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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. Alison R. Lee, Circuit Court Judge

Case No. 2011-CP-40-03561

Gertrude Shiver,.....Claimant, Appellant,

v.

Palmetto Health Richland, Employer,
Key Risk Management Services, Inc., TPA
Palmetto Hospital Trust Services, Carrier,
Trident Regional Medical Center, Employer,
Zurich American Insurance Company, Carrier,.....Respondents,

FINAL REPLY BRIEF OF APPELLANT

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Pro se'

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ARGUMENT IN REPLY

Without restating the issues which have been set forth in her Initial Brief, Appellant offer the following points of clarification and rebuttal to arguments raised by Respondents.

I. The Full Commission and the Circuit Court erred In Denying Appellant's Motion For Leave to Include Additional Evidence In The Record.

Appellant asserts that the hearing held on September 4, 2007, Commissioner David W. Huffstetler allowed Appellant's book to be introduced in evidence. However, neither the Single Commission, the Full Commission, nor the Circuit Court gave consideration to the evidence contained in her book. Thus, the Single Commission, the Full Commission, and Circuit Court abused their discretion when Appellant's Motion to Submit Additional Evidence was denied without giving any consideration to the evidence from her book in their respective findings of facts and conclusion of law.

In the instant Case, Appellant was not seeking to have her book considered as new evidence but as additional evidence underlying the establishment of proof in support of her seven (7) Worker's Compensation Claims. Moreover, the evidence from her book is essential to showing proof of her claims, was not of a cumulative nature or of an impeaching character but, however, would likely have produced a different result had the book's evidence been considered as part of the record and considered by the Commissions and the Circuit Court. S. C. Code Ann. Reg. 67-707; Ancrum v. Low Country Steaks, 317 S. C. 188, 452 S. E. 2d 609 (Ct. App.1994).

"The Fall of a Nurse: What is Wrong With Gerly," is a book written mostly about Appellant's life and the trouble that she was having in Charleston in 1994-1998, with her worker's compensation injuries and how Appellant was being treated by the hospital and its worker's compensation carrier and various individuals during these times. It also included Appellant's accidents at Palmetto Health Richland and how Appellant was being treated by various doctors in the Columbia area. The information in the book is all true to the best of the Appellant's knowledge. Appellant also gave a copy to the Worker's Compensation Commission as part of the papers to Appellant's Motion for Additional Evidence.

Appellant's book was a progression of accidents, especially the ones that were work-related that started at Trident Hospital and ended up at Palmetto Health Richland. The book was written to tell Appellant the story of her life. The injuries and accidents that were work-related was part of the story.

II. Appellant asserts that Substative Due Process and the Equal Protection Clause of the Fourteenth Amendment required Appellant be afforded the right and the opportunity to present before the Full Commission oral argument as to each issue raised by her seven (7) worker's compensation claims, of which the Single Commission denied in an Order dated October 23, 2007.

At the hearing on September 4, 2007, Commissioner David W. Huffstetler allowed the Appellant's book, "The Fall of a Nurse, What is Wrong With Gerly", to be introduced into evidence. (September 4, 2007, Hr'q. pp 170, line 12 through 1 page 172). (Vol. VI. pp. 1034-1120). Appellant had her book placed in evidence so that it would be an addition to her testimony presented at the hearing and, too, so that the hearing Commission would gain insight and understanding of the exact nature of her issues being raised in support of her workers' compensation claims.

Appellant asserts that the Single Commission completely disregarded and overlooked the evidence contained in both her book and the testimony she gave at the hearing on September 4, 2007. The evidence from her book coupled with her testimony at the hearing were essential to offering proof of her claim, for one example, that Attorney Thomas M. White, Appellant's attorney, in breaching his fiduciary duties to Appellant. Attorney White used undue influence, coercion, and duress to compel Appellant to sign the August 24, 1995 Consent Order.

On August 11, 1995, a hearing was scheduled before Commissioner Bryan Lyndon to hear Appellant claim against Trident Regional Medical Center and Alexsis Risk Management Services. Prior to the hearing, Attorney White and the Respondents entered in an agreement which excluded Appellant from having any input in the decision to enter an agreement on her part; and the agreement entered by Attorney White and the Respondents was one-sided in favor of the Respondents. Commissioner Bryan Lyndon issued an Order memorializing the agreement.

What Attorney White should have done was to challenge the Commissioner's authority to memorialize this agreement and to issue an Order. The Commissioner lacked personal and subject matter jurisdiction to decide WC.C. Claim No. 9503744 since Appellant was not in the workers' compensation program on August 24, 1995.

Nevertheless, Appellant did not have an informed Consent when she signed the unlawful Consent Order as Attorney White never disclosed to Appellant that she was withdrawing with prejudice all her injury claims except to her right foot and right shoulder. After signing the Consent Order, Appellant did not receive any medical benefits and compensation because Appellant was not under the Workers' Compensation Act.

Appellant had another hearing in 1996 on her 1994 claim. Here, Attorney Pratt-Thomas and Commissioner Lyndon lumped the injuries of this 1995 injury WCC No. 9503744 into the injuries of this 1994 claim. Commissioner Lyndon did not have personal jurisdiction or subject matter jurisdiction to do this with this 1995 claim because the Appellant was not in the worker's Compensation program with this 1995 claim.

III. Appellant urges this Court to reverse the Circuit Court's Order on the ground that Attorney Thomas M. White, who represented Appellant and Attorney E. Douglas-Pratt Thomas used undue influence, duress, and coercion to compel Appellant to sign a consent order limiting her injuries to her right shoulder and right foot when Respondent accepted Appellant's claim and began providing different benefits under Title 42, Worker's Compensation Act.

Appellant sustained a work related injury on January 23, 1995. Respondent accepted the claim as injuries to various parts of her body. Appellant received only one (1) check for temporary total benefits and some limited medical benefits. However, on March 3, 1995, Respondent, Carrier, Alexsis Insurance Company denied Appellant's claim and refused to provide her with any further medical treatment. Attorney White's letter to Robin Beaver of the Alexsis Insurance Company, dated March 24, 1995 marked as Exhibit A. (Vol. VII. p. 1375). Attorney White's letter to Attorney Pratt-Thomas dated June 6, 1995 marked as Exhibit B. (Vol. VII. pp 1378-1379), regarding Appellant's dismissal from the worker's compensation program and that she would not receive any more medical care and treatment through any authorized treating physicians.

After Appellant was terminated from the worker's compensation program, she hired Attorney White to represent her. Attorney White stood in a fiduciary relationship with Appellant by virtue of attorney-client relationship. Attorney White failed in his fiduciary duties to Appellant. He brought undue influence to bear upon the Appellant, knowing Appellant's psychological and emotional state that she was experiencing from the work-related injuries she sustained and how she was being mistreated by Attorney White.

Attorney White failed and refused to explain the exact nature of the Consent Order, failed to disclose all the facts involving the nature and content of the Consent Order, failed to explain what the word "prejudice" meant and that by signing the Consent Order, all her claim would be dismissed with prejudice. Attorney White failed in his fiduciary duties and representation. Neither Attorney White nor Attorney Pratt-Thomas allowed Appellant to have any input into the drafting of the Consent Order. Appellant was compelled to sign the Consent Order while not being made aware of the averse result she received. The signing of the Consent Order was done while Appellant was under undue influence, pressure, duress, and coercion exerted upon her through Attorney White's and Attorney Pratt-Thomas' conduct toward her.

Attorney White did not tell Appellant the truth that when she signed the Consent Order, she would be on her own dismissing most of her claim against herself. Thus, Attorney White surely did not bargain in good faith and fulfill the obligation of his fiduciary duties to Appellant. If he had done so, Respondent would not have taken unconscionable advantage of Appellant, the advantage being that Attorney Pratt-Thomas had Attorney White to use his position of trust and confidence to unfairly persuade, undue influence, coerced, and compelled Appellant into signing the constitutionally invalid Consent Order dated August 24, 1995. François v. Francois, 599 F. 2d 1286 (1979). After signing the Consent Order, Appellant received no medical care, service, and compensation under the Worker's Compensation Act. Appellant agrees with Respondent in this respect. The record shows that after signing the Consent Order, she received no medical benefits and proper compensation. Judicial Notice: Appellant request this Court to take judicial notice of the fact that she was no longer in the Worker's Compensation Program and the Single

Commissioner did not have personal and subject matter jurisdiction to have heard the matter in the instant case. As a result, The Commissioner erred in hearing Appellant's claim that the Consent Order was statutorily valid and binding. Commissioner G. Bryon Lyndon should not have convened a hearing in the matter of Appellant's claim because the Commissioner did not have personal and subject matter jurisdiction to hear and rule on the claim Appellant presented to the Commission.

Appellant disputes that she received medical treatment from Dr. James J. McCoy on August 10, 1995. Appellant has a letter she received that was written by Attorney White to Attorney Pratt-Thomas dated August 10, 1995. The letter states as follows:

> Dear Douglas:
> Confirming our conversation of August 8, 1995, I understand we have agreed to submit a Consent Order in the above matter along the following lines:
>
> 1. Gertrude Shiver's on-the-job injury of January 23, 1995, will be an admitted claim, with admitted injuries to her right shoulder and right ankle.
> 2. Ms. Shiver will be paid three weeks' of temporary total benefits beginning January 23, 1995.
> 3. Gertrude will be placed under the care of Dr. James McCoy of Lowcountry Orthopaedics for treatment of her right shoulder and right ankle.
> 4. The matter will be re-set for a Hearing upon proper application by either party.
>
> Yours very truly,
> |s|
> Thomas M. White

Concerning the January 23, 1995 claim (WCC Claim No. 9503744) the injuries that the claimant sustained was not alleged, the claimant suffered these injuries from this fall at Trident Hospital. The appellant believed Commissioner Huffstetler to be familiar with this claim and that he would start at the point that Commissioner Mickel had left off at in 2000. Also, Appellant believed the Commissioner to be familiar with Trident Hospital and how the Appellant had been treated by the defendant Hospital. All of this was already common knowledge to the medical community, the Worker's Compensation Commission, and the general public at large. Commissioner Huffstetler had access to Appellant's files as well as

about a box or two of correspondence and other documents at the Worker's Compensation Commission concerning this injury and two prior falls and about three or four subsequent accidents at Trident Hospital.

The Consent Order of 1995, wasn't entered into voluntarily and there was no reason why the Appellant would entered into a Consent Order voluntarily where Attorney Thomas M. White had taken out off of her injuries, especially the injury to the spine and where the Consent Order was signed by Attorney E. Douglas Pratt –Thomas and Commissioner Bryan Lyndon. Appellant never did receive any orthopedic care for her injuries nor was an MRI ever ordered to rule out rotator cuff tear. Dr. Crouch had made a notation about rotator cuff tear in his notes of 6/9/97. (Vol. II. p. 276). Appellant never received a settlement for her injuries. Appellant never could obtain an orthopedist to give her treatment, a rating, or diagnosis for the injury to her right shoulder, feet, arm, and other injuries that she sustained in the January 23, 1995, fall at Trident Hospital. Since Appellant could not get any orthopedic care for her right shoulder, her primary physician Dr. William Crouch was directing her care. Appellant had a breast reduction in 1997 to alleviate some of the pain and pressure on the shoulders where her breasts had become enlarged as a result of this fall and where the fibroids in her uterus had grown. Workers Compensation in Charleston is not practice the same as it is in Columbia. In addition, each Commissioner that came to Charleston was well aware of this claim and the Appellant and she was not required to show proof. Appellant was not aware that Commissioners left the Worker's Compensation Commission after a certain term because Commissioner Bryan Lyndon was a Commissioner during the falls of 1994 and this claim of 1995. He was still a Commissioner when this claim went before the three man Appellant panel and he signed off on that Order. Commissioner Bryan Lyndon was well familiar with this claim and the claims of 1994. He should never had been allowed to sit on the three man Appellate panel because Appellant was prejudiced.

A Worker's Compensation proceeding was held in December of 1997 where Appellant believed Commissioner Holly S. Atkins was the hearing commissioner. Decisions about her injured shoulder and right arm had been made at this proceeding. Appellant believed that the question about Attorney Thomas M. White had already been determined

at this proceeding. Also, this is where the nurses had first lied on the Appellant about mistreatment of patients. Appellant does not know all of the details of this proceeding, only bits and pieces. Some information should have been in her files. Unfortunately, the Appellant does not know what Worker's Compensation file number goes with this proceeding so that the Judiciary Department could provide more information to the Appellant.

IV. The Order Denying Benefits in WCC Claim No. 9503744 (DOA 1/23/1995) Is Not Supported by Substantial Evidence and Should Not Be Affirmed.

Appellant, after this injury thought she was being represented by Attorney Thomas White after she had received a letter from Robin Beaver, the Adjuster for Alexsis Insurance Company who was Trident Hospital's Worker's Compensation Carrier at that time kicking her out of Worker's Compensation. This fall was the third fall the Appellant had had at Trident Hospital in less than six months. Appellant had had an injury to her right shoulder and arm in a previous incident at Trident Hospital where a fellow nurse had slammed the supply closet door into Appellant right arm and shoulder. Appellant was still ignorant of the Worker's Compensation System and she was following the direction of the Occupational Health Nurse who was misinforming the Appellant and gearing her in the wrong direction. The Occupational Health Nurse was following Trident Hospital Worker's Compensation Policy which Appellant later found out was contradictory to state law.

Appellant does not have extensive experience or knowledge with the worker's compensation system. Appellant had worker's compensation accidents, but Appellant was not familiar with the system. Appellant did not have much worker's compensation in school and Appellant had never worked in the legal field. The attorneys that Appellant had contact with would not tell Appellant anything. Appellant have to try to educate herself with the worker's compensation system. At the time of the hearing, Appellant was not going to the Law Library, etc. trying to catch up on the law nor had she been taking any continuing legal education. Appellant was going to school to be retrained for another light duty job since Attorney Chase had caused Appellant to be fired from her mostly sedimentary light duty job at Palmetto Health Richland.

The Consent Order of 1995 was an illegal instrument that was devised against the Appellant because the Appellant had other injuries. The Appellant was sick during these times. Appellant had had three falls within a six month period and Appellant was being abused by the hospital by its' various nurses, doctors, and members of the Charleston Community who were connected to Trident Hospital. This was the first time that the Appellant had ever been hospitalized and the first time that she had ever had surgery. Appellant was going through a religious as well as a mental turmoil and anguish brought on by how she was being treated with her injuries. Appellant also has an underlying preexisting mental condition that was caused by the Appellant almost being kidnapped by a tall white man when she was approximately 4 ½ years old. Appellant also grew up during the Civil Rights Era which affected the Appellant abnormally. This mental condition resurfaced after the Appellant was being abused by various white persons after the injuries.

Appellant does not know about Attorney White's relationship and conduct before Commissioner Huffstetler. She can only speak for what she knows happened to her. Attorney White is a tall white attorney which also triggered the mental condition and he had her shut up in the room with the door closed at various times including the time that the Consent Order was signed. Appellant believes that information about Attorney White was brought out during the Worker's Compensation proceeding held in December of 1997, which part of that proceeding was retried by Commissioner Huffstetler. It was the single Commissioner Ann M. Mickle who made her withdrew the hearing in 2000 and she later sent her an Order where she could bring this claim up again. The decision to go Pro se' was helped brought on by the fact of the insurance adjuster telling the Appellant that Worker's Compensation of South Carolina was design so that the injured worker could represent themselves. The adjusters, attorneys, and various members of the Worker's Compensation Commission knew that the Appellant could not find an attorney to help her with her claims. Some of the girls in the Claim office told Appellant that she could not cancel the September 2007 hearing.

Appellant could not find an orthopedist to give her care and treatment to her right shoulder and arm even though she still have problems after the breast reduction. Appellant

still have pain and she cannot hold up her right arm for long periods of time. She has problems writing, turning and lifting patients, and lifting heavy objects. Appellant has not had another injury to her right shoulder and arm nor her right foot since this 1995 accident. Appellant did not visit Dr. James McCoy on August 10, 1995. When she did visited Dr. McCoy, he was very angry with Appellant and pushed her right arm up behind her back and told Appellant not to come back to his office. He would not treat Appellant injuries. A rotator cuff tear has never been ruled out. Appellant had been told that she only suppose to complain of the body part that was injured at each accident. Appellant has not had another injury to her right shoulder, arm or right foot. The left side of her body is the side that is being mostly affected. Since Dr. McCoy kicked Appellant back out of Worker's Compensation and she could not find another orthopedist to take care of her arm, Dr. William Crouch was taking care of Appellant. Neither Attorney White nor E. Douglas-Pratt Thomas would send Appellant to another orthopedist. Appellant had learned to suffer in silence at Trident Hospital if she wanted to keep her job. She had watched as some injured employees lost their job. Dr. Crouch sent Appellant to St. Francis Hospital where she received physical therapy treatment for her right shoulder. In 1997, Appellant had a breast reduction done to help alleviate some of the pain she was having in the right shoulder and thoracic area. (Vol. II. pp. 266, ll.7-16, p. 273 ll. 16-22). Her right and left foot remain flat after the tendons dropped in her feet with this fall of 1995.

Appellant has permanent injuries to her right shoulder, arm, spine, cervico-thoracic area and feet. Defendant hospital never provided any care to Appellant after Alexsis Insurance Company denied her claim and she was kicked out of Worker's Compensation and Dr. McCoy never treated Appellant. Appellant had been trying to get some orthopedic care for her right shoulder but was unsuccessful. Appellant cannot make an orthopedist take care of her. Commissioner Ann M. Mickel told Appellant in 2000 that the Worker's Compensation Commissioners cannot make a physician take care of her. She never got any orthopedic treatment for her right shoulder, arm, and right foot and these body parts have never been injured since this 1995 accident, therefore, the problems that Appellant is still having especially lifting and having increase pain and tiredness when holding her arm up for

reaching and using her right hand and shoulder for long periods of time is directly and casually connected to this injury. Decisions about Appellant right shoulder were made during the December 1997 proceeding. There is no second injury rule at play here.

V. The Order Denying Benefits in WCC Claim No. 0126962 (DOA 11/15/2001) Is Not Supported By Substantial Evidence And Should Not Be Affirmed.

The injury to Appellant's left Achilles tendon and heel which occurred when a white male employee pushed a metal supply cart into the back of her lower left leg when she was getting off of the elevator was more than a minor injury. Appellant was not given any time off of her feet but was given instructions at all times to return to work. The foot became swollen and cold. Appellant had needed to be off of her feet. Appellant was first being treated for her injuries by a nurse practitioner, Coleen Collins, and an occupational health nurse, Barbara Griffin, although she begged for an orthopedist at the time when the injury first occurred. On 11/16/01, Appellant fell while going up the steps at her home where she injured her left elbow, but she did not injure her heel. Appellant lives in a trailer and she does not have any stairs. This fall was a proximate consequence of the injury to Appellant's left Achilles tendon and heel injury. Appellant left Achilles tendon and heel was injured from the blow to the left leg by the employee James McDonald. Coleen Collins, the nurse practitioner, was Appellant treating care provider from 11/15/01 until 12/11/01. (Vol. II. pp. 311-317). Appellant did not have contact with a physician during this time nor was she offered or given one. On 12/11/01, Appellant was turned loose from treatment by Coleen Collins, nurse practitioner. (Nurse Collins notes of 12/11/01, Vol. II. p. 317). Appellant was still having problems so Appellant returned to Health Works. Appellant was sent over to Midland's Orthopedic to see Dr. Belding. Dr. Belding cursed and seemed angry that Appellant was sent over to him. He never prescribed any treatment for Appellant. Appellant went back to Healthworks where she was seen by Dr. Durkins, the Medical Director of Health Works and a neurologist. He started to treat Appellant injuries but Appellant believed him to be incompetent. He turned Appellant loose because he did not want to order an MRI for Appellant because it would be too costly.

During this time, Appellant was being represented by Attorney Paula M. Stewart of Suggs and Kelly Law Firm. The attorney made arrangement with the insurance adjuster for Appellant to go to see Dr. McBryde. Dr. McBryde did an MRI but did not do any treatment for Appellant. Upon the advice of a co-worker, Appellant went to Augusta, Georgia, to see Dr. David Minter in hopes that he would treat her. Dr. Minter fitted Appellant with an ankle brace and sent Appellant back to Dr. McBryde. (Vol. II. p. 348). Dr. McBryde subsequently made fun of Appellant injuries with his medical students. He still would not do any treatment for Appellant. Appellant continued to have problems so Dr. Hook sent Appellant to The Miller Orthopedic Clinic in Charlotte, North Carolina for treatment. Dr. Bruce Cohen treated Appellant along with his fellow physicians. (Vol. II. pp. 349-357). Appellant had to wear an orthopedic boot. Appellant received physical therapy. Appellant had to get some specially made orthotics. This injury was compounded upon her left foot and ankle injury that occurred at Trident Hospital. The physicians did not give Appellant a rating when they found out that she had these prior injuries from Trident Hospital. Appellant continues to wear an ankle brace and special made orthotics.

Appellant believes that Attorney Paula Stewart was her attorney for these first three injuries and then Michael Kelly took over. He later asked to be release as Appellant's attorney. When Suggs and Kelly broke up as a law group, Appellant's file was destroyed without Appellant knowing it.

VI. The Order Denying Benefits In WCC Claim No. 0217755 (DOA 3/23/2002) Is Not Supported by Substantial Evidence And Should Not Be Affirmed.

The injury to the Appellant's back was more than a minor injury. On June 18, 2014, Appellant finally received a check from the defendant Attorney Fajardo for temporary total disability benefits after punishing the Appellant for over 12 years. Appellant had to go before Commissioner Andrea Roche to compel the defendant attorney to provide the temporary total benefits to her. Defendant attorneys still have not paid all of the Appellant's medical bills even though they submitted a document to Commissioner Roche showing that they had. Appellant never turned in any bills to the Defendant Attorneys, and Dr. Jones has sent a letter and part of the ledger where they have not paid the entire bill.

Dr. Jones is still trying to get the rest of the ledger from an older billing system that is not presently in use. Appellant has had to pay her own bills, even when she was not employed after being fired. About two more bulging disc in Appellant's lumber and sacral spine was noted on an MRI that Dr. Jones ordered based on the accident of 3-23-02. (Vol. VII. pp. 1425-1426).

Dr. Timothy Zgleszewski was referring to Appellant's left leg injury to the Achilles tendon and heel after the male employee, James McDonald, had hit her with the metal supply cart on 1/15/01. The original herniated disc in Appellant's lumbar spine had come from the Appellant helping a patient up in bed on 10-11-97 at Trident Regional Medical Center. Commissioner Holly S. Atkins had awarded Appellant 8% disability to her back.

VII. The Order Denying Benefits In WCC Claim No. 0227098 (DOA 10/24/2002) Is Not Supported By Substantial Evidence And Should Not Be Affirmed.

Appellant sustained more than a minor injury to the left side of her neck and left shoulder when the white supervisor, Jason Morgan, dropped the heavy thick chart on the Appellant's neck. Appellant was sent to the emergency room of defendant hospital by Appellant's immediate supervisor, Beverly Fulton. The emergency room physician wrote and told Appellant to follow up with her physician. Appellant followed up with Dr. Hook. Dr. Hook sent Appellant to Dr. Jacquelyn Goings, ENT, after Appellant developed some severe hoarseness from the thick heavy chart being dropped on the side of her neck and throat. Her medical diagnosis was "muscle tension dysphonia". (Appellant's APA 10, Vol. III. p. 585).

Appellant's neck and shoulder condition was not getting any better so Dr. Hooks sent Appellant to Dr. Jones. Lori Sharpe, the claim adjuster for PHTS had approved the Appellant going to Dr. Jones for treatment. Ms. Sharpe had promised Dr. Jones that she would pay for Appellant's care. After Dr. Jones, a specialist, had started treating the Appellant, Ms. Sharpe changed her mind and wanted the Appellant to leave the physician, a specialist, and come back to Healthworks so that the nurse practitioner could treat the Appellant injuries.

As far as the Appellant knows, the defendant Attorney Lana Sims has not paid for the Appellant medical bills, especially to Dr. Jones for her neck and shoulder treatment. Appellant never submitted any bills to Attorney Sims. Attorney Sims has not produced any proof that he paid any of these bills. Appellant has tried to get proof from Attorney Sims that he has paid the medical bills, but Attorney Sims will not respond to the Appellant's request. Appellant is still being punished for not going over to Health Works to the nurse practitioner and for writing a book about her life and how she was mistreated under the Worker's Compensation System in South Carolina. Appellant missed two days from work per emergency room physician orders. Appellant missed work after neck injections by Dr. Jones. Appellant has an 8% rating to the neck and cervico-thoracic area before this injury, but there was an aggravation and flaring of this injury plus a new myofascial injury.

VIII. The Order Denying Benefits in WCC. Claim No. 0322274 (DOA 1/20/2003) Is Not Supported By Substantial Evidence And Should Not be Affirmed.

The Appellant did fell on the wet floor in the hallway near the Medical Records Department. Appellant did incurred the stated injuries to her neck, back, side, left leg, both wrists, feet, vaginal and perineum areas and body. The nurse practitioner, Ms. Mary Kay Parham did tell the Appellant over the telephone to go to her own doctor on January 24, 2003. Appellant was mistreated because she asked for some narcotics for pain. Appellant was placed on suspension for a week by Ms. Annette Sullivan. She was also humiliated by Annette Sullivan and Libby Holland over at Healthworks. No physician was offered to Appellant for care at Healthworks.

This accident happened in January 20, 2003, and the Appellant did not fall at Embassy Suite Hotel until August of 2003. Appellant fell when she slid on the wet carpet at the hotel. Appellant never did have any symptoms of a urinary tract infection. The pain in Appellant's abdominal and perineum area developed after the fall of January 20, 2003.

IX. The Order Denying Benefits in WCC Claim No. 0321756 (DOA 10/23/2003) Is Not Supported by Substantial Evidence And Should Not Be Affirmed.

The Appellant tripped over a telephone cord at work that one of the fellow employees had left across the aisle. Appellant was sent to the emergency room by the

Nursing Supervisor, Pam Schglione. The emergency room physician instructed Appellant to follow up with her primary doctor. The emergency room physician was well aware that this was a worker's compensation injury, but the emergency room physician at defendant Hospital gave Appellant instructions to follow up with her own doctor. (Vol. II. p. 373). Each time the Appellant would visit the emergency room after an accident whether it was at Richland or Baptist, the physician would tell her and give her instructions to follow up with her own doctor even though they knew that the injury was an on-the-job injury. On 10/24/2003, Mrs. Holland, LPN taunted Appellant about going to her own doctor. Defendant hospital would only offer Appellant a nurse practitioner for care. A nurse practitioner had taken care of Appellant's Achilles tendon and heel injury and Appellant continued to have falls and multiple traumas.

Appellant was planning on submitting medicals after the single commissioner had determined how much of Appellant injuries each insurance carrier should pay. This is what Appellant believed she was supposed to have done. Appellant have never submitted any bills to the Worker's Compensation Commission before. The defendant hospital and the worker's compensation insurance carrier was already aware of the claim.

Appellant was not cautioned against going Pro se'. The opposing attorneys, Commissioner Huffstetler, the insurance adjusters, and various member of the worker's Compensation Commission were well aware of the Appellant inability to obtain an attorney or any legal counseling. Appellant found out later after the hearing that it is next to nil to find an attorney for representation against Palmetto Health Richland and she would never found one to represent her against Trident Regional Medical Center. Appellant had been trying to find an attorney for representation against Trident Hospital ever since 1994. Appellant had also tried to find attorneys in different areas of the State of South Carolina and in neighboring states, but without success for this entire case.

The Appellant does not have extensive experience or knowledge of the Workers' Compensation System. Appellant is learning every day about the Workers' Compensation System after spending numerous times in the Law Library. The Appellant is educated in the healthcare field and this is where she has spent most of her work life after graduating from

nursing school, but this is a continuous learning process. Appellant did not have the legal knowledge or the expertise to know what to do during a worker's compensation hearing before her experience with Commissioner Huffstetler. Worker's Compensation in Charleston is not practice the same way that it is practice in Columbia. Appellant is not an attorney and neither has she gone to Law School. Appellant is female and black and have had extensive verbal abuse from some worker's compensation attorneys and commissioners under the Worker's Compensation System. Appellant has also been taken advantage of by the Worker's Compensation System. Attorney Chase has done numerous things to destroy the Appellant livelihood and he also threatened the Appellant before the hearing with Commissioner Huffstetler. Putting these many claims into one hearing was far too much for an inexperience Pro se' claimant to handle and defend. Appellant doesn't know of any seasoned worker's compensation attorney who have been required by the Worker's Compensation System in South Carolina or any other State to defend these many claims in one setting.

Appellant was sent to Dr. Brandt by Dr. Hook because of continuing left side pain in the area of her ribs which had not abated but had increased since the fall on the cement floor of Palmetto Health Richland. Dr. Brandt indicated the reason in his notes of 2/4/05 line 2 for the Appellant visit. The pain was not of an unknown origin; it started after the fall at Palmetto Health Richland of October 2003. (Vol. III. pp. 515).

Appellant also ended up having abdominal surgery with Dr. Odom because of this fall which aggravated some adhesions that came as a result of the gynecological surgery that she had as a result of the 1995 fall at Trident Hospital. Appellant was unaware of the adhesions. (Vol. III. pp. 511-512; 514).

X. The Order Denying Benefits in WCC. Claim No. 0616756 (DOA 7/16/2006) Is Not Supported by Substantial Evidence and Should Not Be Affirmed.

The Appellant did sustained an injury to her right wrist on 7/16/06, while using the hole puncher. This was the first time during her work shift that she felt pain in her right wrist. Appellant worked in the Medical Records Department as a Health Information Specialist which is more of a sedimentary and light duty job. Appellant had stopped doing

floor nursing and had gone into Health Information Management because the work was less strenuous and because of her numerous orthopedic injuries, especially injuries to her feet, shoulder, knees, tendons, and ligaments, etc. Appellant needed a light duty job and she had already gone through Vocational Rehabilitation. Appellant had a substantial loss of earning capacity because of her many workers' compensation injuries when she went into Health Information Management. Appellant was unable to fully work the hospital floors performing her nursing duties because of the injuries to her right shoulder, arm, feet, knees, side, back, neck, etc. Appellant was not able to find a light duty nursing job and she does not have a Master's Degree. Subsequently, the Appellant had placed her nursing license on inactive status. This accident to the right wrist did occur during the scope of her employment and did arise out of the Appellant's employment.

Appellant was working in the Medical Records Department on 7/16/06, performing her normal duties in order to further the business of her employer. Appellant's duties as a Health Information Specialist required Appellant to input data in the computer, print documents, punch holes in them, staple them, and put them into the medical record chart. Appellant had to make sure the charts were completed as far as the history and physical, discharge summary, and operative reports and other pertinent documents were concerned and included in the medical record to make sure that the medical record was completed. Appellant was also required to file loose material. In July of 2006, the employer was transitioning from paper records to electronic medical records, but the hospital was still using a dual system because everything had not been changed to the electronic medical records as of yet.

Appellant first felt pain in her right wrist toward the last hours of her shift while using the hole puncher. The accident happened in the Medical Record Department of Palmetto Health Richland on July 16, 2006. Using the hole puncher was part of Appellant's duties while performing her job to benefit the defendant employer. The issue of Course of Employment and Arises out of Employment was never really discussed during the hearing with Commissioner Huffstetler, because the hearing was being hurried up and Commissioner Huffstetler was retrying the worker's compensation proceeding of December

of 2007. Claimant was never really given an opportunity to defend herself with this claim. To be entitled to workers' compensation benefits, a claimant must show he or she "sustained an injury by accident arising out of and in the course of employment." S. C. Code Ann. § 42- 1- 160(A) (Supp. 2012). See Eaddy v. Smurfit-Stone Container Corp. 355 S. C. 154, 584 S.E. 2d 390 (S. C. App. 2009) and Crisp v. SouthCo., Inc., 401 S. C. 627, 641, 738 S. E. 2d 835, 842 (S. C. 2013). The question of whether an injury arises out of employment is largely a question of fact for the Commission. See Ervin v. Richland Memorial Hosp., 386 S. C. 245, 249, 687 S. E. 2d 337, 339 (S. C. Ct. App. 2009). Appellant was not present at the Appeals Panel Review to give oral argument because of sickness, therefore; the Appeals Panel never saw or talked to the Appellant. There was no observation of the Appellant because the Appellant was not present at any of the Commission proceedings. There was mention of the injury to the Appellant right wrist at the Circuit Court level by Attorney Chase but the incident was never fully discussed. When the Appellant received the signed Order from the Circuit Court, there was a notation that the injury to the right wrist was from the church and Judge Allison Lee signed the Order. (Vol. I. p. 73).

Appellant never claimed but one injury to the right wrist coming from using the hole puncher and that was on July 16, 2006. Appellant's immediate supervisor, Toni Pait, was notified by e-mail that same night and verbally the next day. This is within the ninety day period. Mrs. Pait was in agreement with the Appellant going to Dr. Noojin because she was aware of how Appellant was being treated by the defendant hospital and she was aware that the defendant hospital was not offering or giving the Appellant a physician. She was also aware of the number of worker's compensation injuries that the Appellant was sustaining in succession. Barrington Wint, the Manager, and Annette Sullivan, the Director of the Medical Records Department was also made aware of the injury to Appellant's right wrist the next day. Neither one of them told Appellant not to go to Dr. Noojin. Defendant Hospital was not prejudiced by Appellant going to Dr. Noojin because Appellant received medical care and physical therapy to the right wrist in a timely manner to affect a cure, give relief, and to lessen the period of disability. Dr Noojin was told on the first day of Appellant's visit about the pain in the right wrist coming from using a hole puncher at the

Medical Records Department at Palmetto Health Richland. He deliberately did not put this in his notes. Appellant believe that this was part of the conspiracy against her. The nurses from Health Works were communicating with Dr. Noojin as well as Ms. Annette Sullivan. The Appellant was fitted with splints for both wrists on the first encounter with Dr. Noojin on 7/21/06. (Vol. III. pp. 548, Line 5-6). Dr. Hook's office was notified via phone of the injury to Appellant right wrist on 7/17/06.

Appellant went over to Healthworks at the urging of a co-worker who had overhead administration talking about the Appellant. Appellant was fearful that they were in the process of firing her. Appellant had already been traumatized and victimized by the nurses at Trident Hospital and the nurse supervisors and the nurses over at Healthworks at Palmetto Health Richland were doing the same thing to Appellant. Appellant was fired in October of 2006, after Attorney Chase took Appellant's book to the Administration of the defendant hospital and urged Appellant's firing; whereas, Appellant was fired and the defendant Hospital kept all of Appellant's PTO days with its monetary value of $4,159.59. The defendant hospital also tried to trick the Appellant so that she would not be able to obtain unemployment benefits. Appellant had a very difficult time trying to find any employment. During the hearing process when Appellant was trying to get her job back at the Defendant Hospital, Appellant was told by Administration that all of the doctors were their doctors. Defendant Hospital accused Appellant of writing a derogatory book about it and its doctors. There is not a physician over at Healthworks and the Appellant was only offered a nurse practitioner for care. Dr. Durkin who is the medical director of Healthworks and a neurologist only came to Healthworks on Wednesdays from 1-2 p.m.

Appellant nor anyone else in the Medical Records Department was required to keep an account of how often they used the hole puncher, stapler, copying machine, telephone, etc., per shift. This is irrelevant. Appellant was required to complete a minimal of approximately thirty records per night and to file loose material. Management kept an account of how many records the Appellant completed per night. The loose material was periodically measured and the Appellant was assigned loose material to file.

Appellant fell at Red Hill Baptist on 5/20/06, where she injured her left wrist and both knees, but her right wrist was not injured. Appellant received an X-ray for these injuries on 6/21/06, when she visited Dr. Hook's office. The church was not responsible for Appellant's fall because there wasn't anything wrong with the church nor was there any wetness or unevenness about the steps or porch. Appellant knew she have some worker's compensation injuries to both feet including the tendons, knees, ankles, left heel and Achilles tendon, and her pelvic area. These injuries came from Trident Regional Medical Center and Palmetto Health Richland. Appellant believe the fall at the church was a remote and proximate cause from these prior worker's compensation injuries to the lower extremities. Every natural consequence that flows from a work related compensable injury is also compensable unless the consequence is the result of an independent, intervening cause sufficient to break the chain of causation. See Whitfield v. Daniel Construction Co. 226 S. C. 37, 40-41, 83 S. E. 2d 460, 462 (1954), and Swilling V. Pride Masonary of Gaffney, 401 S. C. 178, 736 S.E. 2d 672, 673, 677-678 (S. C. App. 2012). Also, Tims v. J. D. Kitts Const., 393 S. C. 496, 713 S. E. 2d 340-341, 344. Dr Noojin gave Appellant a rating of 2% impairment for each upper extremity for wrist sprain and a rating of 10% for the right lower extremity for patellofemoral disorder. This is a total of 14% disability. Appellant had another worker's compensation injury to her right knee on December 6, 2010, before the three men Appellate Panel signed the permanent Order against the Appellant. Appellant received a 20% rating to the right knee from this injury.

At the time of the single commission hearing, Appellant was unaware that Dr. Noojin had deliberately lied in his notes as to the injury to the right wrist. Dr. Noojin was reported to the Division of Civil Rights in Atlanta, Georgia when he refused to correct his medical notes. He was investigated and afterward he made the addendum to his notes to reflect the truth about the injury to Appellant's right wrist. Appellant had previous gotten a form from the insurance adjuster to fill out so that they could consider her medical care but Appellant had inadvertently forgotten to fill out the form and mail it back because of the turmoil and mental anguish that she was experiencing after being fired from her employment and trying to find suitable employment elsewhere with a worker's

compensation injury. As stated earlier, the practice of worker's compensation in Columbia is different from the practice of worker's compensation in Charleston. Appellant had never been to a worker's compensation hearing in Columbia. Furthermore, she had already been set up by Attorney Chase and Commissioner Huffstetler at the time of the hearing.

The defendant hospital and the worker's compensation representative over at Healthworks was aware that Dr. Noojin was taking care of the Appellant's right wrist injury as well as the injury from the fall. Dr. Noojin office was on the campus of the defendant hospital and was one of their doctors. The Appellant does not have a claim against the church because the church was not responsible for Appellant's fall.

CONCLUSION

Considering all of the worker's compensation injuries and trauma the Appellant has had, the Appellant believe that she should have been considered for general disability. Appellant especially believed this since Dr. Jones had indicated in his notes of 7/1/03, "Although patient is released today from active care regarding injuries sustained 10/24/02, patient is candidate for intermittent use of cervical facet and/or trigger point management with focal injections for flares. I can address issues regarding future medical care via Life Care Plan if this becomes necessary..."(Vol. II. p. 393, ll. 31-37). Furthermore, Appellant had a significant dropped in income when she was fired from Trident Hospital where she was a cardiac nurse and went into Health Information Management. Appellant have multiple orthopedic injuries where she was unable to work as a floor nurse without increase pain, difficulty walking and turning, and lifting patients, etc. A light-duty job was more suitable for Appellant which she had obtained but was fired because of the actions of the defense Attorney Chase. Appellant was working in two different jobs capacity at Palmetto Health Richland at the time of her firing in October of 2006, where she was receiving different salaries. Appellant has not been able to obtain another job in Health Information Management. Appellant's falls are proximate and remote consequences of all of her orthopedic injuries. All of these issues need to be discussed and addressed.

All of the facts, especially the correct facts were not obtained by the fact finder Commissioner Huffstetler because he was angry at the Appellant at the worker's compensation level and they were also distorted at the Circuit Court level. Judge Lee told a claimant ahead of the Appellant that she was not a Worker's Compensation Judge. Each claim should have been tried separate or more time should have been allotted to try each claim thoroughly.

The case should be remanded back to the Circuit Court or the Worker's Compensation Commissioner for further determination.

February 17, 2015

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Circuit Court

Alison Renee Lee, Circuit Court Judge

Case No. 2011CP4003561

Gertrude Shiver.....Claimant, Appellant,

v.

Palmetto Health Richland, Employer,
Key Risk Management Services, Inc., TPA,
Palmetto Health Trust Services, Carrier,
Trident Regional Medical Center, Employer,
Zurich American Insurance Company, Carrier.....Respondent,

PROOF OF SERVICE

I certify that I have served the Final Reply Brief on Trident Regional Medical Center and Zurich American Insurance Company, by depositing a copy of it in the United States Mail, postage paid, on February 17, 2015, addressed to its attorney of record, Allison M. Carter, 421 Wando Park Boulevard, Suite 100, Mount Pleasant, South Carolina 29464.

I certify that I have served the Final Reply Brief on Palmetto Health Richland and Palmetto Hospital Trust Services, by depositing a copy of it in the United States Mail, postage paid, on February 17, 2015, addressed to its attorney of record, Andrew W. Fajardo, 1501 Main Street, 5th Floor, Columbia, S. C. 29201.

I certify that I have served the Final Reply Brief on Palmetto Health Richland and Key Risk Management Services, Inc., by depositing a copy of it in the United

States Mail, postage paid, on February 17, 2015, addressed to its attorney of record Carmelo B. Sammataro, P. O. Box 1473, Columbia, S. C. 29202.

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