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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
APPELLATE PANEL

Case No. 2025-002058

Sonya Parks, Appellant,

v.

Cintas Corporation, Employer,
and
Farmington Casualty Company and LM Insurance Corporation, Carriers Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED IN FAILING TO CONDUCT AN INDEPENDENT AND MEANINGFUL REVIEW OF THE RECORD AND INSTEAD ISSUED A CONCLUSORY AFFIRMANCE THAT MERELY ADOPTED THE SINGLE COMMISSIONER'S FINDINGS WITHOUT ANALYSIS.

II. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED AS A MATTER OF LAW AND FACT IN FINDING THAT APPELLANT DID NOT SUSTAIN A COMPENSABLE AGGRAVATION OF HER LEFT SHOULDER.

III. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED IN FINDING THAT APPELLANT WAS NOT ENTITLED TO COMPENSATION FOR HER ALLEGED REPETITIVE TRAUMA CLAIM PURSUANT TO S.C. CODE ANN. § 42-1-172

IV. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED IN FINDING THAT APPELLANT REACHED MAXIMUM MEDICAL IMPROVEMENT ON OCTOBER 31, 2023, THE DATE DETERMINED BY THE ONLY MEDICAL EXPERT TO OPINE ON THE MATTER.

V. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED IN DENYING COMPENSATION FOR APPELLANT'S ALLEGED CONDITIONS FOR HER ARMS, HANDS, NECK, AND PSYCHOLOGICAL OVERLAY.

VI. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED IN FINDING THAT APPELLANT'S VOCATIONAL EVIDENCE DID NOT SUPPORT A FINDING THAT SHE WAS TOTALLY AND PERMANENTLY DISABLED.

VII. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED IN AWARDING RESPONDENTS A CREDIT FOR OVERPAYMENT OF TEMPORARY TOTAL DISABILITY BENEFITS BEGINNING JANUARY 5, 2024, RATHER THAN THE DATE OF MAXIMUM MEDICAL IMPROVEMENT, OR IN THE ALTERNATIVE, IN AWARDING ANY CREDIT AT ALL.

STATEMENT OF THE CASE

This matter came before the Single Commissioner by way of two (2) Form 50s, Claimants' Request for Hearing, filed by Appellant, and a Form 21, Employer's Request for Hearing, filed by Respondents. In one Form 50, Appellant sought benefits due to an injury by accident that occurred on September 2, 2021, in which Appellant alleged that she injured her bilateral shoulders, arms, hands, neck, and psychological overlay. The inciting event purportedly occurred when Appellant was placing a tote of garments on a shelf. In the other, Claimant alleged that she aggravated a preexisting injury to her *left* shoulder and sustained a repetitive trauma injury to her arms, hands, neck, and psyche arising from the same incident, with an ending date of October 9, 2022. Respondents accepted that Appellant sustained an injury to her *right* shoulder only and subsequently provided benefits under the South Carolina Workers' Compensation Act in the form of medical treatment and temporary total disability compensation. Respondents filed a Form 21, Request for Hearing, on January 5, 2024, seeking an award of permanent partial disability to Appellant's right shoulder and a credit for overpayment of temporary total disability benefits based on their assertion that Appellant reached maximum medical improvement ("MMI") on October 31, 2023.

Respondents denied Appellant's claim that she suffered injuries to any other body parts as a result of the accident that occurred on September 2, 2021. Respondents further denied Appellant's repetitive trauma claim on the grounds that Appellant did not provide sufficient notice of said claim, nor did she provide adequate medical evidence in support of such a claim. Specifically, Respondents maintained that Appellant's alleged left shoulder

injury was preexisting on September 2, 2021, and not dormant, and further maintained that Appellant did not timely report a repetitive trauma claim.

Following a hearing, the Single Commissioner found that Appellant sustained a work-related injury to her *right* shoulder arising out of and in the course and scope of her employment on September 2, 2021. The Single Commissioner further determined that Appellant did not prove by a preponderance of the evidence that the September 2, 2021, accident aggravated her *left* shoulder injury, that the left shoulder injury was dormant at the time of the accident, or that she sustained a repetitive trauma injury to any body part. The Single Commissioner found Appellant reached MMI on October 31, 2023, for her *right* shoulder injury, and concluded she was entitled to an award of permanent partial disability of twenty-one percent (21%). Accordingly, the Single Commissioner found, pursuant to S.C. Code Ann. § 42-9-210, that Respondents were entitled to a credit for overpayment of benefits as they continued payment of temporary total disability compensation following Appellant having reached maximum medical improvement. Respondents' credit was awarded from January 5, 2024, which coincided with the date of the filing of Respondents' Form 21, Request for Hearing.

Appellant appealed the Single Commissioner's Decision and Order to the Full Commission ("Commission") and, following oral arguments, the Commission issued its Decision and Order affirming the findings of the Single Commissioner on September 24, 2025. This appeal followed.

FACTS

At the time of the subject incident on September 2, 2021, Appellant worked as a quality technician for Respondent/Employer Cintas Corporation in its Greenville, South Carolina, facility. Appellant testified that her duties consisted of folding garments and sending them to an individual known as a "sealer" for packing. (R. p. 99, lines 8-16; R. p. 100, lines 20-24). Appellant stated that the job sometimes involved lifting a "tub" filled with garments and placing the tub onto a cart, which would then be moved to the sealers. (R. p. 99, lines 17-24). Appellant further stated that her job involved repetitive motions over the course of the preceding twenty (20) years. (R. p. 100, lines 5-9).

In describing the incident, Appellant testified that she was lifting a tub filled with garments weighing approximately fifty pounds to make room for additional space on the folding table. (R. p. 101, lines 8-22). Appellant explained that as she was lifting the tub, she "felt a pop" in her right shoulder. (R. p. 101, lines 23-24). Appellant admitted that the accident report for the incident, which she signed, indicated that her left arm was suffering *from a prior non-work-related injury at the time of the incident*. (R. p. 102, lines 3-9; R. p. 309).

Appellant further admitted that she was scheduled to have surgery on her left shoulder on or about September 10, 2021, at the time of the incident on September 2, 2021. (R. p. 114, lines 7-17). Claimant maintained that she was "managing" the pain in her left shoulder by compensating with her right shoulder until the incident on September 2, 2021, which is why she was able to continue working without restrictions until the date of the incident. (R. p. 115, lines 1-12).

Appellant testified that, following the incident, she was assigned an office job that primarily involved processing paperwork. (R. p. 116, lines 12-18). Appellant noted that she continued to work until she had surgery on her right shoulder in October of 2022. (R. p. 118, lines 1-5). Appellant also explained that following the surgery, Appellant's surgeon, Dr. Stephan Pill,

placed her at MMI and released her to work again on light duty. (R. p. 120, line 10-p.121, line 17). However, Appellant maintained that she did not return to work. (R. p. 121, lines 11-25).

On cross-examination, Appellant acknowledged that she testified in her deposition that her left shoulder had become an issue sometime in 2020, a time during which she was also working at Family Dollar. (R. p. 128, line 9-p. 129, line 1). Appellant openly acknowledged that she had two prior workers' compensation claims, which Respondents accepted and provided treatment. (R. p. 130, line 23-p. 131, line 7). Based on her prior experience filing workers' compensation claims, Appellant admitted that she was familiar with the process for reporting claims and receiving treatment. (R. p. 131, lines 8-12). Despite this familiarity, Appellant, by her own admission, did not pursue a workers' compensation claim for a left shoulder injury through Cintas. (R. p. 131, lines 13-15).

Appellant did, however, seek treatment for her left shoulder with Blue Ridge Orthopedics beginning in 2020 and continuing through March of 2021. (R. p. 134, lines 13-16; p.141, lines 4-17; R. p. 58). For example, treatment records from Blue Ridge Orthopedics showed that Appellant was seen by Blue Ridge Orthopedics on February 10, 2021, complaining of pain in her left shoulder following an injection three months prior. (R. p. 58). Further, on March 9, 2021, Dr. Gabriella Ode recommended surgery to repair Appellant's left rotator cuff. (R. p. 22). Appellant testified that she was recommended for surgery on her left shoulder because of the pain and limitations she was experiencing. (R. p. 138, lines 12-25). Appellant was subsequently referred to Dr. Pill, and, sometime before April of 2021, Dr. Pill confirmed that Appellant required surgery for her left shoulder, which she scheduled. (R. p. 145, lines 13-16). Due to unrelated personal issues, Appellant rescheduled the surgery several times, with the last scheduled date being September 10, 2021. (R. p. 145, line 16-p. 146, line 11). Thus, Appellant's left shoulder surgery, which was being

performed to correct an injury *expressly unrelated to Cintas*, was scheduled at the time of the incident on September 2, 2021.

Gerrit Kurtycz, a Cintas manager who knew Appellant during her time with the company, testified regarding Appellant's job duties as a garment folder for Cintas. (R. p. 176, line 3-p. 177, line 14). Kurtycz further testified that Appellant's job involved continually handling, gripping, grabbing, and lifting garments. (R. p. 176, line 3-p. 177, line 14).

Appellant's Cintas supervisor, Joseph Privatte, testified that he worked with Appellant for over ten years and, prior to September 2, 2021, he was not aware that Appellant had any injuries of any kind. (R. p. 206, lines 21-24). Privatte further testified that prior to September 2, 2021, he was not aware of any restrictions regarding Appellant's ability to perform her job duties, nor did he notice any problems with Appellant's shoulders or arms. (R. p. 208, lines 9-18). Privatte also testified that Appellant never provided any form of documentation regarding an injury to her hands, arms, or shoulders, nor did she complain about any such problems, prior to September 2, 2021. (R. p. 208, line 19-p. 209, line 21).

On September 30, 2021, Dr. Pill diagnosed Appellant with a high-grade, partial-thickness tear in her *right* rotator cuff, but opined that Appellant could return to work with restrictions on lifting, pushing, or pulling more than 5 pounds with the right upper extremity and avoid overhead work. (R. pp. 324, 329).

Appellant followed up with Dr. Pill on October 7, 2021, primarily to address the pain in her *left* shoulder. (R. pp. 330-33). However, she continued to perform her job duties until October 9, 2022. (R. p. 23). On October 10, 2022, Appellant underwent surgery on her *right* shoulder. (R. pp. 367-70).

Appellant testified that she received authorization from Dr. Pill in October of 2023 that she had reached MMI and could return to work. (R. p. 160, lines 8-12). Appellant subsequently provided Cintas with a work authorization and testified that the document stated she was permitted to return to work. (R. p. 160, lines 12-17). Appellant further testified that she took the work authorization to Cintas in the hopes that Cintas would allow her to return to work. (R. p. 160, lines 20-22). However, Cintas provided Appellant, through her attorney, with a Form 17 in December of 2023, which Appellant failed to sign. (R. p. 160, line 23-p. 161, line 4). Appellant asserted that she did not receive the Form 17, but testified that she would have signed it had she received it. (R. p. 160, lines 5-10).

Notably, Dr. Pill opined in a Form 14B that Appellant reached MMI on October 31, 2023, with a 12% impairment rating to her *right* shoulder arising from the incident on September 2, 2021. (R. p. 399).

On January 5, 2024, Respondents filed a Form 21, Request for Hearing, arguing Appellant had reached maximum medical improvement on October 31, 2023, and seeking an award of permanent partial disability to the right shoulder as well as a credit for overpayment of temporary total disability benefits.

Following a hearing, the Single Commissioner issued his Decision and Order, making multiple findings of fact relevant to Appellant's appeal. These findings of fact were upheld on appeal to the Commission.

First, the Commission found that Appellant suffered an injury to her *right* shoulder on September 2, 2021, arising out of and in the course and scope of her employment with Cintas. (R. p. 30). Further, Appellant provided notice to Cintas of the injury to her *right* shoulder. (R. p. 30).

Second, and critical to Appellant's arguments in her Brief, the Commission made findings of fact related to Appellant's *left* shoulder. The Commission found that "[Appellant] had an underlying rotator cuff issue in her left shoulder that originated from a 2019 injury. (R. p. 30). The Commission further found that "[Appellant's] underlying rotator cuff issue in her *left* shoulder caused pain and weakness, particularly with repetitive heavy overhead activities at work." (R. p. 30) (emphases added). In addition, Appellant's job at Cintas required her to lift totes full of laundry, and her left shoulder injury interfered with her normal work activities "quite a bit." (R. p. 30).

The Commission also found that on March 9, 2021, Dr. Gabriella Ode recommended surgery to repair Appellant's *left* rotator cuff. (R. p. 30). However, the surgery had to be postponed multiple times due to unforeseen circumstances and was ultimately scheduled for September 10, 2021. (R. p. 30). This surgery was never performed because of the injury to Appellant's *right* shoulder. (R. p. 31).

Most relevant to this appeal, the Commission found that Dr. Pill, in his deposition, opined that Appellant's left shoulder injury was "aggravated very loosely in that she has a known injury, and that she was holding a tote with both arms and the left shoulder jury continued to hurt like it always had." (R. p. 33). The Commission also found that Dr. Pill opined that Appellant "just made her left shoulder essentially sore without making it any worse. And there's no objective findings there that anything got worse." (R. p. 33). Accordingly, the Commission found that Appellant failed to present any evidence pursuant to S.C. Code Ann. § 42-1-172(D) that there was a direct causal relationship between the conditions under which her job is performed and her alleged repetitive trauma injury claim. (R. p. 34).

The Commission likewise issued multiple conclusions of law. The Commission found Appellant's right shoulder injury reached MMI on October 31, 2023, based on Dr. Pill's Form 14B. (R. p. 26; R. p. 399). Further, the Commission found that Appellant was entitled to an award of permanent partial disability in the amount of 21% to the right shoulder. (R. p. 27).

More importantly, the Commission found that Appellant failed to prove that her preexisting *left* shoulder injury was aggravated by a work-related accident because Dr. Pill, the only medical expert on record, did not opine that Appellant's left shoulder injury was aggravated by her September 2021 injury. (R. p. 34). Thus, Appellant failed to prove by a preponderance of the evidence that her September 2021 accident made her left shoulder injury worse to the extent it harmed her earning capacity or required additional treatment beyond what she already needed before September 2021. (R. pp. 34-35). The Commission also found that Appellant failed to show her left shoulder injury was a dormant condition as required by S.C. Code Ann. § 42-9-45. (R. p. 35). Accordingly, Appellant failed to present any medical evidence required for a finding of compensability for her alleged repetitive trauma claim of October 9, 2021. (R. p. 35).

Lastly, the Commission found that Respondents were entitled to a credit for overpayment of benefits made after January 5, 2024, pursuant to S.C. Code Ann. § 42-9-210. (R. p. 35).

STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers' Compensation Commission." *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 288, 599 S.E.2d 604, 610 (Ct. App. 2004); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981); *Gibson v. Spartanburg Sch. Dist. No. 3,* 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000)). "A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions or decisions of that agency are 'clearly erroneous in view of the

reliable, probative and substantial evidence on the whole record.'" *Hargrove*, 360 S.C. at 288, 599 S.E.2d at 610 (quoting *Bursey v. South Carolina Dep't of Health and Envtl. Control,* 360 S.C. 135, 600 S.E.2d 80 (Ct. App. 2004)); S.C. Code Ann. § 1-23-380(A)(6)(e). "Under the scope of review established in the APA, this Court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law." *Hargrove*, 360 S.C. at 289, 599 S.E.2d at 610 (citing *Frame v. Resort Servs., Inc.,* 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); *Stephen v. Avins Constr. Co.,* 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996); S.C. Code Ann. § 1-23-380(A)(6)(d)).

Review of decisions rendered by the South Carolina Workers' Compensation Commission is governed by the substantial evidence rule as promulgated by the APA. *Hargrove*, 360 S.C. at 289, 599 S.E.2d at 610. Any such review by the Court of Appeals is limited to a determination of whether the decision is unsupported by substantial evidence or was a result of an error in the application of the law. *Id*. at 289, 599 S.E.2d at 611. "In reviewing the decision of the commission, we will not set aside its findings unless they are not supported by substantial evidence or they are controlled by an error of law." *Lyles v. Quantum Chem. Co. (Emery)*, 315 S.C. 440, 445, 434 S.E.2d 292, 294 (Ct. App. 1993). "A finding is supported by substantial evidence unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." *Id.* "A finding upon which reasonable men might differ will not be set aside." *Id.* (quoting *Lark v. Bi-Lo, Inc.,* 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

"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." *See Hargrove*, 360 S.C. at 289, 599 S.E.2d at 610; *see also Etheredge v. Monsanto Co.,*

349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002); *Broughton v. South of the Border,* 336 S.C. 488, 520 S.E.2d 634 (Ct. App. 1999). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." *Id.* at 290; *Sharpe v. Case Produce, Inc.,* 336 S.C. 154, 519 S.E.2d 102 (1999); *Muir,* 336 S.C. at 282, 519 S.E.2d at 591. "Where there are conflicts in the evidence over a factual issue, the findings of the Appellate Panel are conclusive." *Id.*; *see also Etheredge,* 349 S.C. at 455, 562 S.E.2d at 681.

ARGUMENTS

I. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION DID NOT COMMIT AN ERROR OF LAW IN ITS ANALYSIS AND AFFIRMANCE OF THE SINGLE COMMISSIONER'S FINDINGS.

As an initial matter, Respondents contend that Appellant has abandoned this issue. Appellant's explicit argument is that "[w]hile the Commission may affirm a single commissioner's order, it may not do so by merely adopting the findings wholesale without addressing the alleged errors." Appellant further maintains that the Commission offers no "independent" reasoning, failed to address alleged errors, and "rubber-stamped the findings of the Single Commissioner." Thus, Appellant argues that the Commission erred simply by adopting the findings of the Single Commissioner. However, Appellant cites no law in support of such a proposition. Appellant cites only to authority governing the standard of review on appeal from an order by the Single Commissioner. Appellant provides no supporting authority for the proposition that the adoption of the Single Commissioner's findings nearly verbatim is, in and of itself, erroneous. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (finding the failure to provide arguments or supporting authority for an issue renders it abandoned); *State v. Colf*, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998)

(finding a conclusory, two-paragraph argument that cited no authority other than an evidentiary rule was abandoned), *aff'd as modified on other grounds*, 337 S.C. 622, 525 S.E.2d 246 (2000). Indeed, no such authority exists.

Regardless, whether the Commission adopts the findings of the Single Commissioner verbatim or makes adverse or different findings is entirely within the discretion of the Commission. *See Ross v. American Red Cross*, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989) ("[T]he Full Commission, as the ultimate fact-finder, *may* make its own findings, adverse to those of the Single Commissioner." (emphasis added)); *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 281-82, 519 S.E.2d 583, 591 (Ct. App. 1999) ("[T]he Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner." (citing *McGuffin v. Schlumberger–Sangamo*, 307 S.C. 184, 414 S.E.2d 162 (1992))). Here, the Commission correctly exercised its discretion in adopting the findings of the Single Commissioner, and the findings of the Commission are supported by substantial evidence, as discussed more fully in the remaining arguments. *See Lyles*, 315 S.C. at 445, 434 S.E.2d at 294 ("In reviewing the decision of the commission, we will not set aside its findings unless they are not supported by substantial evidence or they are controlled by an error of law.").

II. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION DID NOT ERR IN FINDING THAT APPELLANT DID NOT AGGRAVATE A PREEXISTING INJURY TO HER LEFT SHOULDER BECAUSE THE ONLY EXPERT MEDICAL TESTIMONY IN THE RECORD CONTRADICTS SUCH A FINDING.

"The right of a claimant to compensation for aggravation of a preexisting condition arises only where there is a dormant condition which has produced no disability but which becomes disabling by reason of the aggravating injury." *Hargrove*, 360 S.C. at 288, 599 S.E.2d at 610

(citation omitted). "A determination of whether a claimant's condition was accelerated or aggravated by an accidental injury is a factual matter for the Appellate Panel." *Id*.

South Carolina Code Section 42-9-35, which requires a claimant to prove the aggravation of a preexisting condition with *medical* evidence, provides in part:

> (A) The employee shall establish by a preponderance of the evidence, *including medical* evidence, that:
>
> (1) the subsequent injury aggravated the pre[-]existing condition or permanent physical impairment; or
>
> (2) the pre[-]existing condition or the permanent physical impairment aggravates the subsequent injury.
>
> (B) The commission may award compensation benefits to an employee who has a permanent physical impairment or pre[-]existing condition and who incurs a subsequent disability from an injury arising out of and in the course of his employment for the resulting disability of the permanent physical impairment or pre[-]existing condition and the subsequent injury.

S.C. Code Ann. § 42-9-35 (emphasis added). "In a case brought under section 42-9-35, the burden is on the claimant to produce *medical evidence to establish a claim for the exacerbation of a preexisting condition*." *Rummage v. BGF Industries*, 434 S.C. 441, 458, 865 S.E.2d 380, 389 (Ct. App. 2021).

Throughout this case, Appellant has vacillated between arguing that she aggravated a preexisting dormant condition to her left shoulder and that she suffered a repetitive trauma injury to her left shoulder, or some combination of both. However, Appellant has been consistent in her selective presentation of Dr. Pill's testimony, the only expert medical testimony in the record. Appellant has likewise consistently presented the testimony of her coworkers as medical causation testimony, which it is not. Appellant's argument to the Court again misstates the actual evidence in the record on this issue, and that is the crux of the case. Appellant is required to produce *medical* evidence in support of this claim, and none exists.

Here, the Commission found that Dr. Pill testified that there are no objective findings that Appellant's left shoulder condition was aggravated by the September 2021 incident. (R. p. 33). The Commission further found that Appellant failed to prove by a preponderance of the evidence, including medical evidence, that she aggravated a preexisting left shoulder injury because Dr. Pill, the only medical expert on record, did not offer such a conclusion. (R. pp. 34-35). The Commission's findings are supported by substantial evidence.

Appellant relies on four (4) pieces of evidence in her brief, which Respondent addresses in turn. First, Appellant points to lay testimony about the repetitive nature of her job. This testimony may be relevant to her repetitive trauma claim, but it offers nothing to establish the veracity of her aggravation claim. Respondent does not dispute that Appellant's job had elements that were repetitive. More importantly, none of the lay testimony provides evidence that Appellant's work duties aggravated a preexisting injury, and Appellant cites to no lay testimony in the record supporting this claim.

Second, Appellant references the testimony of Dr. Pill, which forms the gravamen of Appellant's argument. The only medical expert who provided testimony in this case is Dr. Pill, and Dr. Pill did *not* opine, at any point, that Appellant suffered an aggravation to a preexisting injury to her left shoulder, let alone render such an opinion to a reasonable degree of medical certainty. Appellant makes references to Dr. Pill's testimony without offering a single quote, and this is because Dr. Pill very explicitly testified that Appellant's preexisting left shoulder injury was *not* aggravated in the sense that there is a causal relationship between the September 2021 incident, her job, and the injury to her right shoulder.

The reason Appellant does not offer a single quote from Dr. Pill on this issue can be found when reading the transcript of his deposition. In attempting to clarify the confusing timeline and

multiple claims being pursued by Appellant at the time of the deposition, Dr. Pill admitted he had been "caught off guard here by the fact that the left [shoulder] had been seen [in early 2021] and booked for surgery." (R. p. 464, lines 22-24). When Respondents' counsel asked Dr. Pill to clarify his position on the issue of causation with respect to Appellant's left shoulder injury after being given the full picture on Appellant's left shoulder history, Dr. Pill testified:

> Yeah, I mean, I think it -- you know, it clearly – it didn't -- it didn't seem like, you know, from her description at the time of that intake [in September 2021] that it was even the top of her priority. I mean, it seems like she really hurt her right shoulder at the time of that injury. But then during the course of it, you know, her left shoulder, you know, became sore. Now, you could say that's just because she had a big tear and she's been hurting a long time, so it just happened to start hurting again. *You could argue that, you know, because she was immobilized and had to go through physical therapy, she was probably using the left arm a bit more, and then it got sore*. So it's loosely related. I think that just -- I mean, I'm not a lawyer, *but I would think that because she was slated and booked to have a surgery for her left shoulder before that injury, that then that would fall outside of the purview of the workers' compensation claim*. But I'm not a lawyer to know the difference. I mean, the left shoulder is -- you know, it was probably loosely aggravated by all the treatments she went through, but, it was bothering her before all of that. *I don't think it made it any worse. I don't think it would have changed my treatment throughout the course of things*. *I think she always needed that one repaired.*

(R. p. 466, line 25-p.467, line 24) (emphasis added). Dr. Pill further opined that "sure the left shoulder was affected [by the injury to Appellant's right shoulder], but whether that leads to any causality or – you know, if there's – I have no idea." (R. p. 465, lines 10-13). These were Dr. Pill's final opinions on the issue of causality with respect to Appellant's claims to her left shoulder, and Dr. Pill very explicitly declined to opine that, to a reasonable degree of medical certainty, Appellant's left shoulder injury was caused or aggravated by her job duties or the specific injury by accident of September 2, 2021. Indeed, Dr. Pill actually opined that any aggravation to the preexisting left shoulder injury was a minor increase in soreness and a result of the treatment process for Appellant's right shoulder. (R. p. 453, lines 3-25). Furthermore, Dr. Pill expressly

testified that the evidence in the record was *not* consistent with Appellant's contention that her left shoulder injury was dormant at the time of the September 2021 incident. (R. p. 450, lines 4-12). Dr. Pill summarized his opinion on the question of whether Appellant's preexisting left shoulder condition as follows: "I think [Appellant] just made her left shoulder essentially sore without making it any worse. And there's no objective findings that anything got worse." (R. p. 454, lines 5-8). Thus, Dr. Pill's testimony flatly contradicts Appellant's portrayal of his opinion, and his testimony supports only one finding: Appellant's preexisting left shoulder injury was *not* aggravated by the September 2021 incident.

Third, Appellant references comparative MRIs that were performed on her in April 2021 and March 2023, both before and after the incident in September 2021. Appellant's contention that the Commission failed to consider the MRI evidence in the record is perplexing because Dr. Pill offered extensive testimony on the MRI results. Dr. Pill testified that Appellant had an MRI on her left shoulder in April 2021, which confirmed that Appellant had a rotator cuff tear for which Dr. Pill recommended surgery. (R. p. 447, lines 7-13). Dr. Pill also testified that he ordered an MRI of Appellant's left shoulder in March 2023. (R. p. 449, lines 6-7). According to Dr. Pill, there was *no objective evidence* that Appellant's rotator cuff tear in her left shoulder worsened between the time that the two (2) MRIs were undertaken. (R. p. 449, lines 8-18). Therefore, based on Dr. Pill's testimony, the MRI evidence in the record does not support the proposition that Appellant's left shoulder injury worsened after the September 2, 2021 accident or as a result of any repetitive job activities, and Appellant's reliance on this evidence is misplaced.

Fourth, Appellant asserts that the Commission did not consider an alleged June 15, 2022, incident regarding a pop in her left arm, which relates to a wholly separate, and denied, claim that is not part of this appeal. Appellant did not testify about this incident at the hearing because this

incident is not part of the present claim, and is, therefore, entirely irrelevant. Further, the citations to the hearing transcript cited by Appellant in her facts section do not reference this event, so it is not even clear what testimony Appellant is relying on in her Brief. Regardless, Appellant provides no citations in her argument on this issue, and the Court should ignore this irrelevant reference.

In sum, the Commission considered all available evidence in the record on Appellant's alleged aggravation claim to her left shoulder and correctly concluded causality was not supported by medical evidence. *See* S.C. Code Ann. § 42-9-35; *see also Hargrove*, 360 S.C. at 290, 599 S.E.2d at 611 (holding that the findings of an administrative agency will be set aside if unsupported by substantial evidence).

III. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION CORRECTLY APPLIED S.C. CODE ANN. § 42-1-172 IN REACHING ITS CONCLUSION THAT CLAIMAINT DID NOT SUSTAIN A COMPENSABLE REPETITIVE TRAUMA INJURY.

A repetitive trauma injury under the Workers' Compensation Act is governed by S.C. Code Ann. § 42-1-172, in defining one as an "injury, which is gradual in onset and caused by the cumulative effects of repetitive traumatic events." The repetitive trauma statute further notes "[a]n injury is not considered a compensable repetitive trauma injury unless … a causal connection … is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury." In *Schurlknight v. City of North Charleston,* 352 S.C. 175, 178, 574 S.E.2d 194, 195 (2002), our supreme court held repetitive trauma injuries have a gradual onset caused by the cumulative effect of repetitive traumatic events or "mini-accidents." *Rhame v. Charleston County School Dist.*, 415 S.C. 162, 168, 781 S.E.2d 151, 154 (Ct. App. 2015). The court noted that "it is difficult to determine the date an accident occurs in a repetitive trauma case because there is no definite time of injury." *Id.*

Section 42-1-172 of the South Carolina Code sets forth the requirements for a compensable repetitive trauma injury:

> (A) "Repetitive trauma injury" means an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events. Compensability of a repetitive trauma injury must be determined only under the provisions of this statute.
>
> (B) An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.
>
> (C) As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician.
>
> (D) A "repetitive trauma injury" is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.

"It is important to determine what evidence is necessary to establish the causation element in a section 42-1-172 claim." *Brooks v. Benore Logistical Sys., Inc.*, 442 S.C. 462, 481, 900 S.E.2d 436, 446 (2024). "Section 42-1-172 requires causation of a repetitive trauma injury to be proven by 'medical evidence,' which is defined as 'expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material *that is offered by a licensed and qualified medical physician*.'" *Id*. (citing S.C. Code Ann. § 42-1-172(B)–(D) (emphasis in original)). "In keeping with the statute, we have previously held that, when either an employee or an employer in a repetitive trauma injury case offers an opinion or testimony by a medical doctor, that evidence is inadmissible before the Commission—and, therefore, cannot be used to prove or disprove causation—unless it is stated to a reasonable degree of medical certainty." *Id*. (citing

Michau v. S.C. Cntys. Workers Comp. Tr. ex rel. Georgetown Cnty., 396 S.C. 589, 595–96, 723 S.E.2d 805, 808 (2012)).

As an initial matter, Appellant claims that the standard for proving a repetitive trauma claim under S.C. Code Ann. § 42-1-172 requires proof only of (1) a causal connection between the repetitive nature of the work and the injury and (2) a determination of the last date of injurious exposure. Respectfully, this assertion is simply incorrect. "A "repetitive trauma injury" is considered to arise out of employment *only if it is established by medical evidence* that there is a direct causal relationship between the condition under which the work is performed and the injury." S.C. Code Ann. § 42-1-172(D). Here, Appellant has failed to cite to any *medical* evidence in the record establishing such a causal relationship. This failure to cite to the record is telling, and Respondents maintain Appellant has abandoned this argument on this ground.

Regardless, the only medical expert who provided testimony in this case is Dr. Pill, and Dr. Pill did *not* opine that Appellant suffered a repetitive trauma injury to her left shoulder to a reasonable degree of medical certainty. In fact, Dr. Pill never provided any opinion that Appellant suffered any repetitive trauma injury to her left shoulder. Competent evidence on this issue must come from Dr. Pill, the only qualified expert to opine on the matter, and Appellant cannot point to any such evidence. Thus, her argument fails. *See Brooks*, 442 S.C. at 481, 900 S.E.2d at 446 ("Section 42-1-172 requires causation of a repetitive trauma injury to be proven by 'medical evidence,' which is defined as 'expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician."). Indeed, Claimant makes multiple references to Dr. Pill's testimony without offering a single quote from a deposition transcript or medical record in evidence.

The reason Appellant does not offer a single quote from Dr. Pill on this issue can be found when reading the transcript of his deposition. Respondents' counsel asked Dr. Pill to clarify his position on the issue of causation with respect to Claimant's left shoulder injury after being given the full picture on Claimant's left shoulder history, and Dr. Pill opined:

> Yeah, I mean, I think it -- you know, it clearly – it didn't -- it didn't seem like, you know, from her description at the time of that intake [in September 2021] that it was even the top of her priority. I mean, it seems like she really hurt her right shoulder at the time of that injury. But then during the course of it, you know, her left shoulder, you know, became sore. Now, you could say that's just because she had a big tear and she's been hurting a long time, so it just happened to start hurting again. *You could argue that, you know, because she was immobilized and had to go through physical therapy, she was probably using the left arm a bit more, and then it got sore*. So it's loosely related. I think that just -- I mean, I'm not a lawyer, *but I would think that because she was slated and booked to have a surgery for her left shoulder before that injury, that then that would fall outside of the purview of the workers' compensation claim*. But I'm not a lawyer to know the difference. I mean, the left shoulder is -- you know, it was probably loosely aggravated by all the treatments she went through, but, it was bothering her before all of that. *I don't think it made it any worse. I don't think it would have changed my treatment throughout the course of things*. *I think she always needed that one repaired.*

(R. p. 466, line 25-p.467, line 24) (emphasis added). Dr. Pill further opined that "sure the left shoulder was affected [by the injury to Appellant's right shoulder], but whether that leads to any causality or – you know, if there's – I have no idea." (R. p. 465, lines 10-13). These were Dr. Pill's final opinions on the issue of causality with respect to Appellant's repetitive trauma injury claim to her left shoulder, and Dr. Pill very explicitly declined to opine that, to a reasonable degree of medical certainty, Appellant's left shoulder injury was caused by her job duties or the conditions under which her work is performed. There is simply no medical evidence in the record supporting Appellant's claim. *See* S.C. Code Ann. § 42-1-172; *Brooks*, 442 S.C. at 481, 900 S.E.2d at 446 ("Section 42-1-172 requires causation of a repetitive trauma injury to be proven by 'medical evidence,' which is defined as 'expert opinion or testimony stated to a reasonable degree of

medical certainty, documents, records, or other material *that is offered by a licensed and qualified medical physician*.'"); *id*. (holding that when a claimant in a repetitive trauma injury case offers an opinion or testimony by a medical doctor, that evidence is inadmissible and cannot be used to prove or disprove causation unless it is stated to a reasonable degree of medical certainty); *see also Hargrove*, 360 S.C. at 295, 599 S.E.2d at 614 ("The right of a claimant to compensation for aggravation of a preexisting condition arises only where there is a dormant condition which has produced no disability but which becomes disabling by reason of the aggravating injury.").

Appellant likewise vaguely references her medical records and MRI results as supporting her repetitive trauma claim. Notably, she does not cite to the record or direct the Court to which records support this claim. However, as argued more fully above, Dr. Pill testified that there was *no objective evidence* that Appellant's rotator cuff tear in her left shoulder worsened between the time that the two (2) MRIs were undertaken of her left shoulder. (R. p. 449, lines 8-18). Therefore, Appellant's argument that these records support her claim is entirely specious.

Appellant does, however, provide citations to her own testimony and the testimonies of Cintas employees regarding the repetitive nature of her job. However, these citations are irrelevant because the only pertinent question is whether competent medical evidence supports a repetitive trauma claim. *See* S.C. Code Ann. § 42-1-172; *Brooks*, 442 S.C. at 481, 900 S.E.2d at 446 ("Section 42-1-172 requires causation of a repetitive trauma injury to be proven by 'medical evidence,' which is defined as 'expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material *that is offered by a licensed and qualified medical physician*.'"). Further, Respondents do not contest that elements of Appellant's job were repetitive, as the Commission found. Respondents instead contest Appellant's claim because all

medical evidence in the record demonstrates that she did not suffer a repetitive trauma injury to her left shoulder.

Thus, the Commission appropriately and thoroughly considered all available evidence in the record on Claimant's alleged repetitive trauma injury to her left shoulder and correctly concluded causality was not supported by medical evidence as required. *See* S.C. Code Ann. § 42-1-172; *Brooks*, 442 S.C. at 481, 900 S.E.2d at 446; *see also Hargrove*, 360 S.C. at 290, 599 S.E.2d at 611 (holding that the findings of an administrative agency will be set aside if unsupported by substantial evidence).

IV. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION CORRECTLY FOUND THAT APPELLANT REACHED MAXIMUM MEDICAL IMPROVEMENT BECAUSE THE ONLY EXPERT MEDICAL TESTIMONY IN THE RECORD SUPPORTS SUCH A FINDING.

Respondent notes that Appellant appears to also be arguing here that the Commission erred on the issue of the correct determination of MMI because Appellant needed additional treatment for her *left* shoulder. This argument is both wholly irrelevant and not preserved. First, the Commission's finding regarding MMI was for Appellant's *right* shoulder because Dr. Pill's opinion on MMI was for Appellant's *right* shoulder. (R. p. 32; R. p. 35; R. p. 399). Thus, Appellant's discussion regarding her left shoulder is not relevant to this issue. Second, Appellant never raised this "argument" to the Single Commissioner, and neither the Single Commissioner nor the Commission ruled on it. To the extent Appellant contends she has raised this argument previously, she never filed a motion to reconsider seeking a ruling on the argument. Therefore, the argument is not preserved for appellate review. *See Rummage*, 434 S.C. at 458, 865 S.E.2d at 389 (holding that to successfully preserve an issue for appellate review, the issue must be: (1) raised and ruled upon by the lower court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the lower court with sufficient specificity); *Pye v. Estate of Fox*, 369 S.C. 555, 565,

633 S.E.2d 505, 510 (2006) (citing *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (noting a party must file a Rule 59(e) motion "when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review")).

Appellant argues that because she continued to receive treatment for her right shoulder past the date of MMI, the Commission erred in determining that Appellant reached MMI on October 31, 2023, as determined by Dr. Pill in the completed Form 14B. (R. p. 32; R. p. 35; R. p. 399). Appellant's own case law citations undermine her argument.

In his Form 14B, Dr. Pill opined that Appellant reached MMI on October 31, 2023. (R. p. 399). The Form 14B noted that Appellant would require additional treatment for her right shoulder past that date. *Id*. As Appellant herself noted in her Brief, "the fact a claimant has reached maximum medical improvement does not preclude a finding the claimant still may require additional medical care or treatment." *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 574, 581, 514 S.E.2d 593, 596 (Ct. App. 1999). Indeed, this is exactly what the Commission found. (R. p. 35) ("Claimant is entitled to future medical treatment pursuant to S.C. Code Ann. § 42-15-60 and *Dodge v. Bruccoi, Clark, Layman, Inc.*, 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999) as set forth by Dr. Pill in his Form 14B. This treatment is to include lifetime maintenance, repair, and replacement for any hardware retained as a result of her work-related injury of September 2, 2021."). The Commission relied on the very case cited by Appellant in awarding her future benefits for her right shoulder beyond the date of MMI. Notably, Appellant cited no evidence to refute Dr. Pill's conclusion on the issue of MMI. Thus, there is no error with the Commission's finding that Appellant reached MMI on October 31, 2023.

V. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION CORRECTLY DENIED COMPENSATION FOR ALLEGED INJURIES TO APPELLANT'S ARMS, HANDS, NECK, AND PSYCHOLOGICAL CONDITION

BECAUSE APPELLANT FAILED TO DEMONSTRATE THESE CONDITIONS BY A PERPONDERANCE OF THE EVIDENCE.

This question is largely redundant to Appellant's prior questions, as Appellant is relying on the exact same evidence for these claims as her repetitive trauma and aggravation claims. There is no evidence in the record supporting claims for injuries to Appellant's arms, hands, and neck.[1] Claimant provides but a single citation to the record in support of her assertions under this question, which involves Dr. Pill's testimony. However, Dr. Pill's cited testimony discusses only Appellant's injury to her right shoulder and addresses purported aggravation of the preexisting issue with her left shoulder. None of the testimony in the citation discusses Appellant's arms, hands, neck, or psychological condition. (R. p. 424, lines 3-17; R. p. 456, lines 5-12; R. p. 457, lines 21-25). Indeed, Respondents maintain Appellant has abandoned this argument for failing to cite to anything in the record in support. *See First Sav. Bank*, 314 S.C. at 363, 444 S.E.2d at 514 (finding the failure to provide arguments or supporting authority for an issue renders it abandoned); *Colf*, 332 S.C. at 322, 504 S.E.2d at 364 (finding a conclusory, two-paragraph argument that cited no authority other than an evidentiary rule was abandoned), *aff'd as modified on other grounds*, 337 S.C. 622, 525 S.E.2d 246 (2000). Appellant's Brief likewise fails to satisfy Rule 208, SCACR, for failure to cite to the record in support of her assertions. *See* Rule 208(b)(4), SCACR (The brief *shall* contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged." (emphasis added)).

[1] Respondents note here that Appellant's claim regarding her alleged psychological condition is also argued in Question VI. Appellant's lone piece of evidence on this issue is a vocational assessment, which Appellant does not reference or discuss in Question V. Therefore, to avoid confusion and the conflation of issues, Respondents address this argument in Question VI only.

Appellant has not provided citations to the record in support of her assertions because none exist. There is no expert medical or testimonial evidence in the record whatsoever regarding the alleged injuries to Appellant's hands, arms, and neck. Thus, the Commission correctly found Claimant failed to support any claim for injury to her hands, arms, or neck. (R. p. 33); *Hargrove*, 360 S.C. at 290, 599 S.E.2d at 611 (holding that the findings of an administrative agency will be set aside if unsupported by substantial evidence). To the extent that this question is intended to reargue the medical evidence and testimony with respect to Appellant's alleged repetitive trauma injury to her left shoulder, Respondents refer the Court to their previous arguments on those issues.

VI. APPELLANT'S VOCATIONAL EVIDENCE DID NOT ESTABLISH PERMANENT AND TOTAL DISABILITY, AND THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION CORRECTLY WEIGHED THIS EVIDENCE AGAINST MORE COMPETENT EVIDENCE IN THE RECORD.

Appellant asserts that a vocational assessment conducted by Dr. Robert Brabham serves as the only evidence in the record on Appellant's total and permanent disability, and the Commission ignored this evidence. This argument is meritless on several counts. As an initial matter, in the Decision and Order, the Commission found that a "vocational evaluation on January 29, 2024, concluded that Claimant would be unable to effectively perform the essential duties in any full-time, gainful work activity, even at sedentary jobs." (R. p. 33; R. pp. 404-12). Thus, the Commission clearly considered the assessment.

However, the vocational assessment is not "substantial evidence" of Appellant's alleged total and permanent disability for two (2) reasons. *See Hargrove*, 360 S.C. at 290, 599 S.E.2d at 611 (holding that the findings of an administrative agency will be set aside if unsupported by substantial evidence). First, Dr. Brabham is a psychologist, and his opinion of Claimant's total disability is based on a psychological assessment conducted in January 2024. Dr. Brabham is not a physician, and certainly not an expert in orthopedic medicine like Dr. Pill. *See Brown v.*

LaFrance Industries, a Div. of Riegel Textile Corp., 286 S.C. 319, 325, 333 S.E.2d 348, 352 (Ct. App. 1985) ("A witness in a workers' compensation proceeding 'will be permitted to express his opinion on a medical question when it appears that he is qualified so to do by reason of his training, experience, and practice.'" (citation omitted)). Thus, Dr. Brabham is only qualified to offer an opinion on Appellant's psychological overlay claim.

Problematically, Dr. Brabham based his opinion on both the alleged injury to Appellant's left shoulder and the injury to her right shoulder. (R. pp. 404-12). However, the injury to Appellant's left shoulder was found *not* to have been caused by her work duties. (R. pp. 34-35). The law is clear that in order to "combine" injuries in a manner that supports a finding of total disability, the work-related injury must aggravate a preexisting condition to cause a substantially greater disability than would have been caused by the work-related injury alone. *See* S.C. Code Ann. § 42-9-400(a) ("If an employee who has a permanent physical impairment from any cause or origin incurs a *subsequent* disability from injury by accident *arising out of and in the course of his employment*, resulting in compensation and medical payments liability or either, for disability that is substantially greater and is caused by aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall pay all awards of compensation and medical benefits provided by this title[.]"); *Carolinas Recycling Group v. S.C. Second Injury Fund*, 398 S.C. 480, 484, 730 S.E.2d 324, 327 (2012) ("We conclude the only reasonable inference to be drawn from the substantial evidence in the record is that Claimant's preexisting condition was a hindrance to his employment and that he sustained a subsequent work-related injury that combined with or aggravated the preexisting condition to cause "substantially greater" disability and medical costs than would have been caused by the subsequent injury alone."); *see also Ellison v. Frigidaire Home Products*, 371 S.C. 159, 164, 638

S.E.2d 664, 666 (2006) ("The language of § 42–9–400(a) and (d) indicates the legislature clearly envisioned that a claimant may recover for greater disability than that incurred from a single injury to a particular body part if the combination with any preexisting condition hinders reemployment.").

Ellison provides guidance on how this somewhat confusing principle works in practice. In *Ellison*, the claimant fractured his leg in an on-the-job forklift accident and was given a permanent 20% impairment rating to the leg. *See Ellison*, 371 S.C. at 161, 638 S.E.2d at 665. However, the claimant had preexisting conditions that, in combination with his workplace injury, rendered him physically unable to return to work after his accident. *Id*. The Court considered whether the claimant's preexisting conditions that were not causally linked to the work injury should be considered in determining his total compensable disability. *Id*. The Court held that a claimant may recover for greater disability than that incurred from a single injury to a particular body part if the combination with any preexisting condition hinders reemployment. *Id*. at 159, 638 S.E.2d at 666.

Here, Appellant's total disability claim is distinguishable from that of the claimant in *Ellison* because Appellant is not trying to combine her compensable work-related right shoulder condition with an established preexisting condition to form the basis of a greater total disability. Rather, Appellant is attempting to combine a compensable condition (her right shoulder) with a non-compensable condition (her left shoulder) to argue that she has a completely new, and heretofore unmentioned, *mental* affliction, and her affliction entitles her to permanent and total disability.

Second, and equally important, Appellant herself provided *no testimony whatsoever* that she suffered from psychological problems at the hearing on July 9, 2024. *See Burnette v. City of Greenville*, 401 S.C. 417, 427, 737 S.E.2d 200, 206 (Ct. App. 2012) (holding "the Commission is

not bound by the opinions of medical experts and may disregard medical evidence in favor of other competent evidence in the record"). Appellant likewise presented no testimony from any other witness that she was suffering from psychological problems, nor any other evidence on this claim from any source. Given that Appellant's psychological overlay claim forms the basis for her claim for total permanent disability, the lack of supporting evidence for this claim is telling.

Moreover, and antithetical to any assertion that Appellant is permanently and totally disabled, evidence can be found in Appellant's own testimony where she explicitly stated that after she was cleared for a return to work by Dr. Pill, she was physically capable of returning to work. *See* TR p. 97, lines 8-19. Appellant also testified that she took her work clearance from Dr. Pill to Cintas in the hope that they would bring her back to work. (R. p. 97, lines 20-22). Thus, Appellant's own testimony undermines her claim for permanent and total disability, and the vocational assessment was performed by a provider who is not qualified to opine on Appellant's orthopedic conditions.

In sum, the Commission considered the vocational assessment and all relevant evidence on Appellant's alleged total disability, and there is substantial evidence in the record supporting the Commission's denial of this claim.

VII. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION DID NOT ERR IN AWARDING RESPONDENTS A CREDIT FOR OVERPAYMENT OF TEMPORARY TOTAL DISABILITY BENEFITS BECAUSE APPELLANT REACHED MAXIMUM MEDICAL IMPROVEMENT AND DEFENDANTS ARE OBJECTIVELY ENTITLED TO SAID CREDIT FROM THE DATE OF MAXIMUM MEDICAL IMPROVEMENT.

In Appellant's statement of the issues on appeal, Appellant brings two (2) issues to the Court's attention. First, Appellant argues the Commission erred in awarding Respondents a credit for overpayment of temporary total disability ("TTD") benefits beginning January 5, 2024, rather

than the date of MMI, October 31, 2023. Second, Appellant argues in the alternative that the Commission erred in awarding Respondents any credit at all because Appellant did not reach MMI.

Respondents note that Appellant's presentation of the issues is confusing because Respondents, not Appellant, have consistently argued that the Single Commissioner and the Commission erred in awarding Respondents a credit for overpayment from January 5, 2024, which represents the date of filing of Respondents' Form 21, Request for Hearing, rather than the date of MMI, October 31, 2023. So while Respondents maintain that the Commission correctly awarded them a credit for overpayment, the correct date for calculating the credit was the date of MMI. In failing to use this date, the Commission erred, and the Court should correct the error.

In the Decision and Order, the Commission found that, pursuant to S.C. Code Ann. § 42-9-210, Respondents were entitled to a credit for overpayment of TTD benefits made after January 5, 2024. (R. p. 35). The Commission did not offer any analysis or explanation regarding its selection of January 5, 2024, as the date from which the credit was calculated. However, January 5, 2024, correlates to the date of the filing of the Form 21, Employer's Request for Hearing. Respectfully, the Commission erred because South Carolina law entitles Respondents to a credit for overpayment of benefits made after October 31, 2023, the date of MMI.

Section 42-9-210 of the South Carolina Code provides:

> Any payments made by an employer to an injured employee during the period of his disability, or to his dependents, which by the terms of this title were not due and payable when made may, subject to the approval of the commission, be deducted from the amount to be paid as compensation; provided, that in the case of disability such deductions shall be made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly payment.

S.C. Code Ann. § 42-9-210.

"[W]orkers' compensation benefits accrue along a time continuum: temporary total disability benefits are available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member." *Curiel v. Envt'l Mgmt. Servs. (MS)*, 376 S.C. 23, 29, 655 S.E.2d 482, 485 (2007) (citation omitted). Once the Commission affirms that a claimant has reached MMI, it is then appropriate to terminate TTD benefits in favor of either permanent partial or permanent total disability benefits, if warranted by substantial evidence in the record. *Hendricks v. Pickens Co.*, 335 S.C. 405, 414, 517 S.E.2d 698, 703 (Ct. App. 1999) (citing *O'Banner v. Westinghouse Elec. Corp.*, 319 S.C. 24, 27–8, 459 S.E.2d 324, 326 (Ct. App. 1995) (explaining that under Regulation 67–507, an employer successfully rebuts the presumption that a claimant is still entitled to TTD benefits by producing a certificate of MMI)).

Once temporary benefits have been terminated, "it [is] then appropriate for the commission to determine whether to provide a credit to the employer and carrier pursuant to South Carolina Code section 42-9-210 (1985)." *Id.*; *see also Smith v. S.C. Dept. of Mental Health*, 335 S.C. 396, 399, 517 S.E.2d 694, 696 (1999) ("The rationale for ceasing temporary benefits upon a finding of MMI is to permit entry of a permanent award. Clearly, if an employee has reached MMI and remains disabled, then his injury is permanent …. This is precisely the reason to terminate temporary benefits in favor of permanent benefits upon a finding of MMI.").

Here, the Commission erred because the calculation of a credit for overpayment of TTD benefits must be based on the date that the Commission determined MMI was reached, *not* the date of filing a Form 21, Request for Hearing, as seems to have been done in this case. South Carolina case law is clear on this point. *See Curiel*, 376 S.C. at 29, 655 S.E.2d at 485 ("[W]orkers' compensation benefits accrue along a time continuum: temporary total disability benefits are

available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member."). The evidence presented by Respondents clearly establishes diligent effort to secure Appellant's signature on the Form 17, whereafter TTD benefits could have been terminated without the need for a Form 21. However, when Appellant failed to sign and return the Form 17, Defendants had no alternative but to file the Form 21 seeking to stop payment of said benefits, which was done promptly.

The Court's decision in *Sanders v. MeadWestvaco Corp.*, 371 S.C. 284, 638 S.E.2d 66 (Ct. App. 2006) provides guidance on this issue. In *Sanders*, the Court of Appeals held that the Commission erred in limiting a credit for overpayment pursuant to section 42-9-210 to the period commencing the day preceding the hearing before the Single Commissioner. instead of the date of MMI. 371 S.C. at 294, 638 S.E.2d at 71-72. The claimant reached MMI on August 21, 2002. *See id*. at 294, 638 S.E.2d at 72. In September of 2002, Westvaco filed a Form 21, Request for Hearing, seeking to stop payment of TTD benefits. *See id*. at 288, 638 S.E.2d at 68. However, the hearing before the Single Commissioner was not scheduled until January 16, 2003, due to delays by both parties. *See id*. at 294-95, 638 S.E.2d at 72. Following the hearing, the Single Commissioner determined the claimant had reached MMI, terminated TTD, and granted a credit for overpayment dated to the day before the hearing. *See id*. at 288-89, 638 S.E.2d at 69. The Commission affirmed, finding that, due to the fact that the hearing was rescheduled several times, Westvaco was only entitled to credit for overpayments for the period after January 16, 2003. *See id*. at 295, 638 S.E.2d at 72. However, the Court of Appeals reversed, holding that because Westvaco was entitled to have its request to terminate TTD heard within sixty (60) days of filing a Form 21 under S.C. Code Ann. § 42-9-260, and the hearing delay was not solely the fault of Westvaco, there was "no

substantial evidence supporting the Appellate Panel's decision to overpay benefits to [the claimant]." *See id*. at 295, 638 S.E.2d at 72.

Similarly, in *Hendricks*, the Court of Appeals affirmed the finding of the Commission, which awarded Pickens County a credit for overpayment of TTD benefits from the date of MMI because TTD benefits were terminated by the Single Commissioner upon the determination that the claimant had reached MMI. 335 S.C. at 414-16, 517 S.E.2d at 703-04.

In the present case, the Commission found that Appellant reached MMI on October 31, 2023, consistent with the Form 14B completed by Dr. Pill that was faxed to Respondents on December 18, 2021, and awarded Appellant partial permanent disability. (R. p. 35). Thus, Appellant was no longer entitled to TTD benefits as of that date. *See Curiel*, 376 S.C. at 29, 655 S.E.2d at 485 (holding "the date of maximum medical improvement signals the end of entitlement to temporary total benefits"). Once the Commission determined the date of MMI and terminated TTD benefits, Respondents were entitled to a credit for overpayment from that date pursuant to section 42-9-210. *See Curiel*, 376 S.C. at 29, 655 S.E.2d at 485; *Sanders*, 371 S.C. at 295, 638 S.E.2d at 72; *Hendricks*, 335 S.C. at 414-16, 517 S.E.2d at 703-04. The date of MMI is October 31, 2023, not January 5, 2024. There is simply no basis in statute or case law to award a credit for overpayment of TTD from the date of the filing of a Form 21, Request for Hearing, as the Commission did in this case. Moreover, there was nothing offered by the Commission as to the basis for permitting Appellant to continue receiving TTD beyond October 31, 2023. Unlike in *Sanders*, the Commission did *not* conclude that TTD would continue beyond MMI as a result of delays by Respondents. Thus, the Commission erred in this respect, and the Court should rectify this error and award Respondents a credit for overpayment of TTD as of October 31, 2023.

Separately, Appellant's argument that the Commission erred in awarding Respondents *any* credit for overpayment of TTD is entirely without merit for two reasons. First, Respondents are entitled to such a credit under S.C. Code Ann. § 42-9-210 and the foregoing authorities applying the statute. Second, Appellant is again arguing that she did not, in fact, reach MMI, thus rendering any credit for an overpayment erroneous. Respondents fully addressed this assertion in Question IV above and will not repeat their arguments here. Suffice it to say, all evidence in the record demonstrates that Appellant reached MMI on October 31, 2023, and her arguments to the contrary are likewise meritless.

CONCLUSION

For the reasons stated herein, this Court should affirm the Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel in full.

Respectfully Submitted,

May 4, 2026

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