

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

SC Court of Appeals

Appellate Case No.: 2016-002373

Wanda Joe,
Employee.....Appellant,

v.

SC Department of Disabilities and Special Needs, Employer,
and State Accident Fund, Carrier.....Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE WORKERS' COMPENSATION COMMISSION APPELLATE PANEL CORRECTLY FOUND AUTHORIZED TREATING PHYSICIAN DR. BRETT GUNTER'S EVALUATION OF APPELLANT TO BE MORE PERSUASIVE AND DESERVING OF THE GREATER WEIGHT WHEN COMPARED TO THE EVALUATION OF APPELLANT GIVEN BY DR. RAKESH CHOKSHI.
- II. WHETHER THE WORKERS' COMPENSATION COMMISSION APPELLATE PANEL CORRECTLY RULED APPELLANT REACHED MAXIMUM MEDICAL IMPROVEMENT ON APRIL 1, 2015 BASED ON THE OPINION AUTHORIZED TREATING PHYSICIAN DR. BRETT GUNTER AND DUE TO THE LACK OF EVIDENCE SHOWING ADDITIONAL MEDICAL TREATMENT WOULD LESSEN THE PERIOD OF APPELLANT'S DISABILITY.
- III. WHETHER THE WORKERS' COMPENSATION COMMISSION APPELLATE PANEL CORRECTLY RULED RESPONDENTS WERE ENTITLED TO STOP PAYMENT OF TEMPORARY TOTAL DISABILITY BENEFITS EFFECTIVE MARCH 15, 2016, AND WERE ENTITLED TO A CREDIT FOR THE OVERPAYMENT OF THE SAME BEGINNING APRIL 1, 2015.
- IV. WHETHER THE WORKERS' COMPENSATION COMMISSION APPELLATE PANEL PROPERLY EXCLUDED THE INDEPENDENT MEDICAL EVALUATION REPORT OF DR. DONALD JOHNSON DUE TO APPELLANT'S FAILURE TO SERVE THE REPORT ON OPPOSING COUNSEL UNTIL JUNE 17, 2015, THE DATE OF THE HEARING, IN VIOLATION OF REG. 67-612.

STATEMENT OF THE CASE

Appellant sustained an admitted injury to her back on March 7, 2013. (Defs.' Form 58 Pre-Hr'g Br., June 4, 2015). As a result of this injury, Respondents provided temporary total disability benefits pursuant to the South Carolina Workers' Compensation Act, beginning on March 8, 2013. (Form 18 Periodic Report, Apr. 13, 2015). On April 16, 2015, Respondents filed a Form 21 Request for Hearing seeking to terminate temporary total disability benefits and determine if permanent partial disability compensation was due pursuant to Dr. Gunter's release of Appellant at maximum medical improvement on April 1, 2015. (Form 21 Req. Hr'g, Apr. 16, 2015). Additionally, Respondents requested credit for overpayment of temporary total disability benefits as of the date of maximum medical improvement pursuant to S.C. Code Ann. §42-9-210. (Form 21). Respondents timely filed their Pre-Hearing Brief alleging Appellant reached maximum medical improvement on April 1, 2015. (Form 58 Pre-Hr'g Br., June 4, 2015).

On June 17, 2015, the Single Commissioner held a hearing in Florence, South Carolina. (Notice of Hr'g, May 4, 2015). Arguments were presented by both parties on the issues of whether Appellant reached maximum medical improvement, whether Appellant was entitled to additional medical treatment, whether Respondents were entitled to terminate temporary total disability benefits, and whether Respondents were entitled to a credit for overpayment of temporary total disability benefits. (Hr'g Tr., June 17, 2015). Respondents maintained that Appellant reached maximum medical improvement and requested an order allowing for the stop payment of temporary total disability benefits. (Hr'g Tr., 7:15-7:20). Appellant argued the maximum medical improvement characterization was from a surgical standpoint and Appellant is nonsurgical due to the

failed discogram performed by Dr. Bruce Johnson. (Hr'g Tr., 9:24-11:6). Appellant maintained her pain was not under control and sought additional medical treatment. (Hr'g Tr., 10:23-34).

Additionally, Appellant attempted to introduce the independent medical evaluation report of Dr. Donald Johnson, submitted to the Commission by way of an Amended Form 58 dated June 17, 2015, and served on opposing counsel the same day, the date of the hearing. (Am. Form 58 Pre-Hr'g Br., June 17, 2015). Respondents objected to the admission of the report due to the prejudicial nature of its late submission, depriving Respondents of the opportunity to respond to the evidence. (Hr'g Tr., June 17, 2015, 4:25-5:13). The Single Commissioner ultimately excluded the report, citing its untimely submission by Appellant. (Single Comm. Order, Finding of Fact #1). Accordingly, the Single Commissioner did not allow Appellant to testify about the substance of Dr. Donald Johnson's report. (Hr'g Tr., June 17, 2015, 20:12-21:5).

The Single Commissioner found that Appellant reached maximum medical improvement on April 1, 2015. (Single Comm. Order, Finding of Fact 5). Furthermore, the Single Commissioner found that there was no evidence in the record that any additional medical treatment would tend to lessen the Appellant's period of disability. (Order, Finding of Fact 5). The Single Commissioner based her findings upon the evidence as a whole, finding Dr. Gunter's evaluation to be more persuasive and deserving of greater weight. (Order, Finding of Fact 7). The Single Commissioner ordered that Respondents were entitled to stop payment of Appellant's temporary total disability benefits effective March 15, 2016, the filing date of the Commissioner's Order, and found that Respondents were entitled to a credit for the overpayment of the same from April 1, 2015 through March

15, 2016. (Order, Finding of Fact 8). Additionally, the Single Commissioner found that Appellant sustained a fourteen (14) percent permanent partial disability to her back as a result of her March 7, 2013 work injury. (Order, Finding of Fact 9). Finally, the Single Commissioner found that Appellant failed to prove that she was entitled to any further medical benefits or any award for serious disfigurement. (Order, Finding of Fact 12).

On March 28, 2016, Appellant filed a Form 30 Request for Commission Review. (Form 30, Mar. 28, 2016). Appellant filed a Brief with the Full Commission (Claimant's Br. Full Commission, July 18, 2016) and Respondents timely filed a responsive Brief. (Defs.' Br. Full Commission, August 2, 2016). On August 15, 2016, a Full Commission Hearing was held on Appellant's Form 30 Request for Commission Review. (Appellate Panel Order, Oct. 25, 2016). On October 25, 2016, the Full Commission affirmed the Single Commissioner's ruling in full. (Appellate Panel Order, p. 6). Appellant then filed her Notice of Intent to Appeal. This appeal follows.

STATEMENT OF THE FACTS

Appellant sustained a back injury on March 7, 2013 while assisting a patient. (Single Comm. Order, Finding of Fact 3). After initially treating with Dr. Perez of Carolinas Urgent Care and Occupational Health Center, she was referred to Dr. Chokshi of Pee Dee Orthopaedic Associates. (Single Comm. Order). Dr. Bruce Johnson subsequently performed a failed discogram, therefore deeming the Appellant a nonsurgical patient. (Defs.' Br. Full Commission, Aug. 2, 2016). At this time, Dr. Chokshi recommended a spinal cord stimulator trial. (Single Comm. Order, Finding of Fact 7). After Appellant expressed hesitancy to proceed with the spinal cord stimulator trial, she underwent a second opinion from Dr. Brett Gunter. (Single Comm. Order). Dr. Gunter

recommended that Appellant undergo an FCE and physical therapy. (Defs.' Br. Full Commission, Aug. 2, 2016). The results of the FCE were deemed unreliable due to Appellant's "inconsistent and submaximal effort during the evaluation." (Single Comm. Order). Dr. Gunter placed Appellant at maximum medical improvement, assigning a four (4) percent impairment rating, and opined Appellant did not require any work restrictions or future medical treatment. (Defs.' Br. Full Commission, Aug. 2, 2016).

A hearing was held on June 17, 2015. (Notice of Hr'g, May 4, 2015). Prior to the hearing, Respondents timely filed their Pre-Hearing Brief, noting the facts in controversy to be "whether Claimant has reached MMI; whether Defendants are entitled to stop payment of TTD benefits; whether Defendants are entitled to credit for overpayment of TTD benefits; [and] whether Claimant is entitled to any further benefits." (Defs.' Form 58 Pre-Hr'g Br). Appellant attempted to introduce Dr. Johnson's independent medical evaluation report, submitted to the Commission and served on opposing counsel by way of an Amended Form 58 dated June 17, 2015, the very date of the hearing. (Am. Form 58 Pre-Hr'g Br., June 17, 2015). The Single Commissioner excluded Dr. Johnson's report due to Appellant's ill-timed submission and determined that Appellant reached maximum medical improvement on April 1, 2015. (Single Comm. Order, Findings of Fact 1, 5).

The Single Commissioner also determined Respondents were entitled to stop payment of temporary total disability benefits and were entitled to a credit for overpayment. (Single Comm. Order, Finding of Fact 8). Finally, the Single Commissioner found that Appellant sustained a fourteen (14) percent permanent partial disability to her back and was not entitled to any further medical benefits. (Order, Findings of Fact 9, 11).

On October 25, 2016, the Appellate Panel affirmed the Single Commissioner's ruling in full. (Appellate Panel Order, p. 6).

STANDARD OF REVIEW

In Workers' Compensation cases, the South Carolina Workers' Compensation Commission is the trier of fact. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The South Carolina Administrative Procedures Act, S.C. Code Ann. §1-23-380(5) (1976), establishes the "substantial evidence" rule as the standard for judicial review of a decision of the Commission:

The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the administrative agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the [A]ppellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (d) affected by other error of law; [or]
- (e) clearly erroneous in view of the reliable, probative [,] and substantial evidence on the whole record.

In Workers' Compensation appeals, an appellate court may overturn a conclusion of the Workers' Compensation Commission if that conclusion is "clearly erroneous in view of the reliable, probative [,] and substantial evidence on the whole record." Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).

The test is whether the decision of the Commission is supported by substantial evidence. 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 that the administrative agency reached in order to justify its action.

Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995).

Therefore, an appellate court may overturn findings of fact of the Commission if there is no reasonable probability that the facts could be as relayed by the witnesses upon whose testimony the finding was based. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). Further, an award cannot be based on surmise, conjecture, or speculation. Tiller v. National Health Care Center of Sumter, 334 S.C. 333, 339, 513 S.C.2d 843, 845 (1999); *see also* McDowell v. Stilley Plywood Co., 210 S.C. 173, 41 S.E.2d 872 (1947) (holding testimony that is based on surmise, conjecture, and speculation has no probative value). While a finding of fact of the Commission will normally be upheld, such a finding may not be based upon surmise, conjecture, or speculation; instead, it must be founded on evidence of sufficient substance to afford a reasonable basis for it. Edwards v. Pettit Constr. Co., 273 S.C. 576, 257 S.E.2d 754 (1979).

ARGUMENT

- I. THE WORKERS' COMPENSATION COMMISSION APPELLATE PANEL CORRECTLY FOUND AUTHORIZED TREATING PHYSICIAN DR. BRETT GUNTER'S EVALUATION OF APPELLANT TO BE MORE PERSUASIVE AND DESERVING OF THE GREATER WEIGHT WHEN COMPARED TO THE EVALUATION OF APPELLANT GIVEN BY DR. RAKESH CHOKSHI.

The Single Commissioner based her findings upon the evidence as a whole, to include authorized treating physician Dr. Gunter's evaluation of the Appellant. (Single Comm. Order, Finding of Fact 6). Two (2) medical reports were properly entered into evidence: Appellant's initial evaluation by Dr. Chokshi (Defs.' APA 5, pp. 46-49) and Appellant's subsequent evaluation by Dr. Gunter. (APA 6, pp. 53-54). After Dr. Johnson completed an unsuccessful discogram on Appellant (APA 5, p. 48), Dr. Chokshi recommended a spinal cord stimulator trial. (APA 3, p. 40). Additionally, Dr. Chokshi

noted that he was unable to determine precisely where Appellant's pain was coming from. (APA 3, p. 40). Due to Appellant's reluctance to proceed with the spinal cord stimulator, and at her request, Respondents scheduled an appointment with Dr. Gunter to render a second opinion. (APA 6, pp. 50-52). At this appointment, Dr. Gunter recommended that the Appellant undergo an FCE and complete physical therapy. (APA 6, p. 52).

Appellant completed an FCE with CORA Rehabilitation on March 26, 2015. (APA 8, pp. 93-116). The FCE found that Appellant "put forth poor effort" and was "self [-] limiting." (APA 8, p. 93). Additionally, the "results of this FCE are not reliable and are not a true indicator of [Appellant]'s functional capabilities" due to Appellant's poor effort. (APA 8, p. 93). Following the FCE, Appellant returned to Dr. Gunter on April 1, 2015 and was released at maximum medical improvement. (APA 6, pp. 53-54). Dr. Gunter noted that he could not identify the cause of Appellant's pain and "would not expect 'strain' from her back to persist for almost two [(2)] years." (APA 6, pp. 53-54). He released Appellant with a four (4) percent impairment rating to the whole person, did not provide any permanent work restrictions, and noted that she would not require any future medical treatment. (APA 6, p. 54). The Single Commissioner noted Appellant's "'submaximal effort' and 'poor effort' on her FCE" in her reasoning for determining that Dr. Gunter's evaluation was more persuasive and deserving of the greater weight. (Single Comm. Order, Finding of Fact 7). The Single Commissioner also pointed out that Dr. Gunter evaluated Appellant *after* (seven (7) months after to be exact) Dr. Chokshi recommended a spinal cord stimulator. (Order, Finding of Fact 7) (emphasis added).

The Single Commissioner correctly found Dr. Gunter's subsequent evaluation of Appellant to be more persuasive and therefore deserving of greater weight when compared

to Dr. Chokshi's evaluation. The Commission serves as the ultimate factfinder. Hoxit v. Michelin Tire Corp., 304 S.C. 467, 405 S.E.2d 407 (1991). When there is a dispute between the medical evidence introduced, the findings of fact of the Commission are conclusive. Hoxit, 304 S.C. 467 at 409. It is not this Court's job to substitute its judgment as to the weight of the evidence on questions of fact. S.C. Code Ann. §1-23-380(5) (1986). Therefore, the Workers' Compensation Commission Appellate Panel correctly affirmed the decision of the Single Commissioner, finding Dr. Gunter's evaluation of Appellant to be more persuasive and deserving of the greater weight when compared to the evaluation of Appellant given by Dr. Chokshi.

II. THE WORKERS' COMPENSATION COMMISSION APPELLATE PANEL CORRECTLY RULED APPELLANT REACHED MAXIMUM MEDICAL IMPROVEMENT ON APRIL 1, 2015 BASED ON THE OPINION OF AUTHORIZED TREATING PHYSICIAN DR. BRETT GUNTER AND THE LACK OF EVIDENCE SHOWING ADDITIONAL MEDICAL TREATMENT WOULD LESSEN THE PERIOD OF APPELLANT'S DISABILITY.

Appellant initially treated with Dr. Gunter on November 19, 2014 following her request for a second opinion. (Defs.' APA 6, pp. 50-52). At that time, she presented with lower back pain and numbness and tingling in her lower legs and feet. (APA 6, p. 50). Appellant reported her thoracic pain had resolved. (APA 6, p. 50). Dr. Gunter recommended that Appellant participate in six (6) weeks of lumbar physical therapy, which she completed with Progressive Physical Therapy from December 11, 2014 through February 18, 2015. (APA 7, pp. 55-92).

Following Appellant's completion of twelve (12) physical therapy appointments, Dr. Gunter recommended an FCE. (APA 5, p. 52). Appellant completed this FCE with COBRA Rehabilitation on March 26, 2015. (APA 8, pp. 93-116). As mentioned above,

Appellant demonstrated “‘submaximal effort’ and ‘poor effort’ on her FCE.” (Single Comm. Order, Finding of Fact 7). After Appellant put poor effort in the completion of her FCE, she returned to Dr. Gunter’s office on April 1, 2015. (APA 6, pp. 53-54). At that time, Dr. Gunter placed Appellant at maximum medical improvement and released her with a four (4) percent rating to the whole person, noting that he would “not expect ‘strain’ from her back to persist for almost two [(2)] years.” (APA 6, pp. 53-54).

Appellant incorrectly asserts that Dr. Gunter’s release of Appellant at maximum medical improvement is “reasonably impossible” (Appellant’s Br. Ct. of Appeals, p. 5) due to her ongoing subjective complaints of lower back pain and numbness in her legs. “Maximum medical improvement is a term used to indicate that a person has reached such a plateau that in the physician’s opinion there is no further medical care or treatment which will lessen the degree of impairment.” O’Banner v. Westinghouse Elec. Corp., 319 S.C. 24, 459 S.E.2d 327 (Ct. App. 1995). Additional medical treatment can improve a person’s overall quality of life, but not otherwise impact the finding of maximum medical improvement. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 397, 489 SE.2d 221 (Ct. App. 1998).

There is substantial evidence in the record to conclude that Appellant reached maximum medical improvement on April 1, 2015. Despite several evaluations by multiple doctors, neither Dr. Chokshi (Defs.’ Br. Full Commission, p. 3) nor Dr. Gunter could ultimately determine the cause of Appellant’s subjective complaints. (Defs.’ Br., p. 3). Dr. Gunter noted that a strain injury like the one Appellant sustained should not produce symptoms that persist for almost two (2) years. (Defs.’ APA 6, pp. 53-54). Dr. Gunter stated his opinion to a reasonable degree of medical certainty. (APA 6, p. 54). Although

Dr. Chokshi recommended a spinal cord stimulator trial, this recommendation came approximately seven (7) months prior to Appellant's release at maximum medical improvement, before she completed physical therapy or the FCE. (Defs.' Br. Full Commission, p. 4). Furthermore, the Appellant ultimately opted not to proceed with the procedure recommended by Chokshi. (Defs.' Br., p. 3).

After completing twelve (12) physical therapy sessions and displaying "poor effort" at her FCE, Dr. Gunter released Appellant at maximum medical improvement. (Defs.' Br., pp. 3-4). The Single Commissioner found Dr. Gunter's report releasing the Claimant to be more persuasive than Dr. Chokshi's prior evaluation. (Single Comm. Order, Finding of Fact 7). The Single Commissioner determined that Appellant reached maximum medical improvement on April 1, 2015 based on the evidence as a whole. (Single Comm. Order, Findings of Fact 5-6). "M[aximum] M[edical] I[mprovement] is a factual determination left to the discretion of the appellate panel." Gadson v. Mikasa Corp., 368 S.C. 214, 224, 628 S.E.2d 262, 268 (Ct. App. 2006). Therefore, the Workers' Compensation Commission Appellate Panel correctly affirmed the Order of the Single Commissioner finding that Appellant reached maximum medical improvement on April 1, 2015 and that the record lacked any evidence showing additional medical treatment would lessen the period of Appellant's disability.

III. THE WORKERS' COMPENSATION COMMISSION APPELLATE PANEL CORRECTLY RULED RESPONDENTS WERE ENTITLED TO STOP PAYMENT OF TEMPORARY TOTAL DISABILITY BENEFITS EFFECTIVE MARCH 15, 2016 AND WERE ENTITLED TO A CREDIT FOR THE OVERPAYMENT OF THE SAME BEGINNING APRIL 1, 2015.

Respondents paid Appellant temporary total disability benefits from March 8, 2013 until March 15, 2016, the filing date of the Single Commissioner's Order. (Form

18 Periodic Report, Apr. 13, 2015). The South Carolina Workers' Compensation Act provides for the payment of compensation to an injured worker for total disability resulting from a work-related injury. S.C. Code Ann. §42-9-10 (1985 and Supp. 1995). Disability is defined as "incapacity because of injury to earn the wages that the employee was receiving at the time of the injury in the same or any other employment." S.C. Code Ann. §42-1-120 (1985).

Appellant was released without any permanent work restrictions. (Defs.' APA 6, pp. 53-54). No evidence to the contrary was submitted, and therefore, there is no evidence of an incapacity because of injury to earn wages. Furthermore, Respondents showed through the medical testimony of Dr. Gunter that Appellant reached maximum medical improvement on April 1, 2015. (Defs.' APA 6, pp. 53-54). S.C. Code Ann. Reg. 67-507(C)(3) (1990) provides "a showing through medical testimony that [Appellant] has reached maximum medical improvement" as a ground for terminating temporary total disability benefits. Therefore, the Single Commissioner terminated Appellant's temporary total disability benefits pursuant to the appropriate procedure. By showing Appellant reached maximum medical improvement on April 1, 2015 and had no work restrictions, Respondents proved the date upon which Appellant's disability ended.

Accordingly, Appellant was not entitled to any payments issued by Respondent past this date. For this reason, Respondents are entitled to a credit for the overpayment of temporary total disability benefits from April 1, 2015, the date Appellant reached maximum medical improvement, to the last date of payment, March 15, 2016. Hence the Workers' Compensation Commission Appellate Panel correctly ruled Respondents

were entitled to stop payment of temporary total disability benefits effective March 15, 2016, and were entitled to a credit for the overpayment of the same beginning April 1, 2015.

IV. THE WORKERS' COMPENSATION COMMISSION APPELLATE PANEL CORRECTLY EXCLUDED THE INDEPENDENT MEDICAL EVALUATION REPORT OF DR. DONALD JOHNSON DUE TO APPELLANT'S FAILURE TO SERVE THE REPORT ON OPPOSING COUNSEL UNTIL JUNE 17, 2015, THE DATE OF THE HEARING, IN VIOLATION OF REG. 67-612.

Appellant filed an Amended Form 58 on June 17, 2015, the date of the hearing before the Single Commissioner, attempting to add the independent medical evaluation report of Dr. Donald Johnson dated June 10, 2015 as an APA submission. (Am. Form 58 Pre-Hr'g Br., June 17, 2015). Respondents objected to the admission of the report due to its untimely nature. (Hr'g Tr., June 17, 2015, 4:25-5:13). The Single Commissioner excluded the report due to Appellant's failure to timely submit the report to the Commission or serve the report on opposing counsel prior to the date of the hearing. (Single Comm. Order, Finding of Fact #1).

S.C. Code Ann. Reg. 67-612(B)(2) states that a written expert's report must be provided by the non-moving party to the moving party at least ten (10) days before the scheduled hearing. In addition, S.C. Code Ann. Reg. 67-612(C) requires proof of notice to be filed with the Commission at the time the report is provided to the opposing party. Finally, S.C. Code Ann. Reg. 67-612(E) states that "failure to provide reports and notices as required under this section may result in the exclusion of such reports from the evidence of this case." In order to be in compliance with this regulation, Appellant would have needed to file the Amended Form 58 and serve Respondents with a copy of Dr. Johnson's report on June 7, 2015 at the absolute latest. Because

Appellant's failed to comply with Reg. 67-612, the Single Commissioner properly excluded the report. Therefore, the Workers' Compensation Commission Appellate Panel correctly excluded the independent medical evaluation report of Dr. Donald Johnson.

CONCLUSION

Dr. Chokshi recommended Appellant undergo a spinal cord stimulator trial on September 10, 2014. At Appellant's request, and due to her hesitancy to proceed with the spinal cord stimulator, Respondents scheduled an appointment for Appellant with Dr. Gunter. Authorized treating physician Dr. Gunter evaluated Appellant over the course of approximately five (5) months. After referring Appellant to twelve (12) sessions of physical therapy and an FCE, Dr. Gunter released her at maximum medical improvement on April 1, 2015. The Single Commissioner found Dr. Gunter's subsequent evaluation of Appellant to be more persuasive and deserving of the greater weight when compared to Dr. Chokshi's previous evaluation. This finding is supported by substantial evidence and is within the Single Commissioner's discretion in her role as the ultimate factfinder. Therefore, the Workers' Compensation Commission Appellate Panel correctly affirmed the decision of the Single Commissioner.

As stated above, Dr. Gunter released Appellant at maximum medical improvement on April 1, 2015. After completing multiple evaluations of Appellant, neither Dr. Chokshi nor Dr. Gunter could identify the cause of Appellant's subjective complaints. Dr. Gunter was unable to rely on the FCE report due to Appellant's inconsistent and submaximal efforts. The Single Commissioner determined that Appellant reached maximum medical improvement on April 1, 2015, relying on both the evidence as a whole and Dr. Gunter's

evaluation of Appellant. This finding is supported by the substantial evidence in the record. Therefore, the Workers' Compensation Commission Appellate Panel correctly affirmed the decision of the Single Commissioner.

Respondents paid Appellant temporary total disability benefits from March 8, 2013 through March 15, 2016. Respondents showed that Appellant's period of disability ended on April 1, 2015, based upon Dr. Gunter's opinion that Appellant had no work restrictions and that Appellant reached maximum medical improvement. The Single Commissioner based her decision to grant Respondents credit for the overpayment of temporary total disability benefits on Appellant's release at maximum medical improvement, an appropriate ground for terminating temporary total disability benefits. Therefore, the Workers' Compensation Commission Appellate Panel correctly affirmed the decision of the Single Commissioner.

A hearing was set before the Single Commissioner on June 17, 2015. On that same day, Appellant filed an Amended Form 58 attempting to add Dr. Donald Johnson's independent medical evaluation report as an APA submission. Respondents received this report from Appellant via e-mail the morning of the hearing. The Single Commissioner properly excluded the report due to Appellant's failure to comply with Reg. 67-612. Therefore, the Workers' Compensation Commission Appellate Panel correctly affirmed the decision of the Single Commissioner. For the aforementioned reasons, Respondents respectfully request that this Court affirm the Workers' Compensation Commission Full Appellate Panel's October 25, 2016 Decision and Order in full.

Respectfully submitted,



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PROOF OF SERVICE

I certify that I, Cindy D. Lamb, legal assistant to Sarah S. Alphin, have properly served **Respondents' Initial Brief and Designation Of Matter To Be Included In The Record**, by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses on April 19, 2017:

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P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Wanda Joe v. SC Department of Disabilities and Special Needs
 WCC File No.: 1302654
 Appellate Case No.: 2016-002373

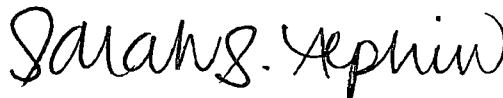
Dear Ms. Kitchings:

Pursuant to Rules 208 and 209, SCACR, please find enclosed for filing one copy of the Respondents' Initial Brief and Designation of Matter to be Included in the Record on Appeal, along with Proof of Service for the same.

By copy of this letter, I am also serving a copy of the Respondents' Initial Brief and Respondents' Designation of Matter to be Included in the Record on Appeal on the attorney for the Appellant by United States Mail with first class postage prepaid.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



Sarah S. Alphin

Enclosure

cc: Ms. Sydney Lynn, Esquire
 Ms. Casey Barham (via email)

cdl

WILLSON JONES CARTER & BAXLEY, P.A.
ATTORNEYS AT LAW
3600 FOREST DRIVE, SUITE 204
COLUMBIA, SC 29204

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SC Court of Appeals

THE HONORABLE JENNY ABBOTT KITCHINGS
SOUTH CAROLINA COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, SC 29211