

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

SCWCC File No. 1401281

Case No. 2015-002192

**RECEIVED**

NOV 16 2015

SC Court of Appeals

Yolanda Lucas, Employee,.....Respondent,

v.

Community Loans of America, Inc., Employer, and  
Continental Indemnity Company, Carrier,.....Appellants.

APPELLANTS' INITIAL BRIEF

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**STATEMENT OF ISSUES ON APPEAL**

- I. Review of the evidence reveals that the Respondent failed to meet her burden of proving her employment conditions on January 11, 2014 were unusual and extraordinary as required for a compensable mental-only injury pursuant to S.C. Code §42-1-160(B).
  - a. The events on January 11, 2014 were not unusual and extraordinary for the Respondent's particular employment.
  - b. The events on January 11, 2014 are not the proximate cause of the Respondent's current mental condition.
  
- II. Respondent should not be entitled to ongoing medical and temporary total disability benefits in the event the claim is found to be compensable.

## STATEMENT OF THE CASE

This matter came before the South Carolina Workers' Compensation Commission pursuant to the Respondent's Hearing Request and the Appellants' Answer. The Respondent alleged that she sustained an aggravation of her mental condition when there was a robbery at the Community Loans of America, Inc. (d/b/a Carolina Payday) on January 11, 2014. The Respondent requested medical examination and treatment for a mental condition as well as temporary total disability benefits from January 11, 2014 and ongoing. The Appellants denied that the Respondent sustained a mental injury arising out of and in the course of her employment on January 11, 2014 based on the evidentiary requirements of §42-1-160(B) for mental only injuries. The Appellants further denied that the Respondent is entitled to any medical treatment or temporary total disability benefits. A hearing was held before the single Commissioner on September 11, 2014. Thereafter, the single Commissioner issued a Decision and Order dated January 30, 2015 which included the following Findings of Fact:

1. Jurisdiction and venue are proper in this matter.
2. The Respondent suffered a compensable Workers' Compensation claim on January 11, 2014 resulting in a mental distress injury.
3. The Respondent's compensation rate is \$232.53, per stipulation of the parties.
4. The Respondent has shown through sworn testimony and by a preponderance of the evidence that the Respondent's employment conditions were extraordinary and unusual in comparison to the normal conditions of the particular employment.
5. Based upon the sworn testimony and a preponderance of the medical evidence submitted in the APA's, pursuant to S.C. Code §§42-1-160(1) and 42-1-160(2), Respondent has met

their burden of proof. Stokes v. National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991).

6. Based upon Respondent's sworn testimony and a preponderance of the medical evidence provided, Respondent is not at maximum medical improvement (MMI).
7. Based on the Respondent's sworn testimony and a preponderance of the medical evidence in the APA's, Respondent has a temporary total disability (TTD) and is entitled to compensation from January 11<sup>th</sup>, 2014 until MMI is reached. Bentley v. Spartanburg Cnty., 398 S.C. 418, 422, 730 S.E.2d 296, 298 (2012), reh'g denied (Aug. 10, 2012).
8. Respondent is entitled to reimbursement for out of pocket medical expenses incurred for causally related treatments since January 11<sup>th</sup>, 2014 and future treatment as recommended by Dr. Nicholas A. Lind, Dr. Roger Deal, and Post Traumatic Resources, Inc.

Following the January 30, 2015 Decision and Order, the Appellants timely requested Full Commission review by way of a Form 30 dated February 12, 2015. The Appellants asserted that the single Commissioner erred pursuant to facts and law in determining that the Respondent sustained a compensable mental only injury arising out of and in the course of her employment. The Appellants further asserted that the Respondent failed to meet her burden of proof outlined in §42-1-160(B).

The Full Commission affirmed the single Commissioner's Decision and Order in its entirety by Order dated August 7, 2015. The Appellants thereafter filed a Motion for Rehearing before the South Carolina Workers' Compensation Commission on August 14, 2015. The Full Commission denied the Motion for Rehearing on September 21, 2015. The Appellants now appeal the Full Commission's decision to this Honorable Court.

## SUMMARY OF EVIDENCE

The Appellants and Respondent submitted written medical records into evidence at the hearing before the single Commissioner on September 11, 2014. According to the Palmetto Health Richland's medical records submitted into the record, the Respondent was diagnosed with post-traumatic stress disorder and anxiety prior to her employment at Community Loans of America, Inc. According to these medical records, the Respondent reported that 2004 was a difficult year for her as her mother died the prior year and she was recently robbed at work (APA 33). The Respondent noted that she was taking prescriptions consisting of Xanax, Zoloft and Trazodone for her post-traumatic stress disorder (APA 33). The Respondent noted past medical history of anxiety (APA 34). The Respondent was further diagnosed with atypical chest pain, a history of breast abscess in the distant past, reactive airway disease, anxiety and obesity (APA 35). The Respondent had follow up care for her chest pain again on July 26, 2005 wherein her past medical history was noted as significant for anxiety disorder, tobacco abuse, chronic chest pain, headache and worsening of her chronic shortness of breath, nausea, light headedness and post traumatic stress disorder (APA 37). According to the Respondent's medical records at Lexington Medical Center Swansea dated February 12, 2005, the Respondent was still actively taking Xanax and Zoloft for post-traumatic stress disorder (APA 40 and 43). On the Respondent's patient information with Lexington Medical Center dated September 6, 2008, her history of depression, anxiety and post-traumatic stress disorder were noted (APA 44). On the patient questionnaire for Lexington Medical Center dated October 2, 2009, the Respondent noted that she sometimes suffers from depression and anxiety (APA 49).

The Respondent's medical records from Internal Medicine Center were also submitted into the evidentiary record. The note dated October 31, 2006 indicates that the Respondent was robbed while working at a bank several months ago and she had been re-experiencing the event, having nightmares and could no longer work or even go to into a bank (APA 50). It was further noted that the Respondent no longer worked secondary to fears of being robbed again (APA 50). At the Internal Medicine Center visit on December 11, 2007, the Respondent complained of depression and indicated that she had not slept in three days (APA 53). The Respondent was prescribed Zoloft and Trazodone for sleep and noted that she had signs of depression secondary to her husband losing his job (APA 53). On September 23, 2008, the Respondent returned to Internal Medicine Center complaining of anxiety (APA 56). The Respondent reported that she continued to be anxious despite regular use of Zoloft and reported that Xanax was effective before Dr. Taylor refused to give her the medication (APA 56). At the same visit, the Respondent continued to complain of feeling down since her husband decided to move out of the house several months prior (APA 57-58). The Respondent was referred to Lexington Area Mental Health with instructions for her to establish care there as they were better equipped to handle her complaints (APA 58). The Respondent was also noted to be taking Zoloft and Trazodone at that time (APA 59).

Thereafter, the Respondent was hired by Community Loans of America, Inc. on May 30, 2012 (APA 61). The Respondent testified at the hearing on September 11, 2014 regarding her prior work history (Hearing Transcript, p. 7, ln. 23 – p. 9, ln. 14). The Respondent also testified regarding her prior workers' compensation claim following a robbery involving a physical injury (which is not subject to the same evidentiary

requirements as a mental only claim). The Respondent testified that on May 26, 2004, she was beat in the head by two guys with guns (Hearing Transcript, p. 9, lns. 14-17). The Respondent further testified that she treated with Dr. Deal and Dr. Bergmann at Post Traumatic Resources following that incident and she was diagnosed with post-traumatic stress disorder (Hearing Transcript, p. 10, lns. 5-14). After receiving unemployment for approximately eight months, the Respondent testified she went back to work not because she wanted to but because she had to (Hearing Transcript, p. 11, lns. 18-23; p. 12, lns. 14-16). In light of her prior experience, the Respondent testified that she hesitantly applied at Carolina Payday (a/k/a Community Loans of America, Inc.) (Hearing Transcript, p. 12, lns. 9-11). The Respondent testified that she investigated whether Carolina Payday had been robbed and indicated that she did not desire to work at the Broad River Road or Two Notch Road locations due to the history of robberies (Hearing Transcript, p. 12, lns. 14-25). The Respondent testified that she informed the area manger that she would work Carolina Payday only at the Lexington location because Lexington had not been robbed (Hearing Transcript, p. 13, lns. 8-11).

The Respondent testified regarding the events on September 11, 2014. The Respondent testified that when she went to lock the door, one guy slammed the door open and backed her up with a gun (Hearing Transcript, p. 13, lns. 21-25). The Respondent testified that there was another guy searching for the money but she did not remember any of it and she only saw the one guy (Hearing Transcript, p. 15, lns. 10-14). The Respondent testified that following the robbery, she resigned her position at Community Loans of America, Inc. (Hearing Transcript, p. 16, lns. 4-7). According to the Respondent's personnel file, she is eligible for rehire (APA 66). The Respondent

testified she resigned as she could not go back to work for fear of being involved in a third robbery (Hearing Transcript, p. 16, lns. 11-13). The Respondent confirmed that after hiring her attorney who knows the owner of Post Trauma Resources, the Respondent began treating there with Dr. Deal for her medication and Dr. Lind for her therapy (Hearing Transcript, p. 16, lns. 14-24). The Respondent confirmed that she is taking Xanax and Trazodone (Hearing Transcript, p. 17, ln. 2). The Respondent testified that she had post-traumatic stress disorder from the first time she was involved with a robbery and is asserting that it was aggravated by the events on September 11, 2014 (Hearing Transcript, p. 17 lns. 3-8).

On cross-examination at the hearing, the Respondent testified she was reluctant to return to a payday lending company after the first time that she was robbed (Hearing Transcript, p. 19, lns. 14-17). The Respondent further admitted that she knew that by working at a payday company there is a potential that she would be a victim of a robbery again (Hearing Transcript, p. 19, lns. 8-21 and p. 20, lns. 12-15). Furthermore, the Respondent admitted that after commencing her employment at Carolina Payday, she was aware that the Two Notch store had been robbed and according to the Respondent's testimony, it was robbed all the time (Hearing Transcript, p. 19, lns. 22-24). The Respondent testified that when she went to work for Carolina Payday, she was provided with information on what to do in the event of a robbery (Hearing Transcript, p. 20, lns. 3-7 and 16-24). The Respondent also admitted that such information was not provided to her in her other employment positions such as a daycare worker (Hearing Transcript, p. 20, lns. 8-11). According to the Respondent's testimony at the hearing, she asked questions prior to going to work for Carolina Payday as she knew it was possible that she

was going to be involved in another robbery (Hearing Transcript, p. 21, lns. 3-12). The Respondent also differentiated that her first robbery while working for a Check Loans involved a physical injury (Hearing Transcript, p. 22, lns. 14-23).

The Respondent admitted at the hearing that she had previously testified at her deposition that she had not treated for any psychological conditions between 2006 and 2014 (Hearing Transcript, p. 24, lns. 4-7). Even at the hearing, the Respondent denied treating for any psychological conditions, anxiety or depression between the two robberies (Hearing Transcript, p. 24, lns. 17-24). Thereafter the Respondent conceded she did have anxiety and depression that was not related to a robbery and was diagnosed prior to the incident on September 11, 2014 (Hearing Transcript, p. 27, lns. 3-8).

During the hearing before the single Commissioner, the Respondent testified regarding the aggravation of her mental condition due to non-work related events after the robbery on January 11, 2014. The Respondent testified that in May 2014, her nephew had a gun at her house and it fell out of his pocket pointing right her (Hearing Transcript, p. 28, lns. 4-16). The Respondent testified that she had an increase in her symptoms at that time (Hearing Transcript, p. 28, lns. 17-19). The Respondent also testified that she has stressors in her home life due to her daughter and her daughter's two children (Hearing Transcript, p. 28, lns. 20-25). The Respondent testified that her daughter's family had moved in with her (Hearing Transcript, p. 29, lns. 7-12): According to the Respondent's testimony, she and her daughter clash as they are two of a kind (Hearing Transcript, p. 29, ln. 25). The Respondent further testified regarding her current physical health condition. The Respondent testified that she was hospitalized for five days and is receiving home health oxygen at this time (Hearing Transcript, p. 31, lns. 2-17). The

Respondent confirmed that she had been a one-to-two pack a day smoker since the age of eleven, thirty-seven years (Hearing Transcript, p. 31, lns. 18-24).

The transcript of Dr. Nicholas Lind's deposition testimony was also submitted into the evidentiary record. On August 29, 2014, Dr. Lind testified that he had been treating the Respondent since February 2014. Dr. Lind testified that although he was not the Respondent's physician in 2004, he is familiar with the fact that the Respondent was diagnosed with post-traumatic stress disorder (Dr. Lind Deposition Transcript, p. 5, lns. 2-14). Dr. Lind further admitted that he was not aware of the Respondent's prior mental health history personally as the written records had been destroyed (Dr. Lind Deposition Transcript, p. 5, lns. 7-14). Dr. Lind testified that once PTSD occurs following an exposure to a life or death situation and someone has a reaction, he or she can expect to have a similar reaction in future times of stress (Dr. Lind Deposition Transcript, p. 12, lns. 13-17). Dr. Lind testified this accounts for the Respondent's mental state referenced in her medical records since she was diagnosed with PTSD in 2004 (Dr. Lind Deposition Transcript, p. 12, lns. 17-21).

According to Dr. Lind, through his treatment of patients, he is aware of other banks and payday lending companies being subject to robberies (Dr. Lind Deposition Transcript, p. 16, lns. 11-13). Dr. Lind also testified regarding his experience with active duty folks who are trained to do a mission which he thinks is extraordinary and unusual regardless if they know what they are getting in for (Dr. Lind Deposition Transcript, p. 16, ln. 22 – p. 17, ln. 20). Dr. Lind elaborated on the fact that he believes that things are extraordinary and unusual even if it is normal for a person's particular employment and that person knows what they are getting into (Dr. Lind Deposition Transcript, p. 17, lns.

15-25). Dr. Lind went on to explain that he is not basing his statements of “unusual and extraordinary” on the law under the South Carolina Workers’ Compensation Act (Dr. Lind Deposition Transcript, p. 18, lns. 5-6). Dr. Lind also confirmed that he is not reaching a legal conclusion as far as the component as to whether Ms. Lucas’ employment on January 11, 2014 was “unusual and extraordinary” compared to conditions of this particular type of employment (Hearing Transcript, p. 20, lns. 11-16). Dr. Lind further testified that he is aware robberies due to tend to happen in this line of work unfortunately (Hearing Transcript, p. 20, lns. 17-19).

In terms of the subsequent events in the Respondent’s personal life, Dr. Lind confirmed that there has been an increase in the Respondent’s anxiety due to her dealings with her daughter and grandchildren (Dr. Lind Deposition Transcript, p. 21, lns. 17-24). Dr. Lind also confirmed that the Respondent’s medical issues have complicated her situation and increased her symptoms (Dr. Lind Deposition Transcript, p. 23, lns. 7-10). Dr. Lind confirmed that there has been a progressive increase in the Respondent’s medications during her treatment (Dr. Lind Deposition Transcript, p. 22, lns. 13-15).

#### **STANDARD OF REVIEW**

The Administrative Procedures Act establishes the standard for judicial review of the Workers’ Compensation Commission’s decisions. Lark v. Bi-Lo, Inc., 276 S.C. 130, 134-135, 276 S.E.2d 304, 306 (1981). The Appellate Court can reverse or modify a decision if the findings and conclusions of the agency are affected by error of law, clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. See Gray v. Club Group, Ltd., 339 S.C. 173, 528 S.E.2d 435 (Ct.

App. 2000); *See also* S.C. Code Ann. §1-23-380(5)(d),(e)(Supp. 2011). In considering an appeal from a Decision and Order of the Commission, the Court's role is of an appellate capacity and is limited to deciding whether the Commission's decision is supported by substantial evidence or is controlled by some error of law. *See* Rogers v. Kunja Knitting Mills Co., 312 S.C. 377, 440 S.E.2d 401, re-hearing denied (Ct. App. 1994). In an appeal from the Commission, the Court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. *See* Gibson v. Spartanburg School Dist. No. 3, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000), citing S.C. Code Ann. § 1-23-380(a)(6) (1976, as amended).

An award for workers' compensation benefits may not rest upon surmise, conjecture, or speculation. Hutson v. S.C. State Ports Authority, 399 S.C. 381, 732 S.E.2d 500 (2012). The Commission's decision also must be founded on evidence of sufficient substance to afford a reasonable basis for it. Wynn v. People's Natural Gas Co. of SC, 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961).

### ARGUMENT

The Appellants contend that the weight of the evidence in the record and the applicable laws suggest that the Respondent failed to meet her burden of proving that she sustained a mental only injury on January 11, 2014 arising out of and in the course of her employment with Community Loans of America, Inc.

- I. Review of the evidence reveals that the Respondent failed to meet her burden of proving her employment conditions on January 11, 2014 were unusual and extraordinary as required for a compensable mental-only injury pursuant to S.C. Code §42-1-160(B).

S.C. Code Ann. §42-1-160(B) states that stress, mental injuries, and mental illnesses arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes by preponderance of evidence: (1) that the employee's employment conditions causing the stress, mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and (2) the medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence. According to §42-1-160(G), medical evidence means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.

- a. The events on January 11, 2014 were not unusual and extraordinary for the Respondent's particular employment.

It is the Respondent's burden to prove both that she was exposed to unusual and extraordinary conditions for her particular employment and that the unusual and extraordinary condition was the proximate cause for mental illness. Shealy v. Aiken County, 341 S.C. 448, 459, 535 S.E.2d 438, 444, rehearing denied (2000). In determining whether an event is unusual and extraordinary, the Commission's scope of review is limited to the particular job performed by a Respondent and not the conditions of employment in general. Frame v. Resort Services, Inc., 257 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); Shealy v. Aiken County, 341 S.C. 448, 456, 535 S.E.2d 438, 442, rehearing denied (2000). The Supreme Court confirmed that the frequency of an event occurring during the course of employment is not a factor in determining whether it is

unusual and extraordinary. Bentley v. Spartanburg County, 398 S.C. 418, 427, 730 S.E.2d 296, 301 (2012) (The Supreme Court affirmed that a deputy sheriff who once used deadly force did not sustain a compensable mental injury as he did not meet his burden of proving that his injuries were caused by an extraordinary and unusual employment condition).

Based on the case law, the applicable standard of review is whether the Respondent's employment on January 11, 2014 was an unusual and extraordinary event for a teller of a payday loan store. The Appellants hereby assert that the robbery was not unusual and extraordinary for this particular employment. The Respondent herself was previously involved with an armed robbery while she was working for another payday lending company (Dr. Lind Deposition Transcript, p. 16, lns. 14-16; Hearing Transcript, p. 9, lns. 14-17). Dr. Nicholas Lind, the Respondent's treating psychologist, testified that he has treated other patients for mental illness following a robbery at a bank or a payday lending company (Dr. Lind Deposition Transcript, p. 16, lns. 11-13). Dr. Lind also confirmed at his deposition that his statement indicating that a robbery was unusual and extraordinary is referring to a robbery in general and not the normal conditions of the Respondent's type of employment (Dr. Lind Deposition Transcript, p. 20, lns. 11-16). In fact, Dr. Lind testified that he is aware that robberies do tend to happen in the Respondent's particular line of work (Dr. Lind Deposition Transcript, p. 20, lns. 17-19).

The Respondent's role in the events on January 11, 2014 were also limited as she was not the employee involved in the production of the money. The Court in Tennant stated that a stressful conflict is not alone sufficient to satisfy the requirements of a mental only claim. Tennant v. Beaufort County School District, 381 S.C. 617, 674

S.E.2d 488 (2009) (A conflict involving non-physical contact was not unusual and extraordinary for a special education teacher). As discussed in Tennant, compensable mental only claims typically involve extreme and severe facts of stressful events occurring over several months and prolonged periods of time. Id. at 622, 490. The Respondent testified that the events on January 11, 2014 did not involve any physical contact and only took a matter of minutes. Therefore, the Appellants contend that the robbery was not extraordinary causing the Respondent extreme stress over a long period of time and thus the requirements of a mental only claim are not satisfied.

The Respondent's testimony also supports that a robbery at a payday lending store is not unusual (Hearing Transcript, pgs. 12, 13 and 19). The Respondent's medical records reflect that she was hesitant to return to work as a payday loan teller after she was first involved in a robbery in 2004 due to the likelihood that she would be involved in a robbery again (APA 50). At the hearing before the single Commissioner, the Respondent offered testimony regarding her inquiry about robbery statistics at the various Community Loans of America, Inc. store locations during the interview process (Hearing Transcript, p. 13, lns. 8-11). The Respondent also testified that after commencing her employment with Community Loans of America, Inc., she was provided with information on what she should do in the event of a robbery and she was not provided with such information for her employment positions outside of the payday lending companies (Hearing Transcript, p. 20, lns. 3-24). The Respondent's experience with being subject to a robbery in this particular line of work and her knowledge as to the likelihood that she would be involved in a robbery again support that this type of event at a payday lending company is not unusual and extraordinary as outlined by §42-1-160(B)(1).

Further, the Respondent presented absolutely no evidence as to the normal employment conditions for a teller at a payday lending company so that the Commission could determine whether the events on January 11, 2014 were unusual. In Bentley, the police officer treated for anxiety and depression also at Post Trauma Resources but as a result of using deadly force in the course of his employment. Bentley at 421, 297. The Court found that the use of deadly force was within the normal scope of employment for a deputy sheriff as the employee confirmed that he would sometimes be required to use deadly force in his job. Id. at 429, 302. The County Sheriff testified in Bentley and stated that the employee was aware of the deadly force possibly through his training. Id. The Supreme Court rejected the Respondent's argument that because statistics showed that the killing of a suspect by a Spartanburg County deputy sheriff only occurred once a year that it meant the event was unusual and extraordinary. Id. at 430, 302. Although the Respondent's specific store location had not been robbed recently, she was aware of the likelihood that a robbery would occur and provided instructions on how to handle such events.

The only evidence offered by the Respondent to support that the robbery on January 11, 2014 was unusual for her particular occupation was a statement from the Cayce Department of Public Safety indicating that her store had not been robbed from 2013 until January 11, 2014 (APA 32). The Respondent offered no witness testimony or documents to support that a robbery was unusual and extraordinary for a payday loan store. The Respondent admitted that she was aware of the likelihood that she would be involved in a robbery; she was previously involved in a robbery in this particular occupation and she was provided with information instructing her on what actions to take

in this type of a situation. Therefore, the Appellants contend that based on the analysis in Bentley and the testimony of the Respondent and of Dr. Lind, the events on January 11, 2014 were not unusual and extraordinary for the Respondent's particular type of employment and thus the Respondent failed to meet her burden of proving a compensable claim under §42-1-160(B).

- b. The events on January 11, 2014 are not the proximate cause of the Respondent's current mental condition.

To the extent that this Honorable Court determines that the robbery on January 11, 2014 was unusual and extraordinary condition for a payday loan officer, the Appellants assert that the robbery is not the proximate cause of Respondent's current mental condition. The Respondent was previously diagnosed with anxiety, depression and PTSD in 2004 which according to Dr. Lind explains the Respondent's reaction to any stressful situation (Dr. Lind Deposition Transcript, p. 12, lns. 17-21). Even if the Respondent had a temporary aggravation of her mental condition related to the robbery on January 11, 2014, the Respondent's current mental condition is the result of subsequent aggravating events after her employment at Community Loans of America, Inc. See Shealy at 459, 444 (Substantial evidence supported the Commission's finding that a Respondent's physiological injuries of depression and PTSD were not proximately caused by his employment as an undercover narcotics police officer). The Full Commission made the factual determination in Shealy indicating that he failed to meet the burden of proof because outside stressors unrelated to his work contributed to or caused his injuries and the Supreme Court affirmed. Shealy was suffering from financial problems that led to bankruptcy; marital problems, including a divorce and a custody

battle over his son; memories of a gun fight and shooting a man during a previous employment; and the constant stress of fighting alcoholism. Shealy at 459, 444.

Similar to Shealy, the Respondent suffers from various non-job stressors. The Respondent was also involved in subsequent events aggravating her mental condition after the robbery on January 11, 2014. The Respondent was involved in a situation in May 2014 at her home when her nephew's pistol fell out of his pocket and landed facing her (Hearing Transcript, p. 28, lns. 20-25; APA 9). Dr. Lind testified that the Respondent's anxiety was aggravated by exposure to this pistol (Dr. Lind Deposition Transcript. p. 21, lns. 1-7). The records also show that the Respondent's daughter's family moved into her home which caused her anxiety (APA 11; Hearing Transcript, p. 28, ln. 20 – p. 29, ln. 25). According to Dr. Lind's deposition testimony, the Respondent's daughter caused an increase in the Respondent's anxiety symptoms (Dr. Lind Deposition Transcript, p. 21, lns. 15-24; APA 11). Further, Dr. Deal, the Respondent's treating psychiatrist at Post Trauma Resources, noted in his June 18, 2014 medical record that the Respondent was much more symptomatic with anxiety, insomnia and somatic problems due to her family's situation (APA 28). Dr. Deal stated in his notes that the Respondent had taken a turn for the worse over the past couple of weeks which was related to an increase in stress in her family (APA 28).

The Respondent also has medical issues contributing to her current mental situation. The Respondent was hospitalized for five days due to her diabetes and pulmonary insufficiency and is now using a portable oxygen machine as evidenced throughout the hearing (Hearing Transcript, p. 31, lns. 2-24, APA 30). Dr. Deal noted that the Respondent's additional medical issues have complicated her situation and have

increased her symptoms (APA 30). The Respondent is currently being prescribed Trazodone and Xanax (APA 26). Prior to other commencing employment with Community Loans of America, Inc., the Respondent was also prescribed Trazodone, Xanax and Zoloft to control her symptoms after the 2004 robbery; after her husband lost his job; and after her husband moved out of their home (APA 43, 53, 56, 57, 58). At the Respondent's deposition, she denied treatment for any mental conditions between 2006 and 2014 (Hearing Transcript, p. 24, lns. 4-7). The Respondent later admitted that she has battled post traumatic stress disorder, depression and anxiety prior to January 11, 2014 and sought medical treatment in the years leading up to her employment with Community Loans of America, Inc. (Hearing Transcript, p. 27, lns. 3-8; APA 49 and 56). The Respondent had also been referred to Lexington Area Mental Health prior to the robbery at Community Loans of America, Inc. on January 11, 2014 (APA 58). Therefore, the Appellants assert that the Respondent's pre-existing and subsequent stressors outside of the events on January 11, 2014 have caused or contributed to her current mental condition. To the extent that the Full Commission awards the Respondent benefits for an aggravation of previously diagnosed PTSD, such an award shall be limited to the period of the alleged aggravation attributable to the events on January 11, 2014. The Appellants should not be responsible for providing benefits after the Respondent has been involved in subsequent events which have aggravated her mental condition.

II. Respondent should not be entitled to ongoing medical and temporary total disability benefits in the event the claim is found to be compensable.

In the event this Court finds that the employment conditions on January 11, 2014 were unusual and extraordinary for the Respondent's particular employment at a payday

loan company and that the Respondent's current mental condition is proximately caused by her employment on January 11, 2014, the Appellants request that this Court deny or limit the Respondent's medical and temporary total disability benefits. Pursuant to Regulation 67-502, an employee is entitled to disability compensation when he or she is incapacitated from earning wages because of an injury. In this situation, the Respondent voluntarily resigned from her employment position where work was available (Hearing Transcript, p. 16, lns. 4-7). The only reference to the Respondent's work capability in the record is noted in Dr. Lind's deposition transcript. Dr. Lind testified he does not believe that the Respondent can engage in any substantial gainful activity based on her current level of symptoms (Dr. Lind Deposition Transcript, p. 33, lns. 15-21). The Appellants assert that the Respondent's *current* level of symptoms referenced by Dr. Lind is inclusive of the aggravations from her non-job stressors outlined herein above and by Dr. Lind during his deposition immediately before such statement. As such, the evidence does not support that the Respondent is currently disabled due to a specific event on January 11, 2014 and therefore she should not be entitled to temporary total disability benefits (APA 9, 13, 28 and 30).

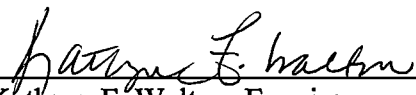
There is no evidence in the record specifically stating that the Respondent is incapacitated from earning wages due to an aggravation of her mental condition from her employment conditions on January 11, 2014. To the extent that this Court affirms the single Commissioner's award of temporary total disability benefits, the Appellants would request that the award be modified to only award benefits from January 12, 2014 until May 7, 2014 when the record reflects that the Respondent reported the incident with the pistol at her home the week prior (APA 9).

CONCLUSION

The Appellants respectfully request that Order of the South Carolina Workers' Compensation Commission be reversed and/or modified. The Appellants specifically request that the Court of Appeals issue its own finding that the Respondent did not meet her burden of proving a mental only injury as required by §42-1-160(B) and that the Appellants are not liable for any benefits under the Workers' Compensation Act. The Appellants would alternatively request that temporary total disability benefits be denied due to the lack of evidence that the Respondent is currently disabled as a result of the events on January 11, 2014. In the event that temporary benefits are affirmed, the Appellants request that the Court of Appeals limit the Respondent's medical and temporary disability benefits to the time period prior to her subsequent non-job aggravating events commencing on May 7, 2014.

RESPECTFULLY SUBMITTED:

Wood Law Group, LLC  
P.O. Box 20550  
Charleston, SC 29413

By:   
Kathryn F. Walton, Esquire  
Attorney for Appellants

Date: November 12, 2015  
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission

WCC File No. 1401281  
Court of Appeals Case No. 2015-002192

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NOV 16 2015

SC Court of Appeals

Yolanda Lucas, Employee,.....Respondent,

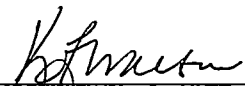
v.

Community Loans of America, Inc., Employer,  
and Continental Indemnity Company, Carrier.....Appellants.

**PROOF OF SERVICE**

I certify that I have served the **Initial Brief and Designation of Matter** upon the Respondent by depositing a copy of the same in the United States Mail, postage prepaid, on November 12, 2015 addressed as follows:

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Columbia, South Carolina 29202

  
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J. HUBERT WOOD, III

KATHRYN F. WALTON\*  
MATTHEW J. FULTZ

\*MEDICARE SET-ASIDE CERTIFIED CONSULTANT

November 12, 2015

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REPLY TO  
PO BOX 20550  
CHARLESTON, SOUTH CAROLINA 29413

NOV 16 2015

SC Court of Appeals

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

Re: Yolanda Lucas v Community Loans of America, Inc.  
Appellate Case No.: 2015-002192  
WCC File No.: 1401281  
Carrier File No.: 74798  
Date of Accident: January 11, 2014  
Our File No.: 94.14

Dear Ms. Kitchings:

Enclosed for filing are the original and one (1) copy of the Appellants' Initial Brief and Designation of Matter with Certificate of Compliance with Rule 209(c) in the above referenced case. Also enclosed is the Proof of Service of the Appellants' Initial Brief and Designation of Matter.

By copy of this letter to D. Michael Kelly, Esquire, Attorney for Respondent, I am notifying him of Appellants' Initial Brief and Designation of Matter filing and serving the same upon him by mail. Please file the originals and return the clocked copies to me in the self-addressed, postage pre-paid envelope provided.

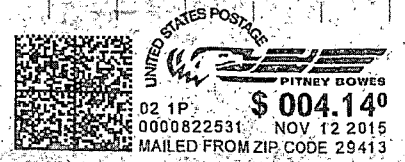
Very truly yours,



Kathryn Fiehrer Walton

KFW/llk

cc: Mr. Michael Heller (via email only) (w/enc.)  
D. Michael Kelly, Esquire (w/enc.)



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*first class*

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The Honorable Jenny Abbott Kitchings  
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NOV 16 2015  
SC Court of Appeals