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FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

DEC 03 2014

CASE NO. 2012-CP-10-<sup>5429</sup>~~8372~~

SC Court of Appeals

2014 OCT 30 PM 1:59

Sara Y. Wilson  
PLAINTIFF(S)

JULIE J. STRONG  
CLERK OF COURT

Charleston County School District  
DEFENDANT(S)

Submitted by:	BY 	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
		or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: This matter came before this Court on Plaintiff's Motion to Reconsider, filed on October 22, 2014. After reviewing Plaintiff's Motion and accompanying legal memorandum, this Court hereby **DENIES** Plaintiff's Motion to Reconsider.

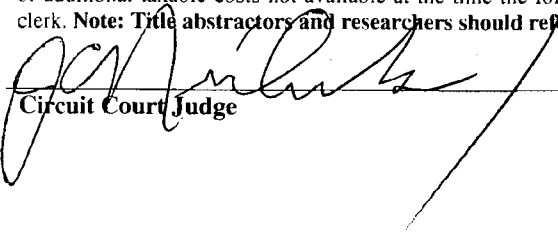
ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

  
Circuit Court Judge

2117  
Judge Code

10/28/14  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

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COUNTY OF CHARLESTON  
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CASE NO. 2012-CP-10-5429

SC Court of Appeals

Sara Wilson  
PLAINTIFF(S)

Charleston County School District  
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
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- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

FILED  
 2014 OCT - 6 AM 9:35  
 CLERK OF COURT  
 JUDICIAL BRANCH

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

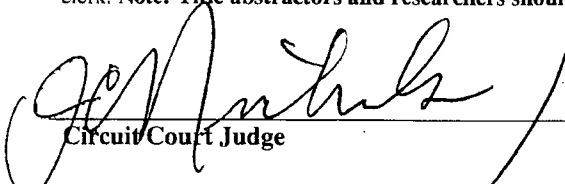
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Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
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 \_\_\_\_\_  
 Circuit Court Judge

2117  
Judge Code

10/3/14  
Date

**For Clerk of Court Office Use Only**

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 SARA Y. WILSON, )  
 )  
 EMPLOYEE/APPELLANT, )  
 )  
 vs. )  
 )  
 CHARLESTON COUNTY SCHOOL )  
 DISTRICT, )  
 )  
 EMPLOYER/SELF-INSURED )  
 CARRIER/RESPONDENT. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO. 12-CP-10-5429

**FILED**  
 2014 OCT -6 AM 9:36  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

**ORDER**

**RECEIVED**

DEC 03 2014

SC Court of Appeals

This matter comes before the Court of Common Pleas for an appellate review of a decision of the South Carolina Workers' Compensation Full Commission WCC No. 0608517. The Employee/Claimant has appealed the Full Commission's decision finding that the Claimant has not proven a change of condition relative to her psyche and is further barred from bringing a psychological claim under the doctrine of res judicata.

The Employee/Claimant filed this appeal, arguing that res judicata was not applicable to the present claim and that a change of condition claim should not be strictly limited to the one year statute of limitations.

Counsel for both parties prepared briefs, and having reviewed the Commission's file as well as the supporting briefs submitted by the parties, this Court affirms in full the Order of the Full Commission, dated July 18, 2012.


## FACTS OF THE CASE

The Claimant in this matter was a data entry clerk for Charleston County School District. She was initially injured on May 9, 2006, when two students were fighting and pushed into her, pinning her against a counter and injuring her neck and back.

The Claimant treated with various doctors for her neck and back and reached Maximum Medical Improvement on July 20, 2007. (Deposition of Dr. Aymond, p. 13). This matter went to a hearing on October 7, 2007, and the Claimant alleged permanent and total disability. On November 29, 2007, the Single Commissioner found that she was not permanently and totally disabled but had a 45% disability to her back relative to her neck and low back. The Form 19 paying this Order was filed on January 25, 2008.

On January 7, 2009, the Claimant filed a Form 50 not requesting a hearing but alleging a change of condition. Attached to this hearing request were two medical reports, neither of which indicated that the Claimant had sustained a change of condition in relation to her work injury. On March 29, 2011, the Claimant filed another Form 50, this time requesting a hearing on the change of condition claim. She attached the same two reports as had been attached to the January 7, 2009 hearing request and still did not attach a medical report indicating a change of condition.

At the hearing on June 29, 2011, the Claimant testified regarding her increased back pain, which is not the subject of this appeal. As far as the psychiatric treatment, which is the subject of this appeal, the Claimant indicated that she was in so much pain that she did not want to get up in the morning. She said that she did not go out with her friends anymore and that she felt helpless. She admitted that she was taking medications for depression and anxiety at the time of her first hearing. (Old APA 15, p.148-52).




The parties submitted the deposition transcript of Dr. Samuel Rosen at the change of condition hearing. In his deposition, Dr. Rosen reviewed his May 2008 report as well as the vocational assessment of Bill Stewart from September of 2007, which indicated that the Claimant had anxiety and depression and was getting medications and treatment for that problem and that it was related to the work injury. (Old APA 15, p.148-52). Dr. Rosen stated that the Claimant's depression and anxiety from her work injury existed in September of 2007, prior to the first hearing in this matter. He was asked "is it your opinion that Ms. Wilson had anxiety and depression from her work injury and required medication and treatment at least by September of 2007?" Dr. Rosen answered "[y]eah, that the work injury was causing some depression and anxiety by -- right." (Transcript of Dr. Rosen's deposition p. 17, line 22 – p.18, line 2). Of note, the Claimant did not allege psychological injuries or depression in the 2007 hearing. Dr. Rosen also testified that when he first saw the Claimant in May of 2008, she did not actually have endogenous depression, but that she did have endogenous depression at the time of his deposition, two and a half years after the statute of limitations had run on her change of condition claim. Dr. Rosen gave no indication that the Claimant had endogenous depression within a year after the last date of payment of compensation.

A review of the record from the first hearing indicates that the Claimant did not raise a psychological claim at that time. However, her vocational expert, William Stewart, did indicate that the Claimant had significant depression and anxiety related to the work injury. (Old APA 15). Mr. Stewart's report, dated September 6, 2007, states that "Ms. Wilson is suffering some psychological overlay (adjustment disorder with depression and anxiety) because of these injuries, her ongoing chronic pain problems, and her inability to work." (Old APA 15, p.144). He also indicated that she required "medical psychological care. . .including follow up office

visits and prescribed psychotropic medications for anxiety and depression.” Id. Specifically, Mr. Stewart noted that the Claimant continued to require Lorazepam for depression and anxiety. (Old APA 15, p.146). Mr. Stewart also noted that the Claimant scored a “7” on the Beck Anxiety Inventory and the fact that it was not worse was because of the medications she was taking. (Old APA 15, p.149). Finally, Mr. Stewart concluded that the Claimant was incapable of working due to a combination of chronic pain and psychological overlay “because of these injuries.” (Old APA 15, p.150).

### **STANDARD OF REVIEW**

This is an appeal from a decision of the South Carolina Workers’ Compensation Commission’s Full Commission. Such appeals are governed by the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310, et seq. Pursuant to S. C. Code Ann. § 1-23-380 (A)(6):

- 
- (A)(6) The Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact... The Court may reverse or modify the decision if substantial rights of the Claimant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
    - (a) in violation of constitutional or statutory provisions;
    - (b) in excess of the statutory authority of the agency;
    - (c) made upon unlawful procedure;
    - (d) affected by other error of law;
    - (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
    - (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

See also Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974) (In order for a court to hold that the judgment of the lower court resulted from an abuse of discretion, there must be a showing by the appellant that the conclusions reached were without reasonable factual support, resulted in prejudice to the right of the appellant, and, therefore, in the circumstances, amounted to an error of law). Based on these criteria, there is no basis for a reversal of the Full Commission's decision.

### ANALYSIS

The Full Commission did not err in finding as a matter of fact and concluding as a matter of law that res judicata barred Claimant's psychological claim or that Claimant's change of condition had to occur within one year of the last date of payment of compensation and that Claimant failed to carry her burden of proof in this regard.

#### **I. Res Judicata Bars Claimant's Stress Claim.**

JEM  
Claimant argues that the Commission erred in denying her change of condition claim based on res judicata because she experienced "some anxiety and depression" before her original award. This Court disagrees. The Commission, in fact, denied Claimant's change of condition claim because she had the opportunity to raise a psychological claim at the first hearing and chose not to do so.

- a. Res Judicata does not require that a claim be previously litigated and lost.

Claimant argues that res judicata does not apply in the present claim because the issue of a psychological injury was not actually litigated in the first hearing. The doctrine of res judicata applies not only when the issues were actually litigated but, as Claimant cites in her brief, also

when the issues “might have been litigated.” Price v. City of Georgetown, 297 S.C. 185, 189, 375 S.E. 2d 335, 338 (Ct. App. 1977).

In the present matter, Claimant certainly could have brought a stress claim at the initial hearing in October of 2007 and chose not to do so. Mr. Stewart’s report, submitted by the Claimant at the first hearing on September 6, 2007, states that “Ms. Wilson is suffering some psychological overlay (adjustment disorder with depression and anxiety) because of these injuries, her ongoing chronic pain problems, and her inability to work.” (Old APA 15, p.144). She required “medical psychological care” and “psychotropic medications for anxiety and depression.” Id. Claimant’s current psychiatrist, Dr. Rosen, testified that the Claimant’s depression and anxiety from her work injury existed in September of 2007, prior to the first hearing in this matter. (Transcript of Dr. Rosen’s deposition p. 17, line 22 – p.18, line 2).

Our Supreme Court has made it clear that if a claimant could have brought a claim at the initial hearing and failed to do so, he cannot later bring a change of condition claim on the same issue. “In a reopening proceeding, the issue before the Commission is sharply restricted to the question of extent of improvement or worsening of the injury on which the original award was based.” Krell v. South Carolina State Hwy. Dept., 237 S.C. 584, 587, 118 S.E. 2d 322, 324-25 (S.C. 1961). In Krell, the claimant filed a change of condition claim because of an alleged recurring hernia problem. The claimant alleged that the hernia was present at the time of the initial accident and had flared up. The Commission denied his change of condition claim in light of the fact that the record showed that the claimant had not alleged a hernia problem at the first hearing and therefore could not assert it at a change of condition hearing.

The present claim is precisely like Krell. The Claimant here filed a change of condition claim because of continuing anxiety and depression, which she claims had worsened. Evidence

from the Claimant's own vocational expert shows that she had anxiety and depression related to her work injury at the time of the first hearing, and she was even on medications for depression and anxiety. The testimony from the Claimant's current psychiatrist is that she suffered from work related depression and anxiety before the first hearing. The Full Commission properly denied the Claimant's change of condition claim in light of the fact that the record showed that Claimant had not alleged a psychological problem at the first hearing and therefore she could not assert it at a change of condition hearing.


Importantly, the issue raised by Claimant is actually whether Claimant had enough of a psychological injury in the past to rise to the level of an injury that might have been litigated at the time of the first hearing. In other words, the Claimant's appeal is a factual one. The Commission is the finder of fact. Lowe v. Am-Cam Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984; S.C. Code Ann. § 42-17-50 (1985)). A finding of fact made by the Commission may only be overturned if there is not substantial evidence to support it. S.C. Code Ann. § 1-23-380 (1986); see also Robbins v. Walgreens & Broadspire Servs., Inc., 375 S.C. 259, 264, 652 S.E.2d 90, 93 (Ct.App.2007). In the present claim, the evidence presented from the Claimant's own vocational expert and chosen psychiatrist is more than sufficient to establish substantial evidence. Therefore, the findings of the Full Commission on this matter are affirmed.

Claimant argues that the Commission's findings are mostly negative (e.g., "no doctor has opined that the Claimant did not have work related depression prior to the October 2, 2007 hearing." Finding of Fact 21 of the Full Commission Order) and that as a result the factual findings are not strong enough to hold up on appeal. This Court disagrees. The Full Commission order does rely on evidence of prior depression in the report of Claimant's own vocational expert and the deposition testimony of Claimant's psychiatrist. (Findings of Fact 19 and 20 of the Full

Commission Order). The point of the negative findings is that Claimant has presented no evidence to the contrary; in addition, it would remain Claimant's burden to prove depression, or if res judicata were somehow inapplicable, depression with a change of condition within one year of the last date of payment of compensation. These findings simply point out that Claimant has not carried her burden.

b. Continuing Jurisdiction Over a Matter Does Not Eliminate the Doctrine of Res Judicata.

Claimant makes an argument based on Cromer v. Newberry Cotton Mills, 201 S.C. 349, 23 S.E.2d 19 (1942), that the Commission has continuing jurisdiction over every case and therefore can change an award at any time. This Court disagrees.



In Cromer, the employer argued that since the claimant had been provided with an award relative to his disability, the Commission could not later come back and pay him an increased disability amount under the doctrine of res judicata. Id. at 21. The Court simply held that the Commission has the power under the change of condition statute, Section 46 (now S.C. Code Ann. § 42-17-90), to increase or diminish a prior award. However, because the Commission may hear a change of condition claim does not mean that commissioners are rehearing issues that could have been heard before. The whole point of a change of condition claim is that something the Commission decided initially has changed; therefore, the issues are different. The real question Claimant raises is whether a claimant may raise a new issue at a change of condition hearing that *could have been raised* at the first hearing. In Cromer, the claimant was not attempting to raise an issue that could have been previously raised. He simply argued that the condition that he had at the first hearing had changed.

Further, the Supreme Court heard Krell nineteen years after Cromer and found res judicata applicable in that workers' compensation claim. As discussed above, the facts of Krell are much more applicable to the present claim. In fact, the Court in Krell actually cited Cromer for the proposition that the Commission, and not the appellate court, is the ultimate finder of fact. Krell at 323-324.

Claimant argues that Krell is inapplicable to the present claim because the case involved a hernia, which comes on suddenly. However, there is no indication in Krell that its holding is limited to hernia claims. In addition, many claims, except for repetitive trauma claims by definition, have injuries that come on suddenly. The only question for this prong of res judicata is whether the issue is one that *could have been litigated* before. As stated above, there is substantial evidence to support that it could have, and under the substantial evidence standard, this Court affirms the findings of the Commission.

c. Res Judicata is a Bar to Claimant's Claim.

Claimant first argues again that res judicata is inapplicable because the issues here were not litigated and lost. As discussed above, this Court disagrees.

Claimant next argues that her claim is similar to Mungo v. Rental Uniform Services of Florence, 383 S.C. 270, 678 S.E.2d 825 (Ct. App. 2009), Estridge v. Joslyn Clark Controls, 325 S.C. 532, 482 S.E.2d 577 (Ct. App. 1997), and Clark v. Aiken County Gov't., 366 S.C. 102, 620 S.E.2d 99 (Ct. App. 2005). This Court finds these cases distinguishable from the present claim.

Mungo and Estridge both held that a claimant may raise the issue of depression at a change of condition hearing when the symptoms of depression prior to the first hearing were "mild, undiagnosed, and untreated." Mungo at 284; Estridge at 581. That is not the case in the present claim. The Claimant's vocational expert concluded that the Claimant was incapable of

working due to a combination of chronic pain and psychological overlay “because of these injuries.” (Old APA 15, p.150). More importantly, he noted that she required “medical psychological care. . .including follow up office visits and prescribed psychotropic medications for anxiety and depression.” *Id.* Specifically, he noted that Claimant *continued* to require Lorazepam for depression and anxiety. (Old APA 15, p.146). In other words, Claimant did not have a “mild, undiagnosed, and untreated” psychological condition. In fact, according to the Claimant’s own expert, she was being treated for depression and anxiety and continued to need that treatment.

In Clark, the court simply found that the claimant’s condition following his back surgery was not ripe for review at the first hearing because he did not know how well he would recover. The fact that his condition later worsened was the subject of a new hearing. Clark at 102-103. That case is wholly unrelated to the present facts where the Claimant had a documented psychological condition prior to her first hearing, was receiving medication for that condition, and chose not to raise the issue at all.

For the reasons set forth above, the decision of the Full commission is affirmed in full.

**II. The Timing for a Claimant to Experience a Change of Condition is Unquestionably One Year.**

Although this Court’s conclusion in Section I disposes of this appeal, this Court addresses the timeframe in which a workers’ compensation claimant must experience and prove a change of condition in order to have a compensable change of condition claim. Claimant argues that the Commission erred in finding that Claimant’s change of condition claim had to occur within one year of the last date of payment of compensation. This Court disagrees. The Claimant makes three sub-arguments that amount to a policy argument that a claimant should have no limitations


on when a change of condition may occur. The clear law is simply not in line with this suggested policy argument and would require a legislative amendment.

S.C. Code Ann § 42-17-90 states in pertinent part:

Upon its own motion or upon the application of any party in interest on the ground of a change in condition, the Commission may review any award and on such review may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this Title, and shall immediately send to the parties a copy of the order changing the award. No such review shall affect such award as regards any moneys paid and *no such review shall be made after twelve months from the date of the last payment of compensation pursuant to an award under this Title.*

(emphasis added)

Regulation 67-602 (C) provides:



In a claim involving a change of condition, the moving party must attach to the hearing request form a medical report(s) *indicating a change in the claimant's condition.*

(emphasis added)

A regulation, which is a "legislative rule," is one which, generally, has the force of law and becomes an integral part of the statute. Faile v. South Carolina Employment Sec. Commission, 230 S.E.2d 219 (1976). The general rule in South Carolina Worker's Compensation cases regarding statutory construction and interpretation is that the cardinal rule is to ascertain and give effect to the intent of the legislature. Wigfall v. Tideland Utilities, 354 S.C.100, 580 S.E.2d 100 (2003) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)). "If a statute's language is plain, unambiguous, and conveys a clear meaning 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" Wigfall, 354 S.C. at 109, 580 S.E.2d at 105 (2003) (citing

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). The courts are further bound by precedent to strictly construe statutes in derogation of the common law. Id. (citing Gilfillin v. Gilfillin, 344 S.C. 407, 544 S.E.2d 829 (2001)). “Workers’ compensation statutes provide an exclusive compensatory system in derogation of common law rights.” Id. (citing Caughman v. Columbia YMCA, 212 S.C. 337, 47 S.E.2d 788 (1948)). “As such, when reading a workers’ compensation statute we strictly construe its terms, leaving it to the legislature to amend and define its ambiguities.” Id.

Claimant cites Allen v. Benson, 236 S.C. 22, 112 S.E.2d 722 (1960) to demonstrate that the Supreme Court has been receptive to lengthening the time in which a change of condition must occur. This Court disagrees with Claimant’s interpretation. The Supreme Court, in Allen, simply found that it would be unfair to prejudice a Claimant by requiring that the *actual hearing* on his change of condition claim be heard within one year of the last date of payment of compensation and noted that it was enough that the “application for review” be filed within one year. Id. at 31, 726. The claimant must request a hearing or “review” within a year of the last date of payment of compensation with medical proof of a change of condition; Allen stands for the proposition that the claimant will not be held responsible if the hearing itself does not take place within that year. Allowing a claimant to file a Form 50 not requesting a hearing within a year of the final payment of compensation and then to wait an additional two years to request an actual review or hearing, and for that entire time to be included in the window for a change of condition, would mean that S.C. Code Ann § 42-17-90 loses all meaning. This Court finds that this is not what the Supreme Court intended in Allen when the claimant actually requested a hearing and experienced a change within the statute of limitations but simply did not have his hearing date until after that year had expired.

Further, the Claimant argues that there should be no set time limit on a change of condition because that could encourage unscrupulous employers to delay allowing a claimant to return to a physician. This Court disagrees. A claimant in such circumstances would have protection under other laws such as waiver or estoppel. See Hoke v. Cherokee County, 216 S.C. 376, 585 S.E.2d 330 (1950); Lovell v. C. A. Timbes, Inc., 263 S.C. 384, 210 S.E.2d 610 (1974).

Claimant also states as a matter of policy that there should be some laxity in the time limit for a change of condition claim in a case where a claimant's family doctor notices issues of depression and refers her out within the one year statute but where a psychologist cannot diagnose depression until after the one year has passed. Those hypothetical facts are not before this Court. The facts in the present claim are that Claimant was treating for depression and anxiety before her first hearing, (Old APA 15, p.148-52), her psychiatrist opined that the depression existed with treatment required prior to the first hearing, (Transcript of Dr. Rosen's deposition p. 17, line 22 – p.18, line 2), and her psychiatrist opined that her depression became endogenous by two and a half years after the one year change of condition time limit had run. Id. It is Claimant's burden to prove that her change of condition occurred within the one year time period, and Claimant has presented no evidence whatsoever to that effect. Claimant argues that if her depression and anxiety were starting or beginning to worsen during the one year time period that should be enough to establish a change of condition. However, Claimant has presented no evidence to this effect either. The only evidence in the record is that Claimant experienced depression and anxiety related to her work injury before the first hearing that became endogenous by two and a half years after the change of condition statute had run. Claimant indicates that she is not alleging that there should be no limit on the statute of limitations in workers' compensation

claims, but she essentially asks this Court to find that the one year statute is inapplicable. This Court is unwilling to make this finding.

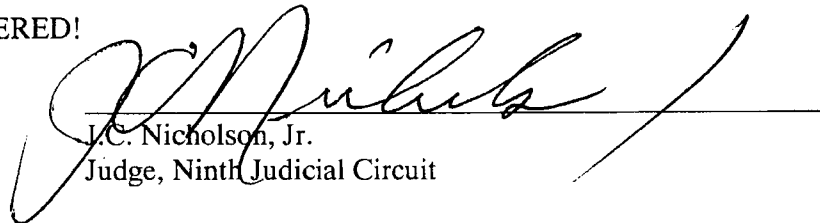
The Claimant also argues that if a claimant takes too long to bring a change of condition claim, the remedy is the doctrine of laches. Under the clear statutory language of S.C. Code Ann § 42-17-90, and for the reasons stated above, this Court disagrees. Respondent argues in the alternative that the doctrine of laches would be applicable in the present claim, but since this Court finds that Claimant failed to prove her case under the doctrine of res judicata, or that any alleged change of condition occurred within one year of the last date of payment of compensation, this Court does not need to reach a decision on the issues of laches.

For the foregoing reasons, the decision of the Full Commission is affirmed in full.

**CONCLUSION**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Full Commission Order, dated July 18, 2012, is fully affirmed.

IT IS SO ORDERED!

  
\_\_\_\_\_  
J.C. Nicholson, Jr.  
Judge, Ninth Judicial Circuit

Charleston, South Carolina

Dated: 10/3/14