

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION APPELLATE PANEL

MAY 27 2016

SC Court of Appeals

Susan B Barden, Commissioner  
R. Michael Campbell, II, Commissioner  
Aisha Taylor, Commissioner

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W.C.C. File No. 1414843  
Appellate Case No. 2016-000705

Elizabeth Preister, Employee ..... Respondent,

v.

PruittHealth, Employer, and American Zurich Insurance Co., Carrier ..... Appellants

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INITIAL BRIEF OF RESPONDENT

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R. Michael Johnson, Jr.  
Daniel E. Peagler  
Michael Johnson, P.C. & Associates  
1201 Carolina Place, Suite 103  
Fort Mill, SC 29708  
(803) 574-2800  
Attorneys for Respondent

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## STATEMENT OF ISSUES ON APPEAL

WHETHER SUBSTANTIAL EVIDENCE EXISTS TO AFFIRM THE FULL COMMISSION IN FINDING THAT THE CLAIMANT SUSTAINED A PHYSICAL/MENTAL INJURY WHERE THE CLAIMANT SUSTAINED A BACK INJURY?

## STATEMENT OF THE CASE

On May 22, 2015, the Claimant filed a Form 50, Request for a Hearing, seeking psychological medical treatment as a result of her accident on September 7, 2014. The Defendants filed a Form 51 on June 22, 2015 admitting that the Claimant sustained injuries to the left wrist and low back but denying all other injuries. A Hearing was held before Commissioner T. Scott Beck on August 20, 2015, in North Augusta, South Carolina with an Order being issued on September 30, 2015.

The Order found that the Claimant was entitled to psychological care and had sustained a physical-mental injury. The Defendants filed a Form 30, Request for Commission Review, on October 12, 2015. On January 11, 2016, the Full Commission held a Hearing and on February 29, 2016, issued an Order affirming the single Commissioner. Defendants filed a Notice of Appeal to the South Carolina Court of Appeals on March 30, 2016.

## STANDARD OF REVIEW

“The South Carolina Administrative Procedures Act establishes the standard for judicial review of decisions of the Commission.” Forrest v. A.S. Price Mech., 373 S.C. 303, 306, 644 S.E.2d 784, 785 (Ct. App. 2007)(citing Lark v. Bi-Lo, Inc., 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981)). “In workers’ compensation cases, the Full Commission is the ultimate fact finder.” Shealy v. Aiken County, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). “This court reviews facts based on the substantial evidence standard.” Thompson v. S.C. Steel Erectors, 369 S.C. 606, 612, 632 S.E.2d 874, 877 (Ct. App. 2006). “Under the substantial evidence standard,

the appellate court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact.” Forrest, 373 S.C. at 306, 644 S.E.2d at 785 (citing S.C. Code Ann. §1-23-380(A)(5)). “The Appellate Panel’s decision must be affirmed if supported by substantial evidence in the record.” Shuler v. Gregory Elec., 366 S.C. 435, 440, 622 S.E.2d 569, 571 (Ct. App. 2005)(citing Sharpe v. Case Produce, Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999)). It is not within the reviewing court’s province to reverse findings of the Appellate Panel which are supported by substantial evidence. Frame v. Resort Servs., Inc., 357 S.C. 520, 528, 593 S.E.2d 491, 495 (Ct. App. 2004). The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. Frame, 357 S.C. at 528, 593 S.E.2d at 495.

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. Hall v. Desert Aire, Inc., 376 S.C. 338, 347-48, 656 S.E.2d 753, 758 (Ct. App. 2007)(citing Pratt v. Morris Roofing, Inc., 357 S.C. 619, 594 S.E.2d 272 (2004)). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s findings from being supported by substantial evidence. Hall, 376 S.C. at 348, 656 S.E.2d at 758.

#### **STATEMENT OF THE FACTS**

At the Hearing the Claimant testified that she is 53 years old and lives in Aiken, South Carolina. (Hearing Transcript at p. 8, ll. 5; R. p. 9, ll. 3). The Claimant testified that she is a high school graduate and has a CNA certificate from Denmark Tech. (Hearing Transcript at p. 9, ll. 13-24). The Claimant has been a certified CNA since 1990. (Hearing Transcript at p. 10, ll. 22-

25). At the time of the Hearing the Claimant was working for Pruitt Health as a CNA. (Hearing Transcript at p. 10, ll. 12-14). On September 7, 2014, the Claimant injured her back while attempting to keep a patient from falling out of a bed. (Hearing Transcript at p. 13, ll. 2-7). The Defendants accepted the claim and began to provide medical care.

The Defendants first sent the Claimant to Doctors Care where she was seen on September 10, 2014. (APA p. 68). The Claimant continued to treat at Doctors Care and was referred for an orthopedic evaluation on October 29, 2014. (APA p. 16). The Defendants sent the Claimant to Dr. Douglas Holford at Carolina Musculoskeletal Institute in Aiken. Dr. Holford saw the Claimant on November 3, 2014 and Dr. Holford recommended epidural steroid injections and provided medical care for the Claimant's neck and low back. (APA p. 14).

The Claimant was also seen by Dr. Scott Boyd of Columbia Neurosurgical Associates, PA, in Columbia. Dr. Boyd noted in his report of May 22, 2015 that he suspected that "there is a strong psychiatric component to her pain." (APA p. 101). Dr. Boyd recommended that future medical treatment should include "pain management with heavy emphasis on cognitive and psychiatric components of pain." (APA p. 101).

At the Hearing, the Claimant testified that she has had prior psychological problems for which she received treatment in 1997. (Hearing Transcript at p. 13, ll. 23-25; p. 14, ll. 1-3). The Claimant testified that following the counseling she got "better" and was not receiving any psychological care at the time of the accident. (Hearing Transcript at p. 14, ll. 3-5). The Claimant testified as a result of the accident she was having problems coping "with the pain" and the "physical trauma" that she had been through. (Hearing Transcript at p. 14, ll. 23-25; p. 15, ll. 1-4). The Claimant also admitted that she has received prior medical treatment for the back as well. (Hearing Transcript at p. 14, ll. 14-15).

On March 31, 2015, the Claimant was seen by Nicholas Lind, PsyD, at Post-Trauma Resources in Columbia. Dr. Lind found that the Claimant's "current symptoms of anxiety and depression were more likely than not, with as much certainty reasonable in the field of psychology, aggravated by the pain and physical limitations resulting from the 7 September 2014 injury." (APA p. 1-4). In addition, Dr. Lind recommended that the Claimant receive treatment, including medications and counseling, all of which are "reasonable, necessary and geared toward lessening the period of disability for her work-related injuries." (APA p. 1-4).

### ARGUMENT

#### **1. The Claimant Sustained a Physical Injury and a Resulting Physical Mental Injury.**

The Defendants' appeal rests on the argument that the Claimant did not sustain a physical injury to her back and, as a result, the Commission erred in finding that she sustained a physical-mental injury. While the Defendants would prefer that this Court apply the mental-mental standard, it would be error, as by their own admission the Claimant sustained a physical injury.

On May 22, 2015, the Claimant filed a Form 50, Request for a Hearing, alleging "an injury to left wrist/arm, neck/back, left hip". The Defendants filed a Form 51, Employer's Answer to Request for Hearing, on June 22, 2015, in which they stated, "Admit an injury to the left wrist and LOW back – all others DENIED." [emphasis added]. The Defendants cannot allege that the Claimant did not sustain an injury to her back and left wrist, as it has been admitted in the Form 51.

Additionally, the Claimant filed a Form 58, Pre-Hearing Brief, on August 5, 2015, in which she again listed her body parts as "left wrist/arm, neck/back, left hip, psychological" and requested treatment for "psychological injury". Once again, the Defendants listed on their August 10, 2015 Pre-Hearing Brief, "Admitted injuries to left wrist and LOW back. All others

denied.” The Defendants amended their Pre-Hearing Brief on August 12, 2015 but made no changes to the statements above. The very first time that the Defendants argued that the Claimant had not sustained a physical injury was at the Hearing, almost two months after first admitting in their pleadings that the Claimant had sustained injuries to her back and left wrist.

The Defendants, by their own pleadings, have stated that the Claimant sustained a physical injury. Moreover, Dr. Scott Boyd, the authorized treating physician, gave the Claimant a 5% impairment to the spine due to this injury. He also stated that he recommended “pain management with heavy emphasis on cognitive and psychiatric components of pain.” Another authorized physician, Dr. Douglas Holford diagnosed the Claimant with lumbosacral nerve root pain with an annular bulge at L4-5.

The Defendants’ argument is that the Claimant did not sustain an injury, yet by their own filings with the Workers’ Compensation Commission, they admitted that the Claimant sustained an injury and sent the Claimant for treatment for seven months. It is clear from the record, and the Defendants’ pleadings, that the Claimant sustained injury by accident to her left wrist and back. Despite their own pleadings admitting an accident, the Defendants argue that the questionnaire response of Dr. Boyd that the Claimant did not sustain an injury is controlling.

Despite the Defendants’ argument on this point, it ignores the well-established law of this State that the “Commission determines the weight and credit to be given to the expert testimony.” Tiller v. National Health Care Center, 334 S.C. 333, 340, 513 S.E.2d 843, (1999). As stated by this Court in Rogers v. Kunja Knitting Mills, Inc., 312 S.C. 377, 440 S.E.2d 401 (Ct. App. 1994) the “final determination of witness credibility and the weight to be accorded evidence is reserved to the full commission and it is not the task of the court to weigh the

evidence as found by the commission.” Rogers, 312 S.C. at 380, 440 S.E.2d at 403 (citing DeBruhl v. Kershaw County Sheriff’s Dept., 303 S.C. 20, 397 S.E.2d 782 (Ct. App. 1990)).

In the case at hand, the Full Commission made a finding that “no weight is given to Dr. Boyd’s questionnaire in light of the impairment rating.” (Order of the Full Commission, at p. 5). The Appellate Panel reasoned that Dr. Boyd gave the Claimant a 5% impairment to the back per the 14B and that is would be inconsistent with that impairment rating to determine that the Claimant has not sustained injury by accident. (Order of the Full Commission, at p. 5). As there is substantial evidence within the record that the Claimant sustained a physical injury, the focus turns to whether the Claimant’s physical injury induced a mental injury.

Once an individual sustains a physical injury which is compensable pursuant to the South Carolina Workers' Compensation Act, “[e]very natural consequence which flow[s]. . . from this injury, unless the result of an independent intervening cause, sufficient to break the chain of causation, is likewise compensable.” Whitfield v. Daniel Construction Company, 226 S.C. 337, 83 S.E. 2d 460, 462 (1954); Mullinax v. Winn-Dixie Stores. Inc., 318 S.C. 431, 458 S.E. 2d 76, 79 (Ct. App. 1995)(“Our courts have clearly held the natural consequences flowing from a compensable injury, absent an independent intervening cause, are compensable.”).

“Compensability” as recognized by Whitfield not only extends to secondary and/or indirect physical symptoms/injuries which result from the compensable accident, but also to psychological/psychiatric conditions which flow from the accident or compensable injuries. Kennedy v. Williamsburg County, 242 S.C. 477,131 S.E. 2d 512 (1963); Bass v. Kenco Group, 366 S.C. 450, 622 S.E. 2d 577, 584 (Ct. App. 2005) (“ . . . [A] mental injury induced by a physical injury is compensable.”).

In Kennedy, the South Carolina Supreme Court held that a chain gang guard “suffering from a mental condition diagnosed as paranoid schizophrenia” was entitled to permanent and total disability benefits, where: (a) the medical evidence, which was provided by two psychiatrists, established that a head injury which Mr. Kennedy had experienced when attacked by two prisoners most probably caused the mental condition; and (b) circumstantial evidence in the form of testimony from family members similarly gave “rise to a reasonable inference that there was a causal connection between the claimant's disability and his prior injury.” Kennedy, 131 S.E. 2d, at 512.

Based upon Kennedy, the Court of Appeals subsequently explained that “if an accident arising out of and in the course of employment results in physical injury or trauma, and additionally, mental injuries are caused by the same accident,” they are compensable under the Act. Doe v. South Carolina State Hospital, 285 S.C. 183, 328 S.E. 2d 652 (Ct. App. 1985) (Claimant, whose mental injury resulted from accidental physical trauma which was compensable per the Act, could not pursue action against employer in tort.).

The standard of proof required to establish the compensability of physical mental injury was clarified in Estridge v. Joslyn Clark Controls. Inc., 325 S.C. 532, 482 S.E. 2d 577, 580 (Ct. App. 1997), where the Court of Appeals: (a) held that mental injuries are compensable if “induced either by physical injury... or by unusual or extraordinary conditions of employment”; and (b) verified that where “the mental injury is induced by physical injury, it is not necessary that it result from unusual or extraordinary conditions of employment.”

It is also well settled that the “aggravation of pre-existing psychiatric injury problems is compensable if that aggravation is caused by a work-related physical injury.” Anderson v. Baptist Medical Center, 343 S.C. 487, 541 S.E. 2d 526, 528 (2001); Smith v. NCCI. Inc., 369

S.C. 236, 631 S.E. 2d 268, 279 (Ct. App. 2006); Bartlev v. Allendale County School District, 292 S.C. 300, 709 S.E. 2d 619, 623 (2011). In this case, Nicholas A. Lind, PsyD, stated,

In my opinion Ms. Priester's current symptoms of anxiety and depression were more likely than not, with as much certainty reasonable in the field of psychology, aggravated by the pain and physical limitations resulting from 7 September 2014 injury. (APA, p. 1-4).

That opinion is buoyed by the statements of Dr. Scott Boyd that he suspected a strong psychiatric component to her pain and recommended pain management with "heavy" emphasis on psychiatric treatment. Further, the Claimant in this matter testified that while she had prior bouts with depression in the 1990's, she was "better" at the time of the accident. (Hearing Transcript, p. 14, ll. 3-5). Under cross-examination the Claimant testified that it had been "many years" since she last took medication for depression. (Hearing Transcript, p. 20, ll. 16).

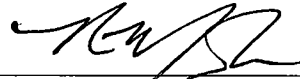
This Court has previously heard and ruled on an analogous case, Getsinger v. Owens-Corning Fiberglass Corp., 335 S.C. 77, 515 S.E.2d 104 (1999), in which the Claimant suffered a foot injury and developed depression. Much like the Claimant in Getsinger, the Claimant testified that "everything was different after I got injured" when discussing her depression and that "I feel in somewhat different of how like I said cope with the world; cope with the pain, physical trauma that I been through. Because before it wasn't like this." (Hearing Transcript, p. 14, ll 12-13, 25; p. 15, ll. 1-3).

The evidence presented at the Hearing can only lead to one conclusion, the Claimant sustained an injury to her left wrist and back, and the accompanying pain aggravated a pre-existing psychological condition requiring medical care. There is substantial evidence in the record to support the finding that the Claimant sustained a physical-mental injury and as a result, the Order of the South Carolina Workers' Compensation Commission should be affirmed.

#### **CONCLUSION**

The substantial evidence in this case supports that this Court affirm the Full Commission's Decision and Award and find that the Claimant sustained a physical injury under S.C. Code Ann. §42-1-160(B) and is entitled to psychological medical care.

Respectfully Submitted,



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R. Michael Johnson, Jr.  
Daniel E. Peagler  
Michael Johnson, P.C. & Associates  
1201 Carolina Place, Suite 103  
Fort Mill, South Carolina 29708  
803 547-2800  
Attorneys for the Respondent

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