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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE  
SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION

Honorable R. Michael Campbell, II, Commissioner  
Honorable Cynthia C. Dooley, Commissioner  
Honorable Aisha Taylor, Commissioner

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SCWCC File No. 1925782

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Appellate Case No. 2025-001254

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Bilma Sanchez-Martinez,  
Claimant

Appellant,

v.

Techtronic Industries, N.A.,  
Employer, and Ace American  
Ins. Co., Carrier

Respondents.

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**FINAL REPLY BRIEF OF APPELLANT**

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## ARGUMENT

Respondents contend that the Single Commissioner and Full Commission properly found that Appellant reached maximum medical improvement (MMI) for her admitted repetitive trauma injury to the left foot. This assertion is unsupported by substantial evidence in the record and rests on a mischaracterization of the medical evidence—particularly Dr. Barcel's testimony—as well as an internal inconsistency in the Full Commission's own Order. The Commission's finding of MMI lacks evidentiary support and must be reversed.

First, Respondents misrepresent the December 7, 2022, Consent Order<sup>1</sup> as merely establishing compensability without entitling Appellant to ongoing treatment. While the Consent Order indeed admitted compensability for repetitive trauma to the left foot, it did so without limitation, obligating Respondents to provide necessary medical treatment for that condition under S.C. Code Ann. § 42-15-60. Respondents' argument ignores that the admitted condition—diagnosed consistently across the medical record as flat-foot and related lower extremity issues—remains the root cause of Appellant's symptoms, as agreed upon by every treating physician.<sup>2</sup> The Consent Order did not carve out an exception for "unrelated" treatment; rather, it bound Respondents to address the compensable injury. Yet, Respondents have *never* offered or authorized *any* treatment for Appellant's admitted condition, despite multiple physicians recommending interventions such as orthotics, physical therapy, injections, and even surgical options.<sup>3</sup> This failure to provide care undermines Respondents' position, as it has prevented

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<sup>1</sup> R. p. 2.

<sup>2</sup> R. p. 265, line 23-p. 266, line 2.

<sup>3</sup> *Id.*

Appellant from achieving any potential improvement, rendering the MMI finding premature and unsupported. The Respondents' reliance on this Consent Order to limit treatment overlooks Respondents' statutory duty and the uncontroverted medical consensus that Appellant's symptoms stem directly from the admitted repetitive trauma.

Second, Respondents claim that Dr. Barcel's MMI opinion was based on a "clinical plateau" rather than causation alone. This is a distortion of Dr. Barcel's deposition testimony, which reveals that his opinion on MMI was inextricably linked to his belief that Appellant's condition was not work-related—a question already resolved by the Consent Order<sup>4</sup> and confirmed by the Single Commissioner and Full Commission<sup>5</sup>. Dr. Barcel testified that Appellant had reached MMI "from a work-related standpoint"<sup>6</sup>, emphasizing that her symptoms were due to non-occupational factors like flat foot and obesity, not repetitive trauma<sup>7</sup>. He did not opine that Appellant had plateaued clinically for the admitted injury; instead, he conflated MMI with causation, stating that if the condition were deemed work-related, further treatment would be warranted.<sup>8</sup> Dr. Barcel explicitly acknowledged that Appellant's condition could benefit from additional interventions, such as custom orthotics, injections or surgical intervention, which he would recommend if causation were not in dispute.<sup>9</sup> This testimony does not support a finding of clinical plateau for the compensable condition; it merely reiterates a causation opinion that is

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<sup>4</sup> R. p. 2.

<sup>5</sup> See R. p. 10, Finding of Fact No. 20 and R. p. 23, Finding of Fact No. 20; *see also* R. p. 11 Conclusion of Law No. 2 and R. p. 24, Conclusion of Law No. 2.

<sup>6</sup> R. p. 253, lines 12-16.

<sup>7</sup> R. p. 256, lines 4-20.

<sup>8</sup> R. p. 260, lines 7-14.

<sup>9</sup> R. p. 264, line 8-p. 265, line 15.

irrelevant post-Consent Order and in light of the Single Commissioner's and Full Commission's Finding(s) and Conclusion(s) that the Claimant's condition is related to work. Respondents' selective reading ignores that Dr. Barcel's notes and deposition confirm Appellant's ongoing pain and functional limitations, with no evidence of stabilization absent treatment. Without addressing the admitted injury through recommended care, Dr. Barcel's opinion cannot substantiate MMI, as it presupposes no work-related need for improvement.

Third, Respondents argue that the Commission properly credited Dr. Barcel's opinion as the "only competent, contemporaneous medical opinion." This overlooks the uniformity of the entire medical record, where every physician—including Dr. Barcel—agreed on the diagnosis of flat-foot as the root cause of Appellant's lower extremity issues, her consistent history and presentation, and the need for continued treatment.<sup>10</sup> The only divergence between medical providers was on causation, which Dr. Barcel alone questioned, but that issue was settled by the Consent Order<sup>11</sup> and Confirmed by the Single Commissioner and Full Commission.<sup>12</sup> The Commission's decision to elevate Dr. Barcel's opinion ignores this consensus and credits a causation-based view over clinical evidence of ongoing treatability. Moreover, the Commission's Order is not contemporaneous with Appellant's condition; it relies on outdated assessments while disregarding that Respondents' refusal to authorize treatment has stalled any progress. Substantial evidence requires more than cherry-picking one opinion that aligns with denying benefits; here,

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<sup>10</sup> R. p. 265, line 23-p. 266, line 2.

<sup>11</sup> R. p. 2.

<sup>12</sup> R. p. 10, Finding of Fact No. 20 and R. p. 23, Finding of Fact No. 20; *see also* R. p. 11, Conclusion of Law No. 2, and R. p. 24, Conclusion of Law No. 2.

the preponderance shows Appellant's condition remains amenable to improvement, precluding a finding of MMI.

Finally, Respondents dismiss Appellant's position as mere disagreement with the weight of the evidence, asserting it is not reversible error. This misstates the standard of review under S.C. Code Ann. § 1-23-380(5), which requires reversal where findings lack substantial evidence or are arbitrary. The record as a whole does not support MMI; instead, it reveals an internal contradiction in the Full Commission's Order itself. The Commission found that Appellant requires additional treatment for her compensable left-foot condition<sup>13</sup>, yet simultaneously concluded she has reached MMI for that same condition.<sup>14</sup> This irreconcilable inconsistency—acknowledging a need for treatment while declaring no further improvement possible—renders the order arbitrary and unsupported.<sup>15</sup> Respondents' failure to offer any treatment exacerbates this error, as MMI cannot be declared when recommended care has been withheld, preventing evaluation of potential recovery.

## CONCLUSION

In sum, the Commission's MMI finding is not supported by substantial evidence and must be reversed. The medical record, including Dr. Barcel's testimony, demonstrates that Appellant's admitted repetitive trauma injury remains treatable, and Respondents' inaction has artificially perpetuated her condition. The Full Commission's Order must be reversed.

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<sup>13</sup> R. p. 10, Findings of Fact No. 12 and No. 16; R. p. 22-23, Findings of Fact No. 12 and No. 16 .

<sup>14</sup> R. p. 11, Conclusion of Law, No. 5, and R. p. 24, Conclusion of Law, No. 5.

<sup>15</sup> See *Potter v. Spartanburg Sch. Dist. No. 7*, 395 S.C. 17, 23, 716 S.E.2d 123, 126 (Ct. App. 2011) (reversing where Commission's findings were internally inconsistent and lacked evidentiary support).

Respectfully submitted,

A handwritten signature in black ink, consisting of the letters 'S' and 'G' written in a cursive, stylized font.

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