RECEIVED
FEB 28 2018
SC Court of Appeals

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1215681

Vickie Rummage, Employee,

Claimant/Appellant,

-v-

BGF Industries, Employer, and Great
American Alliance Insurance Co., Carrier

Defendants/Respondents.

Appellate Panel Review held in Columbia, South Carolina, on September 18, 2017 per notices timely and properly served on all parties of interest.

Appellate Panel Decision and Order filed
2-1, 2018

APPEARANCES:

Claimant/Appellant represented by
Andrew N. Safran of Columbia, SC

Defendants/Respondents represented by
Horton Law Firm, P.A. by
Michael A. Farry of Greenville, SC

STATEMENT OF THE CASE

The parties were heard by Commissioner Susan S. Barden on November 7, 2016 in Hartsville, South Carolina. On March 14, 2017, Commissioner Barden issued the following Order:

FINDINGS OF FACT

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, with BGF Industries, Inc., Employer, and Great American Alliance Insurance Company, Carrier.

2. Claimant injured her head and neck in an admitted accident on May 18, 2012. Claimant alleges that she aggravated her pre-existing psychological condition, a claim I find is not supported by the greater weight of the evidence.

3. Claimant is not remotely credible (if I did not feel strongly after the hearing, reading Claimant's deposition testimony in its entirety only confirmed my impressions). I base this finding on my observations of Claimant, the inconsistencies in the delivery of her testimony, and on her very "selective" memory at the hearing and at her deposition (particularly with regard to her denial/lack of forthrightness of significant, pre-existing conditions for which Claimant received treatment). After observing Claimant at the hearing, reviewing Claimant's prior medical history along with her sworn testimony, and reviewing what Claimant has told post-accident providers, the descriptive words that come to mind are wily and manipulative.

4. Claimant is 56 years of age (Tr., p. 17).

5. Claimant is a high school graduate, and subsequently received her C.N.A. and other certificates/degrees from a technical college where she also took phlebotomy, computer, and home health courses (Tr., p. 18; Claimant's Depo., pp. 9-10).

6. Claimant's employment history includes work as an assembler, an assistant manager at a drycleaners, a manager of a gym, and a school cafeteria cook (Tr., p. 20; Claimant's Depo., pp. 16, 50-51).

7. Claimant's job with Employer was a weaver (Tr., p. 23; Claimant's Depo., p. 16).

8. Prior to the accident, Claimant has documented longstanding, "chronic" pre-existing depression and anxiety disorder for which she took various psychotropic medications over the years, including Prozac, Wellbutrin, Lexapro, Cymbalta, Effexor, Xanax, Ambien for insomnia, and Lorcet (Dr. Fred D. McQueen, APA #13, 9/12/05, p.191; 1/10/06, p. 192; 4/10//06, p. 193; 9/11/06, p.194; 12/8/06, p. 194; 2/16/07, p. 195; 8/9/07, p. 197; 8/17/07, p. 198; 11/27/07, p. 199; 4/21/08, p. 200; 7/22/08, p. 200; 10/21/08, p. 201; 2/13/09, p. 201; 5/15/09, p. 202, 2/13/09; p. 203, 8/17/09, p. 204; 11/17/09, p. 205; 2/12/10, p. 206; 11/22/10, p. 208; 1/25/11, p. 209; 5/9/11, p. 212, 9/30/11, p. 215; 1/13/12, p. 219; 3/13/12, p.224; Ex. 3 to Depo. of Dr. Daniel L. Collins; 5/14/12; APA #12, Dr. James J. Brennan, 7/27/06, p. 187). This was ongoing treatment and not remote, episodic treatment. Claimant also had longstanding pre-existing chronic neck and back pain (primarily neck pain) for which she was treated with Lorcet, Flexeril, and Percocet (4 days before the accident, she received refills for Flexeril, Percocet, Xanax, and Lyrica) (Ex. 3 to Depo. of Dr. Collins, 5/14/12). Notwithstanding Claimant's extensive history, she would not volunteer (or admit) to her pre-existing chronic pain, chronic depression/anxiety, and chronic migraines. Notwithstanding the degree of her pre-existing pain and extensive treatment, Claimant testified under oath that she could not "remember" whether she was treated for neck or back problems, even though the severity of Claimant's neck was such that cervical surgery is mentioned as a possibility in Claimant's family doctor's records pre-dating the accident in issue (Claimant's Depo., p. 36). Claimant suggested in sworn testimony that her psychological treatment was episodic/"in the past" instead of ongoing. She would not admit to taking pain medication, as the only thing she could "remember" was taking blood pressure medication and medication for hypothyroidism; it is noteworthy that she could "remember" these unrelated medications (Claimant's Depo., pp. 37 & 41). Claimant's failure to be forthright greatly damages her credibility. One only needs to read Claimant's prior medical history in its entirety, then to read her deposition testimony in its entirety, and her Facebook pages to judge credibility. Further, at the hearing, Claimant did not redeem herself by her inconsistent presentation, her selective memory, and her denial of pre-existing conditions (dizziness, etc.) (Tr., p. 28), despite the fact that in January 2011, Claimant underwent a CT scan of her head for dizziness and headaches (APA #14, p. 25; Claimant's Depo. in its entirety; APA #13 in its entirety).

9. Claimant's spouse is disabled and does not work. This has caused a hardship, as Claimant was on probation "again" on the date of the injury because of her having to previously miss work because of her husband's condition (Tr., p. 44; Claimant's Depo., pp. 9, 14, & 25).

10. Claimant also has situational stressors regarding her son, including but not limited to his attempted suicide (APA #3, p. 98). Claimant

also has taken care of both her parents through their deaths, as well as continuing to deal with one of her son's health issues, including kidney problems (Tr., pp. 44-45).

11. Contrary to Claimant's testimony at the hearing that her headaches are now "different," Claimant is documented in medical evidence as having pre-existing "chronic migraines" which were and are debilitating and for which Claimant underwent a CT scan of the brain. In addition, Claimant also has (documented) pre-existing sinus and tension headaches (APA #13, pp. 205-206, 209, and 211-212; APA #14, p. 25).

12. **Claimant's testimony that she never had any dizziness prior to the accident** in issue is refuted by Defendants' APA #14, page 225, showing that on January 23, 2011 **Claimant underwent a pre-accident CT of the brain for the specified reasons of dizziness and headaches** (APA #14, p. 225).

13. In 2010, Claimant's physician states that "I don't know how much longer she will be able to continue in the work field because her body at this time is breaking down." He goes on to suggest that Claimant seek Vocational Rehab assistance and sedentary work. The next year Claimant's physician wrote that he does not feel that Claimant should physically be performing the job she was performing (APA #13, pp. 208 & 217).

14. Claimant has **pre-existing sleep difficulties** for which she was prescribed medication for years prior to the date of the accident. Claimant's sleep difficulties are not new, as she would have providers believe (APA #13, 9/12/05 – 9/30/11, pp. 191-193, 197, 199, 201-203, 205, 206, 212, 215).

15. After the accident, Claimant continued to work for 3 months. I give this evidence great weight (Tr., p.50; APA #8, p.135; APA #10, p. 161; Claimant's Depo., pp. 49 & 60).

16. Claimant did not lose consciousness on the date of the accident. I base this finding on APA #10, page 161.

17. On June 1, 2012—2 weeks after the date of the accident—Claimant is documented as having "**no focal neurological deficits**," and that she had no internal head injuries from her fall. Claimant's **recent memory and remote memory are documented as normal**. Of all the post-accident evidence, I give this the greatest weight, and find it is more compelling than any later evidence to the contrary, Claimant's later statements to providers, Claimant's testimony at the hearing that her memory is compromised, or to Claimant's "performance" at the hearing

(APA #8, pp. 134-135; testimony of Claimant; observations of the undersigned).

18. At her visit with Dr. McQueen two weeks after the date of the accident, Claimant was crying about her "home situation with sick spouse;" Claimant's pre-existing "chronic pain syndrome" and her pre-existing "chronic" depression are also referenced. I give this evidence greater weight than I give to Claimant's self-serving statements/testimony to the contrary (APA #8, p. 135).

19. As to opinions from physicians, I also give great weight to the conclusions of Dr. C. Thomas Gualtieri, a psychiatrist, whose impressions of Claimant mirror the undersigned's, and also match the evidence set forth supra. Dr. Gualtieri states in his report: "the patient's evaluation today demonstrates a non-credible clinical presentation, with dramatic inconsistencies. The Patient's overt memory performance, and indeed general appearance, fluency, and lucidity is quite a variance with her claimed symptomatology. There was clear evidence of symptom exaggeration" (APA #20, p. 265). This physician was clearly not fooled or manipulated by Claimant (APA #20, pp. 265-275).

20. Claimant testified that she did not remember seeing Dr. Brennan with Florence Neurosurgery & Spine in July of 2007, complaining of neck pain, low back pain, bilateral hip pain, and numbness and tingling in her hands (Tr., p. 53). Claimant further testified that she did not remember at that time she was taking a number of different medications for pain and depression. When asked about taking Lyrica, Claimant responded, "I cannot remember." When asked if Claimant remembered taking Wellbutrin, Claimant responded, "no sir." When asked if she remembered taking Xanax, Claimant testified, "I can't remember that incident at all." When asked about taking Avandia, Claimant testified that she did not remember that medication. Claimant was asked if she remembered taking the medication Soma and her response was "no sir" (Tr., p. 53). Again when asked about whether she remembered taking Skelaxin, her response was "no sir" (Tr., p. 54). Dr. Fred McQueen states in his report of September 11, 2006, "I do not know how much longer she is going to be able to continue to work, and she works 12 hours a day" (APA #13, p. 194). When Claimant was asked if she remembered Dr. McQueen telling her that, her response was "no sir" (Tr., p. 54). In May of 2009, Dr. McQueen was prescribing Prozac, Lorcet, Xanax, Flexeril, and Ambien, however, Claimant continued to testify that she did not remember those medications (Tr., p. 55). Claimant was asked about a statement in the report from Dr. McQueen dated November 22, 2010, where he wrote "I don't know how much longer she will be able to continue in the work field, because her body is breaking down," and Claimant testified that she did not remember that (Tr., p. 56). In May of 2011, Claimant could not remember

if she was being prescribed Percocet for chronic pain (Tr., p. 56). In February of 2012, three months prior to her accident, Claimant was prescribed Percocet, MS Contin, Morphine Sulfate, and Xanax by Dr. Collins (APA #13, p. 221), however, Claimant could not remember that (Tr., p. 58). Claimant appears to have very selective memory when confronted about the myriad of medications and prior treatment for chronic pain and depression for at least eight years prior to her job injury in May of 2012.

21. Claimant has a long history of pre-existing situational stressors and pre-existing depression as documented by Dr. Fred McQueen on September 12, 2005, "quite a lot of stress; her husband who recently returned from Iraq has had a heart attack and is now undergoing testing to see if there is a blockage" (APA #13, p. 191). On January 10, 2006, Dr. McQueen notes, "her child has just been at Duke for surgery, she has not been sleeping well at all. She has gained 15 pounds recently, partly due to stress" (APA 313, p. 192). On April 10, 2006, Dr. McQueen notes "she has a lot of problems at home with her husband and son so she did not see Dr. Arthur." "She is taking care of her mother." "She has a problem with her husband who is ill and son who is ill" (APA #13, p. 193). On August 9, 2007, Dr. McQueen notes "she has unfortunately lost her job due to the accident [different employer] and she is in a depressed state at this point." "She has difficulty controlling her temper with her family" (APA #13, p. 197). On August 17, 2007, Dr. McQueen notes "it is my professional opinion since February 13, 2007 evaluation that Ms. Rummage was unable to hold gainful employment and continues to remain disabled. Her last evaluation 8/9/07 found her depression and anxiety somewhat worse due to the chronic pain she is having and inability to maintain her lifestyle and activity that she was accustomed to prior to the accident" [different employer] (APA #13, p. 198). On July 22, 2008, Dr. McQueen notes "this is a 48 year old white female with chronic pain and major depression" (APA #13, p. 200). On February 13, 2009, she reports "some days she has trouble getting out of bed and is more tearful than others" (APA #13, p. 201). On May 15, 2009, Dr. McQueen notes "she has been under a lot of stress and I think a lot of it is also related to the fact that she recently lost her mother" (APA #13, p. 202). On August 17, 2009, "she is also on Xanax 1 mg t.i.d. for her nerves" (APA #13, p. 204). On November 17, 2009, "she suffers from longstanding chronic pain secondary to chronic migraines, as well as osteoarthritis." "She also suffers from generalized anxiety disorder" (APA #13, p. 205). On November 22, 2010, "her weight is up remarkably, she went from 152 to 164 for a gain of 12 pounds. This is not like her." "I don't know how much longer she will be able to continue in the work field because her body at this time is breaking down" (APA #13, p. 208). On January 25, 2011, "she has a history of migraines and her migraines have hit her now" (APA #13, p. 209). On December 13, 2011, "patient comes in today and she is having a lot of problems with chronic pain in her back, neck, and shoulders" (APA #13, p. 217). On January 13,

2012, "the patient admits that she has had a breach of her contract with me for pain. She is never to take anyone else's pain medication, but her husband was in Columbia at that time, the VA, and he was sick" (APA #13, p. 219). On May 14, 2012 **(four days prior to her job injury)**, "she is having so much spasm in her neck and shoulder." "She has severe muscle spasm in her cervical spine and she has radiculopathy so I am putting her on Lyrica 75, Flexeril 10, she takes at bedtime, the Lyrica is twice a day" (Depo. of Dr. Daniel Collins, Ex. 3).

22. **Claimant told Dr. Collins (post-accident) that she "has not tried Lyrica or Neurontin at this point." Dr. Collins notes again in a later record that "she had not tried ....Lyrica in the past." In fact, Claimant was prescribed just Lyrica 4 days prior to the date of the accident in issue, and is documented as taking it as early as 2006; Claimant herself wrote on a pre-accident intake sheet that she was taking Lyrica—this greatly damages Claimant's credibility, as it is more evidence that she is simply a stranger to the truth** (APA #13, p. 224; APA #12, p. 187). Because of Claimant's presentation to Dr. Collins, he recommended that Claimant continue speech therapy. In fact, Claimant had no difficulty expressing herself at the hearing except perhaps when confronted with evidence regarding pre-existing conditions she had denied. Claimant told Dr. Hutcheson that she developed insomnia, etc. after the accident, when she in fact was medically documented as an insomniac prior to the accident, and for which she was prescribed medication (longstanding problem for years) and for which a sleep study was recommended. Claimant had to discontinue Ambien at one point because it was too expensive (APA #13, p. 197). Effexor was prescribed for psyche and sleep; Xanax was retained for sleep. Yet, now Claimant attributes her sleep problems to the accident, and wants Defendants to pay for sleep medications (APA #13, pp. 197 and 201-202).

23. Dr. Daniel Collins testified that Claimant did not inform him in any way of similar problems and symptoms involving her neck prior to her May 18, 2012 accident (Depo. Dr. Collins, p. 26). Claimant did not inform Dr. Collins of treatment by Dr. Fred McQueen prior to her May 18, 2012 accident for chronic pain and major depression (Depo. Dr. Collins, p. 33). Dr. Collins testified that Claimant did not tell him that four days prior to her admitted accident on May 18, 2012, Dr. McQueen had prescribed and she was taking Lyrica, Flexeril, Percocet, Xanax, and Nuvigil (Depo. Dr. Collins, p. 30). During the deposition of Dr. Collins, when confronted with the existence of years of prior treatment for chronic pain, anxiety, depression, and trouble sleeping, Dr. Collins stated, "any time the patients aren't up front and tell me the truth or tell me all the truth or tell me just what they want to hear, it is of concern ..." (Depo. Dr. Collins, p. 42). "I have more than concerns about her honesty in the past, and there is always an issue now whether she is being honest with me. She's definitely not been honest in

the past, so I would say a lack of honesty in the past makes me worrisome about a lack of honesty at present" (Depo. Dr. Collins, p. 46).

24. Claimant was sent by her attorney to see Dr. Amanda B. Salas of Palmetto Center of Psychiatry. Contrary to Claimant's pre-existing problems as documented in the APA Submissions referenced above, Dr. Salas set forth in her report that Claimant "presented an honest and forthcoming individual" (APA #2, p. 83). Clamant "reported that her sleep became disrupted after the workers' compensation injury, that her sleep has worsened, and she has not experienced improved sleep despite limited treatment" (APA #2, p. 84). When Claimant saw Dr. Salas, she apparently did not disclose a history of treatment for headaches, including migraines, as well as neck pain (APA #2, p. 84). In fact, Claimant "denied a history of severe depression, treatment for mood or anxiety problems ..." (APA #2, p. 85). Clearly, Claimant was not candid, forthright, and honest with Dr. Amanda Salas. I give Dr. Amanda Salas's report and opinions little weight.

25. Claimant was sent by her attorney to Dr. Tora Brawley, a clinical psychologist. Once again, claimant was not candid and forthright with Dr. Tora Brawley. Claimant did not reveal that she had been treated for prior headaches, including migraines, that she had taken medication for years due to trouble sleeping, and had daily feelings of depression, including crying spells (APA #3, pp. 97-101). It is obvious that Claimant was telling Dr. Tora Brawley only what Claimant wanted her to know and not fully disclosing all of her prior medical history and extensive treatment. I give Dr. Tora Brawley's report and opinions little weight.

26. Claimant was also sent by her attorney to Dr. Donna Schwartz Maddox, a psychiatrist. According to Dr. Maddox's report, Claimant's "chief complaint remains memory impairment," (APA #4, p. 104) an allegation that I do not find believable based upon the lack of Claimant's credibility as set forth hereinabove. I place little weight upon the report and opinions of Dr. Maddox.

27. Claimant was also sent by her attorney to see Dr. J. Kelby Hutcheson of Carolinas Center for Advanced Management of Pain. Dr. Hutcheson's report of September 18, 2013 makes no reference to Claimant's pre-existing chronic pain treatment by Dr. Fred McQueen as set forth hereinabove. In fact, under the past treatment portion of Dr. Hutcheson's report, where it asks "has patient been treated at another pain management center," the response is no (APA #6, p.124). When asked has patient ever had previous psychiatric or psychological treatment, again the response is "no" (APA #6, p. 124). I place little weight on the report and opinions by Dr. J. Kelby Hutcheson.

28. Although Claimant reported that she cries all the time post-accident, (etc.), her Facebook entries show (a) cognitive abilities she denies having, and (b) that she is quite social. At the end of 2014 (two years after the date of the accident), Claimant wrote "**It's been a great year!**" This is antithetical to Claimant's testimony/presentation at the hearing and to providers (APA #24, p. 365). I give greater weight to what Claimant shares with friends than what she portrays to providers and to the Commission. The entries on APA #25, pp. 378 and 380 alone do not suggest the cognitive impairment Claimant would like providers and the Commission to believe. [For someone as depressed/withdrawn as Claimant says she is, she surely does use a lot of exclamation points (!) in all her posts.]

29. If a claimant's statements and purported problems and presentations to providers were dispositive, Commission involvement would be unnecessary. For instance, Claimant told myriad physicians that she has memory problems and that she now drops things and that she never had previous psychological treatment. They believed Claimant just as they believed that she "developed" headaches, dizziness, and insomnia only after the accident (APA #6, pp. 123-124). In fact, Claimant had numbness in her hands (and positive Tinel's and Phalen's signs) as early as 2006 (APA #12, pp. 187-188). In fact, in 2011 (the year before the accident), Claimant reported a deformity of her fingers, such that her family physician pondered whether Claimant had rheumatoid arthritis in her hands (APA #13, page 217).

30. This is a claimant that requests the Commission to find a compensable aggravation, yet will not admit to the extent (or at her deposition, even the existence) of her pre-existing problems, even when a body part is admitted. Claimant would not even admit to the extent of an unrelated, prior workers' compensation claim (Claimant's Depo. in its entirety), particularly with regard to prior conditions and medications: Claimant would not admit to an ongoing or prior neck problem, nor admit that she took ongoing pain medication, etc.(Depo., pp.36, 40, 41, 51, 52).

31. Claimant, in her deposition, would only admit to high blood pressure, a thyroid condition, and sinus infections (Depo., pp.40, 41, 51, 52). She also testified (under oath) at her deposition that her headaches, dizziness, neck problems, and depression "first began" after her work accident—none of this is true (Depo., pp. 53 and 55).

32. Claimant's testimony at the hearing and at her deposition are not imbued with any indicia of trustworthiness.

33. I did not consider the findings of Commissioner Lyndon. However, Claimant's sworn deposition testimony—regarding her prior workers' compensation claim-- is untrue and evasive (Depo., pp 4, 11-12).

34. As to memory, Claimant remembers the time of the accident, the fact that she was getting ready to go to break, that she was trying to clean waste out of the roll, that Ethan helped Claimant up, that Ethan told her she was bleeding, that she told Employer that she would like to stay at work because she was already on probation "again" because of her husband's illness, (which I think is very key in this case—a sick husband with a need to care for him plus all her pre-existing health issues which were escalating), and that she worked until August 2012— three months after the accident, etc. (Depo., pp. 21-27, 49, particularly page 25; Tr., pp. 23, 24, 50).

35. I considered all the "opinions" of physicians who did not (a) observe Claimant's change in demeanor/presentation at the hearing, particularly when being asked about pre-existing conditions, and (b) review the entirety of her deposition testimony, which was just as damning as (if not worse than) her testimony at the hearing.

36. Although the undersigned does not condone prevarication to any degree, the things which Claimant hides or about which she is evasive are salient issues, particularly given the fact that she seeks a finding of an aggravation of a pre-existing condition. Even where admitted body parts/conditions are concerned, Claimant prevaricates. This seriously calls into question Claimant's veracity in general, as well her statements/presentation to providers upon which statements/presentation these experts relied in good faith in formulating opinions and treatment recommendations.

37. I believe that Claimant is using the workers' compensation system for purposes of secondary gain. I decline to require Defendants to subsidize her need to care for family members who rely upon her for support, or because of a host of myriad problems she has unrelated to the accident in issue. Further, Claimant wants Defendants to pay for medications she was already taking (or could not afford) on the date of the accident.

38. Claimant's average weekly wage is $578.23, yielding a compensation rate of $385.51.

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, S.C. Code Ann., it is the determination of this Commissioner:

1. Under § 42-17-160, Claimant sustained an injury by admitted accident to her head and neck on May 18, 2012, arising out of and in the course of her employment.

2. Under § 42-9-35, Claimant has failed to prove an aggravation of her pre-existing psychological condition.

3. Having failed to establish a compensable aggravation of her pre-existing psychological condition, Claimant is not entitled to any workers' compensation benefits for any medical treatment for her psychological condition.

ORDER

IT IS ORDERED that the claim by Vickie Rummage for medical treatment and compensation benefits due to an alleged aggravation of her pre-existing psychological condition is denied.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

Within the statutory period, counsel for Claimant/Appellant filed a Request for Commission Review (Form 30) setting forth fifty-seven grounds for review, copies of which were furnished to all interested parties prior to oral argument that was scheduled before the Appellate Panel of the Full Commission on September 18, 2017. Prior to oral argument, the Commission received Briefs filed by counsel for the respective parties. All proffered testimony has been taken. Such testimony, together with all documentary evidence, has been delivered to individual members of the Appellate Panel of the Commission, along with the Briefs filed, and has since been under study and consideration.

By appeal, the Claimant/Appellant respectfully submitted the following grounds for appeal:

1) Did the hearing commissioner err in admitting the "Decision and Order by Commissioner G. Bryan Lyndon dated March 5, 2008" into evidence when: (a) this document was clearly introduced for the purpose of attacking Ms. Vickie Rummage's credibility; (b) the South Carolina Supreme Court recognized this

form of impeachment cannot be accomplished through introduction of extrinsic evidence (See, Mizell v. Glover, 351 S.C. 392, 370 S.E. 2d 176 (2002)); (c) the March 5, 2008 Decision and Order clearly constitutes extrinsic evidence; and (d) inclusion of this document in the evidentiary record was legally inappropriate?

2) Did the hearing commissioner err in finding the contents of the March 5, 2008 Decision and Order were not "consider[ed] ... " when: (a) this document was clearly introduced into the evidentiary record; (b) this inclusion necessarily led to a review of the contents of this Decision and Order; (c) it cannot be assumed this extrinsic evidence did not impact upon the decision making process in this instance; and (d) this finding cannot remove the tainting effect of this inadmissible evidence?

3) Did the hearing commissioner err in stating Ms. Vickie Rummage's contention as to the causal relationship/ compensability of her current psychiatric symptoms was exclusively founded upon the opinions of her authorized treater, Dr. Daniel L. Collins, when: (a) this statement ignores the fact she submitted evidence from no less than three other qualified expert evaluators verifying this causal connection; (b) she likewise maintained that notwithstanding any prior questions/concerns he may have developed relative to Ms. Rummage's candor or compliance, Dr. Collins, with the passage of time and multiple assessments, determined she was not exhibiting evidence of either symptom magnification or secondary gain; (c) Ms. Rummage also focused on compelling evidence as to the unreliability of Defendants' expert's opinions/conclusions; and (d) this statement simply does not accurately reflect the nature/breadth of Ms. Rummage's contentions?

4) Did the hearing commissioner err in failing to find Ms. Rummage not only acknowledged a long history of pre-injury depression, necessitating use of psychotropic medication, through both her hearing testimony but also interviews with various psychological/psychiatric experts, when the only reasonable inference which may be gleaned from the evidence contained in the hearing record unquestionably verifies this fact?

5) Did the hearing commissioner err in failing to find that, notwithstanding her pre- injury history of depression, Ms. Rummage's treatment prior to sustaining the May 18, 2012 compensable accident did not include/involve specialized

psychological or psychiatric care when the only reasonable inference which may be gleaned from the evidence contained in the hearing record unquestionably verifies this fact?

6) Did the hearing commissioner err in failing to find that several opinions Dr. Daniel L. Collins expressed during the course of his March 14, 2014 deposition, including (but not limited to) his perception of Ms. Rummage's credibility/sincerity and the legitimacy of her symptoms, had favorably changed during his ensuing 2 (+) year course of treatment when the only reasonable inference which may be gleaned from the evidence contained in the hearing record unequivocally establishes this fact?

7) Did the hearing commissioner err in excessively focusing upon the deposition testimony of Ms. Rummage and Dr. Daniel L. Collins, as opposed to her relevant hearing testimony and this authorized treating physician's subsequently generated opinions, when this adjudication process: (a) substantially ignores highly relevant opinions developed by this treating physician subsequent to his deposition; (b) likewise affords no weight to candid acknowledgements of prior testimonial discrepancies; (c) reflects an unreasonable disinclination to recognize either Ms. Rummage's contrition or the multiple medical opinions (rendered with full awareness of her pre-injury history) confirming aggravation of her prior depressive symptoms; and (d) constitutes an arbitrary, capricious and unlawful adjudication procedure?

8) Did the hearing commissioner err in failing to find inspection of the reports generated by Drs. Donna Schwartz Watts-Maddox and Amanda B. Salas not only reflect Ms. Rummage's admission of pre-injury depression, for which she received treatment over an extended period, but also these physicians' review of medical records confirming this pre-injury treatment course, when the only reasonable inference which may be gleaned from the evidence contained in the hearing record unquestionably verifies this fact?

9) Did the hearing commissioner err in failing to find the preponderance of the evidence of record indicates that notwithstanding her pre-injury depression, Ms. Rummage was able to remain employed, perform household chores and engage in essentially all activities of daily living prior to sustaining the May 18, 2012 accident when the only reasonable inference which may be gleaned from the evidence contained in the hearing record certainly establishes this fact?

10) Did the hearing commissioner err in failing to find that, notwithstanding the presence of various stressors, including family illness, death of parents, etc., Ms. Rummage remained sufficiently functional to maintain employment, engaged in household chores and perform essentially all activities of daily living when the only reasonable inference which may be gleaned from the evidence contained in the hearing record unquestionably verifies this fact?

11) Did the hearing commissioner err in failing to find inspection of her hearing testimony reveals Ms. Rummage did not deny receipt of any treatment documented in records generated by Dr. Fred D. McQueen, Jr. when the only reasonable inference which may be gleaned from the evidence contained in the hearing record certainly verifies this fact?

12) Did the hearing commissioner err in finding Ms. Rummage's current psychiatric/psychological symptoms do not proximately result from the aggravation of a preexisting condition by the consequences of her May 18, 2012 compensable accident when this determination is: (a) wholly inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; and (b) the product of not only an arbitrary, capricious and unlawful adjudication process, but also an unusual finesse of reasoning?

13) Did the hearing commissioner err in finding Ms. Rummage "is not remotely credible" when: (a) this determination is substantially the product of a personal, subjective lay assessment ("observations", "delivery of her testimony", "evasiveness" "'selective memory'"); (b) given the statutory requirements relative to the standard of proof governing compensability of psychiatric/psychological conditions (as well as associated treatment needs), this subjective determination constitutes a legally insufficient basis upon which to assess credibility in the context of mental illness and cognitive loss, areas that are reserved to expert opinion; (c) the substantial weight afforded these personal, subjective lay impressions in this instance is reflective of an arbitrary, capricious and unlawful adjudication procedure; and (d) these findings are inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record?

14) Did the hearing commissioner err in finding Ms. Rummage "appears wily and manipulative" when: (a) this statement is

substantially the product of a personal, subjective lay assessment ("observations", "delivery of her testimony", "evasiveness" "'selective memory'"); (b) given the statutory requirements relative to the standard of proof governing compensability of psychiatric/psychological conditions (as well as associated treatment needs), this subjective determination constitutes a legally insufficient basis upon which to assess credibility in the context of mental illness and cognitive loss; (c) the substantial weight afforded these personal, subjective lay impressions in this instance is reflective of an arbitrary, capricious and unlawful adjudication procedure; and (d) these findings are inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record?

15) Did the hearing commissioner err in failing to find both Dr. Donna Schwartz Watts-Maddox and Dr. Amanda B. Salas were clearly aware of Ms. Rummage's "longstanding" preexisting psychological symptoms (as outlined in Finding of Fact Number 8) when the only reasonable inference which may be gleaned from the evidence contained in the hearing record unquestionably establishes this fact?

16) Did the hearing commissioner err in failing to find Ms. Rummage "would not volunteer (or admit) to her preexisting" conditions when the only reasonable inference which may be gleaned from the evidence contained in the hearing record, especially her hearing testimony, unquestionably establishes her repeated acknowledgement of any preexisting conditions outlined in previously generated medical records?

17) Did the hearing commissioner err in finding Ms. Rummage "suggested" in sworn testimony that her psychological treatment was "episodic/'in the past' instead of ongoing" when the only reasonable inference which may be gleaned from the evidence contained in the hearing record, especially her hearing testimony, reflects her acknowledgment of this pre-injury course of treatment?

18) Did the hearing commissioner err in failing to find Ms. Rummage repeatedly clarified any prior discrepancies created by her deposition testimony through candid acknowledgement of the nature/degree of her pre-injury course of treatment when the only reasonable inference which may be gleaned from the evidence contained in the hearing record undoubtedly establishes this fact?

19) Did the hearing commissioner err in finding Ms. Rummage "fail[ed] ... to be forthright" in the delivery of her hearing testimony when this finding is inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record, especially her repeated acknowledgement of extended receipt of treatment through Dr. Fred D. McQueen, Jr.?

20) Did the hearing commissioner err in finding Ms. Rummage "did not redeem herself by her inconsistent presentation, her selective memory, her evasiveness, her outright denial of pre-existing conditions" during the course of the November 7, 2016 hearing when this finding is wholly inconsistent with the only reasonable inference may be gleaned from the evidence contained in the hearing record, particularly her repeated acknowledgement as to the nature/degree of treatment obtained through Dr. Fred D. McQueen, Jr. prior to sustaining the May 18, 2012 compensable accident?

21) Did the hearing commissioner err in finding the medical condition of Ms. Rummage's husband "has caused a hardship" sufficient to independently produce her current level of psychiatric/psychological symptoms when this finding: (a) is inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; (b) is the product of a personal, subjective lay assessment of conditions (mental illness and cognitive loss) which are legally reserved to expert opinion; (c) constitutes an impermissible medical opinion generated by the Commission; and (d) is reflective of an arbitrary, capricious and unlawful adjudication procedure?

22) Did the hearing commissioner err in similarly finding other "situational stressors" (involving her son and parents) independently constituted the source of her current level of psychiatric/psychological symptoms when: (a) is inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; (b) is the product of a personal, subjective lay assessment of conditions (mental illness and cognitive loss) which are legally reserved to expert opinion; (c) constitutes an impermissible medical opinion generated by the Commission; and (d) is reflective of an arbitrary, capricious and unlawful adjudication procedure?

23) Did the hearing commissioner err in finding Ms. Rummage's current headaches were not "different" from those she was experiencing prior to the May 18, 2012 trauma when this finding: (a) is inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; (b) likewise ignores the contrary opinions expressed by Dr. Fred D. McQueen, Jr., who

unquestionably possessed the most reliable knowledge as to the nature of Ms. Rummage's pre-injury and post-injury symptom level; (c) constitutes an impermissible medical opinion generated by the Commission; and (d) is reflective of an arbitrary, capricious and unlawful adjudication procedure?

24) Did the hearing commissioner err in essentially finding Ms. Rummage had deliberately misrepresented the pre-injury presence of "dizziness" when: (a) this finding is premised upon an isolated reference contained on a January 23, 2011 diagnostic test report: (b) inspection of treatment records contemporaneously generated by her long time physician Dr. Fred D. McQueen, Jr., do not identify dizziness as symptom/complaint; (c) Dr. McQueen's records do reflect the presence of migraine headaches, which is also referenced on the January 23, 2011 diagnostic report; (d) the presence of this record is hardly indicative of an attempt to conceal any purported dizziness associated with prior migraines; (e) the nature of this evidence does not justify the emphasis (displayed through the use of bold type) afforded this relatively innocuous reference; and (f) reliance on this isolated finding as justification to either question Ms. Rummage's credibility or deny the causal relationship of her current psychiatric/psychological symptoms to the consequences of her compensable accident is reflective of an arbitrary, capricious and unlawful adjudication procedure?

25) Did the hearing commissioner err in finding Ms. Rummage has attempted to lead "providers ... [to] believe" she did not encounter some degree of sleep difficulties prior to the May 18, 2012 trauma when: (a) Drs. Donna Schwartz Watts - Maddox and Amanda B. Salas were clearly aware of any pre-injury sleep difficulties through review of records generated by Dr. Fred D. McQueen, Jr.; (b) neither of these independent evaluators identified sleep loss as a significant basis for their diagnosis of aggravated preexisting psychiatric/psychological symptoms; (d) the absence of this nexus renders this finding irrelevant to the current dispute; (d) given this lack of relevance, the focus on sleep difficulties is not only unwarranted, but prejudicial; and (e) this finding is reflective of an arbitrary, capricious and unlawful adjudication procedure?

26) Did the hearing commissioner err in finding Ms. Rummage's attempt to continue working following her compensable accident deserves "great weight as to the severity of her condition" when this finding; (a) clearly constitutes the unlawful rendering of a medical opinion by the Commission; (b) conflicts with the applicable standard of proof requiring medical evidence on issues of this nature; (c) seeks to substitute a personal, subjective, speculative lay opinion for the

legally requisite medical evidence; (d) is inconsistent with the only reasonable inference which may be gleaned from the evidence of record; and (e) reflects the use of an arbitrary, capricious and unlawful adjudication procedure?

27) Did the hearing commissioner err in finding a June 1, 2012 report of Dr. Fred D. McQueen, Jr. warranted "the greatest weight ...[o]f all the post-accident evidence" when: (a) Ms. Rummage obviously developed a sufficient level of symptoms to warrant referral to a specialist; (b) the neurologist designated by Defendants subsequently confirmed she exhibited the "typical symptoms of closed-head injury"; (c) after continuing to follow her for the consequences of this injury, Dr. McQueen acknowledged the fact her May 18, 2012 trauma had produced "a concussion"; (d) Dr. McQueen further confirmed a worsening of her pre-injury headache symptoms to a level which warranted neurological evaluation; (e) after reviewing the report of Defendants' designated neurologist, Dr. McQueen concurred with his assessment; (f) this long time primary care physician similarly verified Ms. Rummage's increased headaches were "most probably the product of a post-concussive syndrome", which had also increased her pre-injury cervical and psychological symptoms, to the extent they required further treatment; (g) this finding is consequently wholly inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; (h) the hearing commissioner's determination on this point likewise constitutes a legally impermissible medical opinion; and (i) the nature of this finding, which seeks to ignore Dr. McQueen's recognition of the material consequences of Ms. Rummage's injury is reflective of an arbitrary, capricious and unlawful decision making process?

28) Did the hearing commissioner err in characterizing Ms. Rummage's hearing testimony as a "performance" when this finding: (a) is inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; (b) impermissibly ignores Ms. Rummage's repeated acknowledgements of preexisting medical conditions, treatment, etc. throughout her hearing testimony; (c) constitutes a highly subjective, impermissible medical opinion by the Commission on a subject (mental illness and cognitive loss) that has been legally reserved for qualified experts; and (d) is reflective of an arbitrary, capricious and unlawful adjudication procedure?

29) Did the hearing commissioner err in finding Dr. Fred D. McQueen, Jr.'s June 1, 2012 references to certain preexisting

elements to deserve "great weight" when this finding: (a) constitutes a legally impermissible medical opinion; (b) substitutes personal, subjective lay impressions for the medically technical standard of proof governing the current circumstances; and (c) is reflective of an arbitrary, capricious and unlawful adjudication procedure?

30) Did the hearing commissioner err in finding Dr. C. Thomas Gualtieri's impressions of Ms. Rummage were accurate or worthy of any weight when the only reasonable inference which may be gleaned from the evidence contained in the hearing record establishes: (a) this designated evaluator substantially generated his initial report prior to ever meeting Ms. Rummage; (b) Dr. Gualtieri likewise utilized self-serving testing mechanisms that are not considered acceptable tools in either psychiatric or neuropsychological circles; (c) this physician similarly does not possess the training/expertise to interpret neuropsychological test data; and (d) this finding is inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record?

31) Did the hearing commissioner err in finding Ms. Rummage "appears to have very selective memory" when this finding: (a) constitutes a legally impermissible medical opinion; (b) circumvents the governing standard of proof through reliance on personal, subjective lay impressions, as opposed to the legally mandated medical evidence required in the context of mental illness and cognitive loss; and (c) is reflective of arbitrary, capricious and unlawful adjudication procedure?

32) Did the hearing commissioner err in finding Dr. Daniel L. Collins' December 17, 2012 statement that Ms. Rummage "has not tried Lyrica or Neurontin at this point", as well as his January 11, 2013 notation that "[s]he had not tried Neurontin or Lyrica in the past" constituted "more evidence that she is not credible" when: (a) this finding completely ignores the context of these statements, which relate to her post-May 18, 2012 treatment course; (b) likewise assumes this physician even ask about the **pre-May 18, 2012 usage** of these medications, an inquiry which is certainly not reflected in this physician's records; (c) is inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; and (d) is reflective of an arbitrary, capricious and unlawful adjudication procedure?

33) Did the hearing commissioner err in questioning Ms. Rummage's need for speech therapy, purportedly due to a personal, subjective lay impression that she "had no difficulty expressing herself at the hearing" when this finding: (a) constitutes a legally impermissible medical opinion; (b) incorrectly seeks to create an issue which had never been raised by the respective parties, contrary to any notion of due process; (c) similarly seeks to not only ignore the admitted/acknowledged medical consequences of Ms. Rummage's May 18, 2012 trauma, but also generate additional rationale for challenging her credibility through focus on elements that were not deemed material by either Dr. Donna Schwartz Watts-Maddox or Dr. Amanda B. Salas in determining the causal connection of her current psychiatric/psychological symptoms; and (d) is reflective of an arbitrary, capricious and unlawful adjudication procedure?

34) Did the hearing commissioner err in focusing on certain elements in Dr. Daniel L. Collins' March 13, 2014 deposition testimony, while effectively ignoring this authorized treater's subsequent opinions confirming the absence of "any evidence of malingering, symptom magnification or secondary gain", when: (a) utilization of Dr. Collins' deposition in this fashion does not constitute an accurate representation of Ms. Rummage's authorized treating physician's opinions relative to the nature/degree or legitimacy of her current symptoms; (b) this rather narrow preoccupation with Dr. Collins' March 13, 2014 statements unfairly rejects the positive evolution of this authorized treating physician's impressions of Ms. Rummage; (c) the generation of findings based on Dr. Collins' deposition testimony, as opposed to various opinions which were subsequently developed after numerous evaluations, results an in inaccurate and prejudicial characterization of material evidence; and (d) these findings are reflective of an arbitrary, capricious and unlawful adjudication procedure?

35) Did the hearing commissioner err in finding Dr. Amanda B. Salas was unaware of Ms. Rummage's "pre-existing problems" when this finding: (a) is contrary to the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including Dr. Salas' acknowledged review of records generated by Dr. Fred D. McQueen, Jr.; (b) these records not only reference physical and psychological symptoms, but also sleep disturbance; (c) this finding is reflective of an arbitrary, capricious and unlawful adjudication procedure?

36) Did the hearing commissioner err in basing her finding Ms. Rummage "was not candid, forthright, and honest with Dr. Amanda Salas", to any extent on a purported denial of "a history of severe

depression, treatment for mood anxiety or anxiety problems" contained on page 4 of her report (Claimant's APA Exhibit 2, p. 85) when: (a) even a cursory review of Dr. Salas' entire report reveals references to prior depression, medication use for this mood disorder, the absence of pre-May 18, 2012 treatment by a mental health professional and no history of suicide attempts; (b) the reference contained in Finding of Fact Number 24 of the hearing commissioner's March 14, 2017 order relates to "family members"; (c) given this misconception, the finding Ms. Rummage was not candid/forthright/honest with Dr. Salas is wholly inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; (d) this finding is reflective of an arbitrary, capricious and unlawful adjudication procedure?

37) Did the hearing commissioner err in finding Ms. Rummage "was not candid and forthright with Dr. Tora Brawley" when this finding: (a) ignores the fact Dr. Brawley specifically referenced "a prior history of depression"; (b) similarly overlooks Dr. Brawley's role as neuropsychological evaluator per referral of Dr. Donna Schwartz Watts-Maddox who not only reviewed the extensive pre-May 18, 2012 treatment notes generated by Dr. Fred D. McQueen, Jr., but also referenced the presence of depression, with associated use of psychotropic medication, prior to her accident date; (c) incorrectly/speculatively presumes Ms. Rummage simply "told Dr. Tora Brawley only what Claimant wanted her to know, instead of fully disclosing all of her prior medical history and extensive treatment"; (d) is unsupported by the only reasonable inference which may be gleaned from the evidence contained in the hearing record; and (e) is reflective of an arbitrary, capricious and unlawful adjudication procedure?

38) Did the hearing commissioner err in rejecting Ms. Rummage's contention of causally related memory loss "based upon the lack of Claimant's creditability ... selective memory at the hearing, and temporal records documenting both normal recent and normal remote memory" when this finding: (a) is premised upon a personal, subjective lay assessment of symptoms attributable to complex medical conditions (mental illness and cognitive loss); (b) ignores the governing standard of proof, which requires expert opinion as to all pertinent issues surrounding these medical conditions; (c) constitutes an unlawful medical opinion by the Commission; (d) is inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; and (d) is reflective of an arbitrary, capricious and unlawful adjudication procedure?

39) Did the hearing commissioner err in giving "little weight" to the opinions expressed by Drs. Donna Schwartz Watts-Maddox, Tora Brawley and Amanda B. Salas when: (a) the opinions expressed by these experts are clearly consistent with the pertinent medical evidence of record; (b) the attempts to dismiss and/or minimize the impact of these opinions are the product of an unusual finesse of reasoning and personal, subjective lay misconstruction of the evidence relative to issues (mental illness and cognitive loss) legally reserved for expert opinion; (c) the findings relative to the lack of weight afforded these experts' opinions are not only wholly inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record, but also indicative of a summary rejection stemming from personal, subjective lay assessment of Ms. Rummage's condition in a fashion which is inconsistent with the governing standard of proof; and (d) these finds are reflective of an arbitrary, capricious and unlawful adjudication procedure?

40) Did the hearing commissioner err in failing to find Ms. Rummage's post-May 18, 2012 psychiatric/psychological symptoms most probably result from the aggravation of a preexisting condition by the consequences of her compensable accident when the only reasonable inferences may be gleaned from the evidence contained in the hearing record firmly establishes this fact?

41) Did the hearing commissioner err in failing to find the causally related psychiatric/psychological symptoms identified by Drs. Schwartz Watts-Maddox, Amanda B. Salas, Tora Brawley and Daniel L. Collins require focused treatment that is medically reasonable, necessary and intended to lessen the period of disability produced by the consequences of her May 18, 2012 compensable accident when the only reasonable inferences may be gleaned from the evidence contained in the hearing record firmly establishes this fact?

42) Did the hearing commissioner err in finding the pre-May 18, 2012 treatment Ms. Rummage received from Dr. Fred D. McQueen, Jr., her primary care physician, constituted treatment obtained through a pain management center when the only reasonable inference which may be gleaned from the evidence contained in the hearing record clearly does not support this finding?

43) Did the hearing commissioner err in finding Ms. Rummage's utilization of Facebook reflects either a lack of causally related psychiatric/psychological symptoms or cognitive loss when: (a) conditions of this nature (mental illness and cognitive loss) are medically technical; (b) resolution of issues relating to medically technical issues hinges upon opinions expressed by appropriate medical experts; (c) the hearing commissioner's finding constitutes a legally impermissible medical opinion of the Commission stemming from the personal, subjective impressions of the lay person; (d) this finding is also inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; and (e) it is likewise reflective of an arbitrary, capricious and unlawful adjudication procedure?

44) Did the hearing commissioner err in finding the medical opinions which support Ms. Rummage's contentions as to the causal relationship of her current psychiatric/psychological symptoms and cognitive loss to the consequences of her compensable accident were flawed due to unfamiliarity with her pre-May 18, 2012 medical history when: (a) these supportive opinions were not generated in a vacuum, but rather with awareness of her lengthy treatment history through Dr. Fred D. McQueen, Jr.; after considering her preexisting conditions, Drs. Donna Schwartz Watts-Maddox and Amanda B. Salas each verified not only the causal relationship of these symptoms to the consequences of her May 18, 2012 trauma, but also Ms. Rummage's need for treatment; unlike Defendants' evaluator, these medical experts did not begin the process of generating substantive opinions prior to ever examining Ms. Rummage; and (d) this finding is not only inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record, but also reflective of an arbitrary, capricious and unlawful adjudication procedure?

45) Did the hearing commissioner err in finding Ms. Rummage declined to admit the presence of her preexisting physical and emotional problems when: (a) the only reasonable inference which may be gleaned from the evidence contained in the hearing record, including hearing testimony replete with admissions of this nature, simply does not support this finding; (b) this determination also ignores not only Ms. Rummage's contrition on various points following the deposition, but also extensive medical evidence supporting her contention as to the causal relationship of her current depressive symptoms and cognitive loss; and (c) this

finding is reflective of an arbitrary, capricious and unlawful adjudication procedure?

46) Did the hearing commissioner err in finding Ms. Rummage did not acknowledge the presence of headaches, neck problems and depression prior to May 18, 2012 when this finding: (a) is contrary to the only reasonable inference which may be gleaned from the evidence contained in the hearing record; (b) ignores her repeated acknowledgements as to the presence of these conditions; and (c) is reflective of an arbitrary, capricious and unlawful adjudication procedure?

47) Did the hearing commissioner err in characterizing Ms. Rummage as untrustworthy when this finding: (a) is premised, in large part, on a personal, subjective lay assessment of mental illness and cognitive loss, which are medically technical areas reserved to expert opinion; (b) constitutes a legally impermissible medical opinion; (c) is inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; and (d) is likewise reflective of an arbitrary, capricious and unlawful adjudication procedure?

48) Did the hearing commissioner err in finding several statements referenced in Finding of Fact Number 34 were purportedly inconsistent with Ms. Rummage's current level of memory loss when this finding: (a) is premised, in large part, on a personal, subjective lay assessment of mental illness and cognitive loss, medically technical areas reserved to expert opinion; (b) constitutes a legally impermissible medical opinion; (c) is inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; and (d) is likewise reflective of an arbitrary, capricious and unlawful adjudication procedure?

49) Did the hearing commissioner err in finding Ms. Rummage's "sick husband with a need to care for him plus all her pre-existing health issues which were escalating" were "very key in this case" when this finding: (a) is wholly inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; (b) seeks to create an issue that has never been raised by the respective parties, in violation of due process; (c) is founded upon subjective lay conjecture and surmise; and (d) reflects an arbitrary, capricious and unlawful adjudication procedure?

50) Did the hearing commissioner err in rejecting the various expert opinions supporting Ms. Rummage's contentions as to the causal relationship of her current psychiatric/psychological symptoms and cognitive loss due to her subjective lay impressions of Ms. Rummage's "demeanor/presentation at the hearing" and lack of "review of the entirety of her deposition testimony" when: (a) the record contains no objections as to either the qualifications or foundations of the opinions expressed by these experts; (b) this finding constitutes the *sua sponte* creation of an "issue" which had never been raised by the respective parties, in violation of due process; (c) the hearing commissioner did not identify similar flaws in the opinions expressed by Defendants' designated evaluator (who likewise did not attend the hearing or reference review of the deposition transcript); (d) this finding is not only inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record, but it is also the product of a personal, subjective lay assessment of medically technical conditions (mental illness and cognitive loss) reserved to expert opinion; (e) it constitutes a legally impermissible medical opinion; and (f) this finding is similarly reflective of an arbitrary, capricious and unlawful adjudication procedure?

51) Did the hearing commissioner err in characterizing the nature of Ms. Rummage's testimony as "prevarication" when: (a) this finding presumes equivocation stems from dishonesty, as opposed to mental illness or cognitive loss; (b) it is inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record, particularly Ms. Rummage's repeated acknowledgements of preexisting physical and psychological symptoms through her hearing testimony; (c) this finding, which makes no mention of any expert opinion, stems from the personal, subjective lay assessment of two medically technical conditions, mental illness and cognitive loss; (d) this finding consequently constitutes a legally impermissible medical opinion; and (e) it is likewise reflective of an arbitrary, capricious and unlawful adjudication procedure?

52) Did the hearing commissioner err in finding Ms. Rummage "is using the workers' compensation system for purposes of secondary gain" when: (a) this finding is inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; (b) given the nature of the hearing commissioner's determinations, this finding likewise stems from her personal, subjective lay assessment in the context of

conditions (mental illness and cognitive loss) which are medically technical in nature; and (c) this finding constitutes a legally impermissible medical opinion generated by the Commission; and (d) it is likewise reflective of an arbitrary, capricious and unlawful adjudication procedure?

53)Did the hearing commissioner err in finding Ms. Rummage has sought "to require Defendants to subsidize her need to care for family members who rely upon her for support, or because of a host of myriad and escalating problems unrelated to the accident on issue" when this finding: (a) is wholly inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; (b) the product of an unusual finesse of reasoning, as well as a personal, subjective lay assessment of medically technical conditions involving mental illness and cognitive loss; (c) necessarily constitutes a legally impermissible medical opinion of the Commission; and (d) is likewise reflective of an arbitrary, capricious and unlawful adjudication procedure?

54) Did the hearing commissioner err in failing to conclude Ms. Rummage's receipt of treatment for her aggravated psychiatric/psychological symptoms will tend to lessen her period of disability within the meaning of S.C Code Ann. Section 42-15-60 (2007), when the only reasonable inference which may be gleaned from the evidence contained in the hearing record warrants this conclusion?

55) Did the hearing commissioner err in concluding Ms. Rummage "has failed to prove an aggravation of her pre-existing psychological condition" per the provisions of S.C. Code Ann. Section 42-9-35 (2007) when consideration of the only reasonable inference arising from the evidence of record, in light of the provisions of this statute, establish she has satisfactorily proven her entitlement to rulings: (a) the consequences of her compensable accident have materially aggravated the preexisting psychiatric/psychological condition; and (b) she requires focused treatment of this condition per Section 42-15-60?

56) Did the hearing commissioner err in determining the crux of the parties' current dispute (causal relationship between Ms. Rummage's current psychiatric/ psychological symptoms and the consequences of her compensable accident) based upon a personal, subjective lay assessment of Ms. Rummage's appearance/presentation/demeanor/body language when: (a) the

focal issue involves mental illness and cognitive loss, which are each medically technical subjects; (b) an individual's presentation/appearance/demeanor/body language are unquestionably impacted by mental illness and cognitive loss; (c) the Legislature, as well as our Appellate Courts, have consequently required that determinations as to the source and consequences of these conditions in the current context must be premised upon expert opinion; (d) despite this fact, the hearing commissioner unquestionably determined this medically technical issue based upon personal, subjective lay criteria; (e) while there was reference *to* opinions expressed by Defendants' designated evaluator, these opinions were not followed/relied upon to reach a conclusion, but rather noted to "mirror the undersigned's" personal opinions; (f) this use of expert opinion runs completely counter to the legal standard, which demands that medical evidence guides the fact finder to a determination, rather than using the medical evidence to validate a personal/objective/lay assessment; (g) the fact finding mechanism utilized in this instance clearly began and ended with the formulation of an impermissible medical opinion by the Commission, as opposed to truly analyzing the expert evidence; and (h) this arbitrary, capricious and unlawful adjudication procedure resulted in a determination premised on personal/subjective/lay standards, rather than the requisite medical criteria?

57) Did the hearing commissioner err in determining the crux of the parties' current dispute (causal relationship between Ms. Rummage's current psychiatric/psychological symptoms and the consequences of her compensable accident) based upon a personal, subjective lay assessment of Ms. Rummage's appearance/presentation/demeanor/body language when: (a) the focal issue involves mental illness and cognitive loss, which are each medically technical subjects; (b) an individual's presentation/appearance/demeanor/body language are unquestionably impacted by mental illness and cognitive loss; (c) the Legislature, as well as our Appellate Courts, have consequently required that determinations as to the source and consequences of these conditions in the current context must be premised upon expert opinion; (d) the analysis/decision making process utilized by the hearing commissioner focuses on personal/subjective/lay standards of conduct, which neither comport with the applicable legal criteria nor adequately assess the impact of medically technical conditions (mental illness and cognitive loss) on Ms. Rummage's conduct; (e) this manner of assessment likewise lacks the objectivity which the governing medical standard (identified by both the Legislature and our

Appellate Courts) is designed to promote; (f) this decision making process, which involves the impermissible generation of a medical opinion by the Commission, is unavoidably premised upon personal standards/views/feelings/ideologies, rather than the objective criteria required by the Legislature and our Appellate Courts; and (g) the ultimate determination Ms. Rummage's psychiatric/psychological symptoms are not causally related to the consequences of her compensable accident results from an arbitrary, capricious and unlawful adjudication procedure?

Pursuant to § 42-17-50, S.C. Code Ann., we, the Appellate Panel, have reviewed the award, weighed all the evidence presented, and considered all fifty-seven grounds for appeal, as set forth in Claimant/Appellant's Form 30. Appellant takes exception to the Commission's finding as to Appellant's lack of credibility and refusal to rule in favor of Appellant based upon medical evidence submitted by Appellant. Additionally, Appellant: (a) relying on the decision in Michau v. Georgetown County, 396 S.C. 589, 723 S.E. 2d 805 (2012), contends the provisions of §42-9-35, S.C. Code Ann. not only require medical evidence to prove the aggravation of a preexisting condition, but also to rebut any medical evidence supporting this contention; (b) maintains the record contains no competent evidence which supports the Hearing Commissioner's ruling that she did not meet her burden of proof, as there is no contrary medical evidence that satisfies the requirements of §42-9-35, as Defendants'/Respondents' expert did not offer any opinions to a reasonable degree of medical certainty; (c) argues the Hearing Commissioner's adverse credibility findings alone are insufficient to rebut the multiple medical opinions confirming the aggravation of her preexisting psychological condition by the consequences of her compensable injury; and (d) claims the denial of her request for treatment resulted from an arbitrary decision-making process through which a medical question was determined through the Hearing Commissioner's rendering of an expert opinion. However, while

"medical evidence is entitled to great respect, the Commission is not bound by the opinions of medical experts and may disregard medical evidence in favor of other competent evidence in the record." Burnette v. City of Greenville, 401 S.C. 417, 427-28, 737 S.E. 2nd, 200, 206 (Ct. App. 2012), citing Potter v. Spartanburg School District 7, 395 S.C. 17, 23, 716 S.E. 2nd 123, 126 (Ct. App. 2011). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence" Palmetto Alliance, Inc. v. SC Pub. Serv. Comm'n, 282 S.C. 430, 432, 319 S.E. 2nd 695, 696 (1984). Contrary to the assertion by Appellant that the hearing commissioner's decision "is reflective of an arbitrary, capricious, and unlawful adjudication procedure," the hearing commissioner considered all the evidence presented and based her conclusions on the evidence, including:

- Claimant's long-standing depression and anxiety disorder, which pre-dated her May 2012 accident;
- Claimant's selective memory when it came to her pre-accident symptoms and treatment, including medication she had been prescribed just a few days or months prior to the accident;
- Claimant's long-standing migraines and sinus headaches, which pre-dated her May 2012 accident;
- Claimant's long-standing sleep difficulties, which pre-dated her May 2012 accident;
- The expert opinion of Dr. Gualtieri;
- Claimant's long-standing situational stressors that caused her depression and anxiety for many years prior to the accident;
- Claimant's dishonesty with Dr. Collins in failing to inform him of her extensive pre-existing chronic pain, anxiety, depression, and trouble sleeping, and accompanying medication for treatment; and
- Claimant's selective memory and selective disclosure of prior medical history with a series of doctors that she hired to evaluate her.

Ultimately, this Appellate Panel may make its own Findings of Fact and reach its own Conclusions of Law.

After careful review in the instant case of all fifty-seven grounds for appeal, and after weighing all of the evidence presented, the Appellate Panel of the S.C. Workers Compensation Commission has determined by unanimous vote that all of the Hearing Commissioner's Findings of Fact and Conclusions of Law are correct as stated and are supported by the substantial evidence in the record. The Findings of Fact and Conclusions of Law by the Hearing Commissioner are adopted verbatim by this Appellate Panel. Therefore, based upon the foregoing, the Order of the Hearing Commissioner is affirmed.

ORDER

IT IS THEREFORE ORDERED that the Order by the Hearing Commissioner filed in the above-captioned claim on March 14, 2017 is hereby unanimously affirmed by the Appellate Panel, and the same shall constitute the Decision and Order of this Appellate Panel as follows:

FINDINGS OF FACT

1 The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, with BGF Industries, Inc., Employer, and Great American Alliance Insurance Company, Carrier.

2 Claimant injured her head and neck in an admitted accident on May 18, 2012. Claimant alleges that she aggravated her pre-existing psychological condition, a claim I find is not supported by the greater weight of the evidence.

3. Claimant is not remotely credible (if I did not feel strongly after the hearing, reading Claimant's deposition testimony in its entirety only confirmed my impressions). I base this finding on my observations of Claimant, the inconsistencies in the delivery of

her testimony, and on her very "selective" memory at the hearing and at her deposition (particularly with regard to her denial/lack of forthrightness of significant, pre-existing conditions for which Claimant received treatment). After observing Claimant at the hearing, reviewing Claimant's prior medical history along with her sworn testimony, and reviewing what Claimant has told post-accident providers, the descriptive words that come to mind are wily and manipulative.

4. Claimant is 56 years of age (Tr., p. 17).

5. Claimant is a high school graduate, and subsequently received her C.N.A. and other certificates/degrees from a technical college where she also took phlebotomy, computer, and home health courses (Tr., p. 18; Claimant's Depo., pp. 9-10).

6. Claimant's employment history includes work as an assembler, an assistant manager at a drycleaners, a manager of a gym, and a school cafeteria cook (Tr., p. 20; Claimant's Depo., pp. 16, 50-51).

7. Claimant's job with Employer was a weaver (Tr., p. 23; Claimant's Depo., p. 16).

8. Prior to the accident, Claimant has documented longstanding, "chronic" pre-existing depression and anxiety disorder for which she took various psychotropic medications over the years, including Prozac, Wellbutrin, Lexapro, Cymbalta, Effexor, Xanax, Ambien for insomnia, and Lorcet (Dr. Fred D. McQueen, APA #13, 9/12/05, p.191; 1/10/06, p. 192; 4/10//06, p. 193; 9/11/06, p.194; 12/8/06, p. 194; 2/16/07, p. 195; 8/9/07, p. 197; 8/17/07, p. 198; 11/27/07, p. 199; 4/21/08, p. 200; 7/22/08, p. 200; 10/21/08, p. 201; 2/13/09, p. 201; 5/15/09, p. 202, 2/13/09; p. 203, 8/17/09, p. 204; 11/17/09, p. 205; 2/12/10, p. 206; 11/22/10, p. 208; 1/25/11, p. 209; 5/9/11, p. 212, 9/30/11, p. 215; 1/13/12,

p. 219; 3/13/12, p.224; Ex. 3 to Depo. of Dr. Daniel L. Collins; 5/14/12; APA #12, Dr. James J. Brennan, 7/27/06, p. 187). This was ongoing treatment and not remote, episodic treatment. Claimant also had longstanding pre-existing chronic neck and back pain (primarily neck pain) for which she was treated with Lorcet, Flexeril, and Percocet (4 days before the accident, she received refills for Flexeril, Percocet, Xanax, and Lyrica) (Ex. 3 to Depo. of Dr. Collins, 5/14/12). Notwithstanding Claimant's extensive history, she would not volunteer (or admit) to her pre-existing chronic pain, chronic depression/anxiety, and chronic migraines. Notwithstanding the degree of her pre-existing pain and extensive treatment, Claimant testified under oath that she could not "remember" whether she was treated for neck or back problems, even though the severity of Claimant's neck was such that cervical surgery is mentioned as a possibility in Claimant's family doctor's records pre-dating the accident in issue (Claimant's Depo., p. 36). Claimant suggested in sworn testimony that her psychological treatment was episodic/"in the past" instead of ongoing. She would not admit to taking pain medication, as the only thing she could "remember" was taking blood pressure medication and medication for hypothyroidism; it is noteworthy that she could "remember" these unrelated medications (Claimant's Depo., pp. 37 & 41). Claimant's failure to be forthright greatly damages her credibility. One only needs to read Claimant's prior medical history in its entirety, then to read her deposition testimony in its entirety, and her Facebook pages to judge credibility. Further, at the hearing, Claimant did not redeem herself by her inconsistent presentation, her selective memory, and her denial of pre-existing conditions (dizziness, etc.) (Tr., p. 28), despite the fact that in January 2011, Claimant underwent a

CT scan of her head for dizziness and headaches (APA #14, p. 25; Claimant's Depo. in its entirety; APA #13 in its entirety).

9. Claimant's spouse is disabled and does not work. This has caused a hardship, as Claimant was on probation "again" on the date of the injury because of her having to previously miss work because of her husband's condition (Tr., p. 44; Claimant's Depo., pp, 9, 14, & 25).

10. Claimant also has situational stressors regarding her son, including but not limited to his attempted suicide (APA #3, p. 98). Claimant also has taken care of both her parents through their deaths, as well as continuing to deal with one of her son's health issues, including kidney problems (Tr., pp. 44-45).

11. Contrary to Claimant's testimony at the hearing that her headaches are now "different," Claimant is documented in medical evidence as having pre-existing "chronic migraines" which were and are debilitating and for which Claimant underwent a CT scan of the brain. In addition, Claimant also has (documented) pre-existing sinus and tension headaches (APA #13, pp. 205-206, 209, and 211-212; APA #14, p. 25).

12. **Claimant's testimony that she never had any dizziness prior to the accident** in issue is refuted by Defendants' APA #14, page 225, showing that on January 23, 2011 **Claimant underwent a pre-accident CT of the brain for the specified reasons of dizziness and headaches** (APA #14, p. 225).

13. In 2010, Claimant's physician states that "I don't know how much longer she will be able to continue in the work field because her body at this time is breaking down." He goes on to suggest that Claimant seek Vocational Rehab assistance and sedentary

work. The next year Claimant's physician wrote that he does not feel that Claimant should physically be performing the job she was performing (APA #13, pp. 208 & 217).

14. Claimant has **pre-existing sleep difficulties** for which she was prescribed medication for years prior to the date of the accident. Claimant's sleep difficulties are not new, as she would have providers believe (APA #13, 9/12/05 – 9/30/11, pp. 191-193, 197, 199, 201-203, 205, 206, 212, 215).

15. After the accident, Claimant continued to work for 3 months. I give this evidence great weight (Tr., p.50; APA #8, p.135; APA #10, p. 161; Claimant's Depo., pp. 49 & 60).

16. Claimant did not lose consciousness on the date of the accident. I base this finding on APA #10, page 161.

17. On June 1, 2012—2 weeks after the date of the accident—Claimant is documented as having "**no focal neurological deficits**," and that she had no internal head injuries from her fall. Claimant's **recent memory and remote memory are documented as normal**. Of all the post-accident evidence, I give this the greatest weight, and find it is more compelling than any later evidence to the contrary, Claimant's later statements to providers, Claimant's testimony at the hearing that her memory is compromised, or to Claimant's "performance" at the hearing (APA #8, pp. 134-135; testimony of Claimant; observations of the undersigned).

18. At her visit with Dr. McQueen two weeks after the date of the accident, Claimant was crying about her "home situation with sick spouse;" Claimant's pre-existing "chronic pain syndrome" and her pre-existing "chronic" depression are also referenced. I

give this evidence greater weight than I give to Claimant's self-serving statements/testimony to the contrary (APA #8, p. 135).

19. As to opinions from physicians, I also give great weight to the conclusions of Dr. C. Thomas Gualtieri, a psychiatrist, whose impressions of Claimant mirror the undersigned's, and also match the evidence set forth supra. Dr. Gualtieri states in his report: "the patient's evaluation today demonstrates a non-credible clinical presentation, with dramatic inconsistencies. The Patient's overt memory performance, and indeed general appearance, fluency, and lucidity is quite a variance with her claimed symptomatology. There was clear evidence of symptom exaggeration" (APA #20, p. 265). This physician was clearly not fooled or manipulated by Claimant (APA #20, pp. 265-275).

20. Claimant testified that she did not remember seeing Dr. Brennan with Florence Neurosurgery & Spine in July of 2007, complaining of neck pain, low back pain, bilateral hip pain, and numbness and tingling in her hands (Tr., p. 53). Claimant further testified that she did not remember at that time she was taking a number of different medications for pain and depression. When asked about taking Lyrica, Claimant responded, "I cannot remember." When asked if Claimant remembered taking Wellbutrin, Claimant responded, "no sir." When asked if she remembered taking Xanax, Claimant testified, "I can't remember that incident at all." When asked about taking Avandia, Claimant testified that she did not remember that medication. Claimant was asked if she remembered taking the medication Soma and her response was "no sir" (Tr., p. 53). Again when asked about whether she remembered taking Skelaxin, her response was "no sir" (Tr., p. 54). Dr. Fred McQueen states in his report of September 11, 2006, "I do

not know how much longer she is going to be able to continue to work, and she works 12 hours a day" (APA #13, p. 194). When Claimant was asked if she remembered Dr. McQueen telling her that, her response was "no sir" (Tr., p. 54). In May of 2009, Dr. McQueen was prescribing Prozac, Lorcet, Xanax, Flexeril, and Ambien, however, Claimant continued to testify that she did not remember those medications (Tr., p. 55). Claimant was asked about a statement in the report from Dr. McQueen dated November 22, 2010, where he wrote "I don't know how much longer she will be able to continue in the work field, because her body is breaking down," and Claimant testified that she did not remember that (Tr., p. 56). In May of 2011, Claimant could not remember if she was being prescribed Percocet for chronic pain (Tr., p. 56). In February of 2012, three months prior to her accident, Claimant was prescribed Percocet, MS Contin, Morphine Sulfate, and Xanax by Dr. Collins (APA #13, p. 221), however, Claimant could not remember that (Tr., p. 58). Claimant appears to have very selective memory when confronted about the myriad of medications and prior treatment for chronic pain and depression for at least eight years prior to her job injury in May of 2012.

21. Claimant has a long history of pre-existing situational stressors and pre-existing depression as documented by Dr. Fred McQueen on September 12, 2005, "quite a lot of stress; her husband who recently returned from Iraq has had a heart attack and is now undergoing testing to see if there is a blockage" (APA #13, p. 191). On January 10, 2006, Dr. McQueen notes, "her child has just been at Duke for surgery, she has not been sleeping well at all. She has gained 15 pounds recently, partly due to stress" (APA 313, p. 192). On April 10, 2006, Dr. McQueen notes "she has a lot of problems at home with her husband and son so she did not see Dr. Arthur." "She is taking care of her

mother." "She has a problem with her husband who is ill and son who is ill" (APA #13, p. 193). On August 9, 2007, Dr. McQueen notes "she has unfortunately lost her job due to the accident [different employer] and she is in a depressed state at this point." "She has difficulty controlling her temper with her family" (APA #13, p. 197). On August 17, 2007, Dr. McQueen notes "it is my professional opinion since February 13, 2007 evaluation that Ms. Rummage was unable to hold gainful employment and continues to remain disabled. Her last evaluation 8/9/07 found her depression and anxiety somewhat worse due to the chronic pain she is having and inability to maintain her lifestyle and activity that she was accustomed to prior to the accident" [different employer] (APA #13, p. 198). On July 22, 2008, Dr. McQueen notes "this is a 48 year old white female with chronic pain and major depression" (APA #13, p. 200). On February 13, 2009, she reports "some days she has trouble getting out of bed and is more tearful than others" (APA #13, p. 201). On May 15, 2009, Dr. McQueen notes "she has been under a lot of stress and I think a lot of it is also related to the fact that she recently lost her mother" (APA #13, p. 202). On August 17, 2009, "she is also on Xanax 1 mg t.i.d. for her nerves" (APA #13, p. 204). On November 17, 2009, "she suffers from longstanding chronic pain secondary to chronic migraines, as well as osteoarthritis." "She also suffers from generalized anxiety disorder" (APA #13, p. 205). On November 22, 2010, "her weight is up remarkably, she went from 152 to 164 for a gain of 12 pounds. This is not like her." "I don't know how much longer she will be able to continue in the work field because her body at this time is breaking down" (APA #13, p. 208). On January 25, 2011, "she has a history of migraines and her migraines have hit her now" (APA #13, p. 209). On December 13, 2011, "patient comes in today and she is having a lot of problems with chronic pain in her back, neck, and shoulders"

(APA #13, p. 217). On January 13, 2012, "the patient admits that she has had a breach of her contract with me for pain. She is never to take anyone else's pain medication, but her husband was in Columbia at that time, the VA, and he was sick" (APA #13, p. 219). On May 14, 2012 **(four days prior to her job injury)**, "she is having so much spasm in her neck and shoulder." "She has severe muscle spasm in her cervical spine and she has radiculopathy so I am putting her on Lyrica 75, Flexeril 10, she takes at bedtime, the Lyrica is twice a day" (Depo. of Dr. Daniel Collins, Ex. 3).

22. **Claimant told Dr. Collins (post-accident) that she "has not tried Lyrica or Neurontin at this point." Dr. Collins notes again in a later record that "she had not tried ....Lyrica in the past." <u>In fact, Claimant was prescribed just Lyrica 4 days prior to the date of the accident in issue, and is documented as taking it as early as 2006; Claimant herself wrote on a pre-accident intake sheet that she was taking Lyrica—this greatly damages Claimant's credibility, as it is more evidence that she is simply a stranger to the truth</u>** (APA #13, p. 224; APA #12, p. 187). Because of Claimant's presentation to Dr. Collins, he recommended that Claimant continue speech therapy. In fact, Claimant had no difficulty expressing herself at the hearing except perhaps when confronted with evidence regarding pre-existing conditions she had denied. Claimant told Dr. Hutcheson that she developed insomnia, etc. after the accident, when she in fact was medically documented as an insomniac prior to the accident, and for which she was prescribed medication (longstanding problem for years) and for which a sleep study was recommended. <u>Claimant had to discontinue Ambien at one point because it was too expensive</u> (APA #13, p. 197). Effexor was prescribed for psyche and sleep; Xanax was retained for sleep. Yet, now Claimant attributes her sleep problems to

the accident, and wants Defendants to pay for sleep medications (APA #13, pp. 197 and 201-202).

23. Dr. Daniel Collins testified that Claimant did not inform him in any way of similar problems and symptoms involving her neck prior to her May 18, 2012 accident (Depo. Dr. Collins, p. 26). Claimant did not inform Dr. Collins of treatment by Dr. Fred McQueen prior to her May 18, 2012 accident for chronic pain and major depression (Depo. Dr. Collins, p. 33). Dr. Collins testified that Claimant did not tell him that four days prior to her admitted accident on May 18, 2012, Dr. McQueen had prescribed and she was taking Lyrica, Flexeril, Percocet, Xanax, and Nuvigil (Depo. Dr. Collins, p. 30). During the deposition of Dr. Collins, when confronted with the existence of years of prior treatment for chronic pain, anxiety, depression, and trouble sleeping, Dr. Collins stated, "any time the patients aren't up front and tell me the truth or tell me all the truth or tell me just what they want to hear, it is of concern ..." (Depo. Dr. Collins, p. 42). "I have more than concerns about her honesty in the past, and there is always an issue now whether she is being honest with me. She's definitely not been honest in the past, so I would say a lack of honesty in the past makes me worrisome about a lack of honesty at present" (Depo. Dr. Collins, p. 46).

24. Claimant was sent by her attorney to see Dr. Amanda B. Salas of Palmetto Center of Psychiatry. Contrary to Claimant's pre-existing problems as documented in the APA Submissions referenced above, Dr. Salas set forth in her report that Claimant "presented an honest and forthcoming individual" (APA #2, p. 83). Clamant "reported that her sleep became disrupted after the workers' compensation injury, that her sleep has worsened, and she has not experienced improved sleep despite limited treatment" (APA

#2, p. 84). When Claimant saw Dr. Salas, she apparently did not disclose a history of treatment for headaches, including migraines, as well as neck pain (APA #2, p. 84). In fact, Claimant "denied a history of severe depression, treatment for mood or anxiety problems ..." (APA #2, p. 85). Clearly, Claimant was not candid, forthright, and honest with Dr. Amanda Salas. I give Dr. Amanda Salas's report and opinions little weight.

25. Claimant was sent by her attorney to Dr. Tora Brawley, a clinical psychologist. Once again, claimant was not candid and forthright with Dr. Tora Brawley. Claimant did not reveal that she had been treated for prior headaches, including migraines, that she had taken medication for years due to trouble sleeping, and had daily feelings of depression, including crying spells (APA #3, pp. 97-101). It is obvious that Claimant was telling Dr. Tora Brawley only what Claimant wanted her to know and not fully disclosing all of her prior medical history and extensive treatment. I give Dr. Tora Brawley's report and opinions little weight.

26. Claimant was also sent by her attorney to Dr. Donna Schwartz Maddox, a psychiatrist. According to Dr. Maddox's report, Claimant's "chief complaint remains memory impairment," (APA #4, p. 104) an allegation that I do not find believable based upon the lack of Claimant's credibility as set forth hereinabove. I place little weight upon the report and opinions of Dr. Maddox.

27. Claimant was also sent by her attorney to see Dr. J. Kelby Hutcheson of Carolinas Center for Advanced Management of Pain. Dr. Hutcheson's report of September 18, 2013 makes no reference to Claimant's pre-existing chronic pain treatment by Dr. Fred McQueen as set forth hereinabove. In fact, under the past treatment portion of Dr. Hutcheson's report, where it asks "has patient been treated at

another pain management center," the response is no (APA #6, p. 124). When asked has patient ever had previous psychiatric or psychological treatment, again the response is "no" (APA #6, p. 124). I place little weight on the report and opinions by Dr. J. Kelby Hutcheson.

28. Although Claimant reported that she cries all the time post-accident, (etc.), her Facebook entries show (a) cognitive abilities she denies having, and (b) that she is quite social. At the end of 2014 (two years after the date of the accident), Claimant wrote "**It's been a great year!**" This is antithetical to Claimant's testimony/presentation at the hearing and to providers (APA #24, p. 365). I give greater weight to what Claimant shares with friends than what she portrays to providers and to the Commission. The entries on APA #25, pp. 378 and 380 alone do not suggest the cognitive impairment Claimant would like providers and the Commission to believe. [For someone as depressed/withdrawn as Claimant says she is, she surely does use a lot of exclamation points (!) in all her posts.]

29. If a claimant's statements and purported problems and presentations to providers were dispositive, Commission involvement would be unnecessary. For instance, Claimant told myriad physicians that she has memory problems and that she now drops things and that she never had previous psychological treatment. They believed Claimant just as they believed that she "developed" headaches, dizziness, and insomnia only <u>after</u> the accident (APA #6, pp. 123-124). In fact, Claimant had numbness in her hands (and positive Tinel's and Phalen's signs) as early as 2006 (APA #12, pp. 187-188). In fact, in 2011 (the year before the accident), Claimant reported a deformity of her fingers, such that her family physician pondered whether Claimant had rheumatoid arthritis in her hands (APA #13, page 217).

30. This is a claimant that requests the Commission to find a compensable aggravation, yet will not admit to the extent (or at her deposition, even the existence) of her pre-existing problems, even when a body part is admitted. Claimant would not even admit to the extent of an unrelated, prior workers' compensation claim (Claimant's Depo. in its entirety), particularly with regard to prior conditions and medications: Claimant would not admit to an ongoing or prior neck problem, nor admit that she took ongoing pain medication, etc.(Depo., pp.36, 40, 41, 51, 52).

31. Claimant, in her deposition, would only admit to high blood pressure, a thyroid condition, and sinus infections (Depo., pp.40, 41, 51, 52). She also testified (under oath) at her deposition that her headaches, dizziness, neck problems, and depression "first began" after her work accident—none of this is true (Depo., pp. 53 and 55).

32. Claimant's testimony at the hearing and at her deposition are not imbued with any indicia of trustworthiness.

33. I did not consider the findings of Commissioner Lyndon. However, Claimant's sworn deposition testimony—regarding her prior workers' compensation claim-- is untrue and evasive (Depo., pp 4, 11-12).

34. As to memory, Claimant remembers the time of the accident, the fact that she was getting ready to go to break, that she was trying to clean waste out of the roll, that Ethan helped Claimant up, that Ethan told her she was bleeding, that she told Employer that she would like to stay at work because she was already on probation "again" because of her husband's illness, (which I think is very key in this case—a sick husband with a need to care for him plus all her pre-existing health issues which were

escalating), and that she worked until August 2012— three months after the accident, etc. (Depo., pp. 21-27, 49, particularly page 25; Tr., pp. 23, 24, 50).

35. I considered all the "opinions" of physicians who did not (a) observe Claimant's change in demeanor/presentation at the hearing, particularly when being asked about pre-existing conditions, and (b) review the entirety of her deposition testimony, which was just as damning as (if not worse than) her testimony at the hearing.

36. Although the undersigned does not condone prevarication to any degree, the things which Claimant hides or about which she is evasive are salient issues, particularly given the fact that she seeks a finding of an aggravation of a pre-existing condition. Even where admitted body parts/conditions are concerned, Claimant prevaricates. This seriously calls into question Claimant's veracity in general, as well her statements/presentation to providers upon which statements/presentation these experts relied in good faith in formulating opinions and treatment recommendations.

37. I believe that Claimant is using the workers' compensation system for purposes of secondary gain. I decline to require Defendants to subsidize her need to care for family members who rely upon her for support, or because of a host of myriad problems she has unrelated to the accident in issue. Further, Claimant wants Defendants to pay for medications she was already taking (or could not afford) on the date of the accident.

38. Claimant's average weekly wage is $578.23, yielding a compensation rate of $385.51.

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, S.C. Code Ann., it is the determination of this Commissioner:

1. Under § 42-17-160, Claimant sustained an injury by admitted accident to her head and neck on May 18, 2012, arising out of and in the course of her employment.

2 Under § 42-9-35, Claimant has failed to prove an aggravation of her pre-existing psychological condition.

3. Having failed to establish a compensable aggravation of her pre-existing psychological condition, Claimant is not entitled to any workers' compensation benefits for any medical treatment for her psychological condition.

ORDER

IT IS ORDERED that the claim by Vickie Rummage for medical treatment and compensation benefits due to an alleged aggravation of her pre-existing psychological condition is denied.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

FULL AFFIRMATION

Gene McCaskill, Commissioner

CONCUR

Avery B. Wilkerson, Jr., Commissioner

R. Michael Campbell, II, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Valerie Deller on February 1, 2018