THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2016-002266

Renee Robles, Employee, Claimant, ... Appellant,

v.

Party Reflections, Inc., Employer, and
Employers Assurance Company, Carrier, ... Respondents.

INITIAL REPLY BRIEF OF APPELLANT

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1. The Average Weekly Wage must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the March 16, 2014 injury occurred.

Respondents raise two arguments in support of affirming the Appellate Panel on the average weekly wage: (1) that filing a Form 20 using only the wages from the successor entity is tantamount to raising an alternative argument at trial; and (2) that the Appellate Panel's average weekly wage cannot be reversed because it is a factual determination based on substantial evidence.

A. Party Reflections is bound by Counsel's statement at trial regarding the method used to determine the average weekly wage.

In their Brief to this Court – for the first time in this case – Respondents make the wholly new argument that the average weekly wage must be based on the Form 20 Respondents filed with the Commission. [1] This argument was neither raised at trial nor in the brief to the Appellate Panel. The issue was never preserved for appeal. See Smith v. Pearson, 210 S.C. 524, 530, 43 S.E.2d 479, 481 (1947) (finding appellants bound by statement made by counsel at the outset of hearing before trial judge); Robbins v. Walgreens and Broadspire, 652 S.E.2d 90, 375 S.C. 259 (Ct. App. 2007)(argument for additional medical treatment on alternative grounds was not preserved for appeal because alternative ground was not raised at trial level).

Respondents openly acknowledge that their argument at trial was entirely different than their argument before this Court. [Brief of Respondents, pages 16-17]. Respondents now contend the

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[1]The Form 20 is based on wages Robles earned from the pay periods beginning on December 5, 2014 and ending on March 26, 2014. One obvious problem with the Form 20 is that it includes 10 days after the injury. It also includes 16 holiday hours (presumably Christmas and New Years), plus 40 hours of sick pay and 60 hours of vacation pay paid to Robles *after* his accident on March 16, 2014. [Exhibit].

mere filing of a Form 20 (based on wages from December 5, 2013 through March 26, 2014) is equivalent to making an argument in the alternative. Therefore – Respondents argue – this new argument was raised before the Single Commissioner.

The transcript shows otherwise. The record shows the parties discussed the issues in an off the record prehearing conference. [Tr. Page 6, line 25-page7, line 4]. When the parties went on the record to argue their respective positions on the average weekly wage, the discussion centered on which four-quarter period should be used.[2] Respondents' counsel accurately summarized each party's position:

> For the average weekly wage and compensation rates I disagree with how Mr. Calhoun thinks it should be calculated. Since there are three injuries, he wants to use the average weekly wage and compensation rate from the earnings prior to the first accidents. It's our position that you should use the 52 weeks or the four quarters preceding the accident for which we're responsible. So we're here today on the March 16, 2014 accident or its our position you should use the four quarters from 2013 which are enclosed in Claimant's Pre-Hearing brief as well.

See Williams v. Addison, 314 S.C. 35, 443 S.E.2d 582 (Ct.App.1994)(extensive discussion between counsel and announcement before the court that a particular claim would not be pursued precluded party from raising issue later in trial).

At no point did Respondents argue to the Single Commissioner that Party Reflections was a wholly separate employer or that the average weekly wage should be based only on wages from

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[2]Robles had sustained two previous work injuries under the predecessor company – the first of which occurred on April 15, 2013. He contended he had missed 8 days of work for doctor's visits for the prior injuries, which would impact the average weekly wage. The Single Commissioner adopted Robles' argument and used the four quarters preceding the April 15, 2013 accident. However, on appeal, the Appellate Panel found "There is no evidence in the record that Robles missed any time from work with Party Reflections as a result of his two prior workers' compensation injuries." [FC Order, P. 7, Finding of Fact 8]. Therefore, the correct average weekly wage is based on the four quarters prior to the March 16, 2014 accident, as propounded by Respondents at trial.

the successor company. Their position at trial was unequivocally that the commission "should use the four quarters from 2013 which are enclosed in Claimant's Pre-Hearing brief as well.'" [Brief of Respondents, pages 16-17.]

They took the same position in the brief they filed with the Appellate Panel, arguing in detail why the average weekly wages should be based on the four quarters from 2013, to wit:

> Based upon a preponderance of the evidence, calculating Robles' average weekly wage using the primary calculation method is fair. Robles worked the four quarters preceding the quarter of *this* injury and the fifty-two weeks prior to *this* injury. There is no evidence, or even suggestion, that the employer reduced Robles' pay or scheduled hours as a result of his prior work injuries. There is no evidence Robles missed any work as a result fo the two prior work injuries. There is no evidence Robles missed work and had a loss of income as a result of his two prior work injuries. On the contrary, there are no medical reports indicating Robles was written out of work for either prior work injury, and Robles' own physician indicates "[h]e, however, continued to work . . . ." (Clmt. APA p 50).

[Employers Full Commission Brief, page 5].

As to the new argument, Respondents now argue "In Respondents' Form 20, the method of calculation of the average weekly wage was a 'report of injured employee who did not complete four quarters based on actual time worked.' This position was taken because Appellant had not been employed by Respondent Party Reflections for the four quarters preceding the date of injury." [Brief of Respondents, pages 16-17].

The change in position is not before this Court because it was not before the Single Commissioner at trial. See Robbins v. Walgreens and Broadspire, 652 S.E.2d 90, 375 S.C. 259 (Ct. App. 2007)(argument for additional medical treatment on alternative grounds was not preserved for appeal because alternative ground was not raised at trial level). Had Respondents made the legal argument that Party Reflections was an entirely new employer rather than a successor company, Appellant would have had the opportunity to address the issue with additional legal authority and

evidence at trial. Cf. Dunbar v. Carlson, 341 S.C. 261, 533 S.E.2d 913 (Ct. App. 2000) (amendment of pleadings during trial not allowed where the opposing party may not be conscious of the relevance of the evidence to issues not raised by the pleadings if the relevance is not otherwise made clear). Respondents disregard this practical reality by arguing that "unlike civil matters before a trial judge, workers' compensation matters are form driven." [Brief of Respondents, page 26]. This is a distinction without a difference. While the pleadings in workers' compensation are form-based, the trial and presentation of evidence are virtually identical to a non-jury trial in common pleas. A party cannot look back to a previously filed form to resurrect a position it abandoned on the record at trial.

It is not just Respondents who are barred from raising the issue. It was also error of the Appellate Panel to rule on an issue not properly before it. Only issues raised to the Commission within the application for review of the single commissioner's order are preserved for review. Ham v. Mullins Lumber Co ., 193 S.C. 66, 7 S.E.2d 712 (1952) (holding that all findings of fact and law by the Hearing Commissioner became and are the law of the case, unless within the scope of the appellant's exception to the Full Commission). As the Appellate Panel is acting in an appellate capacity, it had no authority to hold Party Reflections is a wholly separate and different employer because no such question was presented on appeal. See Langley v. Boyter, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct.App.1984), *rev'd on other grounds*, 286 S.C. 85, 332 S.E.2d 100 (1985) ("[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.").

Therefore, the Court should reverse the Appellate Panel and remand for a determination of the average weekly wage based on either the four quarters preceding the March 16, 2014 accident or the four quarters preceding the April 15, 2013 accident.

B. As a mere change in ownership is not an exceptional circumstance allowing for the Commission to depart from the statutory 52-week requirement when the employee is continuously employed in the same employment, this Court has the authority to reverse the Appellate Panel regarding the average weekly wage.

In their brief, "Respondents maintain that because the Commission adopted a method for calculating average weekly wage prescribed by the Act, there is no error of law upon which this Court can reverse the Commission.... Respondents aver that the wage evidence submitted with the Form 20 supports the Commission's findings of fact and conclusions of law." [Brief of Respondents, page 20]. Respondents are incorrect in asserting this is a substantial evidence case. It is well established that when only one reasonable inference can be deduced from the evidence, it becomes a question of law for the appellate courts.[3] See, e.g., Kinsey v. Champion American Service Center, 268 S.C. 177, 232 S.E.2d 720 (1977).

Not only did the Appellate Panel commit legal error by resorting to an alternative method for determining average weekly wage not raised at trial, there are fundamental problems with the Appellate Panel's decision which require reversal by this Court. The error lies in adopting an alternative method to the previous four quarters required by the statute when there was insufficient legal grounds for such a departure.

The Act has a strong preference for using wages from the previous four quarters. The statute states: "'Average weekly wage' must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred as reported on the Department of Employment and Workforce's Employer Contribution Reports divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less." S.C. Code Ann.

[3]The amount of money Robles was paid between January 7, 2011 and March 24, 2014 is not in dispute. No one questions the authenticity of the payroll records.

§ 42-1-40 (2007). This is the preferred method because it is presumed to be "fair and just to both parties." Id.

The Appellate Panel *sua sponte* entirely disregarded Robles earnings with the predecessor employer, holding:

> The average weekly wage is $786.03 resulting in a compensation rate of $524.05. This is based on his actual earnings with Party Reflections. This average weekly wage is a fair reflection of Claimant's earnings and there are no exceptional circumstances upon which to deviate from the calculation methods provided by the statute.

[FC Order, P. 7, Finding of Fact 9].

In reaching this decision, the Appellate Panel seems to have determined that Party Reflections was an entirely new and separate employer such that Robles' earnings before the change in ownership were disregarded as a matter of law. This was error.

The law is well-established that a mere change in ownership does not change the employment relationship. See. Addison v. Dixie Chevrolet Co., 246 S.C. 86, 142 S.E.2d 442 (1965)(change in ownership did not change employment relationship where "During the whole period of his employment, from June, 1956, to the time of his injury in June, 1960, he did substantially the same work, in the same place, and under the same 'boss' . . ."). *Cf.* Mendenall v. Anderson Hardwood Floors, LLC, 401 S.C. 558, 738 S.E.2d 251 (2013)(successor employer retained immunity from suit enjoyed by predecessor company under exclusive remedy doctrine);[4] Crosby v. Prysmian Commc'ns

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[4]In Mendenall, our Supreme Court held "if the plaintiff[s] could not have sued the predecessor in tort if the merger had not occurred, they cannot sue the [successor] in tort." "This rationale is based on the idea that the dual persona doctrine should not be applied to allow 'a merger to increase, rather than preserve, inchoate liability.' " Id. (internal citations omitted) Mendenall is relevant to the instant case because it shows the rights and limitations under the workers' compensation exclusive remedy doctrine continue unabated as to both a predecessor and successor employer.

Cables, 397 S.C. 101, 723 S.E.2d 813 (Ct. App. 2012)(claimant able to bring workers' compensation retaliatory discharge suit against successor company even though she was terminated by predecessor employer).

Had there been some significant change in the employment relationship – truly creating a new job – then perhaps the Appellate Panel could disregard the previous wages. This is not the case. The evidence shows Robles worked continuously for a total of 12 years for Party Reflections and its predecessor company. [Tr. P. 11, lines 11-12; p. 19, lines 19-22]. Adam Vance, the General Manager of the Columbia store and Robles' supervisor, testified he had "been at Party Reflections [for] Five years, five months and three weeks." [Tr. P. 30, lines 1-5]. The employment of both Robles and Vance continued unabated with no changes to the employment or operation other than the name of the company. The employees plainly considered it to *be* the same employment because it *was* the same employment.

Respondents note Robles "testified at his deposition that he was not paid the same by Palmetto Party Rental as he was paid by Party Reflections." [Brief of Respondents, page 23]. Respondents imply that Robles was paid less per hour by the successor company. In fact, Robles testified "I think I got 16.50 with Palmetto Party Rental and [Party Reflections] gave me one more dollar or 75 cents." He also testified his hours were the same. [Dep. Tr. Page 101, lines 1-14]. The only reasonable inference from this testimony and the payroll records is that the time period covered by the payroll from late December 2013 through March 2014 covers the winter months when the party rental business is slowest. Furthermore, the pay period used by the Appellate Panel covers 10 days after the injury and includes 16 holiday hours (presumably Christmas and New Years), plus 40

hours of sick pay and 60 hours of vacation pay paid to Robles *after* his accident on March 16, 2014.[5] It is therefore particularly important for the average weekly wage to be based on a 52-week period. See Pilgrim v. Eaton, 391 S.C. 38, 703 S.E.2d 241 (Ct. App. 2010)(average weekly wage "is designed to be based on a year of data."); Brunson v. Wal-Mart Stores, Inc., 344 S.C. 107, 542 S.E.2d 732 (Ct. App. 2001)(error of law by commission to interpolate wages from seasonal temporary employment over the entire year when evidence showed employee did not intend to work both jobs after the holidays).

Respondents also try to turn the tables on Appellant, by arguing that Appellant has changed his position as to the proper method for calculating the average weekly wage. [Brief of Respondents, page 28]. Appellant has consistently argued that his average weekly wage must be based on a 52-week period. It could be the four quarters prior to the previous work injury occurring on April 15, 2013, or it could be the four quarters prior to the March 14, 2016 injury. Either is proper on appeal because those were the two alternatives presented to the Single Commissioner at trial.

Appellant has not abandoned his previous position regarding the April 15, 2013 wage period. However, he does acknowledge that the rationale for using this period was based on 8 days missed from work due to medical appointments for the April 15, 2013 injury. At oral argument before the Appellate Panel, counsel for Respondent stated he "tried to have my client testify about the time he missed from work, it was objected to by [Respondents' counsel] because the other attorney wasn't there. And she didn't want any issues to be discussed about medical treatment on the prior two injuries." [Appeal TR page 20, lines 18-25]. These objections were made in the pre-trial conference,

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[5]The fact Party Reflections paid 100 hours of sick and vacation time to an employee a mere three months after taking over the company further confirms that all parties considered the employment to have been continuous over the entire 12-year period.

so there is no record of it, nor was a proffer made of the testimony.

In the reply brief to the Appellate Panel, Respondents point out that "the only evidence from the hearing discussing Claimant's decrease in income during the 52 weeks preceding this injury was his own counsel's argument when the parties ' positions were stated on the record. There is no evidence Claimant missed any work, had reduced pay, had reduced hours, or made less income because of the two previous work injuries." [Reply Brief, page 3]. The question then becomes whether the argument for the April 15, 2013 wage period failed for lack of proof. As this appears to be likely,[6] Appellant must acknowledge that the four quarters prior to the March 16, 2014 injury is the correct period to use for determining the average weekly wage.

Therefore, the Court should reverse the Appellate Panel and remand for a determination of the average weekly wage based on either the four quarters preceding the March 16, 2014 accident or the four quarters preceding the April 15, 2013 accident. Given the evidence in the record, the average weekly wage is $1,021.59 with a compensation rate of $681.09 as a matter of law.

2. As Robles had legally established his right to receive temporary compensation prior to April 14, 2014, even if he had been released "to work without restrictions" on that date, temporary compensation would have to be continued because the Employer never "offer[ed] comparable employment" and the Appellate Panel found he was not at MMI.

Respondents argue the evidence of disability in the body of their brief and relegate the legal arguments to a footnote. Although the law controls Robles' right to receive temporary compensation, the evidence also supports his claim. The Appellate Panel made two errors (1) failing to apply § 42-9-260; and (2) making speculative findings unsupported by substantial evidence.

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[6]The Appellate Panel found "There is no evidence in the record that Robles missed any time form work with Party Reflections as a result of his two prior workers' compensation injuries." FC, page 9, Finding of Fact 8].

A. Robles was entitled to temporary compensation as a matter of law because the employer never offered comparable employment and he had not reached MMI.

Robles is entitled to receive temporary total disability compensation beginning on April 7, 2014 and continuing until stopped by agreement of the parties or an order of the Commission (following a finding of MMI or a return to employment). He is entitled to receive temporary compensation because temporary disability benefits are triggered "[w]hen an employee has been out of work due to a reported work-related injury . . . for eight days [.]" S.C. Code Ann. § 42–9–260(A) (2007). Even though Respondents never formally started temporary benefits, they were legally required to do so.

As the legal obligation to pay temporary compensation had accrued, Respondents could not suspend or terminate compensation until certain conditions were met. The Appellate Panel erred because even if the first condition had been met ("released by the treating physician to work without restrictions"), the second condition had not ("employer offers comparable employment"). S.C. Code Ann. § 42–9–260(B)(4)(2007).

Respondents assert they "were under no requirement to provide any comparable employment to accommodate any work restrictions because Appellant had no work restrictions as of April 14, 2014. [Brief of Respondents, page 32, n.2]. Respondents' argument misses the point and misapprehends the statute.

Under the statute, the employer is required to begin paying temporary compensation "[w]hen an employee has been out of work due to a reported work-related injury . . . for eight days [.]" S.C. Code Ann. § 42–9–260(A) (2007). In the instant case, the evidence shows Robles was under work restrictions from March 17th through at least April 14th – a period of 29 days. It is undisputed that

the Employer effectively fired Robles on April 7, 2014, so he was undisputedly out of work for 7 of the necessary 8 days.[7] [Tr. P. 15, lines 14-23]. Robles need only be out one more day.

Respondents' assertion that "Appellant was accommodated by his employer until April 7, 2014' is belied by the evidence. Robles testified his employer provided no work after his injury except for about 3 hours on April 7, 2014. [Tr. P. 15, lines 14-23; p. 19, lines 12-22; p. 28, lines 6-18; p. 39, lines 17-18]. His boss, Adam Vance, testified that between March 17th and April 7th, "I'd say he could have worked five to ten days, maybe. I believe also he was given sick time, vacation time to rest." [Tr. P. 40, line25-P. 41, line 10]. The payroll records show Robles was paid 40 hours of sick pay and 60 hours of vacation pay paid to Robles – presumably *after* his accident on March 16, 2014. [Exhibit]. The testimony and payroll records confirm that Robles missed about 22 work days prior to being terminated.

The Commission's regulations permit an employer to pay salary in lieu of compensation. See 25A S.C Code Ann. Reg. 67-503 (2007)(employer may "pay either temporary total or temporary partial compensation, or salary in lieu of compensation . . . "). The sick and vacation pay paid to Robles is tantamount to salary in lieu of compensation, notwithstanding Respondents did not file a Form 15 (Agreement to Pay Compensation) as required by the regulation. Id.

The flaw in Respondents' argument lies in the contention that they "were under no requirement to provide any comparable employment to accommodate any work restrictions because Appellant had no work restrictions as of April 14, 2014." Once Robles' right to compensation had

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[7]As there is no evidence Robles was terminated for cause or misconduct, he is not barred from receiving temporary compensation by Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E.2d 430 (2013)(holding an employee terminated for cause while his employer is providing work within his restrictions is not entitled to temporary total disability compensation).

accrued – which occurred 8 days into his injury while he was being paid salary in lieu of compensation – Respondents were legally required to continue paying him until one of the conditions in § 42-9-260 were met. Respondents stopped paying Robles on or about March 26, 2014. [Exhibit]. However, as he was still under restrictions and not working, they were required to pay temporary total disability compensation. Their failure to do so violated the law. See Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App. 2006)(requiring strict compliance with statute governing payment and termination of temporary compensation);

The next event when Respondents could have legally suspended temporary compensation was on April 14, 2014, when (arguably) Robles was released to full duty by Doctors Care. The statute provides "Once temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if: . . . the employee has been released by the treating physician to work without restriction and the employer offers comparable employment;" S.C. Code Ann. § 42-9-260(B)(4)(2007).

This code section has nothing to do with offering light duty employment within work restrictions. It comes into play when the previous work restrictions are lifted and the employee is released to work without restriction. The statute allows the employer to offer comparable *full duty* employment. The employee then must either accept the offer of comparable employment. If the employee refuses, the employer can terminate temporary compensation even though the employee is not at MMI.

Here, because Respondents never offered comparable employment, they were legally required to continue paying some form of temporary compensation to Robles. As such, the Appellate Panel should be reversed.

B. Robles was entitled to temporary compensation because the Commission's finding that "Robles was released to full duty on April 14, 2014" is not supported by substantial evidence.

The Commission found as a fact that "Robles was released to full duty on April 14, 2014." [FC Order, page 7, Finding of Fact 7]. The evidence for this finding is a *Return to Work Form* from Doctors Care dated April 7, 2014. The Form provides various restrictions as of April 7, 2014, with the additional notation stating "May perform full duty activities as of 4-14-14." [APA page 48].

The Appellate Panel overlooked two critical parts of the Form. It also states "Return for re-evaluation at this office on 4-14-14 if not better." And it has the hand written notation, "To do home exercise since WC did not approve PT." [APA page 48].

When taken in context with the totality of the evidence, the return to "full duty" on April 14, 2014 is speculation because Robles did not return for reevaluation. The Appellate Panel rejected his assertion that he did not understand the written English. However, his Employer did not pay for the April 7th visit (nor pay for physical therapy) and did not offer to send him back. Robles testified no one told him he would be placed at full duty on April 14th if he did not return to see the doctor, nor did he feel he was able to return to work. [Tr. Page 17, lines 9-21]. The myriad legitimate reasons why he did not return are not the issue – the controlling fact is he did not return for reevaluation.

The only doctor who could speak to his condition is Dr. Westerkam, who saw him 6 weeks later on June 2, 2014. The Appellate Panel never mentions Dr. Westerkam's opinion in their order. Yet, this opinion from Dr. Westerkam is the best – indeed only – evidence of Robles' condition at that time. Appellant requests the Court either reverse the denial of temporary compensation as unsupported by substantial evidence or remand for the Appellate Panel to consider the opinion of Dr. Westerkam.

3. Even if Robles was able to work full duty on April 14, 2014, he should be paid temporary compensation from June 2, 2014 until MMI because he was under work restrictions from Dr. Westerkam.

Even if Robles could work full duty as of April 14, 2014, he was placed on work restrictions from Dr. Westerkam on June 2, 2014. There is no evidence to contradict Dr. Westerkam's opinion; therefore, at a minimum Respondents must pay temporary total disability compensation beginning on June 2, 2014.

Respondents protest that "Appellant did not request authorized treatment and Dr. Westerkam's opinion is form an unauthorized physician, therefore prejudicing Respondents from mitigating benefits due by providing causally related treatment." [Brief of Respondents, page 32]. It is rare for an employer with such a track record of bad faith to have the temerity to suggest it is the injured workers' fault for not asking them to provide treatment.

Respondents refused to pay for physical therapy ordered by Doctors Care on March 24, 2014. [APA page 42]. Respondents refused to pay for the April 7, 2014 Doctors Care visit. [Tr. Page 35, line 1-page36, line 10]. Respondents refused to send Robles back to Doctors Care on April 14, 2014. [Tr. Page 38, line 18-page 39, line 23]. Respondents fired Robles *for no legitimate reason* on April 7, 2014 after letting him work two hours on light duty. [Tr. Page 32, lines 3-6]. And when Robles filed a Form 50 seeking additional medical treatment, Respondents filed a Form 51 denying his claim and asserting "Claimant's injuries did not occur as a result of an accident while working at Party Reflections." [Form 51].

Given this history of obstruction, no reasonable person could believe that Respondents would have provided treatment if only Robles had asked. "The law does not require the doing of a futile act." Shupe v. Settle, 315 S.C. 510, 515, 445 S.E.2d 651, 654 (Ct.App.1994).

Respondents also suggest that Dr. Westerkam's restrictions could apply to the two previous work-related injuries, as the doctor did examine Robles for all three injuries. Once again, a closer look shows this argument to be fallacious. The earlier injuries were to the right wrist and left knee; the current injury is to the back with radiation into the left leg. For the wrist, Robles "still has pain in the wrist, particularly with repetitive use or lifting . . ." For the knee, "squatting or walking long distance aggravates his symptoms. And for the back, "bending, lifting, standing, or sitting for too long aggravates the symptoms." [APA page 50]. Despite these issues, Robles was under no restrictions and worked full duty until the March 16, 2014 back injury.

Dr. Westerkam opined "In terms of work restrictions, I think a maximum lift of 40 pounds, a frequent lift of no greater than 20 pounds, and no repetitive bending, stooping, squatting or crawling." [APA page 51]. Even if some of these restrictions are in part designed to alleviate the symptoms from the earlier injuries, the fact the restrictions followed the back injury and matched the lifting restriction from Doctors Care confirms that the restrictions are related to the March 16, 2014 back injury.

Appellant therefore requests, in the alternative, that the Court hold Robles is entitled to receive temporary compensation from June 2, 2014, until he reaches MMI.

CONCLUSION

For the foregoing reasons, the Decision and Order below should be reversed as controlled by multiple errors of law. The Court should hold (1) the average weekly wage should be based on the actual wages for the four quarters preceding the quarter in which the accident occurred; and (2) Robles is legally entitled to receive temporary compensation from April 7, 2014 and continuing until he reaches MMI. In the alternative, Robles should receive temporary compensation from June 2, 2014 and continuing until he reaches MMI.

Respectfully Submitted,

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Renee Robles, Employee, Claimant, ... Appellant,

v.

Party Reflections, Inc., Employer, and
Employers Assurance Company, Carrier, ... Respondents.

PROOF OF SERVICE

I certify that I, Katherine R. Carter, paralegal for the Samuels Law Firm, LLC, have served the **Appellant's Initial Reply Brief and Designation of Matter** upon counsel for the Respondents by depositing a copy of it in the United States Mail, postage prepaid, on August 24, 2017, addressed as follows:

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August 24, 2017

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

RE: Renee Robles v. Party Reflections, Inc. and Employers Assurance Co.
Appellate Case No.: 2016-002266

Dear Ms. Kitchings:

Please find enclosed the original and one copy of **Initial Reply Brief** and **Designation of Matter** for filing in the above-referenced matter. Please have your staff file the Initial Reply Brief, Designation of Matter and Proof of Service and return a clocked copy in the enclosed self-addressed stamped envelope.

By copy of this letter and enclosure to Ashley Kirkham, Christian Stegmaier, and Kelsey J. Brudvig, we are serving opposing counsel with a copy of our **Initial Reply Brief** and **Designation of Matter** as indicated by the attached Proof of Service.

With kindest regards, I am

Respectfully,

Katherine R. Carter
Litigation Paralegal

/krc
Enclosure(s) as stated

cc: Ashley R. Kirkham, Esq.
Christian Stegmaier, Esq.
Kelsey J. Brudvig, Esq.
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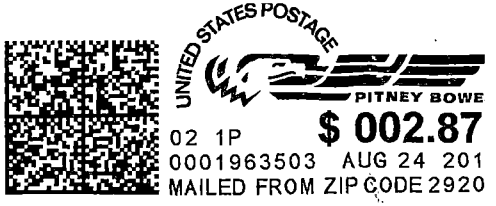

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