THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No.: 2015-001702 (Opinion No. 5548, Filed March 28, 2018)

James Dent, Employee ..... Appellant,

vs.

East Richland County Public Service District, Employer and
State Accident Fund, Carrier ..... Respondents.

RESPONDENTS' PETITION FOR REHEARING

STATEMENT OF THE CASE

Pursuant to the provision of Rule 221(a), SCACR, East Richland County Public Service District and its carrier the South Carolina State Accident Fund (together "Respondents"), through their undersigned counsel, respectfully petition this Court for a rehearing based on facts, points, and arguments overlooked or misapprehended by the Court as set forth herein.

In accordance with the South Carolina Workers' Compensation Act, the Respondents provided proper and adequate medical care and treatment to James Dent ("Appellant") following an admitted low back injury on May 1, 2012. (R. 59). Initial care was provided through Dr. Paula Belmar, who ordered a lumbar spine MRI that incidentally revealed a neoplasm in the lung. (R. 61-67, 147). Thereafter, the Appellant was referred to a back specialist for his

admitted workers' compensation injury and an oncologist for his unrelated, newly discovered lung neoplasm.

Subsequently, the Appellant presented to Dr. Brett Gunter for further evaluation of his lumbar spine, who ordered a repeat MRI that revealed moderate spinal stenosis at L3-4 and L4-5. (R. 123-32, 146). Simultaneously, the Appellant was diagnosed with small cell lung cancer and began months of chemotherapy and radiation treatments. (R. 129). Meanwhile, Dr. Gunter ordered physical therapy and two lumbar epidural steroid injections. (R. 125-28).

Later, Dr. Gunter ordered a work hardening program, but the Appellant complained of shortness of breath and was unable to complete the April 10, 2013 evaluation for the program. (R. 82-83). The Appellant was continuing to receive chemotherapy for his unrelated lung cancer at this time. (R. 161:12-16). At the program evaluation, the Appellant indicated to the physical therapist that he did not plan to return to work and, instead, planned to retire as soon as his workers' compensation claim closed. (R. 82).

Dr. Gunter placed the Appellant at maximum medical improvement on May 8, 2013, assigning a 10 percent permanent impairment rating to the whole person for the low back injury and releasing the Appellant to work in a medium duty capacity. (R. 123). Dr. Gunter did not assign a separate impairment rating for any other body part. (R. 123). He indicated only that the Appellant may require NSAIDs for future medical treatment. (R. 123).

Upon arrangement by his counsel, the Appellant underwent a one-time independent medical evaluation by Dr. Leonard Forrest on July 8, 2013, which lasted a mere hour and a half. (R. 92-97, 182:19-21). Based on this short exam, Dr. Forrest assigned a 21 percent impairment rating to the whole person, opined that the Appellant would need to continue taking Percocet but "additional medications may or may not be needed," and indicated that the Appellant could not

return to work at any level (R. 96-97). While Dr. Forrest's notes documents that the Appellant complained of back pain that traveled down the right leg, Dr. Forrest nowhere assigned a separate impairment rating to either leg. (R. 92-97). The Appellant also procured a vocational evaluation in November 2013, which heavily relied upon physical therapy notes instead of those produced by the authorized treating physician. (R. 98-120).

The Respondents never obtained their own vocational evaluation because the Appellant only sustained an injury to a single body part and should therefore be barred from recovery beyond the schedule, rendering any vocational evaluation superfluous. See, e.g., Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960). The Respondents maintain that any further disability is a result of the unrelated lung cancer, for which the Appellant continued chemotherapy treatments all the way through December 2013—many months after he already reached maximum medical improvement for his work-related injury. (R. 161:12-16).

By Decision and Order dated April 14, 2014, Commissioner Susan S. Barden held that the Appellant sustained a single member injury to the back. (R. 9-11). The Commissioner further held that the Appellant's right leg was only minimally affected and the record contained no impairment rating for the leg. (R. 6-11). As a one body part claim, the Commissioner held that the Appellant was thus only entitled to an award for 35 percent loss of use of the back pursuant to the statutory schedule in Section 42-9-30 and causally-related future medical treatment for the back. (R. 9-11). The Commissioner also concluded that any disability stemmed from the Appellant's unrelated lung cancer. (R. 8).

The Appellant appealed to the Full South Carolina Workers' Compensation Commission, which remanded only for clarification regarding the Commissioner's finding that the right leg was "affected" but that this was "a one body part" claim. (R. 9-12). By Order on Remand, the

Commissioner withdrew language in Findings of Fact #16 and 22, which stated, respectively that the "Claimant's right leg is only minimally affected" and "this is a 'one body part' (i.e. *Singleton*) case." (R. 6, 8). Otherwise, the Commissioner reaffirmed her previous findings that "there is no impairment rating in evidence as far as either leg is concerned—even from Claimant's IME" and any permanency award required her to "parse the (a) back condition from (b) cancer and its residuals" only. (R. 31, 33). Ultimately, the Commissioner again concluded that the Appellant was not permanently and totally disabled under Section 42-9-10 and was entitled to an award for loss of use of the back only under Section 42-9-30. (R. 34-36). The Appellate Panel affirmed. (R. 53).

The Appeal to this Court followed. In its reversal, this Court inverted the substantial evidence standard of review to make its own findings that the Appellant sustained a separate injury to the right leg, was permanently and totally disabled under Section 42-9-10 due entirely to the work-related injury, and was not disabled because of the unrelated lung cancer for which the Appellant continued to treat after his release from care for his work-related injury. Dent v. E. Richland Cnty. Pub. Serv. Dist., No. 2015-001702, 2018 WL 1513963, at*3-6 (S.C. Ct. App. Mar. 28, 2018).

Because this Court did not apply the proper standard of review in its decision to reverse the Full South Carolina Workers' Compensation Commission, the Respondents respectfully request the Court grant their Petition for Rehearing and issue an opinion affirming the Full Commission based on the proper application of the "substantial evidence" standard.

ARGUMENT

I. THE COURT SHOULD REHEAR THIS CASE BECAUSE IT APPLIED THE INCORRECT STANDARD OF REVIEW APPLICABLE TO APPEALS FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION.

This Court should grant the Respondents' Petition for Rehearing because it previously applied an "inverted" version of the substantial evidence standard of review, which effectively resulted in nothing short of a de novo review by this Court. As well-settled precedent makes clear, such a review is prohibited here. Thus, the Court should re-examine this case through the appropriate lens, or else, face the potential of another remand from the Supreme Court with instructions to issue a new ruling applying the correct standard of review. See Nero v. S.C. Dept. of Transp., No. 2017-001970, 2018 WL 1614332, at *1-2 (S.C. Apr. 4, 2018) (remanding workers' compensation case to this Court with instructions to issue a new ruling applying the correct standard of review).

A. THE INVERSE OF THE SUBSTANIAL EVIDENCE STANDARD CONSTITUTES A LOGICAL FALLACY.

In South Carolina, the Administrative Procedures Act establishes the "substantial evidence" standard for judicial review of decisions by the South Carolina Workers' Compensation Commission and other state agencies. Lark v. Bi-Lo, 276 S.C. 130, 133-34, 276 S.E.2d 304, 305-06 (1981) (citing S.C. Code Ann. § 1-23-380) (stating the Commission "is clearly an 'agency'" within the meaning of S.C. Code Ann. § 1-23-310 et seq.). See also Frame v. Resort Servs., Inc., 357 S.C. 250, 593 S.E.2d 491 (S.C. Ct. App. 2002); Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 92 (S.C. Ct. App. 2002); Lockridge v. Santens of Am., Inc., 344 S.C. 511, 544 S.E.2d 842 (S.C. Ct. App. 2001).

Under this standard, the Court of Appeals' review "is limited to deciding whether the **appellate panel's decision** is unsupported by substantial evidence or is controlled by some error of law." Gadson v. Mikasa Corp., 368 S.C. 214, 221, 628 S.E.2d 262, 266 (S.C. Ct. App. 2006) (citing S.C. Code Ann. § 1-23-380) (emphasis added). See also Hartzell v. Palmetto Collision, LLC, 415 S.C. 617, 622, 785 S.E.2d 194, 197 (2016) (same); Grant v. Grant Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007) (same); Rodriguez v. Romero, 363 S.C. 80, 610 S.E.2d 488 (2005) (same); Gibson v. Spartanburg Sch. Dist. #3, 338 S.C. 510, 517, 526 S.E.2d 725, 729 (S.C. Ct. App. 2000) (same); Hendricks v. Pickens Cnty., 335 S.C. 405, 411, 517 S.E.2d 698, 701 (S.C. Ct. App. 1999) (same). "The commission's decision ***must*** be affirmed if the factual findings are supported by substantial evidence in the record." Jennings v. Chambers Dev. Co., 335 S.C. 249, 516 S.E.2d 453, 458 (S.C. Ct. App. 1999) (quoting Minor v. Philips Prods., 329 S.C. 321, 494 S.E.2d 819 (1997)) (emphasis added).

"Substantial evidence" is "evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached." Lark, 276 S.C. at 135, 276 S.E.2d at 306 (quoting Laws v. Richland Cnty. School Dist. No. 1, 270 S.C. 492, 243 S.E.2d 192 (1978). See also Shealy v. Aiken Co., 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) (same); Gadson, 368 S.C. at 221, 628 S.E.2d at 266 (citing Pratt v. Morris Roofing, Inc., 357 S.C. 619, 594 S.E.2d 272 (2004); Jones v. Georgia-Pacific Corp., 355 S.C. 413, 586 S.E.2d 111 (2003)) (same); DeBruhl v. Kershaw Cnty. Sheriff's Dept., 303 S.C. 20, 24, 397 S.E.2d 782, 785 (S.C. Ct. App. 1990) (same). This means that, even if this Court disagrees with the decision of the Full Commission, the Court must, nonetheless, affirm if the decision is support by substantial evidence. Jennings, 335 S.C. at 516 S.E.2d at 458.

Basic propositional logic dictates that the inverse of a conditional statement cannot be inferred from that conditional statement. The conditional statement here is simply that if there is substantial evidence in the record to support the Commission's decision, then the Court must affirm. Jennings, 335 S.C. at 516 S.E.2d at 458. Pursuant to basic tenants of logical reasoning, then from this statement **one cannot infer also that if there is substantial evidence in the record to support the opposite decision, then the Court must reverse**. This proscription from logic holds firm no matter the degree to which the Court *wishes* the Commission would have reached that opposite decision.

But here, the Court did make this inference and thereby committed a logical fallacy. First, the Court re-examined the Record in search of "substantial evidence" to support its desired, opposite decision. See, e.g., Dent, 2018 WL 1513963, at*4 (identifying evidence in the Record of pain in the leg and labeling as "substantial evidence" of injury). In certain aspects, the search for "substantial evidence" to support its desired decision proved decidedly strained—a fact remarked upon by the dissent. Compare Dent, 2018 WL 1513963, at*5 ("[W]e note a transferable skills capacity analysis ... revealed there were no job titles that would be within [Appellant's] current transferable abilities."), with Id. at *7 (Thomas, J., dissenting) ("[T]he majority's reliance on the 'transferable skills capacity analysis,' which is located within the above-mentioned vocational report, is misplaced . . . the analysis searched for potential jobs for [Appellant] based on criteria that assumed he could not physically perform any manual labor or even a sedentary job. Predictably, such an analysis returned zero potential jobs.").

Next, upon this new "substantial evidence" basis, the Court reversed the Appellate Panel's decision. Because this means of reversal endorsed a logical fallacy, produced a result not allowed by all the case law cited herein, and reduced the proper standard of review to a mere

shell of the required deference to the agency in this case; the Court should grant the Petition and restore the deference due to the Full Commission's determination.

B. THE INVERSE OF THE SUBSTANIAL EVIDENCE STANDARD IMPROPERLY ALLOWED THE COURT TO RE-WEIGH THE EVIDENCE AND ACT AS FACT FINDER.

Not only does the inverted substantial evidence standard yield a logical fallacy, but it also opened the door for the Court to impermissibly engage in fact-finding and re-weighing of evidence to find support for the decision that the Court wished the Commission had reached on its own. But, it is well-settled that the Appellate Panel of the Commission—not the Court of Appeals—serves as the ultimate fact finder. Hartzell, 415 S.C. at 622, 785 S.E.2d at 197; 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)); Gadson, 368 S.C. at 221, 628 S.E.2d at 266 (citing Bass v. Isochem, 365 S.C. 454, 617 S.E.2d 369 (S.C. Ct. App. 2005) and Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (S.C. Ct. App. 1999)); Rogers v. Kunja Knitting Mills, Inc., 312 S.C. 377 380, 440 S.E.2d 401, 403 (S.C. Ct. App. 1994); DeBruhl, 303 S.C. at 24, 397 S.E.2d at 785. As such, the Appellate Panel makes "the final determination of witness credibility and the weight to be accorded evidence." Shealy, 341 S.C. at 455, 535 S.E.2d at 442 (citing Ford v. Allied Chem. Co., 252 S.C. 561, 167 S.E.2d 564 (1969). See also Gadson, 368 S.C. at 221, 628 S.E.2d at 266 (citing cases); Rogers, 312 S.C. at 380, 440 S.E.2d at 403.

Despite the above case law, the Court of Appeals nevertheless engaged in a re-weighing of the evidence when it relied upon, and repeatedly cited to, the opinions of Dr. Forrest, the physical therapist, and the Appellant's vocational expert over the opinion of the authorized treating physician, Dr. Gunter, upon which the Appellate Panel of the Commission chose to rely and afforded the most weight. See, e.g., Dent, 2018 WL 1513963, at*5 ("Although Dr. Gunter

opined Dent could work at a medium duty level, we note a transferable skills capacity analysis...."). The Court, in turn, re-labeled this evidence as more persuasive than that relied on by the Appellate Panel.

After this re-weighing of the evidence, the Court took on the prohibited roll of fact finder and made its own specific findings that contradict those made by the Appellate Panel such as: "We find the evidence of Dent's leg pain in the record is substantial evidence of an injury affecting Dent's right leg." Id. at*4. The Court also impermissibly found that "the record contains substantial evidence that Dent is permanently and totally disabled under section 42-9-10 due to an incapacity for work." Id. at*5. Then, the Court again declared that. "based on the record as a whole, we hold substantial evidence supports a finding that Dent is unable to work and is entitled to a permanent, total disability award pursuant to section 42-9-10." Id. However, these findings must be withdrawn because the Appellate Panel of the Commission—not the Court of Appeals—serves as the ultimate fact finder. See, e.g., Hartzell, 415 S.C. at 622, 785 S.E.2d at 197.

It is immaterial that this Court can identify substantial evidence in the record to support its own factual findings. Reversing on these findings turns the substantial evidence standard on its head in an attempt to legitimize the inverse of that standard, despite well-established case law to the contrary. As this Court well-knows, it "may not substitute its judgement for the judgment of the agency as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5). See also Grant, 372 S.C. at 200, 641 S.E.2d at 871; Hendricks, 335 S.C. at 410, 517 S.E.2d at 701. The substantial evidence test specifically prohibits "a substitution of judicial judgment for agency judgement." Hartzell, 415 S.C. at 622, 785 S.E.2d at 197 (quoting Holmes

v. Nat'l Serv. Indus., Inc., 395 S.C. 305, 308-09, 717 S.E.2d 751, 752 (2001). But, the inverse of the substantial evidence rule that the Court applied here instituted that very substitution.

Such a substitution is, furthermore, inappropriate because even "[w]here there are conflicts in the evidence over a factual issue, the findings of the appellate panel are conclusive." Gadson, 368 S.C. at 221-22, 628 S.E.2d at 266 (citing Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (S.C. Ct. App. 2002)). See also Hall v. United Rentals, Inc., 371 S.C. 69, 80, 636 S.E.2d 876, 882 (S.C. Ct. App. 2006); Rogers, 312 S.C. at 380, 440 S.E.2d at 403. In fact, even "[t]he existence of any conflicting opinions between the doctors is a matter left to the [Appellate Panel]." Harbin v. Owens-Corning Fiberglas, 316 S.C. 423, 427, 450 S.E.2d 112, 114 (S.C. Ct. App. 1994). In short, [t]he findings of an administrative agency are presumed correct." Gadson, 368 S.C. at 221, 628 S.E.2d at 266 (citing Anderson v. Bapt. Med. Ctr., 343 S.C. 487, 541 S.E.2d 526 (2001); Hicks v. Piedmont Cold Storage, Inc., 335 S.C. 46, 515 S.E.2d 532 (1999). See also Rodney v. Michelin Tire Corp., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (same); Kearse v. State Health & Human Servs. Fin. Comm'n, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995) (same).

Therefore, the Court was in error in disregarding the Appellate Panel's findings in favor of making its own, new factual findings. See, Hartzell, 415 S.C. at 623, 785 S.E.2d at 197 (the court "must not engage in fact-finding that would disregard the Commission's factual findings"). As made plain by the very definition of "substantial evidence" as previously cited, the prohibition against fact-finding by the Court of Appeals controls even where evidence in the record leads the Court to believe that "reasonable minds could have reached a different conclusion based on the record" before it. Id. (finding the Commission's findings were supported by substantial evidence while specifically noting that other evidence in the record

could allow reasonable minds to have reached the opposite conclusion). Therefore, the Court should grant the Petition for Rehearing, disengage as fact finder, and re-assume its proper role upon review.

C. THE INVERSE OF THE SUBSTANIAL EVIDENCE STANDARD EQUATES TO THE DE NOVO STANDARD RESERVED FOR REVIEW OF JURISDICTIONAL QUESTIONS.

Interestingly, by engaging in fact-finding and re-weighing of the evidence, the Court's inversion of the substantial evidence standard of review is—for all intents and purposes—a de novo review by this Court. But, our Supreme Court has repeatedly made clear that only in the review of jurisdictional questions should the de novo standard be applied instead of the substantial evidence standard. See, e.g., Nero, 2018 WL 1614332, at *1 (holding the substantial evidence standard applies to review of non-jurisdictional issue); Hartzell, 415 S.C. at 622, 785 S.E.2d at 197; Shatto v. McLeod Reg'l Med. Ctr., 406 S,C, 470, 753 S.E.2d 416 (2013) (applying the de novo standard to review of jurisdictional issue); Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co., 382 S.C. 295, 297, 676 S.E.2d 700, 701 (2009) (applying the de novo standard to review of jurisdictional issue).

Only in those jurisdictional cases may the Court of Appeals "take its own view of the preponderance of the evidence." Wilkinson, 382 S.C. at 299, 676 S.E.2d at 702 (citing S.C. Workers' Comp. Comm'n v. Ray Covington Realtors, Inc., 318 S.C. 546, 547, 459 S.E.2d 302, 303 (1995)). See also Hernandez–Zuniga v. Tickle, 374 S.C. 235, 244, 647 S.E.2d 691, 695 (S.C. Ct. App. 2007) ("Our precedent lucidly establishes that an appellate court reviews jurisdictional issues by making its own findings of fact without regard to the findings and conclusions of the Appellate Panel."). Otherwise, the Supreme Court will reverse and remand the case back to the Court of Appels with instructions to issue a new decision under the proper

standard of review. See Nero, 2018 WL 1614332, at *1-2 (remanding workers' compensation case to this Court with instructions to issue a new ruling applying the correct standard of review issue).

Here, although this Court labeled its review as the "substantial evidence" standard of review, it in fact did "take its own view of the preponderance of the evidence" when it re-weighed the evidence and made its own findings contrary to those made by the Appellate Panel. For this reason, the Respondents respectfully request that the Court grant its Petition and apply the true and correct version of the substantial evidence standard of review without regard to the decision that the Court would have made if it had been in the Commission's position.

II. THE COURT OF APPEALS SHOULD HAVE REVERSED, IF AT ALL, ONLY BECAUSE THE COMMISSIONER SHOULD NEVER HAVE REMOVED SPECIFIC LANGUAGE IN HER ORIGINAL ORDER FINDING THAT THIS IS "A ONE BODY PART" CLAIM.

Even though the misapplication of the appropriate standard of review is sufficient reason, alone, to grant the Respondents' Petition and rehear this case; the Court should also grant the Respondents' request because the Commissioner's original finding that this is a "one body part" claim is well-founded. As precedent makes plain, radiculopathy is simply not considered a separate injury within the South Carolina Workers' Compensation Act. Thus, the removal of the Commissioner's language constituted an error of law.

Again, the Court of Appeals' review "is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law." Gadson v. Mikasa Corp., 368 S.C. 214, 221, 628 S.E.2d 262, 266 (S.C. Ct. App. 2006) (citing S.C. Code Ann. § 1-23-380). See also Hartzell v. Palmetto Collision, LLC, 415 S.C. 617, 622, 785 S.E.2d 194, 197 (2016) (same); Grant v. Grant Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007)

(same); Rodriguez v. Romero, 363 S.C. 80, 610 S.E.2d 488 (2005) (same); Gibson v. Spartanburg Sch. Dist. #3, 338 S.C. 510, 517, 526 S.E.2d 725, 729 (S.C. Ct. App. 2000) (same); Hendricks v. Pickens Cnty., 335 S.C. 405, 411, 517 S.E.2d 698, 701 (S.C. Ct. App. 1999) (same). And here, an error of law was made by Order on Remand when the Commissioner withdrew her specific holding that this was a "one body part" claim despite controlling case law on the subject. (R. 6, 8, 31, 33). Yet, on Appeal, this Court made new and separate findings that the Appellant sustained injury to second body part—the leg based on radiculopathy due to the admitted back injury—without regard to that case law which supported the Commissioner's "one body part" claim finding.

South Carolina precedent plainly prohibits characterizing radiculopathy as a separate body part in workers' compensation cases. See, e.g., Fishburne v. ATI Sys. Int'l, 384 S.C. 76, 89, 681 S.E.2d 595, 601 (S.C. Ct. App. 2009) (affirming Commission's order that specifically stated 10 percent award for loss of use of the back under the schedule in Section 42-9-30 encompassed any right lower extremity radiculopathy and noting that claimant presented no evidence of a separate injury to her right leg). See also Clemmons v. Lowe's Home Ctrs., Inc., 412 S.C. 366, 384-85, 772 S.E.2d 517, 527 (S.C. Ct. App 2015) (affirming that impairment rating for loss of use of the back under Section 42-9-30 includes any radicular symptoms to the right leg, and therefore finding no error in no award for myelopathy as a separate neurological injury), *rev'd on other grounds*, 420 S.C. 282, 803 S.E.2d 268 (2017) (taking no issue with Court of Appeals' affirming that loss of use of the back encompassed radicular symptoms and finding error only in concluding that that loss of use of the back did not give rise to the presumption stated in Section 42-9-30); Bolds v. UTI Intergated Logistics., Inc., No. 2011-UP-162, 2011 WL 11733649, at *1 (S.C. Ct. App. June 2, 2011) (affirming award for loss of use of the back as a

scheduled member under Section 42-9-30 where back injury caused radiculopathy). The only case in which radiculopathy has been held to constitute an injury to a separate body part was Beckman v. Sysco Columbia, LLC, 408 S.C. 501, 759 S.E.2d 750 (S.C. Ct. App. 2014). This decision was stricken and de-published by our Supreme Court. 414 S.C. 538, 779 S.E.2d 554 (2015).

Unsurprisingly, medical definitions explicitly state that radicular symptoms emanated from the back. See e.g., Radiculopathy, Johns Hopkins Med. Health Library, https://www.hopkinsmedicine.org/healthlibrary/conditions/nervous_system_disorders/acute_radiculopathies_134,11 (last visited Apr. 9, 2018) ("Radiculopathy describes a range of symptoms produced by the pinching of a nerve root in the spinal column."). Accordingly, this Court has relied on such medical definitions to support is basis for repeatedly limiting awards to a single body part—the back—regardless of the extent of radiculopathy present. See, e.g., Clemmons, 412 S.C. at 372 n.1, 772 S.E.2d at 520 n.1 (quoting Stedman's Medical Dictionary 1187 (24th ed.1982)) (Radiculopathy is a "[d]isease of the spinal nerve roots."); Bolds, 2011 WL 11733649, at *1 n.2 (quoting Medline Plus, http:// www.nlm.nih.gov/medlineplus/ency/article/000442.htm (last visited May 18, 2011)) ("Radiculopathy refers to any disease that affects the spinal nerve roots.").

Thus, radiculopathy complaints do not equate to injury to a separate body part in South Carolina. Regardless of whether that radiculopathy is experienced in the left or right leg, by all medical definitions, those symptoms are caused and emanate from an injury to the back and are indicative of a back injury only. Here, the Appellant exhibit that precise condition clinically and all medical evidence in the Record supports that he only ever sustained an injury to his back. (R. 61-119, 123-48). Indeed, the Record is devoid of any impairment rating to either leg to support a

separate injury to either body part. (R. 61-119, 123-48). Even from Claimant's own IME did not produce evidence of any injury to a second body part despite radicular complaints. (R. 92-97). In accordance with precedent, this case constitutes nothing more than "a one body part" claim as was originally found by the Commissioner.

Moreover, when an injury is confined to a single scheduled member, compensation is limited to that provided under the schedule in Section 42-9-30 and the claimant cannot recover under the general disability statute in Section 42-9-10. Singleton, 236 S.C. at 473, 114 S.E.2d at 846. See also Wigfall v. Tideland Utils, Inc., 354 S.C. 1000, 101-02, 580 S.E.2d 100, 104 (2003) (reaffirming holding in Singleton that a claimant is limited to scheduled compensation when the injury is confined to a single scheduled member). As this Court previously held, a claimant must prove not only that another body part was affected by an injury to a scheduled member, "but that another body part was impaired or injured for section 42-9-10 to apply." Colonna v. Marlboro Park Hosp., 404 S.C. 537, 546, 745 S.E.2d 128, 133 (S.C. Ct. App. 2013) (citing Singleton).

But here, the Appellant failed to establish a second body part was injured. Thus, it was error to remove the Commissioner's original findings that the "Claimant's right leg is only minimally affected" and "this is a 'one body part' (i.e. *Singleton*) case." (R. 6, 8). Both findings are plainly in line with case law. In stark contrast, bringing this case under the Section 42-9-10 umbrella for further analysis, as this Court ultimately did, is violative of case law. In turn, extraneous evidence (such as the vocational evaluation obtained by Appellant) is immaterial to the legal analysis and, at best, is a red herring meant to muddle this Court's inquiry where Section 42-9-10 does not apply.

In sum, the Commissioner's specific language in her original Order that this is "a one body part" claim is supported by the entirety of the Record and comports with more than 50 years' of precedential case law. On this basis—and on this basis alone—may the Court reverse the Appellate Panel's decision.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request that this Court grant their Petition for Rehearing regarding Dent v. E. Richland Cnty. Pub. Serv. Dist., No. 2015-001702, 2018 WL 1513963, at*1-6 (S.C. Ct. App. Mar. 28, 2018), which improvidently reversed the decision of the Appellate Panel of the Workers' Compensation Commission.

First, the Court of Appeals misapplied the substantial evidence standard of review, which constituted a logical fallacy, allowed the Court to engage in fact finding, and resulted in nothing short of the de novo standard of review strictly reserved for questions regarding jurisdiction.

Second, the Court of Appeals should have reversed—if at all—only because the Commissioner should never have removed specific language in her original order finding that this is "a one body part" claim. Precedent makes patent that such a finding was well-founded. Radiculopathy does not constitute separate injury to either of the lower extremities within the South Carolina Workers' Compensation system. Therefore, only one body part was implicated here and Section 42-9-10 is entirely inapplicable.

Thus, Respondents request the Court grant the Petition for Rehearing and issue a new opinion affirming the Order of the Full South Carolina Workers' Compensation Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have served the Respondents' Petition for Rehearing on counsel for the Appellant by depositing a copy of the same in the United States Mail, postage prepaid, on April 12, 2018, addressed to the following:

Matthew C. Robertson, Esquire
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April 12, 2018

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

Re: James Dent, Employee/Appellant v. East Richland County Public Service District, Employer, and State Accident Fund, Carrier, Respondents.
TPGL File No.: 04206.00189
WCC File No.: 1205879
Appellate Case No.: 2015-001702

Dear Ms. Kitchings:

Pursuant to Rule 221, SCACR, please find enclosed for filing an original and six (6) copies of Respondents' Petition for Rehearing, along with Certificate of Service for the same. Pursuant to Rule 240(d), SCACR, no filing fee is required as this Petition is being filed by an agency of the state of South Carolina.

By copy of this letter, I am also serving a copy of Respondents' Petition for Rehearing on the attorney for the Appellant by United States Mail with first class postage prepaid.

Very truly yours,

Turner Padget Graham & Laney, P.A.

David H. Keller, Esquire

DHK/EAN
Enclosures
cc: Matthew C. Robertson, Esquire (w/enclosures)
Page Snyder Hilton, Esquire, (w/enclosures) (via email)