

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM S.C. WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2016-000790

Ann Stevenson, Claimant,

Appellant,

v.

Wal-Mart Stores, Inc., Employer, and
New Hampshire Insurance Co., Carrier,

Respondents.

RECEIVED

DEC 30 2016

SC Court of Appeals

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. IS THERE SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE FINDING OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION THAT THE RIGHT HAND INJURY IS DENIED AND DOES NOT ENTITLE CLAIMANT TO ANY BENEFITS UNDER THE ACT?
- II. ARE THE APPELLANT'S REMAINING ISSUES/GROUNDS PROPERLY PRESERVED FOR APPELLATE REVIEW?

STATEMENT OF THE CASE

This is a workers' compensation claim adjudicated by the South Carolina Workers' Compensation Commission (hereinafter "Commission"). The original hearing on this claim was held before Commissioner Wilkerson on December 19, 2013. After hearing the testimony and considering all of the evidence, Commissioner Wilkerson issued an Order dated March 5, 2014. From that Order, the Claimant appealed. The Appellate Panel/Full Commission heard that appeal and vacated the previous order on the basis that all body parts, both admitted and denied, should have been adjudicated at one time. (Appellate Panel 3/28/16 Order p.2).

A de novo hearing was then held before Commissioner Michael Campbell on January 8, 2015, and an order was issued on October 13, 2015. (Campbell Order 10/13/15). Commissioner Campbell found that the Defendants were entitled to stop payment of temporary total disability compensation as of October 10, 2013, the date on which Claimant reached maximum medical improvement, he awarded permanent disability benefits to the admitted body parts (right knee and right shoulder), he awarded a credit for overpayment of temporary compensation after the date of maximum medical improvement, he found that Claimant was not entitled to any ongoing or future medical treatment, and he denied the Claimant's alleged injuries to her neck, low back, right hand, and right foot/ankle. (Campbell Order 10/13/15 pp. 19-25).

The Claimant again appealed. The Form 30 appeal dated October 23, 2015, listed five

exceptions to the Order of Commissioner Campbell. The Form 30 appeal indicated that the Claimant was appealing the denial of the neck, low back, right hand, and the consequential findings that the Claimant had reached maximum medical improvement. (Form 30 10/23/15). However, the Brief filed by Claimant on December 14, 2015, only asserted that the Commissioner erred in denying the right hand and consequently in finding that the Claimant had reached maximum medical improvement. The Brief abandoned the appeals regarding the neck and low back. (Appellant Brief to Full Commission 12/14/15). Claimant's counsel confirmed at oral arguments before the Appellate Panel of the Commission that Claimant was abandoning and dismissing the Form 30 Grounds for Appeal #1 and #2, which were the appeals regarding the neck and low back. (Appellate Panel 3/28/16 Order p. 4). The only ground preserved for review was compensability of the right hand injury and consequently whether the Commission correctly determined that the claimant had reached maximum medical improvement.

STATEMENT OF THE FACTS

The Claimant sustained a compensable accident at work on February 16, 2013. (Form 50 dated 11/8/13; Form 51 dated 11/13/13). The Claimant alleged a myriad of injuries related to her accident at work, but the Defendants only accepted as compensable injuries to the right shoulder and right knee. (Hearing Tr. 1/8/15 pp 5, 7). The Defendants asserted that the Claimant had been released at maximum medical improvement with regard to the admitted injuries and that they were entitled to an adjudication of permanent disability, future medical treatment, temporary compensation issues, and credit for overpayment of temporary compensation in light of the fact that the Claimant had reached maximum medical improvement with regard to the admitted body parts. (Hearing Tr. 1/8/15 pp. 7-8). The Defendants specifically requested adjudication and denials of the other disputed body parts including the right hand, right foot, back, and neck. (Hearing Tr.

1/8/15 pp. 8-10).

The only issue that is properly on appeal before the South Carolina Court of Appeals, as fully briefed below, is the issue of compensability of the right hand. Therefore, this statement of facts is limited to facts regarding the right hand.

Claimant denied any previous problems with her right hand, but stated that she has had significant difficulties with her right hand since the accident occurred on February 16, 2013. (Hearing Transcript 1/8/15 p. 17). Claimant testified that after the fall at work, her hand was throbbing really bad and she was having trouble using it. She could not use a staple gun, she couldn't sleep because of pain in her right hand, her hand was bruised, and the injury caused her to miss time from work. (Hearing Tr. 1/8/15 p. 20). Claimant alleged that she was having a lot of cramping in her hand, that it got cold, that she sometimes wore a compression glove on it, that she was having trouble writing or performing any repetitive motion, and that she needed help from her husband cutting anything for cooking. (Hearing Tr. 1/18/15 p. 22). She testified that she even had trouble using a mouse on a computer or typing. (Hearing Tr. 1/8/15 p. 22).

Claimant asserted that she relied upon an email from the adjuster dated April 1, 2013, to believe that her right hand was an admitted body part. However, she admitted at the hearing that the email was simply talking about what body parts the Defendants were going to have evaluated by Dr. Merritt. (Hearing Tr. 1/8/15 p. 34, line 24 – p. 35, line 10).

At one point or another on this claim, the Claimant asserted problems with 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, left foot, concentration issues, memory loss, headaches, and lack of sleep. (Hearing Tr. 1/8/15 pp. 30-33). The Claimant admitted at the hearing

that she has been evaluated by several different doctors for several body parts, including her right hand. (Hearing Tr. 1/8/15 pp. 21, 59, 61).

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.” (Defendants’ 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. (Defendants’ 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. (Defendants’ 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 various other injuries. (Defendants’ APA 25). Dr. Merritt also noted serious signs of malingering, lack of motivation, and symptom magnification. (Defendants’ APA 15). Dr. Merritt treated the Claimant for her right shoulder and right knee, and evaluated her for alleged problems involving her neck, back, hips, and wrist, but he indicated repeatedly that he could find no reason from an orthopedic standpoint why she was having the problems that she was describing. (Defendants’ APA 15, 7). Dr. Merritt also indicated that the EMG studies revealed mild to moderate carpal tunnel syndrome in both hands and that her symptoms were inconsistent with carpal tunnel syndrome. He further stated that he was not sure that her right arm carpal tunnel syndrome was related to her fall and that he did not believe that this would explain all the symptoms she was having. (Defendants’ APA 7).

Claimant was seen for an independent medical evaluation by Dr. Alexander Pappas on July 12, 2013, and only complained about problems with her right knee, right hip, right leg, low back,

and right shoulder. (Defendants' APA 11-12).

Dr. Alan Tamadon, a pain management doctor, 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. (Defendants' APA 29-30). Dr. Kimberly Purgavie, another pain management doctor, noted that the Claimant's complaints of pain in her upper and lower extremities seemed to be migratory and she indicated that she did not know why the Claimant was having the complaints about which she was complaining. (Defendants' APA p. 81-82).

The Claimant 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. (Claimant's APA 130). An EMG report was conducted on April 14, 2014, and it revealed evidence of moderate right and mild left carpal tunnel syndrome. (Claimant's APA 129-132). However, 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. (Claimant's APA 130). Dr. Haskin noted that Claimant's testing revealed left carpal tunnel syndrome and that Claimant was not even alleging that she injured her left wrist in the fall at work and that this problem could not be related to her fall at work. (Claimant APA 130). Dr. Haskin did not establish that the claimant had a legitimate right hand injury or causation of the right hand injury.

Physical therapy notes indicate that Claimant's location of pain was sporadic and changing

(Defendants' APA p.84), that her complaints were vague and she was unable to pinpoint areas of pain (Defendants' APA p. 82), that she had non-organic complaints and was noncompliant (Defendants' APA p. 65, 74, 72, 69), and that there was questionable malingering. (Defendants' APA p. 74). Physical therapy notes also indicated that the Claimant refused to perform almost all physical therapy that was introduced for reasons that did not match her injury or complaints. (Defendants' APA p. 74). The physical therapist also noted that the Claimant would complain about swelling in the right hand but that no swelling could be appreciated by the medical professionals. (Defendants' APA p. 68). The Claimant also underwent a functional capacity evaluation that showed submaximal effort and a variety of inconsistencies. (Defendants' APA pp. 41-42).

Dr. James Merritt was deposed and testified on multiple occasions that the Claimant was very resistant about going back to work and objected to being returned to work, even in a light-duty capacity. (Merritt Depo pp. 10, 13, 17). Dr. Merritt testified that the Claimant was having more pain than he would have expected and that he had no orthopedic explanation for her ongoing complaints of pain. (Merritt Depo p. 18). Dr. Merritt, after reviewing the pictures in this matter, testified that it looked like she fell onto her left arm and that her right hand went into a trash basket. (Merritt Depo p. 50). Dr. Merritt did not offer any opinion as to the legitimacy of any right hand injury or causation of any right hand injury.

STANDARD OF REVIEW

The Administrative Procedures Act ("APA") establishes the standard for judicial review of decisions of the Workers' Compensation Commission. Hargrove v. Titan Textile Co., 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004). Upon review, appellate courts have the power to reverse or modify a decision if the findings and conclusions of the administrative agency are affected by an

error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, arbitrary or capricious, characterized by an abuse of discretion, or a clearly unwarranted exercise of discretion. Gray v. Club Group, Ltd., 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000). Under the APA, an appellate court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, but it may reverse for errors of law. Bentley v. Spartanburg County, 730 S.E.2d 296, 398 S.C. 418 (2012) (citing S.C. Code Ann. § 1-23-380(5)). Specifically, “[i]n workers' compensation cases, the Appellate Panel is the ultimate fact finder.” Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000) (citing Hunter v. Patrick Constr. Co., 289 S.C. 46, 344 S.E.2d 613 (1986)). “The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission.” Id. (citing Ford v. Allied Chem. Co., 252 S.C. 561, 167 S.E.2d 564 (1969)). It is not the task of the appellate court to weigh the evidence as found by the Full Commission. Id. (citing Ellis v. Spartan Mills, 276 S.C. 216, 277 S.E.2d 590 (1981)).

The substantial evidence rule of the APA governs the standard of review in a workers' compensation decision. Frame v. Resort Servs., Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004). This Court must affirm the findings of fact made by the Full Commission if they are supported by substantial evidence. Jordan v. Kelly Co., 381 S.C. 483, 674 S.E.2d 166 (2009). Substantial evidence is neither a mere scintilla of evidence, nor 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. Pratt v. Morris Roofing, Inc., 357 S.C. 619, 594 S.E.2d 272 (2004). Thus, substantial evidence is a lesser standard than by a preponderance of the evidence. Id.

ARGUMENT

I. THE SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S DENIAL OF THE ALLEGED RIGHT HAND INJURY.

The substantial evidence in the record supports the Commission's finding that Claimant does not have a legitimate or compensable right hand injury, that Claimant failed to prove medical causation between her alleged right hand injury and accident at work, and that Claimant failed to prove her case with sufficient medical evidence or credible testimony. Further, Respondents request that the Court of Appeals affirm the Order of the Commission for any ground appearing on the record as provided in SCACR 220(c).

A. The Claimant's testimony as to her alleged right hand injury was not credible.

It is important to note that the Hearing Commissioner, who had an opportunity to observe the Claimant and listen to her live testimony, made eight separate Findings of Fact that the Claimant's testimony was exaggerated, not believable, unreliable, and not credible. (Campbell Order 10/13/15 Findings of Fact #5, 10, 12, 13, 14, 15, 18, and 21). Those Findings were not appealed and are the law of the case. (Form 30 10/23/15). All findings of fact and conclusions of law by a hearing Commissioner become the law of the case except those specifically within the scope of an exception in an appeal filed to the Appellate Panel of the Commission. Hoke v. Cherokee County, 216 S.C. 376, 58 S.E.2d 330 (1950). An unappealed ruling is the law of the case and requires affirmance. See Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 171, 525 S.E.2d 869 (2000). Since they were not appealed, the credibility findings were adopted by the Appellate Panel of the Commission. (Appellate Panel order 3/28/16). Based upon those credibility findings, the Claimant's testimony is insufficient to support a finding of compensability of any 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. (Hearing Tr. 1/8/15 17-22). 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 regarding her right hand complaints are not credible or reliable. The lack of credible and reliable testimony by the claimant constitutes substantial evidence to support the factual determination of the Commission.

B. The medical evidence does not support a finding that Claimant sustained a legitimate, compensable injury to her right hand or that such injury was causally related to an accident at work.

The case law places the burden on a Claimant to prove the injury is compensable. Pilgrim v. Eaton, 391 S.C. 38, 703 S.E.2d 241 (S.C. App. 2010). The Claimant bears the burden of proving a compensable accident that is causally related to a work accident by expert medical testimony. Tiller v. National Health Care Center, 334 S.C. 333, 513 S.E.2d 843 (1999). 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 indicates that the Claimant underwent diagnostic testing to include x-rays of her right elbow and hand which were "unremarkable." (Defendants' 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. (Defendants' 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. (Defendants' 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 various other injuries. (Defendants' APA 25). Dr. Merritt also noted serious signs of malingering, lack of motivation, and symptom magnification. (Defendants' APA 15). Dr. Merritt treated the Claimant for her right shoulder and right knee, and evaluated her for alleged problems involving her neck, back, hips, and wrist, but he indicated repeatedly that he could find no reason from an orthopedic standpoint why she was having the problems that she was describing. (Defendants' APA 15, 7). Dr. Merritt also indicated that the EMG studies revealed mild to moderate carpal tunnel syndrome in both hands but that her symptoms were inconsistent with carpal tunnel syndrome. He further stated that he was not sure that her right arm carpal tunnel syndrome was related to her fall and that he did not believe that this would explain all the symptoms she was having. (Defendants' APA 7). Dr. Merritt was also deposed, but did not offer any testimony as to whether the Claimant had a legitimate right hand injury or any testimony about causation of any right hand injury.

Claimant was seen for an independent medical evaluation by Dr. Alexander Pappas on July 12, 2013, and only complained about problems with her right knee, right hip, right leg, low back, and right shoulder. (Defendants' APA 11-12).

Dr. Alan Tamadon, a pain management doctor, 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. (Defendants' APA 29-30). Dr. Kimberly Purgavie, another pain management doctor, noted that the Claimant's complaints of pain in her upper and lower

extremities seemed to be migratory and she indicated that she did not know why the Claimant was having the complaints about which she was complaining. (Defendants' APA p. 81-82).

The Claimant 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. (Claimant's APA 130). An EMG report was conducted on April 14, 2014, and it revealed evidence of moderate right and mild left carpal tunnel syndrome. (Claimant's APA 129-132). However, Dr. Haskin noted that the Claimant had 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. (Claimant's APA 130). Dr. Haskin noted that Claimant's testing revealed left carpal tunnel syndrome and that Claimant was not even alleging that she injured her left wrist in the fall at work and that this problem could not be related to her fall at work. (Claimant's APA 130). Dr. Haskin did not establish legitimacy of any right hand injury or causation of a right hand injury. This opinion is very consistent with the opinion of Dr. Merritt stated above.

Physical therapy notes indicate that Claimant's location of pain was sporadic and changing (Defendants' APA p.84), that her complaints were vague and she was unable to pinpoint areas of pain (Defendants' APA p. 82), that she had non-organic complaints and was noncompliant (Defendants' APA p. 65, 74, 72, 69), and that there was questionable malingering. (Defendants' APA p. 74). Physical therapy notes also indicated that the Claimant refused to perform almost all physical therapy that was introduced for reasons that did not match her injury or complaints. (Defendants' APA p. 74). The physical therapist also noted that the Claimant would complain

about swelling in the right hand but that no swelling could be appreciated by the medical professionals. (Defendants' APA p. 68). The Claimant also underwent a functional capacity evaluation that showed submaximal effort and a variety of inconsistencies. (Defendants' APA pp. 41-42).

Despite being seen and evaluated by four different orthopedic doctors and several other medical providers, 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 or that such injury is causally related to an accident at work. The report from Dr. Haskin does not establish an injury or causation, and the reports from Dr. Merritt and Dr. Tamadon both indicate that the bilateral wrist problems are not related to work and are not even responsible for her complaints. (Defendants' APA 7, 29-30). All doctors state that the Claimant has no symptoms compatible with carpal tunnel syndrome in the right wrist, and this appears to be an incidental finding. There is no doctor who identifies any other legitimate injury with the Claimant's right hand or establishes causation of any right hand injury to the accident at work. 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. In fact, the substantial medical evidence in the record supports that the Claimant's various complaints, including those of her right hand, are inconsistent, unreliable, and not credible.

The combination of the Claimant's failure to present sufficient medical evidence to prove 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 substantial, if not overwhelming, evidence to support the Commission's denial of the right hand injury. There is an abundance of medical evidence which would constitute substantial evidence to support the factual findings of the Commission denying the alleged right hand injury.

C. Even if the right hand was involved in the initial fall, that does not satisfy the burden of proving a legitimate injury that is causally related to the work accident.

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. Our courts have frequently stated that the burden of proof is on the Claimant to prove facts which will bring the injury under the coverage of the Workers' Compensation Act. See, e.g., Clade v. Champion Labs., 330 S.C. 8, 496 S.E.2d 856 (1998); Bartley v. Allendale County Sch. Dist., 381 S.C. 262, 672 S.E.2d 809 (Ct.App.2009). 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 proving both the injury and the causal connection. As indicated above, the Claimant has failed to meet her burden of proof on all counts.

D. The right hand injury has been a denied body part during the entirety of this claim.

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. Again, this argument is both factually and legally incorrect. The Form 12A dated February 22, 2013, lists 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. (Form 12A 2/22/13). 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. (Form 21 10/22/13). 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. (Form 50 11/8/13). A Form 51 was timely filed by Defendants on November 13, 2013, and admitted only the right knee injury as compensable. (Form 51 11/13/13). In their Form 58 Pre-hearing Brief before the first hearing, the Defendants admitted injuries to the right shoulder and right knee. (Form 58 12/4/13). The Defendants maintained that position at the first hearing and at the second hearing on this claim. (Form 58 12/24/14). Any assertion that the Defendants admitted a right hand injury is simply incorrect and disingenuous.

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). 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.

E. Providing an evaluation of a body part does not constitute an admission of compensability of that body part.

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.

II. THE REMAINING ISSUES/GROUNDS FOR APPEAL RAISED BY APPELLANT IN HER BRIEF ARE NOT PROPERLY ON APPEAL AND CANNOT BE CONSIDERED BY THIS COURT.

In her brief, Appellant has asserted several issues/grounds for appeal that were not appealed to the Appellate Panel. Specifically, Issues on the Appeal in the Appellant's Initial Brief #2, #3 (as to the ankle/foot), #4, #8, #9, #10, #11, #12, and #13 were never appealed to the Appellate Panel (Form 30 10/23/15), nor were those issues adjudicated by the South Carolina Worker's Compensation commission (Appellate Panel Order 3/28/16). The Court of Appeals cannot address issues on appeal that were not first raised as exceptions to the Appellate Panel of the Commission. Because the Appellant did not raise these issues on her Form 30, the Appellate Panel of the Commission did not rule on issues #2, #3 (as to the ankle/foot), #4, #8, #9, #10, #11, #12, and #13 raised by Appellant and Appellant did not move pursuant to rule 59 of the SCRCF to amend the order for failure to consider these issues. Therefore, these issues are not preserved for appellate review. Solomon v. W.B. Easton, Inc., 307 S.C, 518, 415 S.E.2d 841 (Ct. App. 1992). "Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the

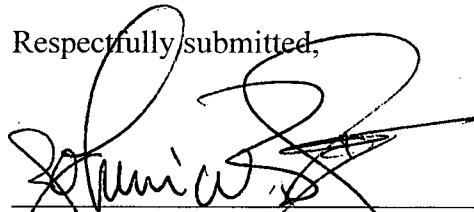
lower court.” Elam v. S.C. Dep't of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004). When a party fails to appeal a single commissioner's finding to the full commission, it becomes the law of the case. Where a party fails to raise an argument or exception to the Full Commission, such arguments or exceptions are not properly before the Court because the issue is not preserved or the issue was unappealed and is now the law of the case. Transportation Insurance Co. v. SC Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010). Because Issues on Appeal in the Appellant’s Initial Brief #2, #3 (as to the ankle/foot), #4, #8, #9, #10, #11, #12, and #13 were never raised in the Form 30 nor ruled upon by the Appellate Panel of the Commission, those issues are not properly before the Court of Appeals.

Additionally, the Claimant abandoned her appeal regarding the neck and low back by failing to address or argue those grounds in her Brief to the Appellate Panel of the Commission. Further, counsel for Appellant confirmed in oral arguments before the Appellate Panel that they were abandoning and dismissing the appeals regarding the neck and low back. Based upon the same case law cited above, because Issues on Appeal in the Appellant’s Initial Brief #1 and #3 (as to the back) were abandoned and dismissed, they were not adjudicated by the Appellate Panel and are not properly before the Court of Appeals.

CONCLUSION

There is substantial evidence in the record to support the factual findings of the South Carolina Workers' Compensation Commission denial of a right hand injury, and thus the Commission properly adjudicated maximum medical improvement on the accepted body parts. Based on the foregoing, the Court of Appeals should affirm the Decision and Order of the Appellate Panel of the Commission.

Respectfully submitted,



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Attorneys for Respondents

December 28, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM S.C. WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2016-000790

Ann Stevenson, Claimant,

Appellant,

v.

Wal-Mart Stores, Inc., Employer, and
New Hampshire Insurance Co., Carrier,

Respondents.

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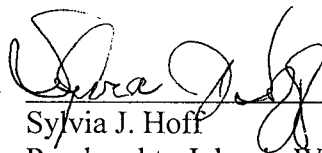
SC Court of Appeals

CERTIFICATE OF SERVICE

I, Sylvia J. Hoff, do hereby certify that I am the Paralegal for Johnnie W. Baxley, III, Esquire, attorney for the Defendants with **WILLSON JONES CARTER & BAXLEY, P.A.** in Mt. Pleasant, South Carolina, and that on December 28, 2016, I mailed the foregoing INITIAL BRIEF OF RESPONDENTS to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

Ann Stevenson
2261 Greenleaf Dr.
Conway, SC 29526

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211



Sylvia J. Hoff
Paralegal to Johnnie W. Baxley, III, Esquire
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December 28, 2016

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Ann Stevenson vs. Wal-Mart Stores, Inc. & New Hampshire Insurance Co.
Appellate Case No.: 2016-00790
WJC&B File No.: 0170.02572

Dear Ms. Kitchings:

Please find enclosed the following documents for filing in regards to the above-referenced case.

1. One copy of the Initial Brief of Respondents with Certificate of Service;
2. One copy of the Designation of Matter to be Included in the Record on Appeal with Certificate of Service;
3. An original and six copies of Respondents' Motion Objecting to Materials Improperly Included in Appellant's Designation of Matter and Motion to Strike Materials in Violation of SCACR 209 and 210 from Appellant's Designation with Certificate of Service.
4. Filing fee of \$25.00 for the Motion.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.


Johnnie W. Baxley, III

JWB/hsh

Enclosures

cc: Ann Stevenson
Barbara Cowan (via e-mail)

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SC Court of Appeals

JENNY ABBOTT KITCHINGS,
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