

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal From The South Carolina
Workers' Compensation Commission

Honorable Melody James, Commissioner
Honorable Gene McCaskill, Commissioner
Honorable Aisha Taylor, Commissioner

WCC File No. 9832206

Appellate Case No. 2017-001804

Stella Mae Richardson,

Appellant,

v.

Yuasa Exide, Inc., Employer, and Great American Insurance Company of
NY, Carrier,

Defendants,

Of which Yuasa Exide, Inc., Employer, is

Respondent.

FINAL BRIEF OF RESPONDENT

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Robert P. Gruber (SC Bar No. 15581)
Catherine H. Chase (SC Bar No. 74593)
25 Calhoun Street, Suite 400 (29401)
P.O. Box 993
Charleston, South Carolina 29402
(843) 720-5488
sbrown@ycrlaw.com
rgruber@ycrlaw.com
cchase@ycrlaw.com
Attorneys for Yuasa Exide, Inc.

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STATEMENT OF THE ISSUES ON APPEAL

- I. DOES THE COURT OF APPEALS HAVE JURISDICTION OVER THE CLAIMANT'S APPEAL?
- II. DID THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION CORRECTLY CONCLUDE THAT THE CLINCHER AGREEMENT WAS A FULL AND FINAL SETTLEMENT OF ALL OF THE CLAIMANT'S CLAIMS AGAINST THE EMPLOYER?

INTRODUCTION

This is an appeal in which the Claimant admitted that she settled her workers' compensation claim against the Employer. Subsequently, she argued that she was improperly represented by her former attorney and sought to reverse the settlement agreement. The Commission properly concluded that she failed to meet her burden to reopen her claim.

STATEMENT OF THE CASE

The Claimant/Appellant Stella Mae Richardson ("Claimant") filed a Form 50 Employee's Notice of Claim and/or Request for Hearing on November 16, 2010 with the South Carolina Workers' Compensation Commission ("Commission") alleging that she sustained a compensable injury by accident to her brain, kidneys, liver, musculoskeletal system, cognitive system, pulmonary system, and neuropathic system on or about August 5, 1998. (Am. R. p. 49.) Malcolm M. Crosland, Esquire, of the Steinberg Law Firm, filed the November 16, 2010 Form 50 on the Claimant's behalf and did not request a hearing. On December 12, 2013, the Claimant filed a *pro se* Form 50 alleging a compensable injury by accident to her brain, heart defect, joint problems, and hypertension. (Am. R. p. 50.) In both Form 50s, the Claimant alleged that she was totally disabled. (Am. R. p. 49; Am. R. p. 50.)

On February 25, 2014, the Claimant and her former employer, Yuasa Exide, Inc. ("Employer"), attended a hearing before Commissioner T. Scott Beck in which the Claimant acknowledged that she last worked for the Employer in October 1997. (Am. R. pp. 1, 3.) The

Commission found that the hearing should be postponed until the carrier for this time period had an opportunity to complete discovery and to obtain the Commission's file. (Am. R. p. 5.) At some time after this hearing, the Claimant retained Charles T. Brooks, III, Esquire, as her counsel. (Supp. R. p. 70, lines 8-16.)

On October 31, 2014, the parties attended mediation before mediator H. Mills Gallivan, Esquire. The Claimant was represented by Mr. Brooks. The Employer was represented by Robert P. Gruber, Esquire. (See, e.g., Supp. R. p. 76, line 7 – p. 79, line 7.) At the conclusion of the mediation, the parties agreed to settle the case on a clincher for \$20,000.00. (Supp. R. p. 82, line 9 – p. 83, line 12; Am. R. p. 111.) The Claimant, the Claimant's counsel Mr. Brooks, and the Employer's counsel Mr. Gruber executed a written memorandum, which stated "[t]he parties in the above matter agree and consent that this matter is fully and finally settled on a doubtful and disputed loss for the sum of Twenty Thousand and no/100 (\$20,000.00). A formal clincher agreement which sets forth the complete terms of this settlement is forthcoming." (Am. R. p. 111.) On November 3, 2014, Mr. Gallivan submitted a Form 70 Mediator Report indicating the case was settled on a clincher. (Am. R. p. 60.)

The parties submitted a Petition for Approval of Compromise Settlement Agreement ("Petition") which set forth the full terms of the settlement, and the Order Approving Settlement Agreement was approved by the Commission on December 10, 2014. (Am. R. pp. 61-65; Am. R. pp. 14-22.) The Petition was executed by the Claimant, the Claimant's counsel Mr. Brooks, and the Employer's counsel Mr. Gruber. (Am. R. pp. 64-65.)

On June 3, 2015, the Commission granted the Motion to be Relieved of Counsel: Charles T. Brooks, III. (Am. R. pp. 7-8.) On June 12, 2015, the Claimant filed a *pro se* Form 50 alleging invasive ductal carcinoma/breast cancer as a result of her exposure at the Employer's jobsite.

(Am. R. p. 51.) As in her prior Form 50s, the Claimant alleged that she was totally disabled.

(Am. R. p. 51.)

On June 19, 2015, the Employer filed a Form 51 Employer's Answer to Request for Hearing denying all allegations and asserted that the "claim was fully and finally settled on a clincher agreement dated 12/10/2014 in which the claimant accepted \$20,000.00 for release of any and all claims against the employer and carrier," among other defenses. (Am. R. p. 124.)

On August 10, 2015, Commissioner R. Michael Campbell, III ("Single Commissioner") held a hearing pursuant to the 2015 Form 50. (Am. R. p. 9.) The Claimant represented herself, and Mr. Gruber represented the Employer. (Am. R. p. 9.) Prior to the hearing, the Employer submitted a Form 58 Pre-Hearing Brief along with APA submissions including the Order Approving Settlement Agreement. (Am. R. pp. 66-67; Am. R. pp. 14-22.) After an extensive pre-hearing conference, the Single Commissioner denied the Claimant's request for further benefits, dismissed her request for a hearing, and found that no further benefits were owed for this matter. (Am. R. pp. 10-13.)

On December 21, 2015, the Claimant timely filed a Form 30 Request for Commission Review of the Single Commissioner's Decision and Order and raised the following questions: (1) Was the Claimant mentally competent to enter into an agreement to clinch the claim? and (2) Did the Claimant receive adequate assistance of legal counsel? (Am. R. p. 81.) On February 1, 2016, the Claimant submitted a Form 59 Appellant's Informal Brief. (Am. R. p. 131.) On February 16, 2016, the Claimant submitted a motion to admit newly discovered evidence from Dr. Gray; the motion was denied on March 21, 2016. (Am. R. pp. 68-83; Am. R. p. 23.) On February 25, 2016, the Employer submitted a Respondent's Brief to the Commission's Appellate Panel ("Appellate Panel"). (Supp. R. pp. 130-136.)

Following a hearing on April 18, 2016, the Appellate Panel ordered the case be remanded to the Single Commissioner to open the record, take testimony, and make findings of fact and conclusions of law consistent with the evidence submitted. (Am. R. pp. 24-29.) Prior to the second Single Commissioner hearing, the Employer resubmitted its Form 58. (Am. R. pp. 84-85.)

On August 17, 2016, a hearing was held before the Single Commissioner. (Am. R. pp. 156-157.) The Single Commissioner did not take testimony at that time as the Claimant raised an issue about whether she signed certain documents while presenting her position. (Am. R. p. 207, line 9 – p. 216, line 12.) The Single Commissioner ordered the hearing to be postponed so that additional discovery could be taken. (Am. R. p. 215, line 17 – p. 216, line 3.)

On October 3, 2016, the Claimant's former attorney, Mr. Brooks, was deposed. (Supp. R. pp. 63-129; Am. R. pp. 111, 134-135; Supp. R. pp. 137-138.) His entire deposition transcript along with the deposition exhibits were submitted to the Commission as a part of the Employer's November 4, 2016 Form 58 Amended Pre-Hearing Brief and Amended Notice of Witnesses and Written Reports(s)/Physician or Other Evidence to be Introduced on behalf of Defendants. (Am. R. pp. 86-87; Am. R. pp. 88-89; Supp. R. p. 20, line 1 – p. 24, line 8.)

On November 10, 2016, the Single Commissioner reconvened the hearing, heard arguments, and accepted sworn testimony. (Supp. R. pp. 18-62.) The Claimant argued that she felt the clincher agreement should be reversed because she asserted that she was poorly represented by Mr. Brooks. (Supp. R. p. 36, line 20 – p. 37, line 25.) The Single Commission explained that he was not making any determination on the medical evidence, but the hearing was being held "strictly on whether the claim could be reopened and whether there was – per the

Full Commission's Order and the determination of competency." (Supp. R. p. 44, line 23 – p. 45, line 3.)

Under oath, the Claimant admitted that she attended the October 31, 2014 mediation with her counsel, Mr. Brooks, and signed the handwritten agreement to settle the claim. (Supp. R. p. 52, line 7-21.) She further testified that the clincher agreement should be voided as she never saw the Order Approving Settlement Agreement. (Supp. R. p. 52, line 22 – p. 53, line 5.) The Claimant testified that the signature on the Petition "don't look like my signature," and that Mr. Brooks signed the document on her behalf because of the Special Power of Attorney to Endorse and Deposit Settlement Check ("Special Power of Attorney"). (Supp. R. p. 53, line 11 – p. 54, line 4; Am. R. pp. 134-135.)

In the Claimant's July 19, 2015 deposition, she admitted that she settled the case for \$20,000.00 and signed documents which her attorney provided. (Am. R. pp. 53-55; Am. R. p. 56, line 10 – p. 59, line 3.) She admitted that she signed these documents with her attorney's advice even though she suspected she may have additional medical issues. (Am. R. pp. 53-55; Am. R. p. 56, line 10 – p. 59, line 3.) At the November 10, 2016 hearing, the Claimant refused to directly answer whether she signed the Petition or Special Power of Attorney. (Supp. R. p. 44, line 23 – p. 57, line 18.) The Employer referenced the Single Commissioner to the deposition of Mr. Brooks and the deposition of the Claimant, which were in the Commission's record. (Supp. R. p. 44, line 23 – p. 57, line 18.)

On January 25, 2017, the Single Commissioner filed an order denying the Claimant's request for further benefits and finding that no further benefits were owed for this matter. (Supp. R. pp. 1-17.) The Single Commissioner found the Claimant's testimony that she did not sign the clincher agreement unpersuasive and found that she possessed the mental capacity to enter into

the October 31, 2014 clincher agreement. (Supp. R. pp. 13-15.) The Single Commissioner also found that Mr. Brooks provided appropriate and adequate assistance to the Claimant. (Supp. R. pp. 15-16.)

On February 1, 2017, the Claimant timely submitted a Form 30 Request for Commission Review. (Am. R. p. 90.) The Claimant submitted a Form 59 Informal Brief, and the Employer submitted a Respondent's Brief. (Am. R. p. 91; Am. R. pp. 92-110.) After reviewing the APA submissions, hearing testimony presented to the Single Commissioner, and the Commission's file, the Appellate Panel affirmed all findings of fact and conclusions of law in the January 25, 2017 Single Commissioner Order. (Am. R. p. 46.) The Appellate Panel by unanimous vote affirmed the January 25, 2017 Single Commissioner Order in its entirety. (Am. R. p. 30-48.)

On August 30, 2017, the Claimant served and filed her notice of appeal to the Court of Appeals. This appeal follows.

STATEMENT OF FACTS

The facts of this appeal are best set forth by the Single Commissioner in his findings of fact, which were affirmed in full by the Appellate Panel. (Am. R. p. 46.) The Commission found as follows:

1. The South Carolina Workers' Compensation Commission has jurisdiction over this matter and the parties to the extent necessary to determine whether or not the case may be re-opened post settlement;
2. The scope of this hearing is limited to determining whether or not the claimant has produced sufficient evidence to re-open her workers' compensation claim to seek additional benefits and/or set aside her clincher consistent with the instructions of the appellate panel.
3. The undersigned makes no findings with regard to the underlying compensability of the claimant claim or medical

causation of her various medical problems as those issues are not before the Commission;

4. The claimant originally filed a claim seeking benefits as the result of a work related occupational exposure in 2009;

5. The claimant was originally represented by the Steinberg Law Firm; however, the claimant was no longer represented by the Steinberg Law Firm by December 6, 2013 when she filed her first *pro se* Form 50 hearing request;

6. The claimant was represented by Charles Brooks as of April 3, 2014, and this representation lasted until June 3, 2015 when Mr. Brooks was relieved of counsel by Order of the Commission;

7. The parties attended a mediation of this case on October 31, 2014 before H. Mills Gallivan. The claimant was represented by Mr. Brooks throughout the mediation;

8. The parties settled the claimant's claim at the aforementioned mediation for \$20,000.00 on a full and final, doubtful and disputed clincher, which was approved by the Commission on December 10, 2014;

9. The settlement appears to have been entered into willingly and voluntarily and with advice of counsel. This finding is based upon Ms. Richardson's having appeared at mediation on 10/31/2014 and her having signed a handwritten document memorializing the settlement terms (Hearing Transcript, November 10, 2016, pg. 35, lns. 18-21) [Supp. R. p. 52, lines 18-21];

10. I find unpersuasive Ms. Richardson's testimony that she did not sign her clincher agreement, or that she does not remember signing her clincher agreement. Ms. Richardson claims that she did not sign the formal clincher (the "Order"), and that the only settlement document she signed was the informal handwritten memorandum (Hearing Transcript, pg. 38) [Supp. R. p. 55]. However, Ms. Richardson acknowledged in her deposition dated July 29, 2015 that she spoke with Mr. Brooks in December of 2014 about her case and the settlement, that Mr. Brooks recommended that she "sign the papers," and that "by him being my attorney, I listened to what he said." (Claimant's deposition, July 29, 2015, Pg. 8, lns. 4-25; Pg. 9, lns1-3) [Am. R. p. 58, lines 4-25; Am. R. p. 59, lines 1-3]. Her having signed the clincher agreement in

December 2014 (December 5, 2014) is consistent with other evidence presented at the hearing and during Mr. Brook's deposition. Mr. Brooks acknowledges receiving the clincher agreement on December 5, 2014. He also testified that that he reviewed the clincher with Ms. Richardson on December 5, 2014 together with a Special Power of Attorney. Finally, the Commission's file shows that Defense counsel mailed the signed clincher to the Commission for approval on December 8, 2014 and the Commission stamped it approved on December 10, 2014. Although Ms. Richardson claims to not remember signing the clincher on December 5, 2014 (or any other day), she acknowledges that she signed the Special Power of Attorney on December 5, 2014. I find that the timeline supports Mr. Brook's testimony more so than it does Ms. Richardson's testimony. I find that Ms. Richardson's deposition testimony is more consistent with Mr. Brook's testimony than her own hearing testimony. Therefore, I find that the preponderance of the evidence support's Mr. Brook's testimony that Ms. Richardson did sign her clincher agreement on December 5, 2014;

11. I find that Ms. Richardson possessed the mental capacity to enter into an agreement to clincher this workers' compensation claim. This finding is based upon there being *no medical evidence* in the record *at all* indicating that Ms. Richardson lacked the mental capacity at the time she settled her workers' compensation case. The medical evidence indicates that she placed herself into inpatient psychiatric care at Richland Memorial Hospital on January 7, 1998 until January 12, 1998 (APA Pg. 515-526) [Am. R. pp. 112-123]. She was diagnosed at that time with psychosis, schizophrenia and obsessive compulsive disorder (*Id*). There is no record of her having been admitted to any psychiatric facility since that time, and there is no evidence that she has ever been medically or legally unable to handle her own affairs. Mr. Richardson explained in her deposition taken on July 29, 2015 that Mr. Brooks told her that she may not "go back and get anything" once her workers' compensation case was settled (Claimant's deposition Pg. 7, Ins. 2-8) [Am. R. p. 57, lines 2-8]. Mrs. Richardson also testified at her deposition that she discussed her settlement with Mr. Brooks in December 2014, and that she discussed her concerns with him, that he recommended she settle her case anyway and she accepted his advice (Claimant's deposition, pg. 8, Ins. 1-15; pg. 9, Ins. 1-3) [Am. R. p. 58, lines 1-15; Am. R. p. 59, lines 1-3]. This testimony indicates that Ms. Richardson understood the settlement proceedings and decided voluntarily to settle her case. Furthermore, Ms. Richardson has represented herself in this matter and shows a clear understanding of the proceedings and

requirements. (See entire transcript of August 17, 2016 hearing) [Am. R. pp. 156-223]. I base this last finding upon my personal observations of Ms. Richardson as well as her testimony at each of the hearings.

12. I find that Mr. Charles Brooks provided appropriate and adequate assistance to Ms. Richardson. Mr. Brooks represented Ms. Richardson for a period of about fourteen (14) months from April 2014 when he was hired until June 3, 2015 when Mr. Brooks filed a Motion to be Relieve as Counsel. I based this finding upon the Commission's file and upon Ms. Richardson's testimony at the November 10, 2016 hearing. During this time, Mr. Brook's represented Ms. Richardson in a slip and fall incidence which occurred at Lowes, and obtained a small settlement for her (Deposition of Charles Brooks, pages 7 & 8) [Supp. R. pp. 69-70]. Mr. Brooks took this workers' compensation case to mediation and secured a \$20,000.00 settlement for her; which she accepted (Deposition of Charles Brooks, page 9) [Supp. R. p. 71]. Based upon Mr. Brooks' exchanges with Ms. Richardson during his deposition, it is clear to the undersigned that he followed a process for concluding her workers' compensation settlement, including having her sign a Special Power of Attorney so that she would not have to return to his office to endorse her settlement check (Deposition of Charles Brooks, pg. 46, lns 5-22) [Supp. R. p. 108, lines 5-22]. It is, likewise, clear that Mr. Brooks considered the Medicare Set Aside issue and understood that the settlement amount fell below CMS review threshold for an MSA (Deposition of Charles Brooks, Pg. 27, lns 1-25; p. 28, 1-25) [Supp. R. p. 89, lines 1-25; Supp. R. p. 90, lines 1-25]. Based upon the above findings, the undersigned finds that Charles Brooks provided appropriate representation to Ms. Richardson.

13. Finally, I find no impropriety on behalf of defense counsel. It appears from the undersigned that defense counsel treated the claimant with respect and courtesy.

14. Based upon the above findings, I find that the claimant, Stella Mae Richardson, has failed to carry her burden of proving fraud, lack of capacity, estopple (sic), deceit or any other circumstance or condition which could give the Workers' Compensation Commission justification to re-open her claim and/or set aside her clincher agreement;

15. Based upon the forgoing findings, I find that the claimant, Stella Mae Richardson, is owed no additional benefits in this matter.

(Supp. R. pp. 12-16 (emphasis in original).)

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act governs judicial review of the Commission's decisions and establishes the "substantial evidence rule" as the standard for reviewing the Commission's factual findings. S.C. Code Ann. § 1-23-380 (Supp. 2005); Lark v. Bi-Lo, Inc., 276 S.C. 130, 133, 276 S.E.2d 304, 305 (1981). An appellate court can reverse or modify the Commission's decision only if the Claimant's "substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Shealy v. Aiken County, 341 S.C. 448, 454, 535 S.E.2d 438, 442 (2000); see § 1-23-380(5)(d),(e).

"In workers' compensation cases, the Full Commission is the ultimate fact finder." Shealy, 341 S.C. at 455, 535 S.E.2d at 442 (*citing* Hunter v. Patrick Constr. Co., 289 S.C. 46, 344 S.E.2d 613 (1986)). "The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission." Id. (*citing* Ford v. Allied Chem. Co., 252 S.C. 561, 167 S.E.2d 564 (1969)). "It is not the task of this Court to weigh the evidence as found by the Full Commission." Id. (*citing* Ellis v. Spartan Mills, 276 S.C. 216, 277 S.E.2d 590 (1981)).

"The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence." Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492, 541 S.E.2d 526, 528 (2001). "Where there is a conflict in the evidence, . . . the findings of fact of the Commission are conclusive." Id. at 492-93, 541 S.E.2d at 528. "[W]hether the facts of a case were correctly applied to a statute is a question of fact, subject to the substantial evidence standard." Hopper v. Terry Hunt Constr., 373 S.C. 475, 479, 646 S.E.2d 162, 165 (Ct. App.

2007) (*citing* Burse v. South Carolina Dep't of Health & Env'tl. Control, 369 S.C. 176, 184-85, 631 S.E.2d 899, 904 (2006)).

ARGUMENTS AND CITATION OF AUTHORITY

I. THE COURT OF APPEALS DOES NOT HAVE JURISDICTION OVER THIS APPEAL, AND THE CLAIMANT'S NOTICE OF APPEAL SHOULD BE DISMISSED.

As the Claimant's date of injury was October 1997, the pre-2007 version of the South Carolina Workers' Compensation Act ("Act") applies. S.C. Code Ann. § 42-17-60 (Supp. 2006) provides, in part:

The award of the commission, as provided in Section 42-17-40, if not reviewed in due time, or an award of the commission upon such review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award or within thirty days after receipt of notice to be sent by registered mail of the award, but not thereafter, may appeal from the decision of the commission **to the court of common pleas** of the county in which the alleged accident happened, or in which the employer resides or has his principal office, for errors of law under the same terms and conditions as govern appeals in ordinary civil actions. . . .

(emphasis added); see, e.g., Skinner v. Westinghouse Elect. Corp., 380 S.C. 91, 93 n.1, 668 S.E.2d 795, 796 n.1 (2008) (recognizing that a claim for an injury occurring before July 1, 2007 was not governed by the current law as amended by Act 111, 2007 S.C. Acts 111). The 2007 amendments to the Act revised this section for injuries which occurred on or after July 1, 2007 and made the proper court to initiate an appeal the Court of Appeals. See S.C. Code Ann. § 42-17-60 (Supp. 2017).

Under the Administrative Procedures Act applicable for this claim, a pre-2007 claim, S.C. Code Ann. § 1-23-380(A)(1) (Supp. 2005), "[p]roceedings for review are instituted by filing a petition **in the circuit court** within thirty days after the final decision of the agency or, if a

rehearing is requested, within thirty days after the decision thereon. . . .” (emphasis added). “The failure of a party to comply with the procedural requirements for perfecting an appeal may deprive the court of ‘appellate’ jurisdiction over the case, but it does not affect the court’s subject matter jurisdiction.” Great Games, Inc. v. S.C. Dep’t of Revenue, 339 S.C. 79, 83 n. 5, 529 S.E.2d 6, 8 n.5 (2000).

The Claimant’s notice of appeal should have been filed in the court of common pleas. As such, the Court of Appeals does not have jurisdiction over this matter, and the Claimant’s appeal should be dismissed.

II. THE COMMISSION CORRECTLY CONCLUDE THAT THE CLINCHER AGREEMENT WAS A FULL AND FINAL SETTLEMENT OF ALL OF THE CLAIMANT’S CLAIMS AGAINST THE EMPLOYER.

If the Court concludes that it has jurisdiction over this appeal, the Commission’s order must be affirmed because it is not affected by an error of law and substantial evidence supports the factual findings. Shealy, 341 S.C. at 454, 535 S.E.2d at 442; Anderson, 343 S.C. at 492, 541 S.E.2d at 528.

The Commission properly denied the Claimant benefits as the claim had been fully and finally settled by way of a clincher agreement. Under the Act, employees and employers are permitted to enter into voluntary settlements “so long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this title.” S.C. Code Ann. § 42-9-390 (Supp. 2006). “A copy of the settlement agreement must be filed by the employer with and approved by only one member of the commission if the employee is represented by an attorney.” Id. This procedure was followed in the present matter. While the Claimant was represented by Mr. Brooks, the Employer submitted the Petition to the Commission, and the

Commission approved the same in the Order Approving Settlement Agreement. (Am. R. pp. 61-65; Am. R. pp. 14-22.)

Regulation 67-801 (Supp. 2005) provides, in part:

B. If the claimant is represented by an attorney, an appearance before a Commissioner is not required for approval of a settlement unless either party requests an informal conference or the Commissioner schedules a hearing.

...
E. An Agreement and Final Release (clincher) relieves the employer and its representative from any further responsibility for payment of compensation or medical expenses, unless the Agreement and Final Release specifically provides otherwise. **When the claimant signs the Agreement and Final Release and it is approved, the claimant does not have the right to ask for additional payments in the future even if the claimant's medical condition worsens, unless otherwise specifically provided in the document.**

25A S.C. Code Reg. 67-801 (Supp. 2005) (emphasis added).

At the time of the clincher agreement, the Claimant was represented by counsel. Substantial evidence in the record supports that the Petition was signed by the Claimant, her counsel Mr. Brooks, and counsel for the Employer. (Am. R. pp. 61-65; Am. R. p. 56, line 10 – p. 59, line 3; Supp. R. p. 90, line 20 – p. 91, line 5; Supp. R. p. 94, line 2 – p. 97, line 22.) In her deposition, the Claimant admitted that she settled the case for \$20,000.00 and signed documents which her attorney provided. (Am. R. p. 56, line 10 – p. 59, line 3.) She admitted that she signed these documents with her attorney's advice even though she suspected she may have additional medical issues. (Am. R. p. 56, line 10 – p. 59, line 3.) In compliance with the Act, the Commission approved the settlement in the Order Approving Settlement Agreement. (Am. R. pp. 14-22).

A settlement agreement "when approved by the Commission, was as binding on the parties as an order, decision or award of the Commission unappealed from, or an award of the

Commission affirmed upon appeal.” Singleton v. Young Lumber Company, 236 S.C. 454, 463, 114 S.E.2d 837, 841 (1960); see also, Spivey ex rel. Spivey v. Carolina Crawler, 367 S.C. 154, 158, 624 S.E.2d 435, 437 (Ct. App. 2005). The Claimant never appealed the Order Approving Settlement Agreement. As such, the unchallenged ruling is the law of the case. Charleston Lumber Co. v. Miller Hous. Corp., 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) (“an unchallenged ruling, ‘right or wrong, is the law of [the] case and requires affirmance’”) (*quoting* Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970)).

The Claimant challenges the Commission’s findings of facts on essentially one point, that she was improperly represented by her former attorney Mr. Brooks, although her brief states this as two points. (Final Brief of Appellant, p. 2.) After reviewing deposition testimony of the Claimant and her former attorney (Mr. Brooks), and after hearing arguments and the Claimant’s testimony at the hearing, the Single Commissioner properly concluded that Mr. Brooks adequately represented the Claimant and that there was no ground to reopen the clincher agreement. (Supp. R. pp. 15-17.) The Appellate Panel affirmed these findings. Substantial evidence supports these findings.

During Mr. Brooks’s representation of the Claimant in the present matter, he also represented her in a slip and fall matter. (Supp. R. p. 69, line 1 – p. 70, line 7.) Mr. Brooks began his representation of the Claimant in the spring of 2014. (Supp. R. p. 70, lines 8-16.) He took the necessary actions to prepare the workers’ compensation claim for mediation, including determining that the Claimant’s prior attorney had no lien, obtaining the file from the Commission, and meeting with the Claimant on numerous occasions. (Supp. R. p. 70, line 17 – p. 74, line 15.) During the October 31, 2014 mediation, Mr. Brooks explained the pros and cons of settlement. (Supp. R. p. 82, line 9 – p. 86, line 6.) Mr. Brooks testified that he understood

that the Claimant understood that the settlement would end her case. (Supp. R. p. 86, lines 7-25; p. 114, line 2 – p. 115, line 10; p. 121, lines 10 – p. 122, line 21.) He testified that he explained the clincher agreement would end the matter and discussed Medicare Set Aside issues. (Supp. R. p. 87, line 1 – p. 89, line 4.) In December 2014, Mr. Brooks reviewed the Petition with the Claimant, explaining again that this agreement ended the matter, and the Claimant executed the same. (Supp. R. p. 90, line 25 – p. 91, line 5; p. 93, line 15 – p. 97, line 22; p. 101, line 10 – p. 102, line 3; p. 105, line 3 – p. 106, line 20.)

Substantial evidence in the record supports the Commission's findings that the Claimant was adequately represented. All of the Commission's findings of facts should be affirmed as they are supported by substantial evidence, and the clincher agreement is the law of the case. Anderson, 343 S.C. at 492, 541 S.E.2d at 528; Shealy, 341 S.C. at 455, 535 S.E.2d at 442; Charleston Lumber Co., 338 S.C. at 175, 525 S.E.2d at 871.

CONCLUSION


The Claimant's appeal should be dismissed for failure to timely file her appeal in the proper court, which deprives the Court of Appeals of jurisdiction.

If the Court concludes that it has jurisdiction, the Commission's order must be affirmed. The Commission's decision and order is not affected by any error of law. The Commission properly determined that the Claimant failed to meet her burden to reopen her claim or set aside the clincher agreement. Further, the order is supported by substantial evidence in the record.

[Signature on following page]

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 

Stephen L. Brown (SC Bar No. 66468)

Robert P. Gruber (SC Bar No. 15581)

Catherine H. Chase (SC Bar No. 74593)

25 Calhoun Street, Suite 400 (29401)

P.O. Box 993

Charleston, South Carolina 29402

(843) 720-5488

sbrown@ycrlaw.com

rgruber@ycrlaw.com

cchase@ycrlaw.com

Attorneys for Yuasa Exide, Inc.

Charleston, South Carolina

Dated: 