, Inc., Appellants' Petition for Rehearing and Reinstatement, dated November 14, 2024. On March 7, 2025, a three Justice panel for the Court of Appeals affirmed the Order issued by Justice Hewitt. *See* Walthour v Remedy Intelligent Staffing, Inc., SC Ct. App. Order dated March 7, 2025. The Order from the Court of Appeals dismissed Appellants' appeal, and ordered remittitur under Rule 221(b), SCACR. *Id.*

On April 7, 2025, pursuant to S.C. Code Ann. § 1-23-390, Rule 242, SCACR, Rule 221, SCACR, and Rule 260 SCACR, Appellants filed a Petition for a Writ of Certiorari with the Supreme Court seeking reinstatement of Appellants' appeal. *See* Walthour v Remedy Intelligent Staffing, Inc., Appellants' Petition for a Writ of Certiorari, dated April 7, 2025. Respondent filed her Return on May 23, 2025. *See* Walthour v Remedy Intelligent Staffing, Inc., Respondent's Return to Appellants' Petition for a Writ of Certiorari, dated May 23, 2025. On June 2, 2025, Appellants filed a Reply to Respondent's Return. *See* Walthour v Remedy Intelligent Staffing, Inc., Appellants' Reply to Respondent's Return, dated June 2, 2025. On August 14, 2025, the Supreme Court granted Appellants' Writ of Certiorari. *See* Walthour v Remedy Intelligent Staffing, Inc., S.C.Sup.Ct. Order dated August 14, 2025.

Subsequently, on November 24, 2025, the Court of Appeals issued a notice to both parties that the Court of Appeals would be hearing Appellants' appeal on the merits and set forth the briefing schedule. *See* Walthour v Remedy Intelligent Staffing, Inc., SC Ct. App. Notice dated November 24, 2025.

STANDARD OF REVIEW

The Administrative Procedures Act (APA) establishes the standard for our review of Appellate Panel decisions. Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). Under the APA, this court may reverse or modify the decision of the Appellate Panel when the substantial rights of the appellant 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.” Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689–90 (2010); *see also* S.C. Code Ann. § 1-23-380(5)(d)–(e) (Supp. 2016). “The Appellate Panel is the ultimate fact finder in workers' compensation cases, and if its findings are supported by substantial evidence, it is not within our province to reverse those findings.” Mungo v. Rental Unif. Serv. of Florence, Inc., 383 S.C. 270, 279, 678 S.E.2d 825, 829–30 (Ct. App. 2009). “Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action.” Taylor v. S.C. Dep't of Motor Vehicles, 368 S.C. 33, 36, 627 S.E.2d 751, 752 (Ct. App. 2006) (quoting S.C. Dep't of Motor Vehicles v. Nelson, 364 S.C. 514, 519, 613 S.E.2d 544, 547 (2005)).

“The Respondent has the burden of proving facts that will bring the injury within the workers’ compensation law, and such award must not be based on surmise, conjecture or speculation.” Crisp v. SouthCo. Inc., 401 S.C. 627, 641, 738 S.E.2d 835, 842 (2013) (quoting Clade v. Champion Labs., 330 S.C. 8, 11, 496 S.E.2d 856, 857 (1998)). “[A]n employer who has responded to a workers’ compensation claim may assert a general denial of liability whether or not the response expressly contests compensability.” Hargrove v. Carolina Orthopaedic Surgery Assocs., PA, 389 S.C. 119, 124, 697 S.E.2d 641, 643 (Ct. App. 2010). “Injury” for purposes of

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

STATEMENT OF FACTS

The Employer is a staffing agency, and Respondent was staffed at Husqvarna when she suffered an injury at work. On July 11, 2019, while lifting a pallet, Respondent injured her lower back and left shoulder. Appellants provided Respondent with treatment at Doctors Care. Respondent was seen twice at Doctors Care and diagnosed with a lumbar strain. On July 16, 2019, Respondent was released from care and returned to full duty. Respondent returned to work but was terminated for cause shortly thereafter.

On August 11, 2019, after being terminated, and almost thirty days after her work injury, Respondent was treated at the ER at Prisma Health Richland. This medical record from the ER does not contain any reference whatsoever to an injury at work. According to the medical report, Respondent was complaining of right shoulder pain (not left shoulder pain) that began two days prior, and Respondent denied recent trauma. On September 12, 2019, Respondent then treated with her primary care provider, Hopkins Family Practice, without mention of a work injury. In this September 12, 2019, medical report from Hopkins Family Practice, Respondent stated she had pain in her right shoulder and back and thought she may have pulled a muscle about a month ago, which would correlate with whatever injury she treated for at the ER on August 11, 2019. Respondent was then referred to Dr. Fulton at Prisma Health Orthopaedics without mention of a work injury. On September 24, 2019, Respondent was seen at Dr. Fulton's office for preexisting right wrist pain. Respondent was then referred for an EMG/NCS of her right wrist. On October 8, 2019, based on the EMG/NCS, Respondent was referred for a cervical MRI. Following the cervical MRI, Respondent was then referred to Dr. DeHoll at Prisma Health Orthopaedics.

On October 14, 2019, Respondent was seen by Dr. DeHoll, and again there is no reference to a work injury anywhere to be found in the medical report. Based on Dr. DeHoll's review of Respondent's MRI, Dr. DeHoll determined that Respondent would require cervical fusion surgery.

Respondent underwent cervical fusion surgery on November 12, 2019. Respondent's last appointment with Dr. DeHoll was on January 16, 2020. Appellants were entirely unaware of the treatment Respondent received after being returned to work full duty on July 16, 2019.

Respondent did not file a Form 50 notice of claim until August 18, 2020, which is more than a year after her July 11, 2019, medical only low back and left shoulder work injury. Respondent's August 18, 2020, Form 50 notice of claim was the very first time Appellants had notice of any kind that Respondent was now alleging that she suffered a cervical spine injury and a right shoulder injury, and that these new injuries were related to her July 11, 2019, work injury. Additionally, Respondent's August 18, 2020, Form 50 notice of claim was not filed until after she had already undergone cervical fusion surgery and was released from care by Dr. DeHoll.

The claim was closed by the commission on May 14, 2021, but on June 4, 2021, Respondent filed a Form 50 hearing request to reopen the claim. The hearing was set for October 20, 2021. Respondent's deposition was scheduled for September 2, 2021, but Respondent cancelled prior to the deposition. Respondent's deposition was then scheduled for October 12, 2021, but Respondent again cancelled. With the hearing being 8 days away, and Appellants having been unable to conduct Respondent's deposition through no fault of their own, Respondent agreed to a consent order to remove the claim from the docket.

Respondent filed a new hearing request on October 15, 2021, and a hearing was set for February 1, 2022. Respondent's deposition was scheduled for January 20, 2022, but Respondent cancelled. Respondent's deposition was then rescheduled for January 25, 2022, but Respondent again cancelled. Additionally, during this time period, Appellants attempted to depose Dr. DeHoll. Dr. DeHoll's deposition was scheduled for November 4, 2021, but Dr. DeHoll cancelled. Dr. DeHoll's deposition was rescheduled for January 20, 2022, but Respondent's attorney cancelled.

On January 31, 2022, prior to the February 1, 2022, hearing, Respondent withdrew her Form 50 hearing request. Following the withdrawal of her Form 50 on January 31, 2022, Respondent did not take any actions to prosecute her claim for another 19 months (579 days or 1 year and 7 months), until she filed a new Form 50 Hearing Request on September 1, 2023.²

Following Respondent's significant delay, she was then unable to sit for her deposition until November 16, 2023, which was only thirteen days prior to the hearing scheduled for November 29, 2023. In addition to new information obtained in Respondent's deposition, there were additional depositions and additional discovery that Appellants were unable to conduct prior to the hearing. Therefore, Appellants filed a motion for continuance to conduct additional discovery. However, Appellants' motion for continuance was denied by the single commissioner.

The hearing was conducted by Commissioner Avery B. Wilkerson, Jr. on November 29, 2023, in Columbia, South Carolina. In addition to denying Appellants' motion for continuance, Commissioner Wilkerson took the two separate dates of injury and the separate body parts and collapsed them into one single date of injury and then found the claim compensable. The Appellate Panel then affirmed the single commissioner's ruling.

ARGUMENTS

1. THE COMMISSION ERRED AS A MATTER OF LAW BY COLLAPSING TWO DISTINCT INJURY EVENTS INTO A SINGLE COMPENSABLE INJURY DESPITE THE OBJECTIVE FACTUAL EVIDENCE, ABSENCE OF NOTICE, AND CONTRADICTORY CONTEMPORANEOUS MEDICAL RECORDS.

A. Initial report and authorized Doctors Care treatment (lumbar strain; no cervical or right-shoulder complaints).

² On September 16, 2022, the claim was closed by the commission.

Respondent reported this injury on July 12 and stated that she was trying to lift a pallet and felt pain in her on the back of her left shoulder blade and in her lower back. (Respondent APA 11, page 3).

Respondent was initially treated at Doctors Care on July 14, 2019, and the subjective information contained in the report indicates Respondent injured her lower back “throwing a 150lbs pallet.” (Respondent APA 4, page 6). At this July 14, 2019, evaluation, Ms. Comer, LPN, noted Respondent denied “saddle anesthesia” and did not have any radiation of pain or parathesis. (Respondent APA 4, page 6). In her deposition testimony, Ms. Comer, LPN, testified that Respondent stated she injured her lower back, and that “she [Respondent] had no red flags, she had no radiation of pain, no numbness or tingling.” (Comer Deposition pages 8-10). Ms. Comer, LPN, diagnosed Respondent with low back pain. (Respondent APA 4, page 16).

On July 16, 2019, Respondent was treated by Dr. Kim at Doctors Care. (Respondent APA 4, page 26). Dr. Kim noted that Respondent told him she obtained a cortisone shot from her doctor in her back, was now feeling better and wanted to return to work. (Respondent APA 4, page 26). Dr. Kim noted that Respondent could return to full-duty work, and that she would not require a follow-up appointment. (Respondent APA 4, page 32). Dr. Kim diagnosed Respondent with a lumbar strain. (Respondent APA 4, page 32).

In his deposition, Dr. Kim testified that Respondent had some vague tenderness over her lumbar spine, but that a straight leg raise of both legs did not produce any results, and that shoulder abduction on both sides did not produce any lower back pain. (Dr. Kim deposition transcript pages 10-11). Dr. Kim testified that he diagnosed Respondent with a lumbar strain, and released her to MMI, without any work restrictions and without any future medical requirements. (Dr. Kim deposition transcript page 12).

There is no evidence in the Doctors Care medical records, or in the deposition testimony from Dr. Kim, or Ms. Comer, LPN, that would indicate Respondent either subjectively or objectively suffered an injury to her cervical spine or right shoulder as a result of her work injury.

B. Termination after Respondent Returned to Work.

Respondent returned to work following her July 16, 2019, appointment at Doctors Care. However, the Employer noted in a computer log that Respondent did not show up to work and did not respond to the Employer's phone calls or text messages. (Appellants APA page 331). As a result of Respondent's "no call, no show", the Employer terminated her employment. (Appellants APA page 331).

C. Respondent's Social Security Disability Application.

On or about August 22, 2019, Claimant made efforts to obtain Social Security Disability through the South Carolina Vocational Rehabilitation Department ("SCVR"). (See Generally Appellants APA's pages 396-402). During this evaluation, Claimant noted that her last employment was with a poultry processing plant for three months and ended in December 2018, because Claimant stated that she was no longer physically able to perform the job. (Appellants APA page 399). Notably, in her deposition, Claimant testified that she left the job at the poultry plant because she got the job at Remedy (the Employer), which is a different explanation than she provided to the SCVR evaluator. (Claimant's Deposition Transcript page 462). In addition to this, Claimant failed to report her employment with Employer (Remedy Intelligent Staffing). (Appellants APA page 399). Similarly, Claimant failed to report a work injury in her application for benefits. (Appellants APA page 399). Claimant states that she has had three different left wrist surgeries (2006, 2008, 2009), and that she is in constant pain as a result. (Appellants APA page 399). It should be noted that Claimant has not at any point alleged that her left wrist is part of this

workers' compensation claim. Importantly, Claimant states that she has been overcompensating with her right arm due to the pain in her left wrist. (Appellants APA page 399).

D. Prisma Health Richland ER: right-shoulder symptoms, no evidence of a work injury, and a denial of recent trauma.

On August 11, 2019, Respondent was treated at the Prisma Health Richland ER. (Appellants APA page 120). There is no mention in the medical records from this visit regarding a work injury, or that Respondent's pain was related to a work injury. (Appellants APA page 120). In fact, Respondent denied recent trauma to her neck or back or shoulder but did endorse a recent fall. (Appellants APA page 120).

At this ER visit, it is noted that Respondent's pain is to her right shoulder, not her left shoulder. (Appellants APA page 120). The medical record notes that Respondent's pain began approximately 2 days previously. (Appellants APA page 120). Not only is there no mention of low back pain or left shoulder pain, but this is also the first time Respondent identified radiating pain, however, Respondent advised that the radiating pain and tingling was in her right shoulder and right arm. (Appellants APA page 120).

E. Respondent's subsequent medical records do not contain any information regarding a work injury, and rather than low back pain, these records reflect right-sided shoulder and cervical pain.

On September 12, 2019, Respondent was treated by Dr. Ash-Malachi. The medical record from this visit states Respondent reported she pulled a muscle about a month ago, and now her right shoulder and back through her right arm/hand now hurts. (Respondent APA 9, page 7). Respondent endorsed numbness and tingling in her right fingers and thumb. (Respondent APA 9, page 7). Respondent's subjective statements correlate with her August 11, 2019, ER visit and not with her July 11, 2019, work injury.

Additionally, Dr. Ash-Malachi noted in the medical report from September 12, 2019, that Respondent has been using her right side as her dominant side since she had surgery for a broken scaphoid (the scaphoid is a bone in your wrist) in her left arm. (Respondent APA 9, page 9). Dr. Ash-Malachi then refers Respondent to Dr. Fulton, and on October 8, 2019, Dr. Clavet performs an EMG/NCS on Respondent's bilateral upper extremities. (Respondent's APA 5, page 9).

On October 8, 2019, Respondent is seen by Dr. Clavet for an EMG/NCS of her bilateral upper extremities. (Respondent's APA 5, page 9). Dr. Clavet notes that Respondent is complaining of neck and bilateral arm pain. (Respondent's APA 5, page 9). However, there is no mention in the medical record of any work-related injury. (Respondent's APA 5, page 9). Based on the EMG/NCS, Dr. Clavet ordered a cervical MRI. (Respondent's APA 5, page 9).

F. The evidence only supports two separate and distinct injuries.

In asserting her proof of compensability, Respondent ignores the fact that the medical evidence clearly shows two different dates on which Respondent suffered different injuries. Respondent suffered an injury on July 11, 2019, to her left shoulder and lower back, for which she received treatment and was released to work full duty. Respondent was then terminated by Appellants. Following her termination, on August 11, 2019, Respondent sought treatment at Prisma Health Richland ER for a new injury to new body parts.

2. THE COMMISSION ERRED AS A MATTER OF LAW BY RELYING ON MEDICAL CAUSATION OPINIONS THAT LACKED A RELIABLE FACTUAL BASIS AND WERE FORMED ONLY AFTER RESPONDENT'S UNREPORTED AND UNAUTHORIZED MEDICAL TREATMENT.

A. Dr. DeHoll: there isn't a single medical record that contains any evidence of a work-injury; his later causation questionnaire is undermined by his admitted lack of recollection.

Respondent was seen by Dr. DeHoll on October 14, 2019, upon referral from Dr. Clavet. (Respondent APA 1, page 23). Dr. DeHoll notes that Respondent was originally referred to Dr. Fulton for a wrist problem, who then referred her to Dr. Clavet for the EMG/NCS. (Respondent

APA 1, page 24). Dr. DeHoll further states that Respondent is experiencing numbness and tingling in her right hand and fingers. (Respondent APA 1, page 24), which of course does not match any of the symptoms Respondent experienced following her July 11, 2019, injury at work.

In his review of the MRI findings, Dr. DeHoll noted that the MRI showed “right-sided extrusion at C4-5.” (Respondent APA 1, page 24). Additionally, it should be noted that at no point in Dr. DeHoll’s medical records is there any mention of a work injury. (See Generally Respondent’s APA 1, pages 1-48). On October 14, 2019, Dr. DeHoll recommended a 3-level cervical fusion. (Respondent APA 1, page 24 and page 27).

Respondent underwent surgery on November 12, 2019. (Respondent APA 1, page 45), and Clamant then followed up with Dr. DeHoll on a monthly basis for the next three months (November 25, 2019, December 5, 2019, and on January 16, 2020). (Respondent APA 1, pages 32, 35, and 38).

Contained within his deposition testimony, Dr. DeHoll was asked the following question as it relates to his responses to any questions that he completed as part of Respondent’s questionnaire: “Dr. DeHoll, I -- I just wanna ask, again, when filling out these questions, do you have a recollection of how Ms. Walthour's injury occurred? To which Dr. DeHoll answered, “I do not.” (Dr. DeHoll’s Deposition Transcript page 10).

B. The history contained in the IME (Dr. Patel) obtained by Respondent’s counsel conflicts with the contemporaneous records and the factual foundation for her causation opinions.

More than two years after Respondent’s July 11, 2019, injury, Respondent was seen by Dr. Patel on October 21, 2021, at Lowcountry Orthopaedics for an independent medical evaluation. (Respondent APA 2, page 1). Dr. Patel notes that Respondent stated she began having neck pain on July 12, 2019, following her work injury. (Appellants’ APA page 325). However, there is no

evidence in the relevant medical records indicating Respondent had any neck pain at the time of her work injury on July 11, 2019.

Additionally, in this IME, Dr. Patel notes that Respondent's current symptoms are primarily located in her left posterior shoulder blade and radiate into her left arm. (Clamiant APA 2, page 2). However, in all the medical records subsequent to Respondent's August 11, 2019, Prisma Health ER visit, Respondent's pain is located in her right arm and shoulder, and there is no mention of any pain located in her left shoulder.

Dr. Patel's opinion on causation cannot be valid when he is relying on inaccurate information, which is the result of subjective information provided to him by Respondent more than two years after her July 11, 2019, and subsequent August 11, 2019, injury.

C. Respondent's causation statements are based on inaccurate and unreliable facts.

Respondent's main argument is based on the causation statements obtained years after her two separate injuries to different body parts. However, a medical opinion is only as good as the facts available to the physician providing the opinion. Moreover, a causation statement cannot be valid if the doctor does not know how the Respondent was injured.

3. THE COMMISSION ERRED AS A MATTER OF LAW BY EXCUSING RESPONDENT'S FAILURE TO PROVIDE NOTICE OF A CERVICAL INJURY AND BY IMPOSING LIABILITY FOR UNAUTHORIZED MEDICAL TREATMENT OBTAINED OUTSIDE OF APPELLANTS' CONTROL.

A. Respondent Never Provided Notice of a Cervical Spine Work Injury Prior to her Self-Directed Treatment

Respondent failed to satisfy her threshold statutory requirements governing notice and the employer's right to control medical treatment. Those requirements are not discretionary and cannot be satisfied retroactively through litigation testimony or later-formed medical opinions.

Following Respondent's July 11, 2019, work injury, Respondent reported only a low back and left shoulder injury and received authorized treatment limited to those complaints. (Respondent APA 11, p. 3; Respondent APA 4, pp. 6, 16, 26, 32). At no point during Respondents two July 2019 appointments with Doctors Care did Respondent ever report cervical symptoms or right shoulder symptoms, and likewise never provide notice of such to Appellants. (Respondent APA 4; Comer Deposition Tr. pp. 8–10; Dr. Kim Deposition Tr. pp. 10–12).

When Respondent presented to the emergency room on August 11, 2019, she did not report a work injury, denied recent trauma, and complained of right-sided shoulder pain that began days earlier. (Appellants' APA p. 120).

Likewise, when Respondent treated at Hopkins Family Practice on September 12, 2019, she did not attribute her symptoms to a work injury and instead stated that she believed she “pulled a muscle about a month ago.” (Respondent APA 9, p. 7). Thus, Appellants never received notice—actual or constructive—of any alleged cervical spine injury until her first Form 50, which was filed a year later on August 18, 2020, and is significantly outside of the ninety (90) day statutory notice requirement.

B. Respondent Usurped Employer's Statutory Right to Control Medical Care.

Despite the absence of notice, Respondent pursued extensive cervical treatment on her own. She underwent diagnostic testing, specialist care, and ultimately a three-level cervical fusion on November 12, 2019, all without Appellants knowledge or authorization. (Respondent APA 1, pp. 27, 29, 32, 35, 38, 45).

Respondent completed post-operative care by January 16, 2020, again without Employer involvement. (Respondent APA 1, p. 45). Even then, Respondent did not file a Form 50 notice of claim for another 8 months! During this entire period, Employer was deprived of the opportunity

to: 1) investigate the alleged cervical condition, 2) direct or authorize medical treatment, or evaluate alternative causes of Respondent's symptoms.

This loss of control was not the result of Appellants inaction, but of Respondent's failure to provide notice and unilateral decision to seek care outside the workers' compensation system.

C. There is no allegation that Respondent's cervical spine injury was related to her work injury until her August 18, 2020, Form 50.

Respondent did not assert that her cervical condition was work-related until she filed her Form 50 on August 18, 2020, more than a year after the alleged work incident and after all cervical treatment had concluded. (Appellants' APA; Respondent APA). By the time Employer first learned of the cervical allegation, Respondent had already undergone surgery and been released from care, rendering Appellants statutory right to control medical meaningless.

D. The Commission's Excusal of Notice and Unauthorized Care Was Legal Error

Despite the lack of notice and the Respondent's failure to provide Appellants with an opportunity to provide and direct her medical treatment, the Commission still found Respondent's cervical condition compensable. By excusing Respondent's failure to provide notice and then retroactively validating Respondent's unauthorized medical treatment, the Commission nullified these statutory protections that are intended to operate as conditions precedent to compensability.

Notice exists to allow the employer to promptly investigate and control medical treatment. Where, as here, Respondent did not provide any notice of her injury and proceeds with extensive self-directed care. The law does not permit the Commission to shift the resulting costs to the employer after the fact.

The prejudice to Appellants is inherent and cannot be disputed. Employer was deprived of: 1) the right to contemporaneous investigation, 2) the right to direct Respondent's medical

treatment, 3) the right to any meaningful evaluation of causation before surgery occurred, and 4) the opportunity to mitigate or manage medical care.

4. THE SINGLE COMMISSIONER'S DENIAL OF APPELLANTS' MOTION FOR CONTINUANCE COMPOUNDED RESPONDENT'S FAILURE TO NOTIFY THE EMPLOYER OF A NEW CERVICAL SPINE INJURY, RESPONDENT'S TREATMENT OUTSIDE OF APPELLANTS' KNOWLEDGE OR CONTROL, RESPONDENT'S FAILURE TO PARTICIPATE IN DISCOVERY, AND RESPONDENT'S 19-MONTH DELAY, RESULTING IN DEMONSTRABLE PREJUDICE TO APPELLANTS.

A. Appellants' Motion for Continuance.

The South Carolina Workers' Compensation Commission is vested with discretion in managing hearings and discovery. However, that discretion is not unfettered. A denial of a continuance constitutes reversible error where it results in prejudice, denial of a meaningful opportunity to be heard, or fundamental unfairness in the proceedings.

The issue before this Court is not whether the Commission possessed discretion, but whether that discretion was abused under the circumstances presented.

A Hearing was scheduled for November 29, 2023. Respondent's deposition was not conducted until November 16, 2023, only thirteen (13) days prior to the scheduled hearing, with Thanksgiving intervening.

Based on Respondent's deposition testimony, Appellants learned for the first time that Respondent had moved from Columbia, South Carolina to Elizabethtown, Kentucky, and then from Kentucky to Sylacauga, Alabama. Since Respondent's deposition was not conducted until November 16, 2023, Appellants did not have sufficient opportunity to conduct any discovery related to Respondent's medical treatment or potential employment in these states.

Appellants also received Respondent's Form 58 Pre-Hearing Brief, APAs, and Exhibits on November 15, 2023. Contained in Respondent's pre-hearing brief were records from Commonwealth Pain & Spine, a provider located in Kentucky. This provider was not listed on

Respondent's Form 50 Hearing Request, and Appellants did not have an opportunity to obtain these records or determine whether any depositions were necessary as a result of Respondent's treatment with this provider.

After the record was left open, Appellants attempted to have Respondent execute a medical release so Appellants could obtain these records from Kentucky as quickly as possible. Respondent refused to provide a medical release for this purpose.

Appellants moved for a continuance to complete discovery made necessary by Respondent's late disclosures, relocation, and previously undisclosed medical treatment. The single commissioner denied that request.

At the time the continuance was denied:

- i) Appellants had not had an opportunity to conduct discovery related to Respondent's out-of-state treatment;
- ii) Appellants had not had an opportunity to conduct discovery related to Respondent's potential employment in other states;
- iii) Appellants had not had an opportunity to obtain or evaluate records from Commonwealth Pain & Spine;
- iv) Appellants had not had a reasonable opportunity to assess whether additional medical or lay depositions were necessary.

Proceeding to a merits hearing under these circumstances deprived Appellants of the ability to fully and fairly defend the claim. This is especially true, when you consider the delays in discovery before Respondent withdrew her hearing on January 31, 2022, and then disappeared for the next 19 months.

The single commissioner attempted to mitigate the prejudice to Appellants by holding the record open for limited purposes. However, holding the record open did not cure the fundamental

problem: Appellants were forced to proceed to hearing without knowing the full scope of Respondent's medical treatment, employment history, or potential witnesses.

Post-hearing discovery is not an adequate substitute for pre-hearing discovery where credibility, medical causation, and factual development are central to the outcome of the case.

The cumulative effect of:

- Respondent's late disclosures,
- the inability to complete necessary discovery,
- the denial of a continuance,
- and the decision to proceed to a merits hearing
- resulted in a procedurally unfair hearing and materially prejudiced Appellants' ability to present a defense.

Accordingly, the single commissioner abused his discretion, as did the Appellate Panel by affirming the decision of the single commissioner. Therefore, the Appellate Panel Order must be reversed.

B. Respondent's failure to participate in discovery and failure to prosecute her claim.

Respondent did not file a Form 50 notice of claim until August 18, 2020, which is after Respondent already underwent cervical fusion surgery and was released from care by Dr. DeHoll.

The claim was closed on May 14, 2021, although on May 26, 2021, Respondent filed a Form 50 hearing request to reopen the claim. The hearing was set for October 20, 2021. Respondent's deposition was scheduled for September 2, 2021, but Respondent cancelled prior to the deposition. Respondent's deposition was then scheduled for October 12, 2021, but Respondent again cancelled.

With the hearing being 8 days away, and Appellants having been unable to conduct Respondent's deposition through no fault of their own, Respondent agreed to a consent order to remove the claim from the docket.

Respondent then filed a new hearing request on October 15, 2021, and a hearing was set for February 1, 2022. Respondent's deposition was scheduled for January 20, 2022, but Respondent cancelled. Respondent's deposition was then rescheduled for January 25, 2022, but Respondent again cancelled. Therefore, in total, Respondent cancelled her deposition four times before she withdrew her Form 50 on January 31, 2022. Respondent's failure to participate in discovery, materially prejudiced Appellants' ability to investigate the claim.

Additionally, during this time period, Appellants attempted to depose Dr. DeHoll. Dr. DeHoll's deposition was scheduled for November 4, 2021, but Dr. DeHoll cancelled. Dr. DeHoll's deposition was rescheduled for January 20, 2022, but Respondent's attorney cancelled.

On January 31, 2022, prior to the February 1, 2022, hearing, Respondent withdrew her Form 50 hearing request. Respondent then completely and utterly failed to further prosecute her claim for the next 19 months (579 days).

Looking at it another way, subsequent to her July 11, 2019, injury, Respondent was released to full duty work on July 16, 2019. Respondent then treated at the ER on August 11, 2019, for a subsequent injury to her right shoulder and cervical spine. 1,507 days (4 years and 1 month) passed from the date Respondent was released to full-duty on July 16, 2019, until Respondent filed her September 1, 2023, Form 50 request for a hearing.

Respondent filed her first Form 50 notice of claim on August 18, 2020. 1,106 days (3 years) passed from the date Respondent filed her first Form 50 until she filed her Form 50 on September 1, 2023, which is the Form 50 the November 29, 2023, hearing was in response to.

A Hearing was scheduled for November 29, 2023. Respondent's deposition was conducted on November 16, 2023. The first time since Respondent cancelled her first cancelled her deposition on September 2, 2021, 798 days earlier, Respondents were able to conduct Respondent's deposition.

Further, Respondent has not only failed to prosecute her own claim but has actively prevented Appellants from conducting discovery in a reasonable time period to make any decisions on the compensability of this claim. All of which has served to significantly and materially prejudice Appellants.

C. Waiver and Laches.

South Carolina Courts have defined laches as “neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.” Muir v. C.R. Bard. Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999). [A] claimant must prosecute his claim in a timely fashion, or it may be barred by the doctrine of laches. (quoting the commissioner's finding) McMillan v. Midlands Human Res., 305 S.C. 532, 533, 409 S.E.2d 443, 444 (Ct.App.1991). The equitable doctrine of laches is equivalent to the legal doctrine of waiver. Strickland v. Strickland, 375 S.C. 76, 650 S.E.2d 465, 470 (2007). South Carolina has acknowledged the applicability of the doctrine of laches in a workers' compensation claim. Richey v. Dickinson, 359 S.C. 609, 612, 598 S.E.2d 307, 309 (Ct. App. 2004).

[T]o establish laches as a defense, a party must show that the complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the party asserting the defense of laches. Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 432, 673 S.E.2d 448, 456 (2009) (quoting Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988)). If a party knows of his rights and does not timely assert them and that delay causes his adversary to incur expense or otherwise detrimentally change its position, then, under the doctrine of laches, equity will refuse

to enforce those rights. Richey, 359 S.C. at 612, 598 S.E.2d at 309. The party asserting laches must show (1) negligence of the other party; (2) that party's opportunity to act sooner; and (3) as a result, the asserting party suffered material prejudice. Richey, 359 S.C. at 612, 598 S.E.2d at 309.

Laches is a defense that operates independently from the statute of limitations. The court is vested with wide discretion in determining what is an unreasonable delay. Ham v. Flowers, 214 S.C. 212, 51 S.E.2d 753 (1949). The burden of proof is upon the person claiming laches. Provident Life and Accident Ins. Co. v. Driver, 317 S.C. 471, 451 S.E.2d 924 (Ct.App.1994). [W]hether laches applies in a particular situation is highly fact-specific, so each case must be judged on its own merits. Muir, 336 S.C. 266, 297, 519 S.E.2d 583, 599 (Ct.App.1999).

Jervey v. Martint Env't, Inc., 406 S.C. 210, 750 S.E.2d 90 (2013) is the case that controls this claim. Following the ruling from the single commissioner, Martint filed an appeal to the Appellate Panel. The Appellate Panel agreed with the single commissioner that Jervey was entitled medical treatment and workers' compensation benefits; however, the Appellate Panel vacated the single commissioner's ruling that the statute of limitations in section 42-9-260 barred Martint's defense, and instead found the doctrines of waiver and laches prohibited Martint's defense. Both parties appealed to the circuit court. The circuit court affirmed the Appellate Panel's order in all respects except for the portion that vacated the single commissioner's legal conclusions concerning the impact of the statute of limitations in section 42-9-260(A). Both parties filed an appeal to the Court of Appeals. The Court of Appeals agreed with the Appellate Panel and ruled that the Appellate Panel was correct in vacating the single commissioner's finding that section 42-9-260 is a time bar for raising a defense against compensability. The Court of Appeals also agreed with the Appellate Panel and the Circuit Court that Martint was barred by the doctrine of waiver and laches. Both parties appealed to the Supreme Court. The Supreme Court ruled that "because determination as to the issues of laches and waiver is dispositive, we grant Jervey's petition for a

writ of certiorari, dispense with further briefing, and vacate that portion of the Court of Appeals' opinion addressing the import of section 42-9-260.”

Importantly, the Appellate Panel, the Circuit Court, the Court of Appeals, and the Supreme Court all found that Martint was barred by the doctrine of waiver and laches. In reaching this conclusion, each Court found that Martint’s failure to act for approximately 450 days was unreasonable.

The Circuit Court ruled that Martint, “(a) were [sic] fully aware of the factual allegations relative to this alleged deviation from the course/scope of employment by no later than January 25, 2006; (b) nonetheless commenced the payment of temporary total disability compensation; (c) engaged in various activities during the ensuing months, which were reflective of an informed/voluntary acknowledgement of liability for Mr. Jervey's claim, notwithstanding their unquestioned possession of the same information upon which the current “good faith defense” is premised; and (d) did not attempt to raise this defense until approximately 450 days after they were notified of Mr. Jervey's injury.” Jervey v. Martint Environmental, Inc., No. 2008-CP-32-2361, 2009 WL 8727100 (S.C.Com.Pl. Mar. 24, 2009).

In applying the doctrine of waiver and laches, the Circuit Court found the following: “I conclude the Commission correctly determined the current defense “was clearly waived by” Martint/General Casualty. See, Hatcher v. Harleysville Mutual Insurance Company, 266 S.C. 548, 225 S.E. 2d 181, 184 (1976). I further conclude the substantial evidence similarly validates the Commission's ruling that Martint's/General Casualty's conduct satisfied the criteria for laches, as denial of his claim at this juncture would: (a) jeopardize Mr. Jervey's continued receipt of necessary medical care, as well as disability compensation; (b) potentially require him to repay substantial sums expended toward his receipt of compensation/medical benefits during the past three years; and (c) undoubtedly result in appreciable prejudice. Id.

In its decision, the Court of Appeals stated, “Furthermore, we find because Martint knew of its defense the day of the accident, yet it paid and has continued to pay Jervey disability compensation, and it did not assert the defense until at least 450 days after the accident, the evidence supports the Appellate Panel's finding that Martint's defense is barred by the doctrine of waiver and laches.” Jervey v. Martint Env't, Inc., 396 S.C. 442, 452, 721 S.E.2d 469, 474 (Ct. App. 2012), vacated in part, 406 S.C. 210, 750 S.E.2d 90 (2013). (In footnote number 4, the Court notes that Martint did not assert its defense until it filed a Form 51 on July 27, 2007, which was 510 days after the date of the accident).

The Supreme Court ruled as follows, “We deny Martint's petition for a writ of certiorari to review the Court of Appeals' decision as to the issues of laches and waiver. In light of the denial of Martint's petition for a writ of certiorari, we find it is unnecessary to address the issues raised by Jervey. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address any remaining issues if the disposition of a prior issue is dispositive). Nevertheless, because determination as to the issues of laches and waiver is dispositive, we grant Jervey's petition for a writ of certiorari, dispense with further briefing, and vacate that portion of the Court of Appeals' opinion addressing the import of section 42–9–260. Jervey v. Martint Env't, Inc., 406 S.C. 210, 211, 750 S.E.2d 90, 90-91 (2013).

To establish laches as a defense, a party must show that the complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the party asserting the defense of laches. The party asserting laches must show (1) negligence of the other party; (2) that party's opportunity to act sooner; and (3) as a result, the asserting party suffered material prejudice.

In Jervey, The Supreme Court confirmed that a party can be subject to the doctrine of waiver and laches if it fails to act within 450 days. Martint failed to raise a defense to the claim within 450 days, and the Court determined the delay was unreasonable and negligent, Martint

could have acted sooner, and Jervey would be materially prejudiced. It is notable that none of the courts determined it necessary that Jervey have actually suffered the material prejudice, but rather found this element satisfied based on the likelihood Jervey would suffer material prejudice.

In the case at bar, Claimant was injured on July 11, 2019. Claimant filed a Form 50 hearing request on September 1, 2023, which is the pleading on which this hearing was set. From July 11, 2019, to September 1, 2023, 1,505 days passed.

Subsequent to her July 11, 2019, injury, Claimant was released to full duty work on July 16, 2019. Claimant filed her first Form 50 notice of claim on August 18, 2020. 1,106 days passed from the date Claimant filed her first Form 50 until her September 1, 2023, Form 50.

The claim was closed on May 14, 2021, and June 4, 2021, Claimant filed a Form 50 hearing request to reopen the claim. The hearing was set for October 20, 2021. Claimant's deposition was scheduled for September 2, 2021, but Claimant cancelled prior to the deposition. Claimant's deposition was then scheduled for October 12, 2021, but Claimant again cancelled. With the hearing being 8 days away, and Appellants having been unable to conduct Claimant's deposition through no fault of their own, Claimant agreed to a consent order to remove the claim from the docket.

Claimant filed a new hearing request on October 15, 2021, and a hearing was set for February 1, 2022. Claimant's deposition was scheduled for January 20, 2022, but Claimant cancelled. Claimant's deposition was then rescheduled for January 25, 2022, but Claimant again cancelled. Additionally, during this time period, Appellants attempted to depose Dr. DeHoll. Dr. DeHoll's deposition was scheduled for November 4, 2021, but Dr. DeHoll cancelled. Dr. DeHoll's deposition was rescheduled for January 20, 2022, but Claimant's attorney cancelled.

On January 31, 2022, prior to the February 1, 2022, hearing, Claimant withdrew her Form 50 hearing request. On September 16, 2022, the claim was closed by the commission. Claimant did not take any actions whatsoever to prosecute her claim from January 31, 2022, until she filed a new Form 50 hearing request on September 1, 2023. There is no reasonable explanation for this delay in the evidence of this case.

576 days passed from the date Claimant withdrew her Form 50 (January 31, 2022) and the date Claimant filed a new Form 50 hearing request (September 1, 2023). Claimant inexplicably, and without explanation, failed to prosecute her claim for 576 days. Claimant was so unconcerned about her claim, that the claim remained closed at the commission for over 12 months.

Unbeknownst to Appellants, Claimant was seen by Dr. DeHoll on July 14, 2022, which is approximately 5 months after she withdrew her Form 50 hearing request. Dr. DeHoll advised Claimant that her condition was worse and there was a high probability that she would need additional surgical intervention. Dr. DeHoll referred Claimant to a pain specialist for a steroid injection to see if surgery could be staved off. Claimant was then seen by a pain specialist on August 9, 2022. However, all of this was done unbeknownst to Appellants. 406 days passed from July 14, 2022, until Claimant filed a new Form 50 hearing request on September 1, 2023 (380 days passed from August 9, 2022).

Despite knowing that additional treatment may be necessary, Claimant unreasonably delayed 406 days. Further, Claimant has not only failed to prosecute her own claim but has actively prevented Appellants from conducting discovery in a reasonable time period to make any decisions on the compensability of this claim. Appellants were unable to conduct Claimant's deposition until November 16, 2023, which was only 13 days prior to the scheduled hearing on November 29, 2023. The first time Claimant cancelled her deposition was on September 2, 2021,

which was 798 days earlier. All of which has served to significantly and materially prejudice Appellants.

Unbeknownst to Appellants, Claimant was first seen by Dr. DeHoll on October 14, 2019. Dr. DeHoll recommended cervical fusion and performed surgery in November of 2019. According to the medical records from Dr. DeHoll, Claimant's last visit following surgery was January 16, 2020. There is no mention in Dr. DeHoll's medical records that Claimant's injury was work related. Despite the fact that Claimant finished treating with Dr. DeHoll on January 16, 2020, Claimant did not file a Form 50 notice of claim until August 18, 2020. Therefore, Claimant completely deprived Appellants of their statutory right to control medical care, or the ability to provide any medical treatment at all. Claimant's treatment was completely over by the time she filed her very first Form 50 on August 18, 2020.

Appellants have been severely prejudiced by Claimant's unreasonable delay in prosecuting her case.

CONCLUSION

For the reasons stated herein, Appellants respectfully request the Court reverse the decision of the Commission.

Respectfully submitted,

s/Michael E. Patterson, Jr.

S.C. Bar No.: 78437

Patterson Law Group, LLC

15 State Street

Charleston, SC 29401

Telephone: (843) 202-0901

E-mail: michael@pattersonlawsc.com

Attorney for Appellants

December 29, 2025

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Dec 29 2025

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

The Honorable Melody L. James, The Honorable Aisha Taylor,
and The Honorable Cynthia C. Dooley
Commissioners for the Appellate Panel

Appellate Case No. 2024-001822
S.C. W.C.C. File No.: 1925084

PROOF OF SERVICE

I certify that I have served the *Appellants' Initial Brief* by forwarding via electronic mail and/or U.S. mail on December 29, 2025 addressed to attorneys of record, Robert C. Limehouse, III and James G. Christmas, to the South Carolina Court of Appeals, and to the South Carolina Workers' Compensation Commission at the following:

Robert C. Limehouse, III, Esq.
James G. Christmas, Esq.
Christmas Injury Lawyers
250 Matthis Ferry Road Ste. 102
Mount Pleasant, SC 29464
Telephone: (843) 900-1499
trey@gchristmaslaw.com
gc@gchristmaslaw.com
Attorneys for Respondent

Amy Bracy
Judicial Department
S.C. W.C.C.
P.O. Box 1715
Columbia, SC 29202-1715
judicial@wcc.sc.gov

S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

s/Michael E. Patterson, Jr.
S.C. Bar No.: 78437
Patterson Law Group, LLC
15 State Street
Charleston, SC 29401
Telephone: (843) 202-0901
E-mail: michael@pattersonlawsc.com
Attorney for Appellants

December 29, 2025
Charleston, South Carolina