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SC Court of Appeals

APPELLATE PANEL

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1303465

Ann Stevenson, CLAIMANT/APPELLANT,

vs.

Wal-Mart Stores, Inc., EMPLOYER,

AND

New Hampshire Insurance, Co., CARRIER,
DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina, on January 11, 2016 per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed March 28th, 2016

APPEARANCES:

Appellant Ann Stevenson, Claimant, represented by Carter Martling, Esquire of Irmo, South Carolina.

Defendants/Respondents represented by Johnnie W. Baxley, III, Esquire of Willson Jones Carter & Baxley, P.A. in Mt. Pleasant, South Carolina.

STATEMENT OF THE CASE

This is a partially admitted/partially denied claim arising out of an accident which occurred on February 16, 2013. It is the claimant's position that she tripped on electrical cord on that date which resulted in multiple injuries. The claimant alleged injuries to her right shoulder, right knee, neck, low back, right hand, and right ankle/foot. The Defendants admitted the injuries to the right shoulder and right knee, but denied all other injuries. The claimant requested disability determinations on all except the body parts, a determination of compensability on the denied body parts, additional medical treatment, temporary compensation, and other benefits under the act. With regard to the admitted body parts, the Defendants took the position that the claimant had already been released at maximum medical improvement and was entitled to a determination of permanent disability. The Defendants also requested a denial of all of the denied body parts.

This matter was originally heard by Commissioner Wilkerson on December 19, 2013. At that hearing, he determined the issues as set forth on the Forms 21 and 22, but did not hear the issues as set forth on the Forms 50 and 51. Commissioner Wilkerson issued an order dated March 5, 2014, and the claimant appealed that decision to the Appellate Panel of the South Carolina Worker's Compensation Commission. The Appellate Panel issued an order dated October 22, 2014, whereby they vacated the order of Commissioner Wilkerson dated March 5, 2014, and ordered that the matter was remanded to a hearing Commissioner for a de novo hearing on the issues set forth on the Forms 21, 22, 50, and 51. That de novo hearing was held on January 8, 2015 before Commissioner Michael Campbell. On October 13, 2015, Commissioner Campbell issued an order adjudicating all of the issues. Commissioner Campbell issued the following order:

IT IS HEREBY ORDERED that the Application of Employer/Carrier to stop payment of temporary total compensation is hereby granted, effective October 10, 2013, the date on which Claimant reached maximum medical improvement.

IT IS FURTHER ORDERED that as a result of Claimant's accidental injury

occurring on February 16, 2013, she has sustained a six percent (6%) permanent partial disability to the right lower extremity (knee) and four percent (4%) permanent partial disability to the right shoulder. At Claimant's compensation rate of $743.72, she is entitled to 11.7 weeks of benefits for the right knee or $8,701.52; and 12 weeks of benefits for the right shoulder or $8,924.64. The total indemnity award, therefore, equates to $17,626.16. From this amount, the Defendants are entitled to a credit or offset for the overpayment of temporary total compensation (October 10, 2013 – January 10, 2014) in the amount of $9,880.85 which represents 13 2/7 weeks of overpayment.

IT IS FURTHER ORDERED that Claimant has not sustained any serious and permanent disfigurement as a result of this accident, and as such Defendants are not liable for same.

IT IS FURTHER ORDERED that claimant is not entitled to any ongoing or future medical treatment.

IT IS FURTHER ORDERED that claimant's application for benefits for asserted injuries to the neck, low back, right hand, and right foot/ankle is hereby denied and her claims for benefits associated with these body parts is dismissed with prejudice.

Within the statutory period, Claimant filed an Application for Review (Form 30) in the case, setting forth his reasons, copies of which were furnished to all interested parties. All parties appeared at oral arguments on September 21, 2015, and presented their case on appeal.

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

By appeal, it is respectfully submitted that the Hearing Commissioner erred in the following:

1. *Did the Single Commissioner err in Finding of Fact #18 and Conclusion of Law #3? The error being that the Claimant's allegation of an injury by accident to the neck was denied despite being supported by the greater weight of medical evidence.*
2. *Did the Single Commissioner err in Finding of Fact #18 and Conclusion of Law #3? The error being that the Claimant's allegation of an injury by accident to the low back was denied despite being supported by the greater weight of medical evidence.*
3. *Did the Single Commissioner err in Finding of Fact #18 and Conclusion of Law #3? The error being that the Claimant's allegation of an injury by accident to the right hand was denied despite being accepted by the carrier and supported by the greater weight of medical evidence*
4. *Did the Single Commissioner err in Finding of Fact #16 and Conclusion of Law #5? The error being that the Claimant was not at maximum medical improvement.*
5. *Did the Single Commissioner err in Finding of Fact #19 and Conclusion of Law #7? The*

error being that the Claimant was not at maximum medical improvement by the greater weight of medical evidence

The Form 30 dated October 23, 2015, indicates that the claimant was appealing the denial of the neck, low back, right hand, and the findings that the claimant had reached maximum medical improvement. However, the Brief filed by claimant dated December 14, 2015, only asserts that the Commissioner erred in denying the right hand and finding that the claimant had reached maximum medical improvement; the Brief abandons the appeals regarding the neck and low back. Counsel for the Claimant confirmed at the oral arguments that claimant was abandoning and dismissing Grounds for Appeal #1 and #2 (the appeals regarding the neck and low back).

In an Appellate Review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50, review the award, weigh the evidence as presented at the initial hearing, and if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent or inconsistent with those of the Hearing Commissioner.

Although the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law, it is logical for the Full Commission, which did not have the benefit of observing the witnesses, to give weight to the Single Commissioner's opinion. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162 (1992). In this case, the preponderance of evidence in the record supports a full affirmation of the Hearing Commissioner's findings.

EVIDENCE OF THE CASE

Statement of the Positions of the Parties

It is claimant's position in this matter that she tripped on an electrical cord on February 16, 2013, resulting in several injuries. She alleged injuries to the right shoulder and right knee, both of which are accepted, as well as additional injuries to the neck, low back, right hand, right ankle/foot, all of which are denied. The claimant requested disability determinations on all accepted body

parts and a determination of compensability on the denied body parts. Claimant asserted that she had not reached maximum medical improvement regarding her hand injury, that she continues to be on work restrictions, that she is entitled to temporary benefits, and that she is entitled to permanent partial disability compensation. The claimant also asserted that there was no lack of credibility on her part.

It is the position of the Defendants that the claimant has been provided medical treatment with regard to her right shoulder and right knee injuries, and that she was released at maximum medical improvement by Dr. James Merritt originally on August 8, 2013, and then again on October 8, 2013. Defendants asserted that the claimant was assigned an impairment rating of 2% to the right upper extremity and 3% to the right lower extremity on October 10, 2013. Defendants denied that the claimant was entitled to temporary total disability compensation after October 10, 2013, the date of maximum medical improvement. Temporary total disability compensation was paid through January 10, 2014, resulting in a credit of 13 2/7 weeks. With regard to disability on the right shoulder and right knee, the Defendants noted that the impairment ratings were based solely upon subjective complaints and there were no objective findings to support a legitimate injury or any ongoing problems. Based on Dr. Merritt's reports and deposition testimony, Defendants assert Claimant has a two percent (2%) impairment rating to the right upper extremity and a three percent (3%) rating to the right lower extremity for her knee complaints. Defendants seek a finding that they are entitled to stop payment of temporary total compensation as of October 10, 2013, the date of MMI, that they are entitled to a finding of permanency to both the right upper extremity and the right lower extremity, that they are entitled to a credit for overpayment of temporary total disability compensation after October 10, 2013, and that Claimant is entitled to no additional benefits (indemnity or medical) regarding the admitted injuries. Finally, Defendants

assert there are problems with the validity and credibility of Claimant's complaints as evidenced in Dr. Merritt's reports, the Doctor's Care reports, the records of Dr. Tamadon, and Claimant's physical therapy providers. For this reason, Defendants seek a finding on credibility as well.

With regard to the neck, low back, right hand, and right foot/ankle, the Defendants deny that the claimant has sustained a compensable injury by accident to any of those body parts, deny medical causation, and deny that claimant is entitled to any benefits under the South Carolina Workers' Compensation Act for those injuries. The Defendants assert that the claimant lacks a statement of causation for the back, the neck, the right foot, the right ankle, and the right hand. Specifically with regard to the right hand, the Defendants noted that the claimant had been diagnosed with carpal tunnel syndrome, but she also has carpal tunnel syndrome in the left hand which is not alleged to be related to the accident. The Defendants asked for a denial of the four denied body parts.

Discussion of the Evidence

The medical evidence submitted as part of the parties' APA submissions reflects that Claimant initially treated at Doctor's Care on February 22, 2013, after her fall where she was diagnosed with a right arm and hand strain. (APA 38). She also began treating at Progressive Physical Therapy ("Progressive") on March 8, 2013, and treated there through June 12, 2013 when she was discharged due to non-improvement. (APA 65-87). The discharge summary records from Progressive state Claimant was observed "performing activities she states she cannot do," that she had "non-organic symptoms," that she refused to perform most all therapy exercises for various reasons, and that there were signs of questionable "malingering." (APA 65-66).

On March 19, 2013, Dr. Baens at Doctor's Care provided a written notification to the assigned workers' compensation claims adjuster advising that Claimant had requested

prescriptions to be written for various items including: an elastic gel wrist wrap, elastic hot/cold gel knee wrap, elastic gel cervical collar, elastic gel shoulder splint, a shoulder splint, and 2 ace wraps. (APA 32). Dr. Baens noted that she does not routinely write for these items and that she told Claimant she would write these on her behalf but did not believe there was any real therapeutic benefit to these items. (APA 32). Dr. Baens cautioned Claimant that she was "determining her own treatment plan" and that the items requested would be subject to payment by the workers' compensation carrier. (APA 32). Finally, she noted she was concerned that Claimant had varying symptoms with every visit claiming "muscle atrophy" (which does not occur in just a few days), and burning sensation after her x-rays were done. (APA 32).

Claimant also underwent a variety of diagnostic imaging tests to include x-rays of her right elbow and hand at Doctor's Care on February 22, 2013, that revealed "unremarkable" results. (APA 63-64). On February 28, 2013, an x-ray of Claimant's right knee showed no acute osseous abnormality. (APA 62). X-rays of Claimant's cervical spine and shoulder taken on February 28, 2013, were negative with no acute abnormalities. (APA 60-61). X-rays of Claimant's pelvis and right hip on February 28, 2013 were also negative. (APA 59). An MRI of Claimant's right shoulder was performed on April 2, 2013, at the direction of Dr. Merritt which revealed tendinopathy of the rotator cuff with some overlying subacromial and subdeltoid bursitis, but no full-thickness tear. (APA 58). A cervical spine MRI was performed on April 17 2013, showing straightening of the cervical spine with no focal central canal or foraminal stenosis. (APA 57). Finally, an MRI of Claimant's right knee was performed on May 7, 2013, showing minimal signal changes within both menisci, an equivocal meniscal tear in the body of the lateral meniscus, and a popliteal cyst. (APA 56).

Claimant treated with Dr James Merritt at Strand Orthopaedic Consultants following her

fall at work on numerous occasions between March 27, 2013 and October 8, 2013. (See APA 1-26). At Claimant's initial visit she reported pain in her right shoulder, arm, wrist, neck, low back, buttock, pain down the hip and cramping in the calf on the right side. (APA 25). Dr. Merritt examined Claimant and told her that most of her discomfort was ligament muscle related and would improve with therapy. On April 23, 2013, Dr. Merritt concluded no surgery would be warranted on the neck and shoulder for her ligamentous pain. (APA 22). He recommended continued therapy for Claimant's muscle related soft tissue discomfort and expressly noted that Claimant was "resistant" to his recommendation that she return to work on light duty. (APA 22). Dr. Merritt expressed his concerns about Claimant's "motivation" to return to work and recommended a functional capacity evaluation to assess her functional capabilities. (APA 22).

On April 24, 2013, claimant sent an email to Dr. Merritt's office regarding all of her various complaints and ongoing problems. (APA 21).

On May 13, 2013, Dr. Merritt reviewed the MRI of Claimant's right knee and ruled out any need for surgery. (APA 18-19). He again opined Claimant was not a surgical candidate for her neck and shoulder. (APA 18-19). Dr. Merritt discussed with Claimant his recommendation to get back to light duty but Claimant was "very hesitant." (APA 18-19).

On June 11, 2013, Claimant again reported to Dr. Merritt with a "multitude" of complaints. (APA 14-15). Dr. Merritt told her he would like a second opinion because he was not sure why she was not improving four months out from an injury without any major structural problems. (APA 14-15) He specifically noted in the record, "Get her back to work" and "I see no reason from her studies why she can't do regular work." (APA 15). Dr. Merritt further commented that there may be a psychological component to Claimant's problem and not necessarily an orthopedic problem. (APA 15).

Claimant was subsequently evaluated by Dr. Alexander Pappas, at Strand Orthopaedics, for her ongoing complaints of pain in her right lower extremity and right foot. (APA 12-13). His report references complaints regarding the hip, knee, ankle and foot. Dr. Pappas conducted a physical evaluation of Claimant and assigned her some light duty work restrictions including no prolonged standing. (APA 12-13). He concluded most of Claimant's symptoms were related to nerve issues higher in the leg and low back with no further follow up needed. (APA 13).

On August 1, 2013, Claimant was evaluated by pain management specialist Dr. Tamadon. He noted Claimant's symptoms are not causally related in total to the alleged accident of February 16, 2013. (APA 29). Specifically, he noted that her neurologic exam was normal, and that her inspection of the neck was unremarkable with full range of motion and no tenderness to palpation. He noted that the inspection of the back was unremarkable with full range of motion within functional limits and no tenderness upon palpation except in the right gluteal region. He further noted that the claimant had full range of motion of the shoulder on the right side and it was symmetrical to the range of motion on the left side. Finally, he noted that the right foot was free of ankle pain complaints. (APA 28). Further, all objective findings with the exception of Claimant's myofascial pain are pre-existing, that it is not possible to determine if myofascial pain is pre-existing without access to any prior medical records, and that it is possible to experience a flare-up of pain from her pre-existing conditions but "the persistence of such pain is not probable." (APA 29-30). Dr. Tamadon performed an EMG which revealed moderate carpal tunnel but he was not sure how this was related to her fall; it did not reveal any radiculopathy or other problems. (APA 29-30). He stated that her only diagnosis was myofascial pain which was completely subjective (APA 29).

Claimant followed up with Dr. Merritt on October 8, 2013, at which time he noted there

was not much else he could do for her from an orthopedic standpoint. (APA 7). He documented that he was unsure as to why Claimant was not improved. (APA 7). He did not see any structural damage to her neck, shoulder, or knee, and opined her knee had a slight or small possible lateral meniscus tear but that it was not likely caused by the accident. (APA 7). He further noted that a second opinion was provided by Dr. Tamadon who did not feel there were any other orthopedic recommendations or needs. (APA 7). Dr. Merritt released Claimant at MMI and assigned a 3% impairment to the right lower extremity for a right knee strain and a 2% rating to the upper extremity for shoulder tendonitis. (APA 20).

Dr. Merritt completed a Form 14B on October 10, 2013, placing Claimant at MMI as of October 8, 2013, with a 2% rating to the upper extremity and a 3% rating to the right lower extremity. (APA 5). He released Claimant to return to work with 20 pound lifting restrictions and referenced her FCE for Claimant's full capabilities or other questions on restrictions. (APA 5). Dr. Merritt opined it is "possible" that Claimant may need future pain management if her pain continues and is not controlled with over the counter medications. (APA 5).

Dr. Merritt was deposed on December 18, 2013, and he testified that Claimant sustained a shoulder strain and knee strain as a result of her accident at work. (Merritt Deposition Transcript, page 31, lines 22-25). Dr. Merritt also testified that he did not have any explanation for Claimant's ongoing complaints of pain after seeing her over the course of two months, objective testing, and his physical examination of the patient. (Merritt Deposition Transcript, page 18, lines 6-16). He testified that he completed a thorough work up for the injuries for which he saw Claimant. (Merritt Deposition Transcript, page 19, lines 1-10). He also agreed that Claimant exhibited "self-limiting behavior" during the WorkWell FCE, could still return to work in the light physical demand category, and that there was no reason from an orthopedic standpoint for Claimant's work hours to

be limited for any reason. (Merritt Deposition Transcript, page 26, lines 3-18; page 27, lines 17-22). Based on his evaluation of Claimant and the objective testing performed, he did not see why she would not be able to go up and down stairs and did not know why she would need a cane. (Merritt deposition Transcript, page 27, lines 1-16). Finally, Dr. Merritt testified that it would not bother or offend him at all if Claimant wanted to find another physician but that it would surprise him if another orthopaedic surgeon found something else they could do. (Merritt Deposition Transcript, page 28, lines 17-19; page 29, lines 7-8).

The claimant returned to Dr. Merritt on May 22, 2014. At that visit, she continued to report pain in her right shoulder and right leg. She was very concerned about nerve damage in her leg giving her some of this pain. Dr. Merritt noted that she had a much improved gait from her last visit, that there might be mild swelling in the leg, but that she did not have any obvious deficits in the leg. Dr. Merritt stated that he would repeat an EMG study, but if the study was normal, she would remain at maximum medical improvement. (APA 2). The repeat EMG study was completed on June 3, 2014, and was reported as being a normal study with no electrodiagnostic evidence of any problem. (APA 3-4).

The claimant was also seen by Dr. Robert Elvington of Pee Dee Orthopedics for an independent medical evaluation on December 13, 2013. The claimant chose Dr. Elvington and presented on her own for this independent medical evaluation; this visit was not authorized by Defendants. That report indicated that the claimant appeared and complained of continued right knee pain. Dr. Elvington reviewed all of the claimant's previous records and fully evaluated the claimant. Dr. Elvington concluded that the claimant's pain and her objective symptoms were out of proportion to her examination and MRI findings. He did not recommend any surgical intervention, and he did not feel that a repeat MRI scan was indicated He indicated in his report that her current

knee symptoms were not related to her original injury which occurred on February 16, 2013. He released her from care at that time. (APA 89-90).

The records from physical therapy were also reviewed. As early as March 8, 2013, the physical therapy reports note diffuse and poorly localized complaints and indicate that compliance may be an issue in the near future. (APA 86). On several occasions, the claimant actually refused medical treatment from physical therapy. (APA 75, 81, 83-84). On APA page 82, the physical therapy notes state that the claimant was complaining of vague complaints and she was unable to pinpoint her exact areas of pain. On APA page 78, the physical therapy notes state that the claimant was continuing with non-organic complaints and a stressed compliance to the claimant. On APA page 74, the physical therapy notes indicate that the claimant was having nonorganic symptoms that did not match her current complaints. One APA page 73, the note indicates that the claimant's complaints were very vague, the complaints were non-organic, and the claimant was able to demonstrate full range of motion throughout testing and observation despite her complaints. The physical therapist noted questionable malingering and recommended discharge. The note also indicates that the claimant refused to perform most exercises for various reasons that did not match her injury/complaints. On APA page 72, the note indicates that the claimant did not seem motivated to return to work and was again refusing treatment that was being offered. On APA page 71, the claimant was still complaining of nonspecific complaints and refusing to participate in some of the treatment that was being recommended. On APA page 68, the claimant was observed with full weight-bearing on her right lower extremity with shoes and no apparent distress. However, she demonstrated an antalgic gait when asked by the therapists to walk. On APA page 66, the physical therapist again noted that her subjective complaints did not match her objective findings, and they noted that she was observed performing activities that she states she cannot do

when not being observed. She was discharged at that time secondary to all of those issues.

The claimant underwent a functional capacity evaluation on August 27, 2013. On page 42 of the APA, the functional capacity report notes that claimant's performance on the functional capacity evaluation was inconsistent in a number of ways, all of which are listed at that time. The report notes that the claimant reported extreme discomfort which never increased, exaggerated posturing and grimacing and pain talk despite any objective signs of discomfort, and other inconsistencies.

The claimant submitted additional medical reports from Dr. Merritt. The claimant was seen on December 27, 2013, and released to work four hours per day, no pushing or pulling in excess of 10 pounds, and no repetitive movements with the right arm. (APA 124). Dr. Merritt saw the claimant on January 9, 2014, and reviewed her hip MRI with her. At that point, he told her that the exam was very normal with no significant findings. He also told her that no further orthopedic intervention was warranted. She asked him to fill in a work form for her at that time, and he completed it based upon what she felt she was capable of doing. (APA 122-123). The claimant was evaluated again on February 5, 2014, by Dr. Pappas, with numerous complaints regarding the right foot, both hands, and other symptoms. She was referred to a neurologist to evaluate her hypersensitivity and discomfort through the entire foot and ankle region. The doctor had to explain to her multiple times that he would not change her work restrictions, and he noted that she had no other pathology that he could determine on exam. She did not have any of the deformity of her foot and there was nothing else he could offer from an orthopedic standpoint. (APA 118-120). The claimant was evaluated again on March 27, 2014 The note indicates that Ms. Stevenson had been through multiple tests and imaging studies, that no orthopedic intervention was needed at that time, but she was in the office on that day complaining of neck pain that began yesterday. (APA 112).

The claimant was seen again on May 22, 2014, complaining of pain in the right upper extremity, right hip, right knee, and right ankle. He ordered a new nerve conduction study. The claimant went back to Dr. Merritt for consultation after the nerve conduction study on June 20, 2014. Dr. Merritt told the claimant that the study was normal, that her symptoms were inconsistent with carpal tunnel syndrome, that she did not need any surgical intervention for the right leg and right arm, and he did not need to see her back unless there were significant changes. (APA 101). The claimant was seen by a pain management doctor at Strand Orthopedics on June 24, 2014. That report indicates the claimant had migratory pains in her upper and lower extremities. From a rehabilitation standpoint, the doctor indicated that they did not see any problems with her range of motion in any of her joints. The doctor indicated that she did not know why the claimant was having numbness and tingling in various aspects of the right upper extremity and right lower extremity based upon her physical examination and the medical records. The doctor stated that she should not follow up with that office and discharged her from care. (APA 98-99). The claimant was seen again on November 3, 2014, by Dr. Merritt. He ordered a repeat MRI of the lumbar spine, and the repeat MRI of the lumbar spine was accomplished on November 10, 2014. Dr. Merritt saw the claimant back on November 12, 2014, and told the claimant that the MRI was fairly unremarkable with a very slight bulge at L4 – L5. There were no other significant problems identified. He stated in his report that he was not sure what was causing most of her pain and that she was probably just having some muscle discomfort. He indicated that she had been through appropriate treatment and he did not have anything else to offer her from an orthopedic standpoint and again released her from care (APA 88-89).

The claimant also submitted a medical report from Dr. Stewart Haskin dated April 2, 2014 She was seen for complaints with both hands hurting The report notes that the claimant

complained of severe diffuse pain throughout both upper extremities. The doctor noted that the claimant has absolutely no symptoms compatible with carpal tunnel syndrome. The doctor also noted that given her exaggerated pain response and posturing, he was doubtful that any treatment would affect a good outcome for that patient. An EMG report was conducted on April 14, 2014, and it revealed evidence of moderate right and mild left carpal tunnel syndrome. (APA 129-132).

The Claimant testified at the hearing in this matter, and her testimony allowed the Commissioner to observe the Claimant, to ask questions to the Claimant and to judge her credibility as a witness. Claimant testified that she is a licensed pharmacist, and she worked for Walmart as a pharmacist. The claimant testified that she last worked in October 2013 and has not had any income since that time.

The claimant testified that when she appeared in front of Commissioner Wilkerson in the past, she complained about a right shoulder and right knee injury. She indicated that the shoulder hasn't changed much and the shoulder was not keeping her out of work this point. She testified that the knee gets better and worse over time, but she is still having problems with both of those body parts. She also indicated that she was claiming injuries to her neck, back, right hand, and right foot. (Hearing transcript at 14-16).

The claimant went over her accident at work and detailed all of her injuries immediately after the accident. The claimant testified that she was having throbbing pain in her right hand after the accident, pain in her right shoulder, pain in her right knee. She went over all of her medical treatment as well. As of today, she testified that her right hand has lots of cramping, that it gets worse with the cold, that she wears a compression glove to keep it from getting irritated at night, and that she has trouble writing or doing any repetitive motion. She testified that she is not even able to cut her own food and that her husband has to do that for her. She testified that she is unable

to write, type, use a computer mouse, or staple anything together with her right hand. The claimant testified that she has been on a restriction of four hours per day, lifting and pulling of 10 pounds, and no repetitive movement of the right arm since December 27, 2013. The claimant testified that she has seen Dr. Merritt continually all the way through late 2014. (Hearing transcript at 20-24).

With regard to her foot, the claimant testified that she has trouble walking, trouble standing for long periods of time, trouble swelling, and trouble with cramping. With regard to the foot, she testified that surgery has not been recommended and she has not been released from care. She claimed at the hearing that Dr. Pappas told her that she had nerve damage in her foot and needed to see a neurologist. (Hearing transcript 25-26).

With regard to the neck, the claimant testified that she has trouble turning her neck and feels a pulling sensation. She testified that she gets headaches that come from the neck and that she has trouble moving her neck. With regard to the low back, she testified that she has problems sitting, walking, bending, getting in and out of a car, and that her pain comes and goes. She also claims that she has pain that shoots from her back into both of her legs and that she can only stand for 15 to 20 minutes. (Hearing transcript 26-28).

With regard to her right shoulder and right arm, she testified that she was having trouble lifting anything. (Hearing transcript 28).

On cross-examination, the claimant was questioned about her deposition testimony. In her deposition, the claimant complained about her neck, back, right shoulder, right arm, right elbow, right hand, right wrist, right fingers, left thumb, entire spine, right hip, right buttocks, right leg, right knee, right calf, right ankle, right foot, left shoulder, left leg, left hip, left buttocks, left knee, left ankle, and left foot. The claimant denied that she complained about all of those body parts. Specifically, the claimant denied that she had complained about the body parts on the left side.

However, after being showed her specific deposition testimony, she testified that she could not remember exactly what she had said and that those body parts did not bother her all of the time. (Hearing transcript 30-32). The claimant also testified that these injuries were causing her memory loss, headaches, concentration issues, and even caused the various mistakes that she made in the pharmacy. (Hearing transcript 32-33). The claimant admitted that she had made prescription errors in the past even before this accident, but blamed her prescription errors after this accident on failed concentration as a result of these injuries. (Hearing transcript 33).

The claimant submitted at the hearing Exhibit 1 which was an email from the adjuster outlining the body parts that were being authorized for evaluation. That email listed the right arm, right elbow, right hand and fingers. However, the claimant asserted that Dr. Merritt was not permitted to evaluate those body parts by the adjuster despite the email that she submitted. She claims that this was memorialized in an email which she did not have a copy of at the hearing. (Hearing transcript 34-36).

Despite the claimant's testimony that the doctors never evaluated certain body parts, the claimant admitted that she had x-rays of her right hand and right elbow which were normal, x-rays of her pelvis, right hip, right shoulder, cervical spine, and right knee, all of which were normal. The claimant also detailed how rude the doctors were to her and admitted that she asked for a change of doctors after her very first visit. She also claims that the doctors were not treating her for what was wrong, that they were treating her incorrectly, and that she made many demands with her doctors about her course of treatment. (Hearing transcript 36-38). The claimant also admitted that within 12 days of the accident she was asking the doctors to put her on work restrictions because full duties were hampering her recovery and worsening her symptoms. The claimant admitted that she was not happy about working full duty and that she was asking the doctors to restrict her from

work. (Hearing transcript 39 – 40). The claimant also admitted that she didn't know why the doctors wouldn't send her to a chiropractor and that she demanded that she be sent. (Hearing transcript 41). The claimant also admitted that she told the doctor that she had already suffered muscle atrophy less than 30 days after the accident. In fact, she claims that there was a visible dent in her leg where she had lost muscle mass less than 30 days after the accident. (Hearing transcript 43).

The claimant was shown APA page 34 which was a return to work slip saying that the claimant could work up to 12 hour shifts. There is another work slip from the same day but on the bottom of that is a note which indicates that the claimant could not work more than seven hours per day. The claimant testified that she could not work a regular shift and that she convinced the doctors to limit her shift because she was taking muscle relaxers while she was working and she simply wasn't able to do the job. (Hearing transcript 43 – 45).

The claimant asserted that Dr. Merritt was only allowed to treat her for her shoulder and knee, but eventually admitted that Dr. Merritt evaluated her right shoulder, right arm, right wrist, neck, low back, buttocks, hip, and cramping in the calf on the right side. (Hearing transcript 46 – 47). The claimant was read the report from Dr. Merritt which stated that the claimant was resistant to doing light duty work and that she could not tolerate light duty work. She claims that she told Dr. Merritt that Walmart was not adhering to light duty work, but admitted that her testimony and that report were inconsistent. (Hearing transcript 50). The claimant also later explained that she was resistant to going back to work because she had not had adequate treatment for all parts of her body. (Hearing transcript 53). The claimant testified repeatedly that her various injuries and body parts were not being addressed by the doctors and was repeatedly confronted with the fact that the medical reports mentioned and dealt with all of those body parts. The claimant, on numerous

occasions, testified that she was resistant to going back to regular duty work because her injuries hadn't been treated properly at that time. (Hearing transcript 53 – 55). During her testimony, the claimant admitted that Dr. Merritt referred her to Dr. Pappas. Dr. Pappas is a specialist who treats feet and ankles. Counsel for the Defendants pointed out how illogical her testimony was that she was never allowed to treat for her foot and ankle and yet was referred by Dr. Merritt to a doctor who specializes in treatment of the feet and ankles. (Hearing transcript 55 – 56). The claimant then told a story about how she was walking in May 2013 and something ripped in her foot and was poking out. Of course, this was during a period of time where she was not working, and none of that history is contained in any of the reports. (Hearing transcript 56).

The claimant admitted that she was released by Dr. Merritt and that she was released by Dr. Pappas. She also admitted that she saw a pain management doctor, Dr. Tamadon, who released her from care as well. She further admitted that she has been released from care by physical therapy, but claims that the physical therapist never discussed with her the fact that she was unable to pinpoint exactly where her pain was coming from and that she had non-organic complaints. The claimant stated that the physical therapist never discussed any of those concerns directly with her.

The claimant admitted that she asked Dr. Pappas to modify her work restrictions in early 2014. (Hearing transcript 76). She then went back and stated that she did not ask Dr. Pappas to change her work restrictions, and that he was simply relying upon Dr. Merritt's restrictions. (Hearing transcript 77).

The claimant admitted that she saw Dr. Elvington upon referral from her own attorney. She denied that Dr. Elvington discussed with her his concerns about symptom magnification She also admitted that she saw Dr. Haskin on her own, but denied that he discussed with her any exaggerated pain response and posturing (Hearing transcript 85 88). The claimant also admitted

that she underwent a functional capacity evaluation.

The claimant admitted that she was totally out of work from April 9, 2013, until July 2, 2013. The claimant then came back and started working partial hours from July 3, 2013, until October 4, 2013. At that point, the claimant was suspended for her third prescription error in a short period of time, and she took personal time until a hearing about her prescription errors. The claimant denied that she was on a leave of absence, but admitted that she has not returned to work for Walmart since October 4, 2013. The claimant testified that she believes she could be back working as a pharmacist at this time four hours per day, but she has not returned to work. (Hearing transcript 88 – 91).

After careful review and consideration of all of the evidence in this matter, we find that the Hearing Commissioner properly denied the alleged right hand injury. The claimant failed to prove by a preponderance of the evidence that she had a legitimate right hand injury that was causally related to her accident at work. The claimant failed to prove her case with either medical evidence or credible testimony. It is important to note that the Hearing Commissioner made eight separate Findings of Fact that the claimant's testimony was exaggerated, not believable, unreliable, and not credible. (Findings of Fact #5, 10, 12, 13, 14, 15, 18, and 21). Those Findings were not appealed and are the law of the case. Based upon those credibility findings, the claimant's testimony is insufficient to support a finding of compensability of any right hand injury.

Additionally, the preponderance of the medical evidence does not support a compensable injury to the right hand which is causally related to her accident at work. On February 22, 2013, the report from Doctors Care indicate that the claimant underwent diagnostic testing to include x-rays of her right elbow and hand which were "unremarkable." (APA 63-64). The claimant was diagnosed with a right arm and hand strain based upon her subjective complaints, but the doctor

indicated that there were signs of questionable malingering. (APA 65-66). A note from the doctor at Doctors Care indicated that the claimant was attempting to determine her own treatment plan and the doctor was concerned that claimant had varying symptoms with every visit and had symptoms that made no medical sense. (APA 32). At the claimant's first visit to the orthopedist, Dr. James Merritt, she did not even complain about a right hand injury, but instead complained about a right wrist injury. (APA 25). Dr. Merritt also noted serious signs of malingering, lack of motivation, and symptom magnification. Dr. Alan Tamadon performed an EMG study on August 1, 2013, which revealed moderate carpal tunnel syndrome in both hands. He stated that he was not sure how this could be related to her fall and that her only diagnosis was myofascial pain which was completely subjective. (APA 29-30). At the hearing, the claimant also submitted a medical report from Dr. Stuart Haskin dated April 2, 2014. The claimant went to Dr. Haskin on her own and was seen for complaints of both hands hurting. The report notes that the claimant complained of severe diffuse pain throughout both upper extremities. Dr. Haskin noted exaggerated and inappropriate pain behaviors and actions by Claimant during the evaluation. (APA 130). Dr. Haskin noted that the claimant has absolutely no symptoms compatible with carpal tunnel syndrome and also noted that given her exaggerated pain response and posturing, he was doubtful that any treatment would affect a good outcome for the patient. An EMG report was conducted on April 14, 2014, and it revealed evidence of moderate right and mild left carpal tunnel syndrome. (APA 129-132). The closest that Dr. Haskin would get to establishing causation was to say that if repeat electrodiagnostic studies confirmed right carpal tunnel syndrome and if the claimant had an injury to the right hand, then carpal tunnel syndrome would be related to the fall He specifically noted that the carpal tunnel syndrome in the left hand was not related to the fall. The claimant underwent another nerve conduction study on June 20, 2014, with Dr. James Merritt, and he

indicated that the study revealed mild to moderate carpal tunnel syndrome in both hands and that her symptoms were inconsistent with carpal tunnel syndrome.

As required by the statute and existing case law, the claimant presented no medical evidence, stated to a most likely or most probable standard within a reasonable degree of medical certainty, which states that the claimant has a legitimate right hand injury which is causally related to an accident at work. The report from Dr. Haskin does not meet the necessary burden of proof, and the reports from Dr. Merritt and Dr. Tamadon both indicate that the problems are not related to work. All doctors state that the claimant has no symptoms compatible with carpal tunnel syndrome. In fact, this appears to be an incidental finding. The claimant failed to present the necessary medical evidence to prove by a preponderance of the evidence that she had a legitimate injury to her right hand which was causally related to an accident at work.

The combination of the claimant's failure to present medical evidence to prove, within a reasonable degree of medical certainty, that she has a legitimate right hand injury which is causally related to an accident at work, the claimant's lack of credible or reliable testimony, and the overwhelming sentiment in all of the submitted medical records that the claimant's complaints, symptoms, and problems were either exaggerated, fabricated, or not reliable, constitutes sufficient and overwhelming evidence to support the denial of the right hand injury.

At the hearing, the claimant complained that her right hand was hurting severely, and that her right hand was so bad that she couldn't use a stapler, she couldn't write, she couldn't type, and she couldn't use a computer mouse. She indicated that she was having severe cramping in the right hand and had to use a compression glove on the hand at night. She indicated that her right hand is so bad that she has to have her husband cut up all food for cooking because she cannot cut anything with her right hand. Of course, none of these complaints are supported by any of the

medical documentation in the claim. As indicated above, the law on this case is that these complaints are not credible or reliable.

In her brief, the claimant argues that because her right hand was involved in the fall at work, that she has satisfied her burden of proving that there was a right hand injury that was causally related to the work accident. This is both factually and legally incorrect. As indicated above, and based upon the long-standing case law and statutory authority, the claimant bears the burden of proving by a preponderance of the evidence that she sustained a compensable injury to her right hand that is causally related to her accident at work. The claimant must also submit expert medical evidence, stated to a reasonable degree of medical certainty, proving both the injury and the causal connection. As indicated above, the claimant has failed to meet her burden of proof on all counts.

The claimant has also argued that the right hand was an admitted body part at the beginning of the claim and therefore must be found compensable by the commission. Again, this argument is both factually and legally incorrect. The Form 12A dated February 22, 2013, list the type of injury as a sprain and list the body part affected as "ring finger(s)." The Form 12A does not list the right hand or right wrist as a body part. A Form 21 was filed by defendants on October 22, 2013, seeking to resolve the claim based upon the fact that the claimant had been released at maximum medical improvement with regard to the right shoulder and right knee, the only two admitted body parts. A Form 50 was filed by claimant on November 8, 2013, and asserted as injured body parts the neck, right shoulder, right upper extremity, right hand, low back, right knee, and right foot/ankle. A Form 51 was timely filed by Defendants on November 13, 2013, and admitted only the right knee injury as compensable. In their Form 58 Pre-hearing Brief before the first hearing, the Defendants admitted injuries to the right shoulder and right knee The Defendants maintain that

position at the first hearing, all subsequent pleadings, at the first appeal hearing, and at the second hearing on this claim. We find that the right hand was, and has always been, a denied body part.

Claimant's counsel, in his statement on the record before Commissioner Campbell, admitted that the right shoulder and right knee were the only two accepted body parts and that the right hand, low back, neck, and right foot/ankle were all denied. (1/8/15 Hearing Tr. at p. 5). Likewise, at the original hearing before Commissioner Wilkerson on December 19, 2013, claimant's counsel noted that the admitted body parts were the right shoulder and right knee and that the other body parts listed on the Form 50, including the right hand, were denied. (12/19/13 Hearing Tr. at pp. 8-10). In fact, this argument that the Defendants previously accepted the right hand injury and that they should be barred by estoppel from asserting a denial was raised for the first time in the Form 30 appeal dated October 23, 2015. As indicated above, the Defendants have denied the compensability of the right hand injury from the beginning of the claim and the claimant's estoppel argument is without merit.

The claimant has also argued that because the Defendants provided medical treatment of the right hand, that this is somehow an admission that the injury is compensable and causally related. There is no legal basis for any such argument. The claimant had an accident at work, and the Defendants provided medical treatment for the compensable body parts, the right shoulder and right knee. During the course of this claim, the claimant alleged a multitude of other injuries. At various times, the Defendants provided diagnostic testing and evaluations of these other alleged injuries in order to determine if they were legitimate and causally related or if they would be denied and defended. There is absolutely no legal basis in either the statute or the case law which would indicate that providing diagnostic testing or evaluations of a disputed body part is somehow an admission by the Defendants that the body part is compensable under the South Carolina

Workers' Compensation Act.

Because the claimant abandoned her appeal regarding the neck and low back by failing to address or argue those grounds in her Brief, which was confirmed by claimant's counsel during oral arguments, we need not address assertions #1 or #2 in the Form 30. We find that the Hearing Commissioner properly denied the right hand injury and thus properly addressed maximum medical improvement, permanent disability, and credit for overpayment of temporary compensation for the admitted right shoulder and right knee in the Order.

A record such as was necessary for a decision was made of the proceeding and after careful consideration and study of all the evidence, the following findings of fact are accordingly made.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Ann Stevenson as Employee-Claimant and Wal-Mart Stores, Inc. as Employer and New Hampshire Insurance Company as Carrier, Defendants.

2. That Claimant was an employee of the above-named Employer on and prior to February 16, 2013, on which date she did sustain an injury to the right knee and right shoulder arising out of and in the course of her employment, and proper notice was given to Employer. This was an accepted claim as to the right knee and right shoulder, and Claimant has received appropriate medical benefits and temporary disability compensation.

3. That the average weekly wage of Employee Ann Stevenson at the time of the above-

described accident was $2,212.05, making the maximum compensation rate of $743.72 applicable in this matter.

4. Claimant's testimony and subjective complaints lack credibility.

5. After carefully listening to Claimant's testimony during the hearing, and reviewing all of the submitted reports, deposition, and exhibits, we find that Claimant's testimony is exaggerated, not credible, and unreliable. Her complaints regarding her symptoms are out of proportion to the objective medical evidence, and we find her complaints to be exaggerated. Her testimony regarding medical treatment, work restrictions, and other parts of this claim are not reliable and not credible.

6. That the only admitted body parts are the right shoulder and right lower extremity/ knee.

7. The claimant has also alleged injuries to her neck, right hand, low back, and right foot/ankle, all of which have been denied by the defendants.

8. The claimant has undergone various evaluations and treatments for both her admitted and denied injuries. The claimant has treated with Dr. Merritt, Dr. Pappas, Dr. Elvington, Dr. Purgavie, Dr. Tamadon, and Dr. Haskin, as well as physical therapy. She has had exhaustive and extensive evaluations, testing, and treatment for both her admitted and denied body parts, as fully detailed above.

9. On October 8, 2013, the authorized treating physician, Dr. James Merritt, stated that claimant had reached maximum medical improvement and assigned a 2% impairment rating to the right upper extremity and a 3% impairment rating to the right lower extremity. In addition, Dr. Merritt assigned work restrictions of 20 pounds lifting and referred to the functional capacity evaluation for full capabilities. Dr. Merritt opined that claimant would possibly need future medical treatment in the form of possible pain management.

10. On December 13, 2013, in an independent medical evaluation for the claimant, Dr. Robert Elvington opined that claimant's pain and her objective symptoms were out of proportion to her examination and MRI findings.

11. On December 18, 2013, in deposition testimony, Dr. Merritt testified that his impairment ratings were based mostly on claimant's subjective complaints.

12. On April 2, 2014, in an independent medical evaluation for the claimant, Dr. Stewart Haskin opined that the claimant's exaggerated pain response and posturing would make doubtful that any treatment was going to affect a good outcome for her.

13. The Claimant does not believe that her doctors listened to her complaints or examined all of her complaints and body parts. We find that those beliefs by Claimant are not supported by the medical evidence.

14. That Dr. Merritt's deposition was very informative, and his opinion is given great weight. Dr. Merritt specifically referenced Claimant's self-limiting behavior (page 26, lines 1-25) and that three different MRIs have been performed in the course of Claimant's treatment (See page 28; page 30, lines 12-25). Dr. Merritt has serious questions about Claimant's motivation to treat, motivation to get back to work, and whether her complaints were legitimate or physical in nature.

15. There are a host of medical records and testimony which call Claimant's motivation and the legitimacy of her complaints into serious question. We give greater weight to the medical reports. We also give less weight to the testimony of Claimant based upon these concerns and my judgment of her testimony at the hearing.

16. The claimant reached maximum medical improvement as of October 10, 2013, for her admitted work-related injuries to her right shoulder and right knee. This finding is based upon our review of the claimant's testimony and our review of the submitted medical records and the

deposition testimony of Dr. Merritt.

17. I place the greatest weight on the medical reports and opinions of Dr. Merritt.

18. The claimant's alleged injuries to her neck, back, right hand, and right foot/ankle are hereby denied. We specifically find that the claimant failed to prove, through a preponderance of the evidence, a causal connection between these alleged injuries and her work-related accident. We have serious doubts as to the legitimacy of these alleged accidents in the first place. All of these body parts were evaluated by several doctors, and no doctor could identify any objective injury, nor could any doctor give a legitimate objective diagnosis for any of these alleged injuries. The claimant also failed to prove by a preponderance of the evidence medical causation between any of these alleged injuries and her work-related accident. The claimant's testimony, which lacks credibility and reliability, is insufficient to prove by a preponderance of the record the compensability of these alleged body parts.

19. That Defendants were entitled to stop payment of temporary total compensation effective October 10, 2013, and are entitled to a credit for the overpayment of temporary total compensation since October 10, 2013, against the award for permanent partial disability ordered herein.

20. Claimant has sustained a six percent (6%) permanent partial disability to the right lower extremity (knee) and four percent (4%) permanent partial disability to the right shoulder (even though the rating is to the right upper extremity, the injury was to the shoulder) as a result of the accidental injury on February 16, 2013. This finding is based on the medical evidence and the testimony of the Claimant, although the Claimant's testimony was given little weight because of the credibility problems discussed above.

21. The claimant is not entitled to any future medical treatment. Even though Dr. Merritt indicated on the Form 14B that claimant might possibly need pain management, we find that this

opinion is insufficient to establish that claimant will most likely or most probably need ongoing medical treatment in order to maintain her current status. Additionally, the claimant has already treated with two pain management doctors who opined that they had nothing further to offer her. Those facts, combined with the claimant's lack of credible testimony, and the concerns about the claimant's credibility in almost every medical report, leads to the ultimate conclusion that there is insufficient evidence upon which to base an award for future medical treatment on this claim.

22. That Claimant has failed to prove that she is entitled to any further medical benefits, any award for serious disfigurement or any other compensable element under the law, other than the award for disability as ordered herein.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant did sustain an injury to her right knee and right shoulder by accident arising out of and in the course and scope of her employment on February 16, 2013.

3. Under § 42-1-160, claimant's alleged injuries to her neck, back, right hand, and right foot/ankle are hereby denied.

4. Under §§ 42-9-10 and 42-1-120, Claimant was entitled to compensation for a period of temporary total disability until October 10, 2013, the date on which Claimant reached maximum medical improvement.

5. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until October 10, 2013, the date on which Claimant reached maximum medical

improvement.

6. Under § 42-9-30, Claimant has sustained a six percent (6%) permanent partial disability to the right lower extremity (knee) and four percent (4%) permanent partial disability to the right shoulder.

7. Under § 42-9-210, Defendants are entitled to a credit for the overpayment of temporary total compensation since October 10, 2013.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the Application of Employer/Carrier to stop payment of temporary total compensation is hereby granted, effective October 10, 2013, the date on which Claimant reached maximum medical improvement.

IT IS FURTHER ORDERED that as a result of Claimant's accidental injury occurring on February 16, 2013, she has sustained a six percent (6%) permanent partial disability to the right lower extremity (knee) and four percent (4%) permanent partial disability to the right shoulder. At Claimant's compensation rate of $743.72, she is entitled to 11.7 weeks of benefits for the right knee or $8,701.52; and 12 weeks of benefits for the right shoulder or $8,924.64. The total indemnity award, therefore, equates to $17,626 16. From this amount, the Defendants are entitled to a credit or offset for the overpayment of temporary total compensation (October 10, 2013 – January 10, 2014) in the amount of $9,880.85 which represents 13 2/7 weeks of overpayment.

IT IS FURTHER ORDERED that Claimant has not sustained any serious and permanent disfigurement as a result of this accident, and as such Defendants are not liable for same.

IT IS FURTHER ORDERED that claimant is not entitled to any ongoing or future medical treatment.

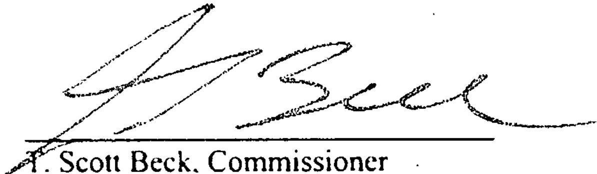
IT IS FURTHER ORDERED that claimant's application for benefits for asserted injuries to the neck, low back, right hand, and right foot/ankle is hereby denied and her claims for benefits associated with these body parts is dismissed with prejudice.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

FULL AFFIRMATION

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION



T. Scott Beck, Commissioner

Melody L. James, Commissioner

Gene McCaskill, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kim Falls on March 28, 2016