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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. Supreme Court

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No: 2013-000890

Loretta Springs Petitioner,

vs.

Clemson University and State Accident Fund..... Respondents.

BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND THE SOUTH CAROLINA COURT OF APPEALS FOLLOWED PRECEDENT AND ESTABLISHED CASE LAW, INCLUDING *ANDERSON V. BAPTIST MEDICAL CENTER*, 343 S.C. 387, 541 S.E.2D 526 (2001), IN CONCLUDING THAT THE SUBSTANTIAL EVIDENCE IN THE RECORD AS A WHOLE DID NOT SUPPORT COMPENSABILITY FOR THE CLAIMANT'S CURRENT MENTAL PROBLEMS.
2. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND THE SOUTH CAROLINA COURT OF APPEALS CORRECTLY APPLIED SOUTH CAROLINA LAW IN FINDING AND CONCLUDING THE PETITIONER'S CURRENT MENTAL PROBLEMS ARE NOT COMPENSABLE.

STATEMENT OF THE CASE

This case originated when the Appellant, Loretta Springs (hereinafter "Springs"), suffered work related injuries from an accident occurring on October 12, 2007 as the result of a fall from a golf cart causing her to hit her head and injuring her neck, back, and hip. Springs subsequently contended she sustained physical brain damage in addition to injuries to her head, her back, her coccyx, her left lower extremity, her ears, her nose, her tongue, her olfactory nerve, anxiety, depression, and psychological overlay. Springs asked for lifetime benefits as a result of physical brain damage or, in the alternative, asked to be determined permanently and totally disabled based on a combination of her head and back injuries, with continuing medical treatment for the remainder of her life.

The Employer, Clemson University (hereinafter "Clemson"), and Carrier, State Accident Fund (hereinafter jointly referred to as "Respondents") admitted an injury to Springs' coccyx, hip, and head. The Respondents contended Springs reached maximum medical improvement in regard to her work related injuries on October 11, 2010 and relied on the medial impairment ratings of Dr. Jerry Sherrill and Dr. Carol Burnette. The

Respondents maintained the Claimant suffered a minor closed head injury (concussion) which healed and specifically denied physical brain damage. The Respondents contended Springs' current psychological or mental condition, including memory loss and need for counseling, was related to her past post-traumatic stress disorder (hereinafter "PTSD") as a result of childhood abuse resulting in dissociative identity disorder (multiple personalities). Further, the Respondents denied the extent of Springs' injuries including those to Springs' back, specifically the bulging disks, and the causal relationship between Springs' loss of taste and smell.

A hearing was held before Commissioner Avery B. Wilkerson of the South Carolina Worker's Compensation Commission (hereinafter "Commission"). At the hearing Springs focused much of her attention on the physical brain damage component of the case. Commissioner Wilkerson took evidence on the claim and subsequently issued a Decision and Order dated April 11, 2011. Commissioner Wilkerson found that Springs had reached maximum medical improvement in regard to her work related injuries, had suffered a partial permanent disability to her back and coccyx, had sustained a minor closed head injury which subsequently healed, had not suffered physical brain damage, that the aggravation to Springs' PTSD was not disabling, that Springs' current memory problems and psychological conditions were related to her childhood abuse and not the result of her work injury, and that Springs was in need of such additional medical care and treatment which would tend to lessen her period of disability.

Both parties timely filed Requests for Review by the Appellate Panel of the Commission asserting errors on the part of Commissioner Wilkerson. On the review before

the Appellate Panel, Springs again focused on the argument that she had suffered physical brain damage and was entitled to lifetime benefits. The Appellate Panel issued a unanimous decision dated November 16, 2011 affirming the Single Commissioner's Decision and Order in its entirety. Pursuant to the Commission's Decision and Order, Springs was awarded ten (10) weeks of permanent disability to her coccyx and 15 weeks of permanent disability to her back, totaling 25 weeks of disability. Springs was found to have sustained a minor closed head injury which subsequently healed, and it was determined that she had not suffered permanent physical brain damage as contemplated under S.C. CODE ANN. § 42-9-10. It was further determined Springs suffers from at least five (5) different personalities as a result of her dissociative identity disorder stemming from post-traumatic stress disorder from childhood abuse. The Commission found that Springs' memory problems and her other psychological conditions were "more related" to her childhood abuse and, accordingly, she was not entitled to any permanent disability for the closed head injury. Springs was awarded such additional medical care and treatment which would tend to lessen her period of disability. Since the counseling by Dr. Kriegel for Springs' pain coping skills and her PTSD were so intertwined, this included counseling by Dr. Kriegel. The Commission also determined that the Respondents would be responsible for Springs' referral to vocational rehabilitation.

Springs appealed the Commission's Decision and Order to the South Carolina Court of Appeals. At this point, Springs abandoned her argument related to physical brain damage and concentrated her argument on the Findings and Conclusions of the Commission that (1) Springs' mental condition was not causally related to the accident and (2) Springs was not

totally and permanently disabled as a result of her work related injury. By a unanimous opinion, the South Carolina Court of Appeals affirmed the Commission finding there was substantial evidence to support the Commission's Order. Springs thereafter petitioned the South Carolina Court of Appeals for a rehearing, which was denied.

Springs subsequently filed a Writ of Certiorari with the South Carolina Supreme Court which was granted. This Brief is in support of the Respondents' position that the South Carolina Supreme Court should affirm the Decision and Order of the South Carolina Workers' Compensation Commission in its entirety.

FACTS

Both the Appellant Springs and her husband Daniel Allen Springs (Mr. Springs) testified at the hearing. Mr. Springs testified that following the accident, his wife had dizziness, lack of equilibrium, no short term memory, impaired long term memory, and was disoriented. (R. p. 70). He feels she currently does not have the strength she used to have and planting a garden, bending, squatting, and kneeling are hard for her. (R. pp. 71-72). Mr. Springs testified Springs' dizziness and headaches did improve after the accident. (R. p. 76). He further testified she can do some household chores, some cooking, and some housekeeping. Mr. Springs is aware his wife suffers from multiple personality disorder. Mr. Springs acknowledged he had no training in determining how to detect personality disorders and that he learned of her multiple personalities after she began seeing Dr. Kriegel. He testified some of Springs' personalities have certain memories, and it is his understanding these personalities are the way she copes with her early childhood trauma. (R. p. 79).

Springs testified at the hearing that at the time of her injuries she was a maintenance technician at Clemson University. (R. p. 86). Springs testified the accident occurred at the end of the day when she “hopped” in a golf cart to return to the shop with another team member. They were going pretty fast, and when the driver swerved to the left, she fell out of the cart landing on her back. (R. p. 87).

Springs testified x-rays were taken at Clemson’s Redfern Clinic, and she was taken to the hospital the same day where a CAT scan was performed. She was discharged home but returned to the hospital the next day because she had nausea and had been “blacking out” all night. She was told she had a concussion. She later saw a neurologist and a neurosurgeon for treatment of these conditions. (R. pp. 89-90). Springs further testified she has seen two (2) neuropsychologists for memory issues, and has seen an ENT for loss of taste and smell. (R. p. 91). Springs currently sees Dr. Eric Loudermilk for pain management and Dr. Michael Kriegel for counseling. She takes medications for pain and depression. (R. pp. 92-95).

Springs testified that after the accident she returned to work for a period of time. She was subsequently told since she could not meet her job requirements, which included lifting 50 pounds, she would need to find a job somewhere else. (R. pp. 95-96).

According to Springs, she initially had problems hearing following the accident, but this has resolved. She testified she began having problems with smell and taste about a week or so after the accident and continues to have problems with these senses. (R. pp. 96-98). Springs further testified her coccyx was broken and her neck and lower back cause her pain. (R. pp. 99-100). In describing her current condition, Springs testified she has good days and bad days. (R. p. 102). Springs testified she loves to cook and she paints as a hobby. (R. p.

118). She sees Dr. Kriegel for pain and emotional counseling. While receiving counseling, it became apparent she was abused as a child. (R. pp. 103-104).

Springs testified that prior to the accident she took an antidepressant for about 6 months when she was in her 20's and was going through a divorce. She stated she continues to have memory problems but has learned to cope with this through therapy. She testified her word recall has improved, but she has more problems with anger and emotions. (R. pp. 105-106). Springs acknowledged that she has alter personalities. She is aware of them some of the time, but at other times, she is not. She maintained she had never experienced these alter personalities prior to the injury, but acknowledged she did have prior "lost time." (R. p. 107). She stated the youngest alter personality is 4 years old. (R. p. 107).

On cross-examination, Springs acknowledged she suffered episodes of dizziness and severe headaches prior to her work injury and had previously been treated by the Mayo Clinic in Florida. At that time, she underwent an MRI of the brain for these problems. (R. p. 109). In regard to her back problems, Springs denied straining her back while lifting some household appliances when she and her husband were moving but acknowledged she had mentioned to Dr. Kriegel that her back hurt because they were moving. Springs went on to testify one of her alter personalities (a 12-year old) always wants to do things to be helpful. When the alter ego "came out," she tried to move things and her current self would have to take back over and tell the alter ego she could not move things. (R. p. 112). Springs acknowledged she has been diagnosed with a mild disk bulge but no surgery was recommended. (R. p. 113). Springs further testified her dizziness has resolved, but she

stated she still sometimes loses her balance. She stated her severe headaches and the problems with her ear have also resolved. (R. p. 114).

Springs acknowledged Dr. Kriegel has diagnosed her with at least five (5) different personalities. She stated she was unaware of her alter egos or personalities prior to the accident. (R. p. 117). Springs testified that when she disassociates, Dr. Kriegel can ask an alter ego (an 8-year old female) to discuss a bad occurrence. This female alter ego can make Springs smell and taste as if the occurrence were happening. (R. p. 118). Springs further recalled losing time or blacking out in high school. She stated these episodes could have been due to her different personalities because she was being abused at the time. She never saw anyone for these problems nor sought treatment prior to this accident. (R. p. 119).

The medical records establish Springs had a normal CT scan of the brain on October 12, 2007. (R. p. 140). According to the Oconee Hospital record dated October 12, 2007, Springs suffered a minor closed head injury. (R. p. 142). MRIs of Springs' back dated November 16, 2007 and April 1, 2009 indicate a mild disc bulge at L5-S1 with mild degenerative changes and a subtle right lateral disc bulge at S1-S2. The MRIs found no significant neural impingement. (R. pp. 188, 318). Dr. Sherrill's medical records indicate Springs' back problems were completely non-surgical. (R. p. 187). On August 1, 2008, Springs was assigned a seven (7%) percent impairment to the lumbar spine, equating to a five (5%) percent rating to the whole person, by Dr. Carol Burnette. (R. p. 213). Dr. Sherrill, a neurologist, assigned a three (3%) percent medical impairment to Springs' head for anosmia (loss of smell) and a zero (0%) percent medical impairment to Springs' low back

on March 26, 2010. Dr. Sherrill returned her to work with no restrictions, and stated she did not need further medical care related to her work injury. (R. p. 319).

A review of Dr. Kriegel's medical records indicate that Springs has been diagnosed with dissociative identity disorder (a/k/a multiple personality disorder). She has at least five (5) alter egos or personalities and has been battling depression for many years. Dr. Kriegel believes Springs suffers from post-traumatic stress disorder as a result of childhood abuse. (R. p. 289). Dr. Kriegel's medical record dated February 17, 2010 states that as a result of implementing his suggestions, Springs has focused on memories from her childhood making her quite upset and agitated. He goes on to state there is potential that her current memory problems may be more related to intrusive memories from her childhood rather than as a direct result of her head injury during her work accident. (R. p. 286). Dr. Kriegel's medical record dated March 19, 2010 states her symptoms appear more and more related to post-traumatic stress disorder from childhood abuse than to her work injury. (R. p. 289).

ARGUMENTS

This Court has determined that the Administrative Procedures Act governs the standard of judicial review of decisions and awards issued by the South Carolina Workers' Compensation Commission. Citing the statute, the Court held that it is empowered on review to reverse or modify a decision only "if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decision, are ... (3) made upon unlawful procedures; (4) affected by other errors of law, [or] (5) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record...." S.C. CODE ANN. § 1-23-380; *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). Thus, in

the present matter, the award by the Workers' Compensation Commission can be set aside only if there is an error of law or it is unsupported by substantial evidence. In *Lark*, the Court addressed the substantial evidence rule, stating that in its opinion, the substantial evidence rule should be applied only in those cases where a manifest or gross error of law has been committed by the administrative agency. The court then quoted the language of the statute, adding that: "the Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d. 304 (1981).

Substantial evidence has been defined as:

"such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.... This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence."

Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 408 (1991).

Other South Carolina decisions have established that where there is a conflict in the evidence, the Findings of Fact of the Commission, as trier of the facts, is conclusive. *Greer v. Greenville County*, 245 S.C. 442, 141 S.E.2d 91 (1965); *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 519 S.E.2d 583 (S.C. Ct. App. 1999); *Holcombe v. Dan River Mills/Woodside Division*, 286 S.C. 223, 333 S.E.2d 338 (S.C. Ct. App. 1985). The Appellate Courts have cautioned the Bench and Bar on numerous occasions that the substantial evidence rule should not be used as judicial fact finding or a substitution of judicial judgment for agency judgment, and that a judgment upon which reasonable men might differ cannot set aside. *Hunter v. Patrick Construction Co.*, 289 S.C. 46, 344 S.E.2d 613 (1986); *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 519 S.E.2d 583 (S.C. Ct. App. 1999). The Findings of the Commission are presumed

correct and will be set aside only if unsupported by substantial evidence. *Crisp v. SouthCo, Inc.*, 390 S.C. 340, 701 S.E.2d 762 (S.C. Ct. App. 2010).

The South Carolina Courts have long held and definitively stated that a Claimant who asserts his or her rights to compensation must establish by the preponderance of the evidence the facts which will entitle him or her to an award under the Act and such award must not be based on surmise, conjecture or speculation. *Tiller v. National Healthcare Ctr.*, 334 S.C. 333, 513 S.E.2d 843 (1999); *Polk v. E.I. DuPont deNemours Co., Inc.*, 250 S.C. 468, 158 S.E.2d 765, 767 (1968). The burden is on the Claimant to prove the facts which will render the injury compensable. *Mims v. Nehi Bottling Co.*, 218 S.C. 513, 63 S.E.2d 305 (1951). In deciding whether substantial evidence supports a finding of causation in a Workers' Compensation case, it is appropriate to consider both the lay and expert evidence. *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 656 S.E.2d 753 (S.C. Ct. App. 2007).

I. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND THE SOUTH CAROLINA COURT OF APPEALS FOLLOWED PRECEDENT AND ESTABLISHED CASE LAW, INCLUDING *ANDERSON V. BAPTIST MEDICAL CENTER*, 343 S.C. 387, 541 S.E.2D 526 (2001), IN FINDING AND CONCLUDING SPRINGS' CURRENT MENTAL PROBLEMS WERE NOT COMPENSABLE.

Springs maintains the Commission's Findings and Conclusions that her current mental/psychological problems are not compensable are based on an error of law and unsupported by the evidence in the record. Springs cites *Anderson v. Baptist Medical Center*, 343 S.C. 387, 493, 541 S.E.2d 526, 528 (2001) along with several other cases and S.C. CODE ANN. § 42-9-35 to argue that Springs' work injury aggravated a pre-existing condition making her current psychological problems compensable. The Respondents maintain the substantial evidence in the record supports the Commission's conclusions that

Springs has reached maximum medical improvement in regard to any psychological problems causally related to the accident and that her current psychological problems are unrelated. Furthermore, the Respondents maintain there is no error of law. While the Respondents do not dispute that pursuant to *Anderson v. Baptist Medical Center* and the supporting statutory law and case law, mental injuries are compensable if they are induced by either physical injury or by unusual or extraordinary conditions of employment, they dispute that Springs met her burden of proof of establishing compensability.

The case law supports the right of a Claimant to compensation for an aggravation of a pre-existing condition where there is a dormant condition which has produced no disability but which, thereafter, becomes disabling by reason of the aggravating injury. *Anderson* is distinguishable from the present case in that the court in *Anderson* found a pre-existing psychological condition to be compensable because the only substantial evidence in the record clearly showed her condition was aggravated by the work related fall. As set forth below, substantial evidence in the present case supports the Findings of Fact and conclusions of law reached by the Commission that any aggravation of Springs' PTSD is not disabling. Springs' current problems are related to PTSD as a result of childhood abuse, and while unknown to her, they existed prior to her work accident.

As cited by the South Carolina Court of Appeals in its opinion in this case, *Bartley v. Allendale Co. School District*, 392 S.C. 300, 709 S.E.2d 619 (2011) holds that the question to be considered regarding a pre-existing condition is whether the combined effects of the pre-existing condition and the work place injury result in a greater disability than would have otherwise existed. What separates the present case from *Bartley* is that the Commission in

this case determined the substantial evidence in the record supports the fact that the Claimant's current psychological condition is related to her PTSD from childhood abuse, and that while the accident may have initially aggravated her pre-existing PTSD, it was not disabling.

Springs' medical condition is complicated, and in order to understand the Findings and Conclusions of the Commission as it relates to Springs' psychological claim, it is necessary to review the background of Springs' medical treatment. A review of the evidence establishes the Respondents initially accepted responsibility for the claim and based on Springs' subjective complaints provided treatment for Springs' depression and apparent psychological problems. The initial acceptance of the psychological portion of the claim was made in good faith and in the belief that Springs' physical injury resulted in depression and memory loss. While certain early psychological testing and even some treatment may have been necessary and related to the accident, the Respondents dispute Springs' current psychological problems are causally related to her work injury. The record establishes Springs reached maximum medical improvement in regard to any psychological problems causally related to the accident and that her current problems are the result of her pre-existing undiagnosed dissociative identity disorder. This disorder was present for years but had never been diagnosed because Springs had never received counseling. The accident did not cause or aggravate the condition, it just brought the condition to light.

Following the injury, a CT scan was conducted and a referral was made to a neurologist. Springs complained of memory loss, depression, and other psychological problems. The neurologist, Dr. Jerry Sherrill, treated Springs over an extended period of

time. Springs' objective testings were reported as normal. (R. pp. 140, 157). Despite negative scans, it was initially believed that Springs' subjective complaints of memory loss and depression were related to her head injury. Springs also underwent a psychological evaluation by Dr. Nancy Voight in the fall of 2008 and was referred to the Roger C. Peace Rehabilitation Hospital where she underwent neuropsychological evaluation by Dr. Sheldon Herring, a Ph.D., Licensed Psychologist, Clinical Neuropsychologist, and Clinical Program Director on September 30, 2009.

Following extensive testing, Dr. Herring issued a report dated October 26, 2009. The testing established that Springs was able to read single words and short sentences adequately and her single word recognition was in the average range. Visual spatial processing was normal. Despite Springs' objective complaints, her memory was found to be functional and essentially fell within the average range. Springs' overall profile was within normal limits. It was felt that most of her problems at the time were likely due to pain and not necessarily reflective of primary deficits related to a brain injury. This was supported by the significant disassociation between the patient's self reporting and her actual underlying cognitive strengths. (R. pp. 258-264). Dr. Herring further noted that the evidence shows improvement in some areas compared to 2008 testing which was conducted by Dr. Voight. (R. p. 262). Dr. Herring also noted that Springs was surprised by her numerous cognitive strengths. (R. p. 262).

Dr. Herring's testing shows that Springs' mental status following the accident improved and that her mental abilities were in the average range. Thus, the record establishes Springs' subjective complaints were not corroborated through the testing and it

was Dr. Herring's opinion that there was no confirmation of a brain injury. There is no mention of PTSD. This supports the Commission's conclusions that Springs' problems were not as severe as reported, and her current problems are unrelated to the accident. Accordingly, there is evidence in the record to support the Commission's Decision and Order that the accident did not aggravate or cause her current problems.

As a result of this testing and based on the recommendations of her doctors, counseling sessions were authorized by the Respondents through Dr. Kriegel for counseling related to back pain. Dr. Kriegel first saw Springs in November 2009, more than two (2) years after her work accident. At that time, he felt Springs was an excellent candidate for a treatment program focusing on improving her coping skills and assisting her in reducing all of her chronic pain symptoms and her emotional reaction to her condition. (R. pp. 279-280). Dr. Kriegel felt Springs had good potential for improvement and began counseling Springs every two (2) weeks. Since there appeared to be improvement in her coping skills, beginning in February 2010, Dr. Kriegel started addressing and focusing on her purported memory issues. (R. p. 285). As Dr. Kriegel and Springs began discussing her memory issues, Springs started focusing on her memories from her childhood and it became apparent that her memory problems "may be more related to intrusive memories from her childhood rather than as a direct result of her head injury during the accident." (R. p. 286). Springs related she had intrusive memories and nightmares most of her life but she had not been aware that they may be related to the trauma she had experienced as a child. (R. p. 287). By March 19, 2010, Dr. Kriegel determined it appeared "more and more that she suffered from post traumatic stress disorder from childhood abuse." (R. p. 289). The first mention of

dissociative identity disorder is in Dr. Kriegel's medical record dated July 27, 2010, approximately eight (8) months into her treatment. (R. p. 324). On August 19, 2010, Springs informed Dr. Kriegel she realized for the first time she had been battling depression for many years and that the reason she did not recognize it was because it had been her constant companion. (R. p. 327). By September 23, 2010, Springs was found to have at least five (5) separate alter personalities and Dr. Kriegel had been in communication with at least three (3) of them. (R. p. 332).

Thus, the evidence shows that for a considerable period of time, the treating physicians were unable to connect their objective findings with Springs' subjective complaints. While several diagnoses were considered, including secondary gain (R. p. 183), based on the physicians' recommendations, treatment was provided by the Respondents. As a result, Springs' condition improved as evidenced by the fact that she returned to work and her psychological testing improved. Although Springs subsequently left work, this was due to her work restrictions associated with her back problems at that time and not the result of any mental or psychological issues. (R. pp. 95-96). These work restrictions were later lifted when Dr. Sherrill returned her to work with no restrictions. (R. p. 319).

In reviewing Dr. Kriegel's medical records and Springs' testimony, it is apparent the accident did not cause her PTSD nor did it cause her memory issues. Instead, the counseling brought Springs' pre-existing PTSD and dissociative identity disorder to the forefront. This is supported by her statements to Dr. Kriegel that she had had intrusive memories and nightmares most of her life but she had not been aware that they may be related to trauma she had experienced as a child. (R. p. 287). Springs' testimony at the hearing also establishes

that prior to the accident she had “lost time,” and she recalled losing time or blacking out while in high school. Springs acknowledged these incidents could have been due to different personalities because she was being abused at the time. (R. pp. 107, 119). In actuality, Springs had been suffering from memory loss and depression since childhood, she just did not know why nor did she associate it with PTSD or dissociative identity disorder. Since she had not received counseling, the condition had never been diagnosed.

The record also contains evidence that Springs had similar dizziness and severe headaches issues before the accident. Springs’ prior episodes of dizziness and severe headaches prompted previous treatment and evaluation by the Mayo Clinic in Florida. During this time, Springs also had an MRI of the brain to determine the source of her problems. (R. p. 110). As stated above, Springs acknowledged “lost time” and depression for many years.

Springs cites several Findings of Fact upon which she relies to establish compensability by way of an aggravation of a pre-existing condition. Springs, however, fails to cite the additional Findings of Fact and evidence in the Commission’s Order which support the denial of compensability. For instance, Springs received extensive medical treatment from a neurologist and two (2) neuropsychologists for approximately two and one-half (2½) years following the accident with no mention of PTSD. Similarly, there is no mention of any aggravation of a pre-existing condition in any of their records. Dr. Jerry Sherrill, the treating neurologist, treated Springs for both her back and memory issues. As stated in Finding of Fact 16, in April 2009 Dr. Sherrill stated that Springs had no restrictions neurologically to keep her from working. (R. p. 29). This is supported by the record wherein

Dr. Sherrill concluded on March 26, 2010 that Springs was able to return to work with no restrictions and would not need further medical treatment for her work injury. While Dr. Sherrill assigned a 3% impairment to the head, this rating was for Springs' purported loss of smell and not for any mental or psychological problems. (R. p. 319).

As set forth above, Dr. Sheldon Herring, a licensed psychologist, clinical neuropsychologist, and Clinical Director of the Roger C. Peace Rehabilitation Hospital conducted an extensive neuropsychological evaluation in September 2009 finding Springs to have an overall normal cognitive profile with improvement from prior 2008 testing. (R. pp. 258-264). This is set forth in Finding of Fact 23 wherein the Commission states that Dr. Herring found Springs to have normal cognitive capacities and did not find her cognitive capacities to keep her from seeking alternative work. (R. p. 30 and R. pp. 258-264). Neither Dr. Herring nor Dr. Sherrill assigned any impairment for memory loss or any other mental or psychological problems. Thus, her current cognitive problems are not disabling. This provides substantial expert testimony from two (2) treating physicians that Springs is capable of working from both a physical and mental perspective.

Springs argues there are some Findings of Fact which may support compensability, however, there are other Findings of Fact which do not support compensability. The Commission found that Springs has had and suffers from some very serious problems, however, based on the greater weight of the evidence, the October 12, 2007 accident did not cause all of the problems Springs is experiencing. (R. p. 28). This sentence, when read with the remainder of Finding of Fact No. 7, is in fact consistent with the Commission's determination that the accident was not the cause of, nor did it result in or contribute to, her

current mental issues, including her PTSD and memory loss. In other words, the PTSD and multiple personalities were always there. Springs had always suffered memory loss, depression, and other issues.

Further, Springs references only part of Finding of Fact No. 5 in her argument. (R. p. 28). Springs leaves out the last part of the sentence stating any aggravation to the pre-existing condition “is not disabling.” This finding of fact, when read in its entirety, along with the remainder of the Commission’s Decision and Order is consistent with the Commission’s determination that although the Appellant’s PTSD may have been aggravated by the accident, the aggravation was of a temporary or minor nature, is not disabling, and is not the cause of her current mental issues. To conclude that her non-verifiable claims of memory loss and diagnosis of PTSD and multiple personal disorder some two and one-half (2½) years after the accident was aggravated by the Workers’ Compensation injury is speculative at best.

Springs also contends the completed questionnaires of Dr. Kriegel support her contention that the Commission’s Decision and Order should be reversed. The first medical questionnaire cited by Springs was signed on May 25, 2010. This was before Springs’ diagnosis of dissociative identity disorder and, accordingly, the opinions of Dr. Kriegel in this questionnaire are overshadowed and overruled by his subsequent diagnosis. In Dr. Kriegel’s second questionnaire dated October 11, 2010, which was completed after his diagnosis of dissociative identity disorder, Dr. Kriegel indicates that future treatment is needed for Springs to maintain her level of functioning. (R. p. 295-296). The questionnaire also states, however, that Springs is at maximum psychological improvement for the

symptoms brought forth by the work injury of October 12, 2007. Accordingly, the medical questionnaire supports the Commission's determination that Springs had reached maximum medical improvement in regard to her psychological problems causally related to the accident. This, along with other records of Dr. Kriegel, suggests that her current problems may not be related to the accident. The record is clear that as Dr. Kriegel continued his counseling, he began to question the relationship between Springs' problems and the accident stating that her problems appeared to be more related to childhood abuse than as a direct result of her head injury during the Workers' Compensation accident. (R. pp. 286, 289). It should be noted that it is this language which was later used in the Commission's Order. A review of Dr. Kriegel's medical records establish that the majority of Springs' current treatment is related to her pre-existing PTSD associated with her early childhood abuse and dissociative identity disorder and not treatment related to pain. While some of his records may be evidence to support Springs' contentions, as set forth above, there is considerable evidence to the contrary.

As Springs contends, the South Carolina Workers' Compensation Act addresses the standard for compensability for mental injuries in S.C. CODE ANN. § 42-1-160(D). Springs argues that Dr. Kriegel's opinions, as an authorized treating physician, establish compensability under this statute. Springs also argues that Finding of Fact No. 5 in the Commission's Decision and Order and Finding of Fact No. 7 confirm that an aggravation of a pre-existing condition occurred, and as a result, the Commission erred in not finding compensability. A review of the Decision and Order as a whole, however, establishes that this is not the case. Instead, it is clear there is conflicting medical evidence. A reading of the

Order in its entirety shows the Commission concluded that while the accident may have aggravated Springs' pre-existing depression and PTSD, that at a certain point Springs reached maximum medical improvement for the work injury. Her psychological testing was within the average range. This is further evidenced by her improvement and return to work, along with the Form 14B by Dr. Sherrill returning her to work with no restrictions. Accordingly, any aggravation to her PTSD was not disabling. Since there is conflicting evidence in the record, the Commission's Findings and Conclusions should be affirmed.

In summary, the record establishes that there was conflicting testimony and evidence as to the cause, nature, and other issues surrounding the Appellant's PTSD and current mental state. The record establishes that following Spring's injury, she showed significant improvement and returned to work for a period of time. According to Dr. Kriegel's records, she was able to control her pain. It was not until approximately two and one-half (2½) years following the accident that she was first diagnosed with PTSD as a result of early childhood abuse. Pursuant to Springs' own words, she had battled depression for many years and the reason she did not recognize it was because it had been her constant companion (R. p. 327), she had intrusive memories and nightmares most of her life (R. p. 387), and had periods of lost time and blackouts going back to high school (R. pp. 107 & 119). Therefore, there is sufficient evidence in the record to establish Springs suffered from multiple personality disorder and PTSD prior to the accident, but because it had never been diagnosed, she simply did not know why she was having these problems. There is also evidence that any aggravation of her PTSD was not disabling. Thus, there is substantial evidence in the record to support the Commission's Findings and Conclusions that Springs' current mental

condition, including her PTSD, is unrelated to the Workers' Compensation accident and that any aggravation failed to combine with and increase the degree of disability. Accordingly, her current mental condition is not compensable and there is no error of law.

II. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND THE SOUTH CAROLINA COURT OF APPEALS CORRECTLY APPLIED SOUTH CAROLINA LAW WHEN IT FOUND THE PETITIONER'S MENTAL CONDITION IS NOT COMPENSABLE.

Springs contends that the Commission adopted a new standard, the "more related" standard, which she claims directly contradicts established law. While the Commission's Decision and Order did use the words "more related" in its decision, it is clear these words were not the basis of the Commission's decision and did not create a new standard. Instead, these words merely mirrored the wording of Dr. Kriegel's medical record stating in essence that Springs' memory loss was not a result of her work injury but the result of her post traumatic stress disorder from early childhood abuse. (R. p. 286). The Respondents contend that citing language from a medical record does not create a new standard.

In making her argument, Springs is taking the "more related" wording in isolation with the remainder of the language in the Order. The record supports the Commission's decision, and the language of the Order as a whole is consistent with South Carolina law. As discussed above, following the work injury Springs was evaluated by a neurologist and two neuropsychologists which ultimately found her to have normal cognitive capacities which were not disabling. They returned her to work. It was not until approximately two and one half (2½) years after the work injury that Springs' PTSD was diagnosed. This was only after Springs first began seeing Dr. Kriegel in 2009, for pain therapy. Dr. Kriegel initially stated

that her coping skills were improving and that as a result he would begin focusing more on her memory problems. (R. p. 285) It was at this point that Springs began focusing on memories from her childhood and Dr. Kriegel concluded that her memory problems “may be more related to intrusive memories from her childhood rather than as a direct result of her head injury during the accident.” (R. p. 286).

As reflected in the Commission’s Decision and Order, the objective findings do not support Springs’ subjective complaints, and the evidence establishes that her current mental and memory problems are unrelated to the Workers’ Compensation injury. Furthermore, there is no medical opinion by Dr. Kriegel or any other physician that Springs is permanently and totally disabled as a result of a combination of her mental problems and her work injury.

There is no vocational expert opinion providing such an opinion. The testing of Dr. Herring shows that Springs’ memory and intellectual skills are in the average range. In fact, Dr. Herring’s report from October, 2009 indicated that it is only due to Springs’ physical work restrictions that she should consider alternative work. Dr. Herring specifically stated she has the cognitive capacities to do so. (R. pp. 258–264). Dr. Herring’s extensive testing did not find Springs’ condition to be disabling, and there was no diagnosis of PTSD. This opinion is supported by Dr. Sherrill’s record of March, 2010 stating Springs had an impairment rating of 0% to her back and 3% to her head for anosmia (loss of smell), returning her to work with no restrictions, and indicating that she would not need future medical care related to her work injury. (R. p. 319).

In summary, the healthcare providers found no cognitive impairment or disability related to Springs’ mental status or memory loss. Her healthcare providers returned her to

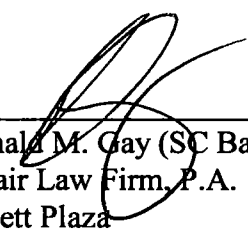
work and found her cognitive capacities to not be disabling. While the Commission's Order could have been worded more clearly, it did not create a new standard and was merely referring to wording used by Dr. Kriegel. The Commission's Decision and Order is, therefore, consistent with South Carolina statutory and case law and should be affirmed in its entirety.

CONCLUSION

For the reasons above stated, the Respondents respectfully contend that there is substantial evidence on the record as a whole to support the South Carolina Worker's Compensation Commission's Findings of Fact and Conclusions of Law, that there is no error of law, and that, as a result, the Commission's Decision and Order should be affirmed in its entirety.

Respectfully submitted,

September 26, 2014



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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No: 2013-000890

Loretta Springs Petitioner,

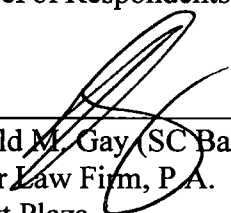
vs.

Clemson University and State Accident Fund..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondents complies with Rule 211(b), SCACR.

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