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Jan 12 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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

WCC File No. 1925782

Court of Appeals Case No. 2025-001254

Bilma Sanchez-Martinez, Claimant ..... Appellant,

v.

Techtronic Industries North America Inc., Employer,
and Ace American Insurance Co., Carrier ..... Respondents.

FINAL BRIEF OF RESPONDENTS

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3. Whether the Hearing Commissioner and Full Commission properly found that Respondents were entitled to a credit for overpayment of TTD benefits from June 12, 2023.
4. Whether the Hearing Commissioner and Full Commission properly found that Appellant sustained no permanent partial disability and was therefore not entitled to any award of PPD benefits.

STATEMENT OF THE CASE

This is a workers' compensation appeal by Bilma Sanchez-Martinez ("Appellant") from the Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel (the "Full Commission"), filed on May 2, 2025, which unanimously upheld the Decision and Order of the Hearing Commissioner, Commissioner Avery B. Wilkerson, Jr., entered September 3, 2024. Appellant also appeals the Decision and Order of the Full Commission filed on June 16, 2025, which denied Appellant's Motion for Reconsideration of the Full Commission's May 2, 2025, Order.

This claim arises from an admitted repetitive trauma injury to Appellant's left foot occurring on or about January 24, 2022. Respondents initially denied this claim pending further investigation. However, on December 7, 2022, the parties entered into a Consent Order whereby Respondents agreed, *inter alia*, to accept as compensable Appellant's alleged repetitive trauma injury to her left foot, to provide causally related medical treatment for Appellant's left foot injury until Appellant reached Maximum Medical Improvement ("MMI"), and to initiate Temporary Total Disability ("TTD") benefits. (R. pp. 2-3). Respondents directed care with Dr. Anthony Barcel of Carolina Orthopedic and Neurological Associates, an orthopedic surgeon specializing in the foot and ankle. On May 30, 2023, Dr. Barcel opined that Appellant had reached MMI for her repetitive trauma injury, with no causally-related impairment, no future medical treatment, and no permanent restrictions. (R. pp. 73-75). Dr. Barcel further opined that he was unable to say to a reasonable degree of medical certainty that Appellant's foot condition was causally-related to her alleged repetitive work. (*Id.*). Based on Dr. Barcel's opinions, Respondents suspended further medical treatment and filed a Form 21 Hearing Request on June 12, 2023, seeking suspension of TTD benefits and a determination of Permanent Partial Disability ("PPD") benefits owed to

Appellant. Appellant filed a Form 50 Hearing Request seeking further medical treatment for her left foot and a finding that she had not yet reached MMI. A Hearing on both the Forms 50 and 21 was set for May 20, 2024.

At the Hearing before the Hearing Commissioner, Appellant contended that she had not reached MMI for her left foot condition despite Dr. Barcel's testimony, that she continued to require future medical treatment for her left foot, and that she was entitled to continued TTD benefits. Appellant offered no medical evidence to oppose Dr. Barcel's opinions. Instead, Appellant relied on the opinion of Dr. Christopher Clemow, who had not seen Appellant since March 14, 2022, and who declined to offer an opinion as to MMI due to same, both via questionnaire as well as in his deposition testimony. (R. p. 225). Appellant did not testify at the Hearing.

Rather than deny the claim in its entirety based on the causation opinion of Dr. Barcel, Respondents took the position supported by the substantial evidence in the record—that Appellant had reached MMI and was not entitled to further medical treatment or any further benefits. Respondents also asserted that, as such, TTD benefits should be suspended with credit extending back to the filing of the Form 21 Hearing Request on June 12, 2023, and requested a determination of permanent impairment, if any, maintaining that none exists that is actually related to Appellant's employment.

The Hearing Commissioner properly found that Appellant had reached MMI, that she was not entitled to further medical treatment for her work-related repetitive trauma, and that TTD benefits could be suspended, with a credit for overpaid TTD owed to Respondents. Prior to the issuance of an Order, but after provision to both parties of the Hearing Commissioner's Order

Instructions, Appellant filed a Motion to Reconsider, which was properly denied. On September 3, 2024, the Hearing Commissioner issued his Order outlining the above findings.

On September 10, 2024, Appellant filed her Form 30 Notice of Appeal from the Hearing Commissioner's Order. In short, Appellant argued that the Single Commissioner erred in finding (a) Appellant had reached MMI, (b) Appellant had no permanent impairment as a result of her repetitive work; and (c) Appellant requires no further treatment as a result of her repetitive work. A hearing before the Full Commission was held on March 10, 2025, during which Respondents contended that the Single Commissioner properly found, based on substantial weight evidence in the record including Dr. Barcel's evaluation note and deposition testimony, that Appellant had reached MMI, that Appellant had no causally related impairment or permanent restrictions, that Appellant had no future medical treatment causally-related to her compensable repetitive work trauma according to Dr. Barcel, and that Respondents could properly terminate TTD benefits. On May 2, 2025, the Full Commission affirmed the Order of the Hearing Commissioner in its entirety, and Appellant's May 7, 2025, Motion to Reconsider was properly denied on June 16, 2025.

This appeal follows.

STATEMENT OF FACTS

While this claim was denied, Appellant sought unauthorized treatment with Dr. Christian Clemow of AnMed Health Orthopedics and Sports Medicine and Dr. Scott Bastian, DPM, a Podiatrist at Palmetto Podiatry of Anderon. Dr. Clemow testified in his deposition that he is board certified in Family Medicine and Primary Care Sport Medicine. (R. p. 202). On January 24, 2022, Appellant reported to Dr. Clemow with left medial ankle pain which she stated had been occurring for several weeks as a result of being on her feet at work for extended periods of time. (R. p. 36). Appellant's x-rays revealed a healed 5th metatarsal shaft fracture but nothing else, and she was

placed in a boot. (*Id.*). During her next visit with Dr. Clemow on February 21, 2022, Appellant reported continued left ankle pain and was diagnosed with posterior tibial tendon dysfunction. (R. pp. 43-46). Dr. Clemow sent Appellant to physical therapy for orthotics and referred her to podiatry after an MRI of her left ankle revealed tenosynovitis medially and laterally in the left ankle, mild sinus tarsal syndrome, and no tendon tear or breakdown. (*Id.*; R. pp. 47-48).

Dr. Bastian treated Appellant from March 21, 2022, through June 30, 2022, and diagnosed her with tibialis posterior tendinitis, left tarsal tunnel syndrome, a sprain of her lateral ligament of the ankle joint, and dysfunction of the posterior tibial tendon. (R. pp. 50-52). At her final visit with Dr. Bastian on June 30, 2022, he noted the following:

> The patient has been compliant with treatment recommendations. Patient following up left tarsal tunnel. She states the pain is a lot better than before. She does have some inflammation on left medial, but she states it's due to last weekend activities. She stopped wearing the CAM boot a month ago. She restarted Physical Therapy. The steroid injection #1 helped a lot.

(R. pp. 67-69). Appellant did not return to either Dr. Clemow or Dr. Bastian after June of 2022.

On December 7, 2022, the parties entered a Consent Order whereby Defendants, *inter alia*: (1) admitted that Appellant "sustained a compensable injury to her left foot as a result of repetitive trauma culminating on January 24, 2022;" (2) agreed to "provide causally-related medical treatment for [Appellant's] left foot injury with a doctor of their choosing;" and (3) agreed to pay a compromised amount of TTD benefits as well as place Appellant on running TTD benefits until termination under the Act is proper. (R. pp. 2-3). Respondents directed care with Dr. Anthony Barcel of Carolina Orthopedic and Neurosurgical Associates. Dr. Barcel testified during his deposition that he is board certified in orthopedic surgery, that he specializes in foot and ankle orthopedics, with approximately 75-80% of his practice being foot and ankle patients, and that he treats patients with Appellant's condition on a daily basis. (R. pp. 243-244; R. pp. 268-269).

On May 30, 2023, Appellant presented to Dr. Barcel and reported that she initially started limping sometime around October 2021, but that she could not recall a specific date. (R. pp. 73-75). Appellant denied a specific injury, and reported an atraumatic increase in pain that she believed was related to her being on her feet at work and loading boxes into a truck. (*Id.*). Dr. Barcel ruled out tarsal tunnel syndrome based upon Appellants EMG/NCS result and diagnosed Appellant with adult acquired flatfoot with posterior tibial tendon dysfunction. (*Id.*). Dr. Barcel opined that while Appellant would benefit from a flatfoot reconstruction surgery, he "could not say to a reasonable degree of medical certainty that [Appellant's] adult acquired flatfoot and posterior tibial tendon deficiency ... is causally related to any specific workplace injury or workplace causative factor." (*Id.*). Dr. Barcel clarified that "certainly, [Appellant] does have a demanding job, and she is on her feet quite a bit, but the development of adult acquired flatfoot can happen unilaterally or bilaterally [and] there is likely a genetic component." (*Id.*). As such, Dr. Barcel stated that he does "not feel again that [Appellant's condition] is causally related to her work." (*Id.*).

Dr. Barcel confirmed under oath that his opinion was unchanged from his May 30, 2023, evaluation of Appellant. Specifically, Dr. Barcel reiterated that he believed Appellant's complaints, currently and at all times during this claim, have been the result of a natural progression of Appellant's pre-existing adult acquired flatfoot, and that, to a reasonable degree of medical certainty, Appellant's condition is not casually related to her working conditions. (R. p. 252). In fact, Dr. Barcel testified that Appellant's complaints could have been brough on simply be walking in a grocery store. (*Id.*). Accordingly, Dr. Barcel confirmed that, to a reasonable degree of medical certainty: (1) Appellant's complaints are related to a natural progression of her underlying pre-existing condition, not her working conditions; (2) Appellant has reached MMI for

her alleged repetitive work trauma; (3) Appellant has not causally related impairment related to her alleged repetitive work trauma; (4) any and all further treatment recommended for Appellant's adult acquired flatfoot condition is unrelated to her alleged repetitive work trauma; and (5) Appellant has no permanent work restrictions related to her alleged repetitive work trauma. (R. pp. 252-254).

STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act (APA) gives judicial review of decisions by the Commission." *Hartzell v. Palmetto Collision, LLC*, 415 S.C. 617, 622, 785 S.E.2d 194, 197 (2016). It is well established that "the Commission is the ultimate fact finder" in workers' compensation cases, and its findings "must be affirmed if they are supported by substantial evidence." *Holmes v. Nat'l Serv. Indus.*, 395 S.C. 305, 308, 717 S.E.2d 751, 752 (2011); see also *Muir v. CR Bard, Inc.*, 336 S.C. 266, 282, 519 S.E.2d 583 (Ct. App. 1999) ("The findings of the Commission are presumed correct and will be set aside only if unsupported by substantial evidence"); *Jordan v. Kelly Co.*, 381 S.C. 483, 674 S.E.2d 166 (2009); *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). Substantial evidence is evidence which, when viewed as a whole, "would allow reasonable minds to reach the conclusion the agency reached." *Pierre*, 386 S.C. at 540, 684 S.E.2d at 618. This standard does not permit substitution of judicial judgment for agency judgment; a finding "upon which reasonable men might differ will not be set aside." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981).

ARGUMENT

I. THE SINGLE COMMISSIONER AND FULL COMMISSION PROPERLY FOUND THAT APPELLANT REACHED MMI FOR HER ADMITTED REPETITIVE TRAUMA.

Appellant contends Dr. Barcel's MMI opinion was flawed because it was "based solely" on his view that her condition was not causally related to her work, and that the December 7, 2022, Consent Order foreclosed that conclusion. That contention is legally and factually unsound. The Consent Order established compensability and an obligation to provide causally-related treatment until MMI; it did not immunize the Appellant from a medical determination that she had reached a clinical plateau. The Commission's MMI finding here is supported by substantial, uncontroverted medical testimony from the authorized treating orthopedist and should be affirmed.

a. The December 7, 2022, Consent Order Established Compensability—Not an Indefinite Entitlement to Unrelated Treatment.

The Consent Order required Respondents to provide *causally related* medical treatment for Appellant's left foot injury until she reached MMI. It did not—and could not—guarantee indefinite medical treatment unrelated to the compensable injury. The Consent Order left intact the authorized treating physician's duty to determine, in good faith and to a reasonable degree of medical certainty, (1) whether further care would tend to lessen the degree of impairment and (2) whether any ongoing complaints remained work-related.

"Maximum medical improvement" marks the point at which "there is no further medical care or treatment which will tend to lessen the degree of impairment." *O'Banner v. Westinghouse Elec. Corp.*, 319 S.C. 24, 27, 459 S.E.2d 324, 326 (Ct. App. 1995). Once that point is reached, the entitlement to temporary benefits ceases, and any additional treatment must be both reasonable and *causally related* to the compensable condition. The Consent Order, therefore, did not prevent

Dr. Barcel from determining that Appellant had reached MMI for her work-related injury, even if she continued to experience symptoms from an unrelated or naturally progressive condition.

b. Dr. Barcel's Testimony Demonstrates That His MMI Opinion Was Based on Clinic Plateau—Not Causation Alone.

Appellant's argument collapses factual distinctions the witness repeatedly made. Dr. Barcel unequivocally testified that Appellant had reached MMI. When asked directly, he answered: "I would say yes." (R. p. 253). He then confirmed, to a reasonable degree of medical certainty, that Appellant had no impairment caused by her working conditions and required no future medical treatment causally related to her described work activities (R. p. 252-253). He also stated she had no permanent work-related restrictions (R. p. 253).

Moreover, Dr. Barcel described Appellant's pathology as a "pretty standard flatfoot" with "nothing that was clearly torn or broken" and explained that the presentation reflected the natural progression of adult acquired flatfoot rather than an acute, correctable work injury (R. p. 252). He emphasized that the clinical picture could "just as easily have happened walking through the grocery store," illustrating that his causation analysis explained etiology — not the existence (or lack) of a clinical plateau that supports an MMI finding (*Id.*).

Thus, the record shows two distinct components in his testimony: (1) an etiology opinion that the condition most likely reflected natural progression rather than occupational causation, and (2) a separate, independent medical determination that Appellant had reached MMI and required no further treatment for any *work-related* condition. That distinction is dispositive.

c. The Commission Permissibly Credited the Only Competent, Contemporaneous Medical Opinion Present.

Under the Administrative Procedures Act, this Court will affirm the Commission when its conclusions are supported by substantial evidence. *Holmes*, 395 S.C. at 308, 717 S.E.2d at 752;

see also *Muir*, 336 S.C. at 282, 519 S.E.2d 583 ("The findings of the Commission are presumed correct and will be set aside only if unsupported by substantial evidence"); *Jordan*, 381 S.C. 483, 674 S.E.2d 166; *Pierre*, 386 S.C. at 540, 689 S.E.2d at 618. Substantial evidence exists when a reasonable mind could accept the evidence as adequate to support the conclusion. *Holmes*, 395 S.C. at 308, 717 S.E.2d at 752.

Here, the Commission credited the testimony of the authorized treating physician—a board-certified orthopedic surgeon who specializes in foot and ankle conditions and who testified that he sees this flatfoot condition "every single week" (R. pp. 267-268). The Appellant offered no contemporaneous medical opinion contradicting the MMI finding: Dr. Clemow expressly declined to offer an MMI opinion (because he had not seen the patient recently) (R. p. 225), and no other physician testified that further treatment would lessen any work-related impairment. Under these circumstances, the Commission's reliance on Dr. Barcel's uncontroverted testimony constitutes substantial evidence warranting affirmation.

d. Appellant's Disagreement with The Weight of The Evidence is Not Reversible Error.

Appellant effectively asks the Court to re-weigh the evidence and substitute its judgment for the Commission's. That is not the standard of review. "A finding upon which reasonable men might differ will not be set aside." *Lyles v. Quantum Chem. Co.*, 315 S.C. 440, 445, 434 S.E.2d 292 (Ct. App. 1993) (citing *Lark*, 276 S.C. at 136, 276 S.E.2d at 307). The Commission was entitled to credit the testimony of a specialist who (a) examined Appellant, (b) documented a clinical plateau, and (c) testified clearly that Appellant had no ratable work-related impairment, no future work-related treatment needs, and no work-related permanent restrictions. That suffices under the substantial-evidence standard.

II. THE HEARING COMMISSIONER AND FULL COMMISSION PROPERLY FOUND THAT RESPONDENTS MAY SUSPEND TTD BENEFITS UPON APPELLANT REACHING MMI AND ARE ENTITLED TO CREDIT FOR OVERPAYMENT OF TTD BENEFITS FROM JUNE 12, 2023.

The Hearing Commissioner and Full Commission correctly found that Respondents were authorized to suspend payment of TTD benefits once Appellant reached MMI. The law in South Carolina is clear:

> Benefits accrue along a time continuum; temporary total disability (TTD) benefits are available from the date of injury through the date of maximum medical improvement (MMI), and post-MMI benefits may be awarded as either a permanent total or partial disability, or as a percentage of impairment to a scheduled member.

Hendricks v. Pickens County, 335 S.C. 405, 410, 517 S.E.2d 698, 700 (Ct. App. 1999). Because the Commission properly determined—based on substantial medical evidence—that Appellant reached MMI on May 30, 2023, she was no longer legally entitled to TTD benefits thereafter. *See id.*

Dr. Barcel testified unequivocally that Appellant had reached MMI and that she had no remaining work-related impairment, no need for future treatment, and no permanent restrictions (R. p. 253). This testimony was uncontroverted and provided the factual foundation for the Commission's finding. Once Appellant reached MMI, Respondents were entitled to file a Form 21 Stop-Pay Request seeking an order permitting suspension of TTD and recognition of a credit for any payments made beyond that date.

Accordingly, the Hearing Commissioner properly granted Respondents credit for overpayment of TTD benefits from June 12, 2023—the date of the Form 21—and properly authorized suspension of further TTD benefits. To hold otherwise would contradict the express holding in *Hendricks* and undermine the well-settled principle that temporary benefits terminate

at MMI. The Full Commission therefore committed no error in affirming the Hearing Commissioner's order.

III. THE HEARING COMMISSIONER AND FULL COMMISSION PROPERLY FOUND THAT APPELLANT SUSTAINED NO PERMANENT PARTIAL DISABILITY AND IS THEREFORE NOT ENTITLED TO ANY AWARD OF PPD BENEFITS.

The Hearing Commissioner and Full Commission also correctly found that Appellant failed to establish any permanent partial disability ("PPD"). The only competent medical testimony on impairment came from Dr. Barcel, the authorized treating physician. When asked whether Appellant sustained any permanent impairment as a result of her work, Dr. Barcel answered emphatically, "No" (R. p. 253). He further testified that she required no future medical treatment, and no permanent restrictions related to her work or any workplace accident (*Id.*).

Appellant offered no contrary medical evidence. Dr. Clemow expressly declined to render an opinion as to MMI status and never opined as to impairment. (R. p. 225). Excluding Dr. Barcel, no other provider addressed impairment or disability. Thus, the only evidence in the record regarding impairment supports the Commission's finding that Appellant sustained no ratable, work-related impairment and is therefore ineligible for a PPD award.

Because the authorized treating physician's testimony constitutes substantial evidence supporting the Commission's determination, this Court should affirm.

CONCLUSION

For the reasons set forth above, the Full Commission's Decision and Order should be affirmed in its entirety. Substantial, competent evidence supports each of the Full Commission's findings, including that Appellant reached maximum medical improvement, sustained no work-related impairment, required no further medical treatment, and is not entitled to continuing TTD or PPD benefits. The Commission properly relied on the uncontroverted testimony of Dr. Anthony

Barcel—the authorized treating physician and board-certified orthopedic specialist—whose opinions satisfy every element of the substantial-evidence standard.

While the result may be disappointing to Appellant, it is compelled by both the evidence and South Carolina law. The Workers' Compensation Act affords benefits only for disability causally related to covered employment, not for the natural progression of unrelated conditions. The Commission applied those principles faithfully and within its discretion. Its Decision and Order should therefore be affirmed in full.

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