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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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FEB 06 2015

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION APPELLATE PANEL **SC Court of Appeals**

Appellate Case No. 2012-212972

W.C.C. File No. 0905068

Alison Morrett, Employee, Claimant,Appellant,

v.

Capital City Ambulance of GA, Ltd., and
Companion Property and Casualty Group, Employer, Carrier, Respondents.

RESPONDENTS' RETURN IN OPPOSITION TO
APPELLANT'S PETITION FOR REHEARING

I. INTRODUCTION

This Court affirmed the Order of the Appellant Panel of the Workers' Compensation Commission reversing the single commissioner's determination that Appellant Alison Morrett's (hereinafter "Morrett") admitted physical injury and subsequent treatment aggravated her preexisting psychological condition and eating disorder. *Morrett v. Capital City Ambulance*, Op. No. 2015-UP-036 (S.C.Ct.App. filed Jan. 14, 2015). Morrett filed her Petition for Rehearing in this Court on or after January 27, 2015. For the reasons stated herein, as well as those set forth in their Brief and oral argument before the Court, Respondents submit the Court's Opinion reached the correct result. As such, Morrett's Petition for Rehearing should be denied.

II. ARGUMENT

Morrett's Petition advances the same facts and arguments previously submitted to this Court in her briefing and oral argument. She contends – without additional supporting facts or legal authority – that this Court either misapprehended her arguments on appeal or misapplied existing law. Morrett's assignments of error fail as this Court applied the appropriate law and standard of review, carefully considered the briefing and oral argument by the parties, and correctly affirmed the denial of benefits by the Appellate Panel of the Full Commission. As such, rehearing is unnecessary, and Morrett's Petition should be denied.

The essence of Morrett's grounds for reconsideration consists of her arguments that she met her burden of proof and that the Appellate Panel erred in its consideration of certain evidence. These are the identical grounds she advanced in her briefing and argument to the Court, and Morrett has not advanced any salient argument that the Court's Opinion in this case is incorrect. Appellant's Petition should be denied on this basis.

A. Regarding Issues 1 And 6, The Court Correctly Determined Substantial Evidence Supports The Denial Of Benefits For Aggravation Of Morrett's Psychological Condition.

In her Petition, Morrett urges reconsideration on the basis that the only substantial evidence militates in favor of a finding that she sustained her burden of proof. Relying exclusively on the records and testimony of her treating orthopedic surgeon Dr. Piasecki, Morrett conveniently overlooks the fact that her own testimony and medical history amply demonstrate that her psychological issues and the degree of her psychological impairment were the same before and after her admitted work injury. As

this Court correctly noted, Morrett bore the burden of establishing an aggravation of her underlying psychological condition. Further, the possibility of drawing competing conclusions does not prevent the Appellate Panel's findings from being supported by substantial evidence.

Even if the records and testimony by Morrett's treating physician are taken at face value, extensive and uncontroverted substantial evidence supports the denial of benefits for the alleged aggravation of her psychological conditions. For example, Morrett admits her eating disorder and depression were ongoing both before and after her accident. In addition, Morrett testified she had relationship problems with her family members and members of the opposite sex, financial strain, and anxiety about school. (R. p. 205, line 18 – p. 206, line 24) She refused recommended inpatient treatment and treatment by a dietician before and after her accident. (R. p. 206, lines 25-5) She admitted purging during her last week at the Ridgeview Institute and did not complete a recommended outpatient program. (R. p. 1338)

The medical records in this case also provide substantial evidence supporting the denial of benefits. Record evidence demonstrates Morrett consistently refused treatment no fewer than six times in the two-year period leading up to her work injury. (R. pp. 336-337, 340, 342, 345, 349) During her last appointment with a therapist prior to her work injury, Morrett admitted she was purging frequently and that she was stressed about money. She also admitted being resistant to seeing a dietician. (R. p. 205, lines 18-21; p. 206, lines 10-23)

Finally, the only qualified psychologist to render an opinion as to whether Morrett's preexisting psychological condition was aggravated by her work accident

concluded that Morrett's psychological condition was no different before than after her injury. (R. pp. 1339-1340; Appx. p. 3; R. p. 36, ¶ 12) ("Ms. Morrett's symptoms appear to be consistent throughout her counseling with little impact from her work-related injury [and] Ms. Morrett's psychological condition is more likely than not, with as much certainty reasonable in the field of psychology, no different than before her 11 May 2009 work-related injury.") In light of his background and experience, the Appellate Panel afforded Dr. Lind's opinion "much greater weight" than the opinions of either Counselor Hobbs or Dr. Piasecki. (R. p. 36, ¶ 13)

B. With Regard To Issue 2, The Court Correctly Deferred To The Appellate Panel Regarding The Weight Afforded To The Report By Respondents' Expert Psychologist, Dr. Lind.

As this Court noted in its unpublished Opinion, the Appellate Panel of the Full Commission is the ultimate finder of fact and is the final arbiter of both witness credibility and the weight to be afforded to the evidence. (Op. No. 2015-UP-036) (citing *Jordan v. Kelly Co.*, 381 S.C. 483, 486, 674 S.E.2d 166, 168 (2009); *Shealy v. Aiken Cnty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000)). As noted in the preceding paragraph, the Appellate Panel of the Full Commission made the specific finding that "Dr. Lind was the only psychologist to render an opinion as to whether [Morrett's] preexisting psychological condition and eating disorder were aggravated by the work accident. Dr. Lind was in an especially good position to render this opinion because of his experience as a psychologist in the Air Force." (R. p. 36, ¶ 13) Further, it found that "Dr. Lind's opinion [was] given much greater weight than both the opinions of Counselor Hobbs and Dr. Piasecki." (R. p. 37, ¶ 16)

In placing great emphasis on certain typographical errors in Dr. Lind's initial report, Morrett attempts to divert attention from the facts that Dr. Lind reviewed her medical records, conducted psychological testing, performed a clinical interview of Morrett, and prepared an extensive report setting forth his findings and conclusions. (R. pp. 1335-1340) Going further, Morrett completely overlooks and fails to mention the addendum to Dr. Lind's report (Appx. p. 3), the Full Commission's determination that Dr. Lind was uniquely qualified to assess Morrett's condition, and that his opinion was singled out as entitled to "much greater weight" than the unqualified opinions of Counselor Hobbs or Dr. Piasecki.

C. Regarding Issue 3, The Court Properly Deferred To The Appellate Panel Regarding The Weight Afforded To The Opinions Of Treating Physician Dr. Piasecki.

Morrett challenges the Appellate Panel's finding that Dr. Piasecki was unaware of her extensive preexisting psychological treatment and that he failed to take her prior course into account when rendering his opinion relating to aggravation of her psychological condition. As this Court correctly recognized, however, it was for the Appellate Panel to determine the weight afforded to the evidence and, if supported by substantial evidence, to affirm the findings of the Full Commission. Further, as addressed in the preceding section, the Appellate Panel specifically concluded that Dr. Lind was in a better position to assess Morrett's condition and that his opinion was entitled to "much greater weight" than that of Dr. Piasecki. This finding is supported by substantial evidence, was affirmed by the Court, and need not be reconsidered.

D. Regarding Issue 4, The Court Correctly Determined Morrett's Evidentiary Challenge Was Not Preserved For Appellate Review.

As her fourth basis for reconsideration in this Court, Morrett takes the position that the Full Commission erred in considering a summary of medical evidence proffered by Respondents at the July 16, 2012 hearing. At that hearing, Morrett's argument was that the summary was not a piece of medical evidence and, accordingly, should not be considered as medical evidence, that the summary was not part of the Full Commission's file, and that the parties had not yet had an opportunity to brief the question of admissibility. Morrett's entire objection was as follows:

I do object in the sense that it's not a piece of evidence. It's not a piece of medical record. I mean, the medical records are extensive. At this point, I did not realize this would be handed up. I mean, it's not been briefed, and I would object to it.

(R. p. 215, line 23 – p. 216, line 3)

Contrary to Morrett's assertion that the summary was not in evidence, it actually became a part of the Full Commission's file when it was filed as an attachment to Respondents' pre-trial brief and again when additional copies were handed up to the panel members at the July 16 hearing. (R. p. 216, lines 4-7) More importantly, the Commission ruled that the summary would be accepted "as demonstrative evidence only. It certainly is not evidence." (*Id.*, lines 20-22) It is clear from the Record that the Full Commission did not rely upon the summary to reach its findings of fact or conclusions of law and it is, therefore, immaterial to the findings and conclusions at issue on appeal for this reason.

Morrett's request for rehearing on this ground is even more suspect because she never challenged the admissibility of the summary as purely demonstrative evidence or

explained why the admission of the summary as demonstrative evidence was prejudicial to her case. Thus, these arguments were never raised or ruled upon below, and the Court correctly determined they are not preserved for further appellate review. Order p. 2 (citing *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (additional citations omitted)).

E. Regarding Issue 5, The Court Correctly Determined The Commission Made Specific Factual Findings On All Essential Factual Issues.

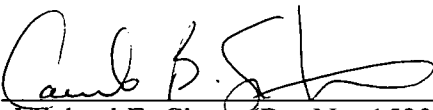
In her Petition, Morrett again argues the Full Commission erred in not addressing the single commissioner's determination that she testified accurately and in line with her treatment records. This is a "weight of the evidence" argument and overlooks the fact that, even setting aside Morrett's direct testimony, substantial record evidence supports the finding that she failed to establish aggravation of her pre-existing psychological issues. Thus, the Full Commission did not fail to make findings on any of the "*essential factual issues*" as Morrett alleges, and this Court properly deferred to the findings of material fact by the Full Commission. Order p. 3 (quoting *Airco, Inc. v. Hollington*, 269 S.C. 152, 160, 236 S.E.2d 804, 808 (1977) (emphasis supplied); *Nettles v. Spartanburg Sch. Dist. 7*, 342 S.C. 580, 590, 535 S.E.2d 146, 151 (Ct. App. 2000)).

III. CONCLUSION

The Court's Opinion fully addresses all of the issues on appeal, and it correctly decided those issues. Appellant's Petition for Rehearing does not demonstrate otherwise, and there is no reason for the Court to revisit its decision. For these reasons, Appellant's Petition for Rehearing should be denied in its entirety.

(Signature page to follow.)

February 6, 2015

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SC Court of Appeals

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Alison Morrett, Employee, Claimant,.....Appellant,

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PROOF OF SERVICE

I certify this 6th day of February 2015 that I have served a copy of
RESPONDENTS' RETURN IN OPPOSITION TO APPELLANT'S PETITION FOR
REHEARING upon other counsel of record, by mailing same, postage prepaid in the
United States mail, addressed to the following:

J. Bradley Baker, Esquire
Law Office of J. Bradley Baker, LLC
403 East Main Street, Suite E
Lexington, SC 29072

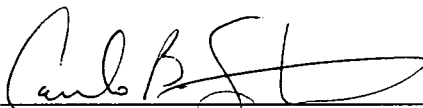
Virginia L. Crocker, Judicial Director
S.C. Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

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(Signature page to follow.)

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SC Court of Appeals

HAND DELIVERY:

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Alison R. Morrett v. Capital City Ambulance of GA, Ltd. and Companion
Property and Casualty Group
Appellate Case No.: 2012-212972
File No.: 576.1320

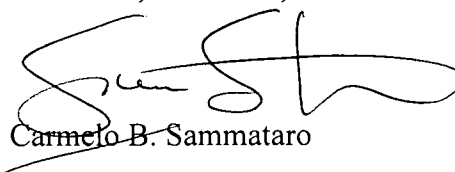
Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Respondents' Return In Opposition to Appellant's Petition For Rehearing regarding the above-referenced matter. Also enclosed are the original and one copy of the Proof of Service. Please file the original documents and return clocked copies to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Carmelo B. Sammataro

CBS/tj

Enclosures

cc: J. Bradley Baker, Esquire
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