

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Melody James, Commissioner
Aisha Taylor, Commissioner
Cynthia Dooley, Commissioner
Commissioners for the Appellate Panel

APPELLATE CASE NO.: 2024-001822
W.C.C. FILE NO.: 1925084

Christina Walthour, ClaimantRESPONDENT,

v.

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

BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the Workers' Compensation Commission erred as a matter of law in finding Respondent sustained a compensable cervical injury arising from her July 11, 2019, work accident, where substantial evidence, including unrebutted medical causation opinions, supports the Commission's findings and where Appellants offered no competing medical causation testimony.
2. Whether Appellants carried their burden to establish the equitable defense of laches where the record demonstrates continuous litigation activity, Appellants actively participated in discovery and hearings, and Appellants failed to prove the material prejudice required for this extraordinary remedy.
3. Whether the Commission erred in finding Respondent provided timely notice and in evaluating the medical treatment evidence, where Respondent reported her work accident within hours and where the Commission, as ultimate factfinder, properly weighed conflicting evidence regarding the evolution of her symptoms.
4. Whether the Single Commissioner abused his discretion in denying Appellants' Motion for continuance, where Appellants failed to demonstrate actual prejudice and where the procedural history reveals that discovery delays resulted primarily from Appellants' own litigation choices.

STATEMENT OF THE CASE AND FACTS

A. Nature of This Appeal

This workers' compensation appeal challenges the Commission's determination that Respondent sustained a compensable cervical spine injury with myelopathy and radiculopathy, which originated from a workplace accident on July 11, 2019. Appellants request that this Court reweigh the medical evidence, scrutinize the credibility assessments made by the two levels of the Commission, and convert the equitable doctrine of laches into a rigid time bar. That is not the proper scope of appellate review.

B. The July 11, 2019, Work Accident and Immediate Report

On July 11, 2019, Respondent sustained an injury while lifting or pulling down a 150-pound pallet at her workplace. (R. pp. 30-31, 759-761). Within 11 hours (on July 12, 2019), Respondent reported the accident to her employer through the workplace injury triage and reporting system. (*Id.*). The contemporaneous accident report documented Respondent's complaints of constant pain in her lower back and "constant sharp pain on the back of her shoulder on the shoulder blade," noting her reluctance to lift even a cup with her left arm due to pain. (R. p. 761).

This prompt report provided Appellants with immediate notice of a work-related injury. The Commission explicitly found that "Claimant timely gave notice of her injury by accident to her Employer promptly in accordance with the Act." (R. pp. 30-31, 759-761).

C. Authorized Medical Treatment and Return to Work

Following the accident, Appellants authorized medical treatment at Doctors Care, where Respondent was examined on July 14 and July 16, 2019. (R. pp. 30, 543-544, 562-570). She received medication and work restrictions, and on July 16, 2019, was released to full-duty work.

(R. pp. 570, 577). Dr. Chun Kim, who treated Respondent at Doctors Care, subsequently opined to a reasonable degree of medical certainty that Respondent was injured at work and that her symptoms were caused or aggravated by the July 11, 2019, accident. (R. pp. 30, 539).

Respondent returned to work but was terminated shortly thereafter. (R. pp. 11-12, 323-324).

D. Development of Cervical Symptoms and Subsequent Medical Care

Following her return to work and subsequent termination, Respondent's symptoms evolved and worsened. On August 11, 2019, approximately one month after the accident, she presented to the Prisma Health Richland emergency room. (R. p. 887). In September 2019, she was seen at Hopkins Family Practice, where she reported experiencing pain in the right shoulder, back, and bilateral arms and hands, accompanied by neurological symptoms. (R. pp. 685-688). She was subsequently referred to orthopedics.

Dr. John Clavet conducted electromyography and nerve conduction studies (EMG/NCS) on October 8, 2019, which identified C6-7 radiculopathy on the right side. Consequently, a recommendation was made for a cervical MRI due to concerns regarding myelopathic symptoms. (R. pp. 30, 578-582).

E. Diagnosis and Surgical Treatment of Severe Cervical Pathology

Respondent was referred to board-certified orthopedic surgeon Dr. Paul DeHoll. On October 14, 2019, Dr. DeHoll reviewed Respondent's cervical MRI, which indicated "right-sided extrusion at C4-5 with flattening of the cord and myelomalacia and C5-6 severe stenosis." (R. pp. 493-495). Dr. DeHoll diagnosed severe stenosis with myelomalacia of the spinal cord at three levels and recommended a 3-level anterior cervical discectomy and fusion (ACDF). (*Id.*)

Dr. DeHoll performed the 3-level ACDF surgery on November 12, 2019. (R. pp. 31, 487-488). Respondent continued to receive follow-up care from Dr. DeHoll through January 16, 2020. (R. pp. 508-510).

Dr. DeHoll subsequently opined, to a reasonable degree of medical certainty, that Respondent's cervical spine injuries were aggravated by her work-related accident on July 11, 2019, and that she will require future medical treatment, including a C3-4 fusion and diagnostic imaging, as a result of that work accident. (R. pp. 30-31, 194-195, 471-473).

F. Independent Medical Examination and Additional Causation Evidence

On October 12, 2021, an independent medical examination (IME) was performed by Dr. Shailesh Patel, a board-certified physical medicine and rehabilitation specialist. (R. pp. 30, 519-523). Dr. Patel opined, to a reasonable degree of medical certainty, that: (a) Respondent sustained a work-related injury to her cervical spine causing myelopathic spinal cord injury affecting her bilateral upper extremities; (b) the cervical fusion performed by Dr. DeHoll was appropriate and medically necessary; (c) Respondent's injuries were caused by her work accident; (d) her subsequent motor vehicle accident did not aggravate her neck condition; and (e) Respondent should remain off work and requires additional treatment, including a C3-4 fusion. (R. pp. 30-31, 405-410, 519-523).

Dr. Patel explained that disc extrusions causing myelomalacia are generally of traumatic origin, and that "the closest trauma here is the July 11th work injury." (R. pp. 381-387).

G. Critical Absence of Any Contrary Medical Evidence from Appellants

Throughout this litigation, Appellants have offered no medical opinion to a reasonable degree of medical certainty contradicting the causation opinions of Dr. DeHoll, Dr. Patel, and Dr. Kim. Both the Single Commissioner and the Appellate Panel specifically found:

"That Defendants proffered no medical opinion to a reasonable degree of medical certainty from any doctor with a differing opinion regarding causation in this case and proffered no medical opinion from any doctor that Claimant's injuries came from anywhere other than from her work-related accident that occurred on July 11, 2019."

(R. p. 30).

This complete absence of opposing or contrary medical evidence is critical to the substantial evidence analysis.

H. The June 2020 Motor Vehicle Accident

On June 13, 2020, Respondent was involved in a motor vehicle accident. (R. pp. 605-678). Medical records from this incident indicate negative CT scans of her cervical spine and head, with only minor abrasions. (*Id.*). Dr. Patel specifically reviewed these records and expressed the opinion that the motor vehicle accident did not increase Respondent's neck pain nor aggravate her cervical condition. (R. pp. 14, 400-401, 408). Again, Appellants did not provide any medical opinion countering this assessment. (R. p. 30).

I. Procedural History

Respondent filed her initial Form 50 (Notice of Claim) on August 18, 2020. Although the claim was initially closed, it was subsequently reopened when Respondent filed a Form 50 (Request for Hearing) on June 4, 2021, thereby scheduling a hearing for October 20, 2021. In accordance with a consent discovery order, Respondent filed an additional hearing request on October 15, 2021, with a hearing date set for February 1, 2022. Nevertheless, on January 31, 2022, Respondent withdrew that hearing request.

On September 1, 2023, Respondent filed a new Form 50 hearing request. (R. pp. 58-61). Appellants filed their Form 51 Answer on September 29, 2023. (R. pp. 62-65). Respondent's

deposition was held on November 16, 2023, 13 days before the scheduled hearing on November 29, 2023. (R. p. 112).

Appellants filed a Motion for continuance on November 28, 2023, the day before the hearing, which the Single Commissioner subsequently denied. (R. pp. 459-471). The hearing proceeded as scheduled on November 29, 2023.

J. Commission Decisions

On April 16, 2024, the Single Commissioner issued a comprehensive Decision and Order finding the claim compensable and granting medical benefits and temporary total disability benefits. (R. pp. 8-21, 31). The Single Commissioner specifically found Respondent credible, observed that she "appeared to be in genuine discomfort at the hearing," and found substantial medical evidence supporting causation. (R. pp. 19, 31).

Appellants submitted their appeal to the Appellate Panel, which convened to hear oral arguments on July 15, 2024. Subsequently, on October 3, 2024, the Appellate Panel issued its Decision and Order, affirming the previous ruling with specified amendments (R. pp. 22-35). The Panel conducted an independent review, including a comprehensive analysis of laches, and determined that Appellants did not establish either an unreasonable delay or material prejudice. (R. pp. 31-34).

Appellants now appeal to this Court.

STANDARD OF REVIEW

A. The Commission Is the Ultimate Factfinder

The Administrative Procedures Act (APA) governs this Court's review of Workers' Compensation Commission decisions and is highly deferential to the Commission's factual findings. "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).

This Court does not reweigh evidence or substitute its judgment for that of the Commission. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981).

B. Substantial Evidence Standard

Under the APA, this Court may reverse or modify the Commission's decision only when "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); S.C. Code Ann. § 1-23-380(5)(d)-(e).

"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)).

Critically, where substantial evidence supports the Commission's findings, this Court must affirm even if the record could support a different conclusion.

C. Respondent Bears Burden of Proof; Appellants Bear Burden on Affirmative Defenses

"The claimant 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)).

However, Appellants bear the burden of proving affirmative defenses such as laches. "The burden of proof is upon the person claiming laches." *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 432, 673 S.E.2d 448, 456 (2009).

ARGUMENT

I. THE COMMISSION'S FINDING OF A COMPENSABLE CERVICAL INJURY IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND MUST BE AFFIRMED WHERE APPELLANTS PRESENTED NO CONTRARY MEDICAL CAUSATION OPINION

Appellants' first argument, styled as "collapsing two distinct injury events," fundamentally misrepresents both the role of the Commission and the record. This case does not involve the Commission neglecting objective evidence or committing a legal error. Instead, the Commission fulfilled its fundamental duty: evaluating competing evidence, assessing credibility, and making factual findings based on substantial medical testimony. These findings must be upheld.

A. Appellants' "Two Distinct Injuries" Theory Is a Factual Argument Already Rejected by Two Levels of the Commission

Appellants present their initial issue as alleging that the Commission committed an error of law by "collapsing two distinct injury events into a single compensable injury." (Appellants' Brief at 1, 9-12). However, this framing is misleading. The pertinent question before this Court is not whether Appellants can construct an alternative narrative from selected parts of the record, a capability they unquestionably possess. Instead, the only inquiry is whether there is substantial evidence supporting the Commission's findings.

Both the Single Commissioner and the Appellate Panel examined all pertinent evidence as recited by Appellants: the initial diagnoses from Doctors Care, the one-month interval preceding

the emergency room visit, the absence of the phrase "work-related" in certain medical documentation, and Respondent's right-sided symptoms documented in subsequent records. Despite these considerations, both tiers of the Commission determined that Respondent sustained a compensable cervical injury resulting from the work-related accident on July 11, 2019.

The Single Commissioner specifically found "[t]hat on or about July 11, 2019, Claimant sustained compensable injuries by accident to her neck at C3-4, C4-5, C5-6, and C6-7, with a myelopathic spinal cord injury and radicular symptoms that affect her bilateral shoulders, bilateral upper extremities, bilateral hands, and bilateral fingers..." (R. p. 18).

This finding was based on "the greater weight of the evidence, including the testimony of the witnesses, medical reports, and other documentary evidence." (*Id.*). The Appellate Panel independently reviewed the record and reached the same conclusion. (R. p. 30).

Appellants request that this Court overturn the previous findings by reevaluating the evidence and endorsing their favored interpretation. Such a practice is explicitly contrary to the role of appellate courts in administrative appeals.

B. Substantial Medical Evidence Supports the Commission's Causation Findings

The Commission's compensability finding rests on a solid foundation of medical causation evidence:

1. Paul DeHoll, MD, Board-Certified Orthopedic Surgeon

Dr. DeHoll treated Respondent and performed her 3-level ACDF surgery. Subsequently, he completed a comprehensive questionnaire opining to a reasonable degree of medical certainty that: (a) Respondent's cervical spine injuries were aggravated by her work-related accident on July 11, 2019; (b) she will require future medical treatment including a C3-4 fusion, as a result of that

accident; and (c) she has permanent sedentary work restrictions as a result. (R. pp. 30-31, 194-195, 471-473).

During his deposition, Dr. DeHoll testified that he stands by all opinions expressed in the questionnaire and that these opinions were stated to a reasonable degree of medical certainty. (R. p. 195).

2. Shailesh Patel, MD, Board-Certified Physical Medicine and Rehabilitation Specialist

Dr. Patel conducted an IME on October 12, 2021, and provided comprehensive testimony linking Respondent's cervical pathology to her work-related accident. His principal opinions include: (a) disc extrusions causing myelomalacia are typically traumatic in origin, and "the closest trauma here is the July 11th work injury" (R. pp. 381-387); (b) Respondent sustained a work-related injury to her cervical spine causing myelopathic spinal cord injury affecting both upper extremities (R. p. 408); (c) the 3-level cervical fusion was appropriate and medically necessary (R. pp. 405-406); (d) the June 2020 motor vehicle accident did not aggravate her cervical condition (R. p. 408); (e) Respondent should remain off work due to her injuries (R. p. 410).

All of Dr. Patel's opinions were stated to a reasonable degree of medical certainty. (R. p. 404).

3. Chun Kim, MD, Authorized Treating Physician

Even Dr. Kim, who examined Respondent solely in the immediate aftermath of the accident, subsequently opined that Respondent sustained an injury at work and that her symptoms were caused or aggravated by the accident on July 11, 2019. (R. p. 30, 539).

4. Diagnostic Testing

The medical record includes objective diagnostic findings supporting the causation opinions: (a) EMG/NCS showing C6-7 radiculopathy (R. pp. 578-582); (b) cervical MRI revealing

severe multi-level stenosis with myelomalacia (R. pp. 493-495); and (c) documented myelopathic symptoms including positive Hoffman's reflex, positive Spurling's sign, and hyperactive reflexes. (R. pp. 385-386).

This is not speculative evidence. These are board-certified physicians rendering opinions within their areas of expertise, supported by objective diagnostic testing, and stated to the requisite degree of medical certainty.

C. Appellants' Attack on Medical Opinion Credibility Improperly Asks This Court to Reweigh Evidence

Appellants dedicate considerable argument to challenging the reliability of the medical causation opinions, asserting that: (a) Dr. DeHoll admitted he did not recall how Respondent's injury occurred while completing his questionnaire; (b) Dr. Patel based his conclusions on Respondent's history provided "more than two years" after the accident; (c) certain medical histories exhibit alleged inconsistencies; and (d) "A medical opinion is only as good as the facts available to the physician." (Appellants' Brief at 12-14)

These arguments all relate to weight, rather than admissibility or legal sufficiency. They are precisely the types of cross-examination points and credibility challenges that parties routinely present to factfinders. The Commission considered these arguments and ultimately rejected them.

Concerning Dr. DeHoll's lack of specific recollection, the Commission was justified in considering his written opinion, his deposition testimony corroborating that opinion, and the objective medical records documenting the severity of Respondent's cervical pathology. Medical practitioners routinely provide opinions based on medical records rather than recollections of conversations from years prior. This is especially pertinent in situations where, as in this case, the physician remembered the patient due to her condition being unusual for her age. (R. p. 191).

Regarding Dr. Patel's reliance on Respondent's medical history, the Commission was justified in acknowledging his expert opinion that the objective diagnostic findings, including severe multi-level stenosis with myelomalacia, positive EMG results, and documented myelopathic symptoms, were indicative of traumatic causation. Furthermore, the Commission may have taken into account that Dr. Patel reviewed contemporaneous medical records from Dr. DeHoll, diagnostic test results, and records from Doctors Care.

Most importantly, Appellants' credibility attacks against Respondent's medical experts do not constitute legal error. They merely demonstrate that Appellants contested the case, which is consistent with the adversarial nature of litigation. The Commission accordingly resolved those contestations unfavorably to Appellants. In the absence of an abuse of discretion or lack of substantial evidence, such a determination must remain in effect.

D. The Absence of Any Competing Medical Causation Opinion from Appellants Is Dispositive

Perhaps most indicative is the fact that the Appellants did not provide any medical expert testimony to challenge the causation opinions linking Respondent's cervical condition to her work accident.

Both the Single Commissioner and the Appellate Panel specifically found:

"That Defendants proffered no medical opinion to a reasonable degree of medical certainty from any doctor with a differing opinion regarding causation in this case and proffered no medical opinion from any doctor that Claimant's injuries came from anywhere other than from her work-related accident that occurred on July 11, 2019."

(R. pp. 18, 30).

This finding is of paramount importance under South Carolina law. When credible medical testimony supports compensability and no opposing medical evidence is provided, the Commission's determination must be upheld. The Commission does not resolve causation issues

through legal semantics or by enumerating the number of days between medical consultations. Instead, it relies on medical evidence to determine causation.

Appellants had ample opportunity to retain their own medical expert to review Respondent's records and to assert that her cervical pathology resulted from pre-existing conditions, the motor vehicle accident, or any other cause besides the work-related accident. They elected not to pursue this course of action.

Presently, on appeal, they request this Court to dismiss the causation opinions of multiple board-certified physicians, which are only based on an argumentative analysis of medical records. Such a task does not fall within the Court's responsibilities. In cases where substantial medical evidence substantiates causation and no opposing medical evidence is available, the Commission's determination must remain upheld.

E. Workers' Compensation Law Does Not Require Claimants to Self-Diagnose Complex Neurological Conditions

Appellants emphasize the fact that initial treatment records primarily addressed low back symptoms, whereas subsequent records indicate complaints on the right side. (Appellants' Brief at 10-12). However, this argument misinterprets the causal considerations within workers' compensation causation.

First, the contemporaneous accident report documented both low back pain and shoulder blade pain. The Commission determined that this report provided timely notice. (R. pp. 30-31, 761).

Second, Dr. Patel explicitly clarified the rationale behind early records emphasizing back and shoulder blade pain rather than "cervical" or "neck" complaints: cervical pathology often causes pain that radiates to the shoulder blade area, and providers without specialization in this field may not recognize referred pain patterns that spine specialists would promptly identify. (R.

pp. 377-378). This expert testimony, which explains the progression of symptoms, was duly acknowledged by the Commission.

Third, the medical testimony established that the myelopathic spinal cord injury, which Respondent demonstrably suffered, can manifest with complex, bilateral symptoms that develop over time. (R. pp. 385-386, 379-380). Severe multi-level stenosis with cord compression does not invariably present with the textbook symptom of "neck pain" on the initial day.

Fourth, and most fundamentally, workers' compensation claimants are not required to correctly diagnose their own injuries or utilize precise anatomical terminology when reporting accidents. They are obligated to report the accident and associated symptoms. Respondent did precisely that (within 11 hours of her injury).

F. Conclusion on Issue I

The Commission's determination of compensability is substantiated by: (a) unrebutted medical causation opinions provided by multiple board-certified physicians; (b) objective diagnostic testing demonstrating significant cervical pathology; (c) expert testimony elucidating the progression of symptoms and referred pain patterns; (d) the Commission's credibility assessments and evaluation of the evidence; and (e) the total absence of any contradictory medical causation evidence from Appellants.

Appellants have not identified any errors of law. They have not demonstrated that the Commission's findings lack support from substantial evidence. They have merely provided an alternative interpretation of contested facts, an interpretation that was rejected at two levels of the Commission.

This Court should affirm the Commission's compensability determination.

II. APPELLANTS FAILED TO PROVE THE EQUITABLE DEFENSE OF LACHES, AND THE COMMISSION'S REJECTION OF THAT DEFENSE IS SUPPORTED BY SUBSTANTIAL EVIDENCE

Appellants' most vigorous argument invokes *Jervey v. Martint Env't, Inc.*, 406 S.C. 210, 750 S.E.2d 90 (2013), and asserts that laches bars this claim as a matter of law. (Appellants' Brief at 21-27). This argument fails for multiple independent reasons: (1) Appellants did not meet the burden of proof regarding the essential elements of laches; (2) the procedural record indicates ongoing litigation activities rather than unexplained abandonment; (3) Appellants failed to prove material prejudice; and (4) *Jervey* is factually distinguishable and substantiates the decision of the Commission in this instance.

A. Laches Requires Proof of Three Elements, All of Which Appellants Failed to Establish

Laches is an equitable defense requiring the party asserting it to prove three elements: "(1) delay, (2) unreasonable delay, and (3) prejudice." *Hallums v. Hallums*, 296 S.C. 195, 199, 371 S.E.2d 525, 528 (1988). Appellants bear the burden of proving all three elements. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 432, 673 S.E.2d 448, 456 (2009).

The Appellate Panel meticulously examined the laches defense and determined that Appellants did not meet their burden of proof. The Panel concluded that there was "no unreasonable delay by Claimant in this matter" based on the pleadings, testimony, and procedural history. (R. pp. 31-32). Furthermore, the Panel established that "no material prejudice to Defendants" existed and observed that, in contrast to the eleven-year delay in *Richey v. Dickinson*, there was no evidence of missing files, inaccessible medical records, or unavailable healthcare providers. (*Id.*).

These are factual findings entitled to deference. Appellants have not demonstrated that they are clearly erroneous or devoid of substantial evidence.

B. The Procedural History Demonstrates Ongoing Litigation Activity, Not Unexplained Abandonment

Appellants' argument based on laches primarily hinges on a mathematical computation: calculating the days elapsed between pleadings and asserting that any interval surpassing 450 days (as exemplified in *Jervey*) invariably constitutes an unreasonable delay. (Appellants' Brief at 21-27). This rigid methodology disregards both the legal principles and the factual record.

1. The Claim Was Never Abandoned

The procedural history shows continuous litigation activity:

- August 18, 2020: Initial Form 50 filed;
- June 4, 2021: Form 50 hearing request after initial closure;
- October 13, 2021: Joint consent order for additional discovery;
- October 28, 2021: New Form 50 hearing request;
- January 21, 2022: Form 58 pre-hearing brief filed;
- January 31, 2022: Hearing withdrawn (the day before the scheduled hearing);
- September 1, 2023: New Form 50 hearing request filed;
- September 29, 2023: Appellants filed Form 51 Answer;
- November 14, 2023: Respondent's pre-hearing brief;
- November 21, 2023: Appellants' pre-hearing brief;
- November 28, 2023: Appellants' amended pre-hearing brief and Motion for continuance; and
- November 29, 2023: Hearing held. (Appellants' Brief at 2-3; R. p. 203).

This is not a situation in which a claimant filed a claim and then ceased all involvement for several years. Respondent submitted numerous hearing requests, engaged in consent discovery procedures, submitted pre-hearing briefs, and participated in depositions. Most notably, the

Appellants were actively involved throughout the process by filing responses, requesting discovery, submitting motions, and attending hearings.

2. Gaps Between Filings Do Not Equal Unreasonable Delay

The principal "delay" that Appellants cite is the 19-month interval from January 31, 2022 (the date on which Respondent withdrew her hearing request) to September 1, 2023 (the date on which she submitted a new hearing request). (Appellants' Brief at 8, 20).

However, the mere passage of time does not constitute an unreasonable delay. The Commission must consider the circumstances, including: (a) the claim remained pending at the Commission; it was neither dismissed nor abandoned; (b) discovery disputes preceded the withdrawal, and the record indicates that Respondent's deposition was canceled multiple times in Fall 2021 and January 2022, and Dr. DeHoll's deposition was also canceled. (*Id.* at 7-8, 19-20). The hearing was withdrawn the day before it was scheduled, following the inability to complete discovery; (c) Respondent was receiving ongoing medical treatment. During the period the Appellants characterize as "delay," Respondent was undergoing evaluation for worsening cervical symptoms and potential additional surgery. (R. p. 16); and (d) no statute of limitations was applicable. Unlike tort claims with strict filing deadlines, workers' compensation claims involve continuous medical treatment and evolving disability over time.

The Appellate Panel properly considered these circumstances and found no unreasonable delay. (R. pp. 31-32).

3. Laches Is Fact-Specific, Not a Bright-Line Rule

Appellants invoke *Jervey* to support the proposition that 450 days of inaction automatically establishes laches. (Appellants' Brief at 23-27). However, South Carolina law consistently underscores that "the question of laches is largely a factual one, so each case must be judged on its

own merits." *Richey v. Dickinson*, 359 S.C. 609, 611, 598 S.E.2d 307, 309 (Ct. App. 2004). *See also Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 297, 519 S.E.2d 583, 599 (Ct. App. 1999) ("whether laches applies in a particular situation is highly fact-specific, so each case must be judged on its own merits").

The Commission conducted a fact-specific analysis and concluded that, under the circumstances of this case, laches was not applicable. *Richey*, 359 S.C. at 611, 598 S.E.2d at 309. That determination is entitled to deference.

C. Appellants Failed to Prove Material Prejudice (The Critical Third Element)

Even if Appellants could establish delay and characterize it as unreasonable, their laches defense nonetheless fails because they did not demonstrate material prejudice.

1. The Burden Is on Appellants to Prove Prejudice

"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." *Historic Charleston Holdings*, 381 S.C. at 432, 673 S.E.2d at 456 (emphasis added).

Prejudice is not presumed. It must be proven. *Richey*, 359 S.C. at 612, 598 S.E.2d at 309 (requiring the asserting party to show "material prejudice").

2. Appellants' Claimed "Prejudice" Is Litigation Inconvenience, Not Equitable Harm

Appellants claim they were prejudiced by: (a) inability to "contemporaneously investigate" the claim; (b) loss of "control" over medical treatment; (c) deposition scheduling difficulties; (d) late discovery of out-of-state treatment; and (e) having to defend the claim years after the accident. (Appellants' Brief at 15-17, 18-21).

None of these constitute the type of material prejudice required for laches. They are ordinary litigation challenges faced by parties in virtually every workers' compensation case involving delayed diagnosis or symptom evolution.

3. The Record Refutes Appellants' Prejudice Claims

The Appellate Panel specifically found:

"Contrary to the facts in *Richey*, we find there is no material prejudice to Defendants shown in the instant matter. Neither party indicates that their file or their client's file is missing; neither party indicated they could not access medical records; there is not an indication that there are missing medical records or providers that did not respond; and there is not an indication that practices or doctors are unavailable."

(R. p. 32).

This finding is supported by substantial evidence: (a) all medical records were available. Appellants obtained and submitted extensive medical records from multiple providers; (b) all key witnesses testified. Appellants deposed Respondent, Dr. DeHoll, Dr. Patel, Dr. Kim, and Ms. Comer. (R. pp. 70, 186, 372, 413); (c) no evidence was lost, and Appellants do not identify any specific witness who became unavailable, any document that was destroyed, or any demonstrable loss of evidence; (d) Appellants' own litigation choices created discovery challenges; and (e) the record shows multiple cancelled depositions on both sides throughout 2021-2022. (Appellants' Brief at 7-8, 19-20).

4. Loss of Medical "Control" Is Not Laches Prejudice

Appellants contend that they were "deprived" of their statutory right to control medical treatment due to Respondent's independent pursuit of care. (*Id.* at 15-17). This argument conflates two distinct issues: (1) whether the treatment was compensable (a question of merits), and (2) whether laches bars the claim (an issue of equitable defense).

Regarding the merits, the Commission determined that the treatment was causally related to the compensable injury based on un rebutted medical testimony. This conclusion does not imply prejudice due to laches solely because the Appellants were not involved in directing the care, as is the case when a claim is denied.

Furthermore, Appellants' argument regarding a "loss of control" is inherently circular. They assert: Respondent failed to notify them of cervical symptoms; → consequently, they were unable to exercise control over the treatment; → consequently, they suffered prejudice.

However, the Commission determined that Respondent provide timely notice of her work-related accident and consequent injuries. (R. pp. 30-31). Medical evidence subsequently confirmed that her cervical condition originated from the reported accident. The fact that the complete severity of her cervical pathology was not immediately evident does not constitute prejudice due to laches.

5. Discovery Difficulties Are Not Material Prejudice

Appellants raise concerns regarding the timing of the deposition, records originating from out of state, and their inability to complete all necessary discovery before the November 2023 hearing. (Appellants' Brief at 17-21). These issues pertain to discovery management rather than laches prejudice. The Commission possesses extensive discretion in overseeing discovery procedures, and Appellants' appropriate remedy for substantive discovery concerns was to request intervention from the Commission, which they adequately pursued through their Motion for a continuance. The denial of this Motion (as discussed in Section IV below) does not convert discovery difficulties into equitable prejudice that would exclude the possibility of compensation.

D. *Jervey* Is Distinguishable and Does Not Support Appellants' Position

Appellants devote substantial briefing to *Jervey v. Martint Env't, Inc.*, arguing it "controls this claim." (Appellants' Brief at 23-27). A careful reading of *Jervey* reveals it is factually distinguishable and, if anything, substantiates the Commission's decision in this matter.

1. *Jervey* Involved Delay in Asserting a Defense, Not Delay in Prosecuting a Claim

In *Jervey*, the Supreme Court held that an employer's delay in asserting a known defense while paying workers' compensation benefits was barred by laches and waiver. 406 S.C. at 211, 750 S.E.2d at 90-91. The employer was aware of a potential defense, specifically, deviation from the scope of employment, from the outset, but failed to assert it for over 450 days while continuing to pay benefits. The Court determined that laches barred the assertion of this defense because the employer immediately possessed complete knowledge of the factual basis for the defense. Nonetheless, the employer continued to pay benefits, engaged in conduct indicative of a voluntary acknowledgment of liability, and invoked the defense only after the employee had received and relied on ongoing treatment and benefits for more than a year. *Id.*

2. This Case Involves the Opposite Scenario

In this context, Respondent asserted a claim for benefits, rather than a carrier delaying the assertion of a defense while disbursing benefits. The equitable considerations in this scenario are fundamentally different.

In *Jervey*, the prejudice was clear: the claimant received continuous medical treatment and benefits over several years based on the carrier's apparent acceptance of liability, only for the carrier to abruptly reverse course and assert a defense. Terminating benefits after such reliance resulted in demonstrable equitable harm.

In contrast, Appellants here have neither accepted liability nor paid benefits. They have contested the issue of compensability from the outset. Respondent was not lulled into any form of reliance or detrimental reliance. Therefore, the equitable harm that was a driving factor in *Jervey* is not present in this case.

3. The Procedural Posture Is Also Different

In *Jervey*, the employer had all the facts necessary to assert its defense on day one but chose to pay benefits for over 450 days before raising the issue. The delay was inexplicable given the employer's knowledge. Here, the procedural timeline involves: (a) filing a claim (Form 50); (b) pursuing hearing requests; (c) participating in discovery; (d) withdrawing and refile hearing requests; and (e) ultimately proceeding to a merits hearing. This sequence reflects the ordinary progression of litigation in a disputed workers' compensation claim, rather than the deliberate delay while paying benefits that characterized *Jervey*.

4. *Jervey* Supports the Fact-Specific Analysis the Commission Applied

Most importantly, *Jervey* reinforces that laches is fact-specific and equitable. The Supreme Court's analysis focused on the particular facts demonstrating delay, knowledge, and prejudice in that case. *Jervey*, 406 S.C. at 211, 750 S.E.2d at 90-91.

In this instance, the Appellate Panel undertook a similar fact-specific analysis and arrived at a different conclusion based on different facts. This approach precisely aligns with *Jervey's* guidance.

5. If Anything, *Jervey* Suggests Appellants' Own Delay Should Bar Their Defenses

Applying *Jervey's* logic, one could argue that Appellants waived certain defenses by: (a) participating in multiple hearing settings and consent discovery orders in 2021-2022; (b) filing

answers and pre-hearing briefs without asserting laches until late in the process; and (c) actively litigating the case for years before making laches a centerpiece argument.

Of course, Respondent does not press that argument because the claim proceeded through normal litigation channels and both parties engaged appropriately. But Appellants cannot have it both ways: they cannot participate in ongoing litigation for years and then claim that Respondent's participation in that same process constitutes laches.

E. Conclusion on Issue II

The Commission's rejection of the laches defense is supported by substantial evidence and should be affirmed. Appellants failed to prove unreasonable delay under the specific circumstances of this case, and they failed to prove material prejudice. *Jervey* does not compel a different result; it reinforces that laches is fact-specific and that the Commission's factual findings are entitled to deference.

III. THE COMMISSION CORRECTLY FOUND TIMELY NOTICE AND PROPERLY ASSESSED THE MEDICAL TREATMENT EVIDENCE

The third issue raised by Appellants contests the Commission's determinations concerning notice and medical treatment (Appellants' Brief at 14-17). These challenges are unavailing as they are predicated upon fundamental misconceptions of workers' compensation notice obligations and seek to have this Court replace the Commission's factual determinations with its own judgment.

A. Respondent Provided Prompt Notice of Her Work Accident and Resulting Injuries

1. The Commission Found Timely Notice as a Matter of Fact

Both the Single Commissioner and the Appellate Panel expressly found that Respondent provided timely notice:

"That Claimant timely gave notice of her injury by accident to her Employer promptly in accordance with the Act, which [we] find is supported by the greater weight of the evidence including, but not

limited to: Employer's 'Workplace Injury Triage & Reporting Confidential: Incident Report,' which was filled out on July 12, 2019, **within eleven (11) hours** of Claimant's work accident and stated that Claimant had injuries to her back and left shoulder."

(R. pp. 18-19, 30-31, 759-761 (emphasis added)).

This is a factual finding supported by documentary evidence in the record and is entitled to deference.

2. The Incident Report Documented Prompt Notice of Shoulder and Back Pain

The July 12, 2019, incident report (completed within 11 hours of the accident) specifically documented: (a) constant pain in the lower back (below ribs, above buttocks); (b) constant sharp pain "on the back of her shoulder on the shoulder blade"; and (c) reluctance to lift even a cup with her left arm due to pain. (R. p. 761).

This contemporaneous report furnished Appellants with notification of a work-related injury affecting Respondent's back and shoulder regions. Such notification fulfills the requirements stipulated by the Act.

3. Notice Does Not Require Medical Diagnosis or Anatomical Precision

Appellants contend that Respondent "never provided notice of a cervical spine injury" and that, consequently, the Commission "excused" a statutory obligation. (Appellants' Brief at 14-15). This assertion demonstrates a misunderstanding of the notice requirements. In workers' compensation cases, notice does not necessitate claimants to self-diagnose the anatomical origin of their symptoms or to employ medically precise terminology. Instead, notice involves reporting the accident and its ensuing symptoms.

Here, Respondent reported: (a) workplace accident involving lifting a heavy pallet; (b) resulting pain in her back and shoulder blade area; and (c) inability to use her left arm.

The fact that the underlying anatomical cause was subsequently diagnosed as cervical spine pathology with myelomalacia and radiculopathy does not imply that notice was inadequate. Numerous workplace injuries exhibit symptoms that initially manifest in one manner and are eventually diagnosed as originating from a different anatomical source.

4. Dr. Patel's Testimony Explains Why Cervical Pathology May Present as Shoulder Blade Pain

Dr. Patel specifically testified that cervical spine pathology frequently refers pain to the shoulder blade area and that non-specialist providers may not recognize this referred pain pattern: "The neck commonly refers to the shoulder, particularly the shoulder blade and... I wouldn't expect an ER physician or Doctors Care to pick up on the same. However,... any spine specialist would make the connection that the referred pain is coming from the neck." (R. pp. 377-378).

This expert testimony, endorsed by the Commission, explains why initial reports emphasized "shoulder blade" pain rather than "cervical" or "neck" pain. The Commission appropriately took this testimony into account in concluding that Respondent's immediate report of shoulder blade and back pain constituted sufficient notice of the injury, which was subsequently diagnosed as cervical pathology.

B. Appellants' "Unauthorized Treatment" Argument Fails Where They Offered No Medical Evidence That Treatment Was Unrelated to the Compensable Injury

Appellants contend that Respondent "usurped" their right to control medical treatment by independently seeking care after her release from authorized treatment. (Appellants' Brief at 15-17).

This argument fails for multiple reasons:

1. The Commission Found the Treatment Causally Related

The primary flaw in Appellants' argument lies in the fact that the Commission determined, based on substantial medical evidence, that Respondent's cervical treatment was causally related to her compensable work injury. (R. pp. 30-31).

Once causation is established, the fact that a claimant sought treatment independently does not render that treatment non-compensable. The question is whether the treatment was medically necessary for the work-related injury, not whether the carrier pre-approved it.

2. Appellants Presented No Medical Evidence Contradicting Causation

As discussed extensively in Section I above, Appellants presented no medical opinion contradicting the testimony of Dr. DeHoll, Dr. Patel, or Dr. Kim, who assert that Respondent's pathology resulted from her work-related accident. (R. p. 30).

If Appellants intended to contend that Respondent's cervical surgery was "unauthorized" and not connected to her work injury, they were responsible for providing medical evidence to substantiate that claim. They failed to do so.

3. The "Unauthorized Treatment" Argument Is Circular

Appellants' reasoning establishes a paradoxical situation: they assert that they had no prior notice of the cervical injury; → consequently, they could not have authorized the cervical treatment; → therefore, the treatment is deemed "unauthorized"; → and as a result, it should not be compensable.

This reasoning disintegrates if the cervical injury was indeed caused by the reported work accident, which the Commission determined based on substantial medical evidence. An employer cannot evade liability for compensable injuries merely by contending that it did not pre-approve treatment, especially when Respondent reported the accident and the medical evidence confirms causation.

4. Appellants' "Control" Argument Proves Too Much

If Appellants' logic were accepted, carriers could defeat compensability in any case where: (a) a claimant's symptoms evolve or worsen after initial treatment; (b) the claimant seeks additional care independently; and (c) later medical evidence establishes causation.

This would create perverse incentives for carriers to interpret initial injury reports narrowly and subsequently claim that any follow-up treatment is beyond the scope of the "authorized" injury. Such practices do not align with the principles of workers' compensation law.

C. The Commission's Notice Finding Is a Factual Determination Supported by Substantial Evidence

Appellants have not identified any legal error in the analysis presented in the Commission's notice. They have merely contended that the Commission ought to have interpreted the evidence differently, specifically, that the symptom of "shoulder blade" pain did not serve as an indication of cervical pathology.

But that is a factual question the Commission resolved against Appellants based on: (a) the contemporaneous accident report documenting shoulder blade pain within 11 hours; (b) Dr. Patel's expert testimony explaining referred pain patterns; and (c) the medical evidence establishing causation from the reported accident.

Those factual findings are supported by substantial evidence and must be affirmed.

IV. THE SINGLE COMMISSIONER'S DENIAL OF APPELLANTS' MOTION FOR CONTINUANCE WAS NOT AN ABUSE OF DISCRETION

Appellants' final issue challenges the Single Commissioner's denial of their request for continuance, submitted on the day before the November 29, 2023, hearing. (Appellants' Brief at 17-21). This contention does not withstand scrutiny under the applicable abuse-of-discretion standard.

A. The Governing Standard Requires Appellants to Demonstrate Actual Prejudice

1. Trial Court Discretion Applies to Continuance Decisions

The Commission has extensive discretion in overseeing hearings and discovery. A denial of a continuance is subject to review for an abuse of discretion, and a reversal necessitates demonstrating actual prejudice and fundamental unfairness.

Appellants acknowledge this standard, stating: "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." (*Id.* at 17).

The burden is on Appellants to demonstrate such prejudice.

2. Mere Inconvenience Is Not Prejudice

The challenges associated with discovery timing, last-minute document production, and imperfect preparation are commonplace in litigation. Such issues do not inherently justify a continuance, nor do they constitute reversible error.

To justify reversal, Appellants are required to demonstrate that they were deprived of a meaningful opportunity to present their case and that the outcome would likely have been different had they been afforded additional time.

B. Appellants' Discovery Complaints Result From Their Own Litigation Choices, Not Commission Error

1. The Procedural History Shows Appellants Had Ample Opportunity for Discovery

The timeline demonstrates that the challenges encountered during the discovery process were not imposed upon the Appellants by the Commission or by Respondent's last-minute conduct:

- June 2021-January 2022: Multiple hearing settings and consent discovery orders. During this period, Respondent's deposition was scheduled and canceled four times. Dr. DeHoll's deposition was also scheduled and canceled.

- January 31, 2022: Respondent withdrew her hearing request (the day before the scheduled hearing).
- September 1, 2023: Respondent filed a new hearing request.
- September 29, 2023: Appellants filed Form 51 Answer.
- November 16, 2023: Respondent's deposition conducted.
- November 28, 2023: Appellants filed a Motion for continuance (one day before the hearing). (Appellants' Brief at 2-3, 7-8, 17-20; R. pp. 459-470).

This timeline shows that both parties encountered challenges in discovery during 2021-2022, leading to Respondent's withdrawal. When the case was reset in September 2023, Appellants were given a two-month period to conduct discovery before the November hearing. Respondent's deposition was taken 13 days before trial, which is suboptimal; however, it does not deprive Appellants of a meaningful opportunity to prepare.

2. Appellants' Specific Complaints Do Not Demonstrate Prejudice

Appellants argue they needed additional time to: (a) investigate Respondent's moves to Kentucky and Alabama; (b) obtain records from Commonwealth Pain & Spine; and (c) determine whether additional depositions were necessary. (Appellants' Brief at 17-19).

However, Appellants do not specify the particular evidence they would have acquired nor how such evidence might have altered the result. They fail to explain why the Commonwealth Pain records (obtained through Respondent's pre-hearing submissions) could not have been reviewed within the 13 days preceding the hearing. Additionally, they do not specify which depositions they would have conducted or the statements the witnesses would have provided.

These are speculative claims of prejudice, not concrete showings of harm.

3. The Record Was Held Open for Post-Hearing Discovery

The Single Commissioner did not merely deny the continuance and close the record. Instead, he managed the proceeding by keeping the record open for limited post-hearing discovery. (*Id.* at 18-19).

Appellants contend that this measure was insufficient, asserting that "post-hearing discovery is not an adequate substitute for pre-hearing discovery where credibility, medical causation, and factual development are central." (*Id.* at 19).

However, the primary medical causation evidence was already documented in the record through the depositions of Dr. DeHoll, Dr. Patel, Dr. Kim, and Ms. Comer. Respondent provided live testimony at the hearing, subject to cross-examination. Appellants had the opportunity to challenge her credibility and to introduce contrary evidence if they possessed any.

What Appellants sought was additional time to locate impeachment evidence or to formulate supplementary challenges. This request should not be construed as a denial of a meaningful opportunity to present a defense.

C. The Record Does Not Support a Finding of Fundamental Unfairness

Appellants ultimately received a full hearing where they: (a) cross-examined Respondent under oath; (b) presented multiple medical depositions; (c) submitted extensive documentary evidence; (d) argued their defenses, including compensability challenges and laches; and (e) appealed to the Appellate Panel and received a second level of review.

Both the Single Commissioner and the Appellate Panel thoroughly examined all arguments presented by Appellants and ultimately rejected them based on substantive merits. There is no indication that further discovery would have altered these conclusions, especially considering that

the primary issue for the Appellants was the lack of any medical causation evidence contradicting the experts of Respondent.

D. Conclusion on Issue IV

The Single Commissioner did not abuse his discretion in denying the Motion for Continuance. Appellants have not demonstrated actual prejudice or fundamental unfairness. The procedural history indicates that discovery challenges primarily arose from scheduling difficulties encountered by both parties over several years, and the Commissioner appropriately managed the proceedings to uphold efficiency and fairness.

This Court should find no reversible error in the continuance denial.

CONCLUSION

Appellants request this Court to re-evaluate the evidence, second-guess credibility determinations, and overturn factual findings that are supported by substantial evidence. They urge the Court to dismiss unrebutted medical causation opinions that are based on argumentative parsing of medical records. Additionally, they petition the Court to transform the equitable doctrine of laches into a definitive time bar, notwithstanding ongoing litigation over several years and their inability to demonstrate material prejudice. Moreover, they implore the Court to find an abuse of discretion in routine discovery management decisions.

None of these requests warrant reversal. The Commission conducted its fact-finding responsibilities, evaluated conflicting evidence, appraised witness credibility, and rendered detailed findings supported by substantial evidence. The case was independently reviewed at two levels by the Commission, both arriving at the same conclusion: Respondent sustained a compensable cervical spine injury resulting from her work-related accident on July 11, 2019.

In light of the reasons previously outlined, Respondent respectfully petitions this Court to uphold the Decision and Order issued by the Workers' Compensation Commission.

Respectfully submitted,

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