THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2014-000454

Paula Russell,..... Appellant,

v.

Wal-Mart Stores, Inc., and American Home Assurance,..... Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. DID THE APPELLATE PANEL APPLY THE CORRECT LEGAL STANDARD AND CORRECTLY DETERMINE THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE IN THE RECORD THAT SHE SUSTAINED A WORSENING OF HER PHYSICAL CONDITION AS A RESULT OF THE ORIGINAL INJURY AND OCCURRING AFTER THE FIRST AWARD?

2. DOES SUBSTANTIAL EVIDENCE SUPPORT THE COMMISSION'S FINDING THAT APPELLANT DID NOT SUSTAIN A PHYSICAL CHANGE OF CONDITION FOR THE WORSE?

STATEMENT OF THE CASE

On November 3, 2009, Appellant sustained an admitted injury to her back arising out of and in the course of her employment with Wal-Mart. A hearing was held on April 13, 2011, and on June 8, 2011, the Commission ordered that Appellant reached maximum medical improvement for her work-related injury on February 2, 2011, and was entitled to a 7% permanent partial disability to the back. The Commission further ordered that Appellant is entitled to ongoing anti-inflammatory medication as per the Form 14B completed by treating provider Dr. Merritt on March 29, 2011, as long as such medication is causally related to her work accident and tends to lessen her period of disability.

On December 9, 2011, Appellant filed a Form 50 claiming she was experiencing a change of condition for the worse with allegations of new and increased symptoms including radicular pain in her legs. A hearing on the change of condition claim was held on February 11, 2013, before Commissioner Andrea Roche who found on August 5, 2013, that Appellant suffered a change of condition for the worse and ordered Respondents to provide Appellant with medical care and attention for the change of condition and temporary total disability benefits starting on December 1, 2011 to the present.

The August 5, 2013, Order was timely appealed by Respondents and a hearing was held before the Appellate Panel (Full Commission) on December 16, 2013. The Appellate Panel issued its Order on January 30, 2014, finding Appellant failed to prove by a preponderance of the evidence in the record that she sustained a change of condition for the worse. The Order further states that the preponderance of the evidence does not prove a worsening of Appellant's physical condition as a result of the original injury and occurring after the first award. The Commission found Appellant is ineligible for any further benefits under the South Carolina Worker's Compensation Act. Notwithstanding this outcome, the Commission found Appellant is still entitled to ongoing anti-inflammatory medication as per the original order in the case. In making this ruling, the Commission considered all of the evidence as a whole but gave greater weight to the medical records, the diagnostic tests, and the testimony of the medical experts in reaching a decision. Among the medical experts, the Appellate Panel gave the greatest weight to spine surgeon Dr. Edwards' testimony. In contrast, limited weight was given by the Commission to the lay testimony of the Claimant. In sum, the Commission found the medical records, diagnostic tests, and medical opinions did not support a *physical* change of condition for the worse; instead, the Appellate Panel concluded the preponderance of the evidence showed no objective difference between the Claimant's MRI scan after the original award and the MRI scan before the original award.

Appellant subsequently served her notice of Appeal on February 28, 2013. Respondents now timely submit this brief arguing the Appellate Panel's Decision and Order should be upheld as a matter of law.

STATEMENT OF THE FACTS

After the original Hearing and Decision of the Commission for Appellant's November 3, 2009, back claim, Appellant alleges she experienced new and increased symptoms including radiating pain into her legs requiring additional medical treatment to include surgery by Dr. Edwards. (Roche Hearing Tr. at 4: 3-6). Specifically, Appellant reported to Dr. James O. Merritt on September 16, 2011, months after the April 13, 2011 original Hearing and June 8, 2011 Decision and Order of the Commission with alleged new complaints of pain down her legs. (Dr. Merritt Deposition, page 7, lines 9-10). When Dr. Merritt was deposed, however, he admitted he had some notes in his file showing Claimant complained of pain going into her leg before she initially saw him in 2010. (Dr. Merritt Deposition, page 13, line 21— page 14, line 1). In September 2011, Dr. Merritt ordered an MRI to compare to Appellant's prior August 2011 MRI, and both MRIs showed a disc protrusion at L5-S1. (Dr. Merritt Deposition, page 7, line 24— page 8, lines 4-11). Although Dr. Merritt did not have the films from the MRIs to compare, he did not think there was a major change between the two. (Dr. Merritt Deposition, page 8, lines 18-21). In fact, he testified he was not sure if he ever saw the actual films, but upon reviewing the MRI reports, there was nothing he felt was "extremely remarkable." (Dr. Merritt Deposition, page 8, lines 13-14; 21-24). Without looking at the films, Dr. Merritt could not say for sure whether there was an obvious objective change or not. (Dr. Merritt Deposition, page 17, lines 11-13). Dr. Merritt also conceded that Dr. Edwards as a spine surgeon would be "more of an expert on spine MRIs" that he would be, and that Dr. Edwards' opinion that there was no change in the MRIs from 2010 to 2011 was probably correct. (Dr. Merritt Deposition, page 18, lines 3-19).

Dr. Merritt sent Appellant for further evaluation with spine surgeon Dr. William S. Edwards who did review the actual MRI studies at issue in this case. (Dr. Edwards Deposition,

page 5, lines 16-17; page 16, lines 22-25). He concluded there was pathology at the L5-S1 disc on both studies, that they looked substantially the same to him, and that there was no objective or significant radiographical difference to be noted in the scans. (Dr. Edwards Deposition, page 6, lines 5-7; page 7, lines 8-10; page 17, lines 1-3). Further, he opined Appellant's radiographical condition was not worsening; instead, any worsening was predominantly subjective. (Dr. Edwards Deposition, page 12, lines 24-25; page 13, lines 5-6). In fact, Dr. Edwards explained that Appellant's disc protrusion at L5-S1 has been contacting the nerve root throughout the course of her claim causing irritation in the nerve root, that Appellant does not have any weakness in her muscles innervated by that particular nerve, and that Appellant's reflexes remain the same. (Dr. Edwards Deposition, page 16, lines 17-21; page 17, lines 9-12). Dr. Edwards also opined that Appellant could have been a candidate for discectomy back in 2010 for her November 2009 accident, but it was probably not considered at that time because Claimant was pregnant. (Dr. Edwards Deposition, page 20, line 19—page 21, line 2).

STANDARD OF REVIEW

The 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, 599 S.E.2d 604 (Ct. App. 2004). Upon review, appellate courts have the power to reverse or modify a decision if the findings and conclusions of the administrative agency are affected by an error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, arbitrary or capricious, characterized by an abuse of discretion, or a clearly unwarranted exercise of discretion. Gray v. Club Group, Ltd., 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000). Under the APA, an appellate court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, but it may reverse for errors of law. Bentley v. Spartanburg County, 730 S.E.2d 296, 398 S.C. 418 (S.C. 2012) (citing S.C. Code Ann. § 1-23-380(5)). Specifically, "[i]n workers' compensation cases, the Appellate Panel is the ultimate fact finder." Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (S.C. 2000) (citing Hunter v. Patrick Constr. Co., 289 S.C. 46, 344 S.E.2d 613 (1986)). "The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission." Id. (citing Ford v. Allied Chem. Co., 252 S.C. 561, 167 S.E.2d 564 (1969)). It is not the task of the appellate court to weigh the evidence as found by the Full Commission. Id. (citing Ellis v. Spartan Mills, 276 S.C. 216, 277 S.E.2d 590 (1981)).

The substantial evidence rule of the APA governs the standard of review in a workers' compensation decision. Frame v. Resort Servs., Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004). This Court must affirm the findings of fact made by the Full Commission if they are supported by substantial evidence. Jordan v. Kelly Co., 381 S.C. 483, 486, 674 S.E.2d 166, 168 (2009). Substantial evidence is neither a mere scintilla of evidence, nor 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. Pratt v. Morris Roofing, Inc., 357 S.C. 619, 594 S.E.2d 272 (2004). Thus, substantial evidence is a lesser standard than by a preponderance of the evidence. Id.

ARGUMENT

I. THE APPELLATE PANEL APPLIED THE APPROPRIATE LEGAL STANDARD AND CORRECTLY DETERMINED APPELLANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE IN THE RECORD THAT SHE SUSTAINED A WORSENING OF HER PHYSICAL CONDITION AS A RESULT OF THE ORIGINAL INJURY AND OCCURRING AFTER THE FIRST AWARD.

The record and the Decision and Order show that the Appellate Panel considered the record as a whole and reached a reasonable conclusion based on all of the evidence submitted by both parties. Contrary to the arguments of Appellant, they did not apply the wrong legal standard or fail to consider any evidence in this matter.

S.C. Code Ann. § 42-17-90 provides, "the Commission may review an award and on that review make an award . . . on proof ***by a preponderance of the evidence*** that there has been a change of condition caused by the original injury, after the last payment of compensation." (emphasis added). In Gattis v. Murrells Inlet VFW #10420, 576 S.E.2d 191 (S.C. Ct. App. 2003) (citing Causby v. Rock Hill Printing & Finishing Co., 153 S.E.2d 697, 698 (S.C. 1967)), the court held a change in condition occurs when a claimant experiences a change in ***"physical condition"*** as a result of the original injury and occurring after the first award. (emphasis added). To justify a modification of an award based on a change of condition, therefore, the claimant bears the burden of proving the actual change in condition and its causal connection to the

original compensable accident. Id. (citing Krell v. S.C. State Hwy. Dept., 118 S.E.2d 322, 323 (S.C. 1961)). The determination of whether a claimant experiences a change of condition is a question for the fact finder and must be affirmed if substantial evidence supports the Full Commission's finding. Clark v. Aiken County Government, 620 S.E.2d 99 (S.C. Ct. App. 2005) (citing Gattis, 576 S.E.2d at 194; Solomon v. W.B. Easton, Inc., 415 S.E.2d 841, 843 (S.C. Ct. App. 1992)). Further, an appellate court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Bentley v. Spartanburg County, 730 S.E.2d 296 (S.C. 2012) (citing S.C. Code Ann. § 1-23-380(5)).

a. The Commission correctly reviewed the record as a whole and in its discretion determined Claimant did not meet her burden of proving a change of condition by a preponderance of the evidence.

As indicated by the extensive case law cited above, the Claimant must prove by a preponderance of the evidence that there has been a change in the physical condition caused by the original injury after the last payment of compensation. It is the duty and obligation of the Commission, in its role as fact finder, to consider all of the evidence presented and, in reviewing the record as a whole, to use its discretion as to the weight given to the evidence submitted in forming findings and conclusions based on that evidence. This is precisely what the Appellate Panel did in this matter.

The Commission correctly applied this preponderance of the evidence standard and properly weighed the various evidence presented, as supported by various Findings of Fact in the January 30, 2014 Appellate Panel Order. Specifically, Findings of Fact 7 on page 9 states, "[w]e give limited weight to the testimony of the Claimant as it is conclusory and self-serving . . . when considering all of the evidence as a whole, we find Claimant's lay testimony about her past and ongoing complaints does not carry the burden o[f] proving a worsening of condition after the

original award." Further, Findings of Fact 8 on page 9 says, "[w]e give more weight to the medical records, the diagnostic tests, and the testimony of the medical experts in this case . . . we give the greatest weight to Dr. Edwards' testimony and opinion because he is a spine surgeon and because Dr. Merritt himself identified Dr. Edwards as more of an expert of these issues and deferred to his judgment." Most importantly, the Commission specifically held in Findings of Fact 10, "[w]e are cognizant of the fact that testimony from both doctors and statements out of medical reports can be cherry-picked to support either position on this change of condition dispute . . . [h]owever, when reviewing the evidence as a whole and giving weight to the various pieces of evidence, it is our view that the preponderance of the evidence does not establish that Claimant has sustained a change of condition for the worse." (Appellate Panel Order, page 9).

While the Commission did note the lack of differences between the 2010 and the 2011/2012 MRIs in the January 30, 2014, Order, the Commission also cited to deposition testimony of the medical providers and testimony of the Claimant. Specifically, the Order references testimony from Dr. Edwards stating Appellant could have been a candidate for discectomy back in 2010 for her November 2009 accident, but it was probably not considered because Claimant was pregnant. (Appellate Panel Order, page 5). The Order further cites to testimony from Dr. Edwards that Claimant had not developed any weakness in her muscles and that her reflexes have remained the same. (Appellate Panel Order, page 7). The Commission also referenced testimony from Dr. Merritt that Appellant had some complaints of pain going into her right leg before she saw him at her first visit as well as testimony from Claimant that she believed the pain in her right leg was new and different than before. (Appellate Panel Order, page 6).

The Appellate Panel fulfilled its obligation to consider and weigh all of the presented

evidence in order to reach a determination as to whether the Claimant's legal burden had been met. The clear language of the Order indicates that all evidence was considered and which evidence was given more or less weight and the reasons therefore.

b. Appellant's argument that the Commission applied the wrong standard when evaluating Appellant's change of condition claim is unsubstantiated by the record.

Appellant now contends the Commission erred by using the wrong standard when evaluating Appellant's change of condition by requiring objective evidence of the change of condition. This argument is simply invalid. At no point in the Appellate Panel's Order does the Appellate Panel include a finding which would imply or indicate that only objective evidence was being considered in reaching a conclusion. Rather, the Commission clearly lays out that they considered all of the evidence as a whole. The Commission considered the medical reports, the diagnostic tests, the testimony of Dr. Merritt, the testimony of Dr. Edwards, and the testimony of the Claimant. The Commission did not prohibit, ignore, or disallow evidence that was not objective evidence. In fact, the plain language of the Commission's Order makes it extremely clear that the Commission considered and weighed all of the evidence.

Appellant has asserted that this change of condition claim was denied for the single reason that there was no definitive difference between the MRI scans before and after the original award. This argument is disingenuous. The Appellate Panel notes in Findings of Fact #6 that they reviewed all of the submitted evidence, including the medical records, the Claimant's testimony, the testimony of the various doctors, and the prior Orders. (Appellate Panel Order, page 9). The Appellate Panel then details, in Findings of Fact #7-14 all categories of the evidence presented, the weight given to the evidence, and their reasons therefore. (Appellate Panel Order pages 9-10). At no point in the Order does the Appellate Panel indicate

or imply that the change of condition claim was being denied for a single reason, and this assertion by Appellant is without merit.

Appellant has argued that Claimant's testimony and complaints were ignored, but that is simply not the case. The Appellate Panel considered and weighed that evidence, and they found that the Claimant's lay testimony about her past and ongoing complaints did not carry the burden of proving a worsening of condition and that greater weight is given to the medical records, the diagnostic tests, and the testimony of the medical experts. The Commission did not prohibit or disallow lay testimony by the Claimant; instead, the Commission reviewed and considered Claimant's testimony but gave her statements less weight than the expert testimony of the medical providers.

The Appellant also repeatedly asserts that Respondents have argued the wrong legal standard. This argument is without merit for two reasons. First, it is irrelevant to a judicial review as to which legal standard was argued by Respondents; the only relevant standard is the one applied by the Appellate Panel and in this case, the evidence is abundantly clear that the correct legal and evidentiary standards were applied. Second, the Appellant has mischaracterized the Respondents' argument. In the case at hand, Respondents timely submitted a brief to the Appellate Panel discussing the applicable case law on change of condition claims in South Carolina in support of their argument that Appellant has not presented any objective testimony other than self-serving subjective complaints to demonstrate her condition is any "different" from her condition at the time the original Decision and Order was filed in June 2011. Likewise, at oral argument, Respondents argued to the Appellate Panel that while the Claimant's testimony is indeed one factor to be considered, the most important factor is the doctor's testimony about the actual physical condition of the back. (Appellate Panel Hearing Transcript,

page 9, line 19- page 10, line 1). Respondents conceded at oral argument that all testimony must be considered but they have also repeatedly argued that there must be a "physical change of condition for the worse" which is consistent with long-standing case law. (Appellate Panel Hearing Transcript, page 8).

The Appellant repeatedly asserts in her Brief that Respondent argued that objective evidence should be relied upon as opposed to subjective testimony. The Appellant cites this as proof of application of the wrong legal standard. It is not. It is simply argument by the Respondents over the weight given to testimony. The Respondents have argued from the beginning of the claim, and still argue at this time, that objective evidence should be given more weight than subjective evidence. It has never been argued that subjective evidence cannot be considered, nor has it been argued that there must be objective proof of a change of condition. The Respondents have simply argued that based upon the particular circumstances present in this case, the objective evidence and the testimony of the doctors based upon that objective evidence should be given more weight than the subjective complaints of claimant. The Appellate Panel decided that the medical records, diagnostic testing, and medical opinions should be afforded more weight on this particular claim, which is well within their discretion to determine.

II. SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSION'S FINDING THAT APPELLANT DID NOT SUSTAIN A PHYSICAL CHANGE OF CONDITION FOR THE WORSE.

This Court should uphold the decision of the Appellate Panel because substantial evidence supports the Commission's finding that Appellant did not sustain a physical change of condition for the worse. In Gattis v. Murrells Inlet VFW #10420, 576 S.E.2d 191 (S.C. Ct. App. 2003) (citing Causby v. Rock Hill Printing & Finishing Co., 153 S.E.2d 697, 698 (S.C. 1967)), the court held a change in condition occurs when a claimant experiences a change in "physical

condition" as a result of the original injury and occurring after the first award. (emphasis added). To justify a modification of an award based on a change of condition, therefore, the claimant bears the burden of proving the actual change in condition and its causal connection to the original compensable accident. Id. (citing Krell v. S.C. State Hwy. Dept., 118 S.E.2d 322, 323 (S.C. 1061)). It is important to note that a change of condition refers to conditions different from those in existence when an award was originally made. Id. at 191 (citing Lewis v. Craven Reg'l Med. Ctr., 468 S.E.2d 269, 274 (N.C. Ct. App. 1996)). A continued or ongoing incapacity of the same character and kind and for the same injury is not a "change in condition." Id. Further, where one relies upon expert medical testimony to show a causal connection between an injury and a subsequent condition, the testimony must meet the "most probably" rule and it is not sufficient under our case law to establish the condition in question "possibly", "could have", or "might have" resulted from the injury. Gambrell v. Burleson, 165 S.E.2d 622, 623 (S.C. 1969) (citing Cross v. Concrete Materials, 114 S.E.2d 828 (S.C. 1960)). The determination of whether a claimant experiences a change of condition is a question for the fact finder and must be affirmed if substantial evidence supports the Full Commission's finding. Clark v. Aiken County Government, 620 S.E.2d 99, 366 S.C. 102 (S.C. App. 2005) (citing Gattis, 353 S.C. at 107, 576 S.E.2d at 194; Solomon v. W.B. Easton, Inc., 415 S.E.2d 841, 843 (S.C. Ct. App. 1992)).

In the case at hand, Appellant contends that she began to experience new complaints of pain in her legs after the June 8, 2011, Order issued by the single Commissioner placing her at maximum medical improvement and assigning a seven percent impairment rating to her back. On May 23, 2012, however, Claimant's treating provider Dr. Merritt testified that Claimant had some complaints of pain going into the leg before she returned to see him in September of 2011. (Dr. Merritt Deposition, page 13, line 21—page 14, line 1). Likewise, Claimant testified at the

hearing that she was indeed having some aches in her right leg when she first started treatment with Dr. Merritt and conceded she had some right leg symptoms when she treated with Dr. Wentz for injections in 2010. (Roche Hearing Tr. at 18:21-25; 20:2-23). Nevertheless, she testified that she believed the pain in her right leg associated with her claim for a change of condition was new and different than before, although she could not remember exactly when she "started receiving them." (Roche Hearing Tr. at 9: 11-21).

While a new MRI was ordered by Claimant's treating provider due to her new complaints of pain, Dr. Merritt testified during his deposition that he could not recall whether he actually reviewed the original films in this case and testified that he didn't think there was a major change . . . "[n]othing I felt was extremely remarkable". (Dr. Merritt Deposition, page 8, lines 13-24). He then testified on cross examination that he would defer to Dr. Edwards as being more of an expert regarding the interpretation of the MRI scans from 2010 to 2011, agreed that Dr. Edwards probably has more experience in evaluating spine MRIs and would be more of an expert on spine MRIs than he was, and ultimately agreed with Dr. Edwards' opinion there was no change in the MRI scan before and after the first hearing. (Dr. Merritt Deposition, page 18, lines 3-19).

As indicated above, Dr. Edwards did review and compare the MRI studies from 2010 and 2011 after which he concluded: (1) there was pathology at the L5-S1 disc on both studies; (2) the MRIs looked substantially the same to him; and, (3) there was no objective or significant radiographical difference to be noted in the scans. (Dr. Edwards Deposition, page 5, lines 16-17; page 6, lines 5-7; page 7, lines 8-10; page 16, lines 22-25; page 17, lines 1-3). Dr. Edwards also opined Claimant's disc protrusion at L5-S1 has been contacting the nerve root and causing irritation throughout the course of her claim; she has not developed any weakness in her muscles innervated by that particular nerve; and, her reflexes have remained the same. (Dr. Edwards

Deposition, page 16, lines 17-21; page 17, lines 9-12).

The substantial evidence in the record, including the medical records, the diagnostic testing, and the medical testimony, support the finding of the Appellate Panel that Appellant did not sustain a physical change of condition after the original award.. The expert testimony of both Dr. Merritt and Dr. Edwards, the medical records, and the diagnostic tests constitute substantial evidence to support the finding that Appellant did not sustain a change of condition for the worse.

Appellant has argued the wrong standard on this issue. On page 27 of her Brief, the Appellant states that the substantial evidence supports a finding of a change of condition. That is not the inquiry of this Court. The legal inquiry and review of this Court is limited to whether there is substantial evidence to support the findings of the Appellate Panel, not whether there is substantial evidence to support opposite findings. In this appeal, the only inquiry is whether there is substantial evidence to support the findings of the Appellate Panel, and there is substantial evidence in this matter.

Appellant also alleges she developed new symptoms after the original Decision and Order in this case which resulted in Dr. Edwards recommending spine surgery. (Roche Hearing Tr. at 12:4-23). Upon further review of the evidence in this case, however, it is clear that Dr. Edwards opined Appellant could have been a candidate for discectomy back in 2010 for her November 2009 accident, but it was probably not considered at that time because she was pregnant. (Dr. Edwards Deposition, page 20, line 19—page 21, line 2). Specifically, he testified, "[w]e certainly try not to operate on pregnant people if we can get by without it." (Dr. Edwards Deposition, page 21, lines 1-2). He also opined that surgery for this type of problem is not something that "has" to be done the majority of the time; rather, it's something that is offered to

patients in an effort to try to give them some relief for their pain. (Dr. Edwards Deposition, page 14, lines 4-11). Based upon Dr. Edwards' testimony, Claimant's current condition is not new but is merely the same problem that she had before the original award.

Appellant also alleges that Dr. Edwards came to the conclusion that Appellant's "nerve has worsened." When reading the actual complete testimony of Dr. Edwards, however, he actually states, "the worsening of [Appellant's] symptoms, anatomically, could be that there is now a chronic change in that nerve that makes it more painful or symptomatic." (Dr. Edwards Deposition, page 13, lines 11-14) (emphasis added). When questioned on whether irritation of a nerve that continues over time would cause the nerve to worsen, Dr. Edwards testified, "[i]t can". (Dr. Edwards Deposition Testimony, page 12, lines 6-10). He then testified that radiographically Claimant's condition was not worsening and that her alleged "worsening" was predominantly a subjective or symptomatic worsening. (Dr. Edwards Deposition, page 12, line 24-page 13, line 6). While Dr. Edwards also opined that chemicals inside a disc can also cause nerve root irritation if those leak out, he could not state to a reasonable degree of medical certainty that Appellant has had chemical leaking affecting the nerve root and even stated that "there's just no way to prove that one way or the other". (Deposition of Dr. Edwards, page 18, line 15-page 19, line 14). The Appellate Panel declined to base its decision on evidence from a doctor that something "could" be a cause especially where the doctor conceded that he could not offer his opinion to a reasonable degree of medical certainty.

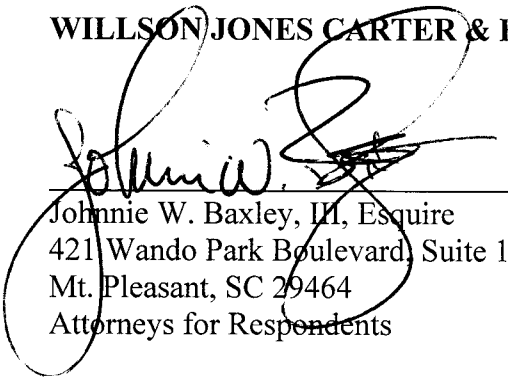
Finally, Appellant argues about the weight given to claimant's testimony and about the credibility determinations as to her testimony made by the Appellate Panel. As asserted fully above, it has long been held by our courts that the Appellate Panel is empowered to adjudicate credibility of witnesses and weight of evidence, and the courts will not disturb those judgments.

CONCLUSION

Based on the foregoing, this Court should affirm the Appellate Panel Decision and Order.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.



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PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondents on the Appellant by depositing a copy of the document in the United States mail, first class postage prepaid, on July 25, 2014, Paula Russell's counsels of record, William A. Jordan, III, Esquire, 622 Wade Hampton Boulevard, Greenville, SC 29609; and C. Daniel Vega, Esquire, 1510 Calhoun Street, Columbia, SC 29201.

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July 25, 2014

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Paula Russell vs. Wal-Mart Stores, Inc.
WCC File No.: 0917785 DOI: 11/3/2009
Carrier: Illinois National Insurance Company - Claim No.: 5943261
WJC&B File No.: 0170.01754

Dear Ms. Kitchings:

Enclosed for filing with the Court, please find the Initial Brief of Respondents, the Proof of Service of the Initial Brief of Respondents, the Designation of Matter To Be Included In The Record On Appeal, and the Proof of Service of the Designation of Matter.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

Johnnie W. Baxley, III

JWB/erg

Enclosures

cc: Mr. William A. Jordan
Mr. C. Daniel Vega
Ms. Anita Adams (via e-mail)

erg
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THE HONORABLE JENNY ABBOTT KITCHINGS
THE SOUTH CAROLINA COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, SC 29211