THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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S.C. SUPREME COURT

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate File No.: 2015-02093

Robert L. Harrison, Employee,.....Appellant,

v.

Owen Steel Company, Inc., Employer, and
Old Republic Insurance Company
c/o Gallagher Bassett Services, Inc., Carrier,.....Respondents.

SECOND CORRECTED APPENDIX

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INDEX

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Appellate Case No. 2015-002093

Appeal From The Workers' Compensation Commission

Opinion No. 5528
Heard October 3, 2017 – Filed January 10, 2018

AFFIRMED

Frank Anthony Barton, of West Columbia, for Appellant.

Jason Wendell Lockhart, of McAngus, Goudelock & Courie, LLC, of Columbia, and Helen F. Hiser, of McAngus, Goudelock & Courie, LLC, of Mount Pleasant, for Respondents.

GEATHERS, J.: Robert Harrison, an employee of Owen Steel Company, appeals the decision of the Appellate Panel of the Workers' Compensation Commission (Appellate Panel) denying his claim for compensation for injuries sustained from an admitted workplace accident occurring on September 17, 2008. Harrison argues the Appellate Panel erred in finding his claim was barred by the doctrine of laches and the occurrence of intervening accidents. We affirm.

FACTS/PROCEDURAL HISTORY

In September 2008, Harrison suffered an admitted workplace injury to his neck while working for Owen Steel Company as a gantry welder. Harrison indicated he had neck pain that radiated behind his left shoulder blade down his left arm to his elbow. Owen Steel provided medical treatment through Dr. Thomas Holbrook, who performed a cervical-spine fusion at C5-C6 in November 2009. After the surgery, Harrison returned to work on light duty.

Harrison was then involved in a motorcycle accident in April 2010. As a result of the accident, Harrison suffered a left clavicle fracture and abrasions to the left side of his head, right arm and palm, and both knees. However, the emergency room doctor's notes indicate Harrison denied having pain in his head or neck.

In July 2010, Dr. Holbrook released Harrison at Maximum Medical Improvement (MMI) with a fifty-pound lifting restriction and "a 25% impairment to the whole person." Dr. Holbrook's notes indicate Harrison was doing well and had no radicular arm pain but, going forth, might occasionally experience some discomfort that could be relieved with aspirin. Harrison returned to work full time as a welder.

Dr. Donald Johnson performed an independent medical evaluation of Harrison in September 2010. Dr. Johnson noted Harrison had returned to work as a welder and observed Harrison had degenerative changes to his spine above the cervical fusion, specifically C3-C4 and C4-C5. On September 29, similar to Dr. Holbrook, Dr. Johnson believed Harrison had reached MMI and assigned him a 25% impairment rating to the whole person.

In early October 2010, Harrison reinjured his neck at work. The doctor's notes from the emergency room visit state that Harrison lifted a fifty-pound roll of wire and felt a sharp pain in his neck that "radiated down to his upper back and down his left arm." Dr. Raymond Sweet examined Harrison a month after Harrison's second workplace injury. Dr. Sweet knew of Harrison's previous surgery by Dr. Holbrook. Dr. Sweet noted Harrison stated he had never completely recovered and still had pain in his left arm that was getting worse. At a follow-up visit two weeks later, Dr. Sweet reevaluated Harrison and recommended against a posterior fusion, further noting that Harrison was experiencing reduced neck pain and no arm pain. Dr. Sweet released Harrison at MMI with a 15% whole-person impairment and allowed Harrison to return to work with a restriction not to lift more than thirty pounds.

Harrison returned to work on light duty, working in the tool room for the entirety of 2011. During that time, Harrison filed a workers' compensation claim for his 2010 workplace injury. Owen Steel settled the claim in August 2011 for $42,193.63. Sometime near the end of 2011, Harrison transitioned back to work as a welder.

In February 2012, Harrison suffered another injury while picking up his young daughter, who had fallen off of a porch. As a result of the injury, Harrison went to Doctors Express. The records from that visit indicate Harrison's chief complaint was neck pain. Harrison had a follow-up visit with Dr. Holbrook a month later. Dr. Holbrook's notes indicate Harrison complained of pain in his neck and right arm that radiated down into his hand with numbness and tingling in his fingers. Harrison contends he never complained of neck pain.

Harrison became a shop foreman, a supervisory position with higher pay, in August 2012. Although his position is less physically demanding, Harrison is occasionally required to perform the tasks he supervises, including welding, turning beams, and cleaning up.

On April 18, 2013, Harrison filed a Form 50 seeking compensation for injuries sustained in his 2008 workplace injury.[1] Owen Steel argued, among other things, Harrison had failed to file the claim within the applicable two-year statute of limitations. After a hearing, the single commissioner found Harrison's claim was barred by the two-year statute of limitations. Harrison appealed to the Appellate Panel, which reversed the single commissioner and found Harrison had complied with the statute of limitations by filing a claim letter in September 2009. The Appellate Panel remanded the case "for findings with regard to issues of intervening accidents, laches, and permanency."

On remand, the single commissioner found Harrison's claim was barred by the doctrine of laches. The single commissioner also found that even if laches did not bar Harrison's claim, it would be impossible to determine Harrison's entitlement to permanent partial disability benefits because of intervening accidents. Further, the single commissioner found Harrison had "not met his

[1] Harrison has been involved in two motor vehicle accidents since the filing of his claim, one in July 2013 and one in March 2014. Harrison visited a doctor for the 2014 accident and the medical notes indicate Harrison had "pain from the top of his neck to the top of his right buttocks."

burden of proving by [a] preponderance of the evidence as to what his causally related condition was as a result of" his 2008 workplace injury. The Appellate Panel affirmed. This appeal followed.

ISSUES ON APPEAL

1. Did the Appellate Panel err in considering the affirmative defense of laches?

2. Did the Appellate Panel err in concluding Harrison's claim was barred by laches?

3. Did the Appellate Panel err in concluding Harrison's claim was barred by intervening accidents?

4. Did the Appellate Panel err in concluding Harrison was not entitled to an award of permanent partial disability or continuing medical benefits?

STANDARD OF REVIEW

An appellate court may reverse a decision by the Appellate Panel if it is affected by an error of law or is clearly erroneous in view of the substantial evidence. S.C. Code Ann. § 1-23-380(5)(d)–(e) (Supp. 2017). "'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that [the Appellate Panel] reached or must have reached" to support its order. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Law v. Richland Cty. Sch. Dist. No. 1*, 270 S.C. 492, 495–96, 243 S.E.2d 192, 193 (1978)).

"The Appellate Panel is the ultimate fact finder in Workers' Compensation cases and is not bound by the single commissioner's findings of fact." *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 348, 656 S.E.2d 753, 758 (Ct. App. 2007). When "there are conflicts in the evidence over a factual issue, the findings of the Appellate Panel are conclusive." *Id.* "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 338, 513 S.E.2d 843, 845 (1999). An appellate court "may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." § 1-23-380(5).

LAW/ANALYSIS

The Appellate Panel denied Harrison's claim for permanent partial disability benefits associated with his 2008 workplace injury. We affirm this ruling, albeit for reasons different from those underlying the Appellate Panel's decision and the parties' arguments. *See* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision[,] or judgment upon any ground(s) appearing in the Record on Appeal."); *see also Bartles v. Livingston*, 282 S.C. 448, 465, 319 S.E.2d 707, 717 (Ct. App. 1984) (stating an appellate court "is not limited to the *reasoning* of the parties or the trial court in addressing" the issues before it); *id.* ("If we were bound to conform our opinions strictly to the arguments and reasoning of the parties, the result would often be bad decisional law. . . . To confine ourselves solely to the reasoning of the parties would be an abdication of our duty as judges to decide cases independently and impartially in accordance with the law."). Although the Appellate Panel relied on laches in making its ruling, we find laches does not apply.[2]

Harrison argues this court should focus solely on the impairment ratings issued by Dr. Holbrook and Dr. Johnson for Harrison's first injury and disregard the impairment rating issued by Dr. Sweet for Harrison's second injury to the same body part. He argues the reports of Dr. Holbrook and Dr. Johnson conclusively established he suffered a 25% whole-person impairment from his September 2008 injury. We disagree.

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[2] "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999). "The party asserting laches has the burden of showing negligence, the opportunity to act sooner, and material prejudice." *Richey v. Dickinson*, 359 S.C. 609, 612, 598 S.E.2d 307, 309 (Ct. App. 2004). "In order to constitute laches, the delay in bringing suit must have caused some injury, prejudice[,] or disadvantage to the party claiming laches." *Provident Life & Accident Ins. Co. v. Driver*, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (Ct. App. 1994). The Appellate Panel found Owen Steel had been prejudiced because Harrison had suffered multiple successive injuries to the same body part making it difficult to determine his entitlement to disability benefits without speculating. We disregard this reasoning because Dr. Holbrook and Dr. Johnson examined Harrison before any of his successive injuries and determined he had suffered a 25% whole-person impairment as a result of his September 2008 injury.

We are unable to discover any cases similar to the unique posture of this case—an employee who suffers two workplace injuries to the same body part, receives compensation for the second injury first, suffers additional non-workplace injuries to the same body part, then seeks compensation for the first workplace injury.[3] However, our supreme court's opinion in *Medlin v. Greenville County*, 303 S.C. 484, 401 S.E.2d 667 (1991) is instructive. In *Medlin*, the court found "that an employee who has suffered a fifty percent or more loss of use of his back and has received total and permanent compensation for this loss, is not entitled to any further total and permanent benefits for successive injuries to that same body part." 303 S.C. at 488–89, 401 S.E.2d at 669. The court's rationale was that any additional compensation would create a windfall because the person has already received compensation for total loss of use of the body part. *See Stephenson v. Rice Servs., Inc.*, 323 S.C. 113, 118 n.2, 473 S.E.2d 699, 702 n.2 (1996). The *Medlin* court further stated, "Only if [the] employee had suffered less than fifty percent loss of use to his back in the first accident, would he have been entitled to compensation *for the degree of disability [that] would have resulted from the later accident*." 303 S.C. at 488, 401 S.E.2d at 669 (emphasis added); *see Hopper v. Firestone Stores*, 222 S.C. 143, 153, 72 S.E.2d 71, 76 (1952) (finding language from the predecessor of section 42-9-150 stating an employee "shall be entitled to compensation only for the degree of disability which would have resulted from the later accident if the earlier disability or injury had not existed" clearly evidenced "legislative intent to prevent double compensation"). This indicates that for a claimant to be entitled to additional permanent partial disability compensation for a second injury, when the claimant has already received permanent partial disability compensation for a previous injury to the same body part, the evidence must show the degree of disability attributable only to the second injury in order to avoid double compensation.

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[3] This procedural posture was purposeful. Harrison's counsel conceded at oral argument that former counsel sought compensation for the second injury before the first injury in order to circumvent sections 42-9-150 to -170 of the South Carolina Code (2015), which, if Harrison had received compensation for the first injury before the second injury, would have entitled Owen Steel to credit for the permanent disability benefits it would have paid for Harrison's first injury. *See Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 165–66, 584 S.E.2d 390, 396–97 (Ct. App. 2003) (finding an employer was not entitled to credit for previously paid disability benefits pursuant to sections 42-9-150 to -170 because there was no evidence the claimant had previously suffered a permanent injury).

Our worker's compensation law refers to the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (5th ed. 2000) (AMA Guides) to determine whole person impairment ratings when an employee has an unscheduled injury. *See* S.C. Code Ann. Regs. 67-1101(B) (2012); *Therrell v. Jerry's Inc.*, 370 S.C. 22, 28, 633 S.E.2d 893, 896 (2006). The AMA Guides also recognize that impairment ratings can change from prior ratings—"unanticipated changes may occur: the condition may have become worse as a result of aggravation or clinical progression, or *it may have improved.*" AMA Guides at 21. (emphasis added). The AMA Guides address how to determine the impairment rating attributable to a second injury to the same body part: "[T]he most recent permanent impairment rating is calculated, and then the prior impairment rating is calculated and deducted." *Id.* at 12. The AMA Guides provide an example related to successive spine impairments:

> [I]n apportioning a spine impairment, first the current spine impairment rating is calculated, and then an impairment rating from any preexisting spine problem is calculated. The value for the preexisting impairment rating can be subtracted from the present impairment rating to account for the effects of the intervening injury or disease.

Id. at 21.

Our courts have not previously had an opportunity to address the issue, but the Supreme Court of Appeals of West Virginia, referring to the Fourth Edition AMA Guides, has addressed apportioning impairment between two successive workplace injuries to the same body part.[4] *Wagner v. Workers' Compensation Div.*, 517 S.E.2d 283, 284, 287–88 (W. Va. 1998); *see also* 8 Lex K. Larson, *Larson's Workers' Compensation* § 92.02D[6] (Matthew Bender, Rev. Ed.) (listing decisions of various jurisdictions regarding successive injuries to the same body part). In *Wagner*, an employee injured her back at work and was awarded a 22% impairment rating for permanent partial disability. 517 S.E.2d at 284. Eleven

[4] South Carolina law has discussed apportionment in another context not relevant here. *See Geathers v. 3V. Inc.*, 371 S.C. 570, 576–79, 641 S.E.2d 29, 32–34 (2007) (rejecting apportionment of liability as a solution to the "successive-carrier problem," occurring "when a worker suffers successive workplace injuries with an intervening change of employers or" insurance carriers, and adopting the "last injurious exposure" rule).

years later, the employee reinjured her back. *Id.* Two doctors opined the employee had a current whole person impairment rating of at least 10%. *Id.* at 287. The first doctor was of the opinion that the previous injury had "very little" effect on the current injury and, therefore, the employee was entitled to 10% additional impairment. *Id.* The second doctor determined, however, that because the injuries occurred at the same location, the employee's current impairment rating had to be apportioned. *Id.* "[T]o calculate the impairment caused by an injury sustained at the same location as an earlier injury, the physician first determines the patient's whole person impairment and then subtracts the amount of impairment caused by the earlier injury. The amount remaining is attributable to the newer injury." *Id.* at 284. Applying this standard, the doctor determined the employee had no additional impairment as a result of her second injury because deducting the previous impairment (22%) from the current impairment (10% or 15%) would result in a negative number. *Id.*; *see, e.g., Cummings v. Omaha Pub. Schs.*, 574 N.W.2d 533, 540 (Neb. Ct. App. 1998) (finding a claimant was entitled to receive compensation for only the additional 5% disability attributable to his subsequent injury because he was already compensated for his prior disability to the same body part).

The *Wagner* court affirmed the finding of the Workers' Compensation Appeal Board that the first doctor's opinion was unreliable because it failed to account for the previous 22% disability—stating the first doctor disregarded the permanency of the employee's previous disability and seemingly opined the disability had cured itself. 517 S.E.2d at 287. The court stated the only reliable evidence was the second doctor's report, which found, pursuant to the AMA Guides, the employee had suffered no additional impairment as a result of her second injury. *Id.*

Here, days after Dr. Johnson determined Harrison reached MMI from his 2008 injury, assigning a 25% whole person impairment, Harrison re-injured his cervical spine at work and was examined by Dr. Sweet. Dr. Sweet acknowledged Harrison's spinal fusion by Dr. Holbrook and Harrison's fifty-pound lifting restriction. Dr. Sweet determined Harrison had reached MMI from his 2010 injury and pursuant to the AMA Guides, assigned Harrison a 15% whole person impairment rating. Harrison filed and settled a compensation claim based on Dr. Sweet's report.[5]

[5] Harrison received $43,193.63 in compensation—Dr. Sweet's 15% whole-person impairment rating converted to a 28% loss of use of the back, representing eighty-four weeks of compensation at Harrison's average weekly wage.

We find Harrison is not entitled to any additional permanent partial disability benefits. *Medlin* and *Hopper* support the proposition that an employee, if compensated for a first injury to the back, is entitled to compensation for the degree of disability associated with only the second injury. The logical corollary is that the order in which an employee settles two compensable injuries would not matter so long as the injuries are distinguishable. The AMA Guides require physicians to distinguish successive injuries to the same body part and acknowledge that impairment ratings, although permanent, can change because the employee has improved. Following *Wagner's* approach to the AMA Guides—the second doctor's finding of a lesser impairment percentage reflected the employee's current condition after both injuries—Harrison is entitled to only the compensation he received for his second injury because the 15% impairment represents the totality of his impairment resulting from his 2008 and 2010 workplace injuries. Indeed, Dr. Sweet's recognition of Harrison's previous injury yet his issuance of a lower impairment rating is telling. *Cf. Burnette v. City of Greenville*, 401 S.C. 417, 423, 737 S.E.2d 200, 203 (Ct. App. 2012) (noting a doctor increased the initial impairment rating he assigned to an employee, from 10% cervical spine impairment to 28% whole person impairment, after learning the employee had previous impairments including a lumbar spine injury).

We acknowledge the purpose of workers' compensation law is to compensate a worker for injuries occurring in the course and scope of employment and that the law must be construed in favor of coverage. *See James v. Anne's Inc.*, 390 S.C. 188, 198, 701 S.E.2d 730, 735 (2010) ("[W]orkers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Act . . . ."). However, this policy is not implicated because Harrison has received compensation for the combined effect of his workplace injuries. Moreover, additional compensation is not warranted considering our courts' express proscription against double recovery. *See Hopper*, 222 S.C. at 153, 72 S.E.2d at 76 (finding language from the predecessor of section 42-9-150 stating an employee "shall be entitled to compensation only for the degree of disability which would have resulted from the later accident if the earlier disability or injury had not existed" clearly evidenced "legislative intent to prevent double compensation").

We doubt the legislature intended to allow an employee, who has suffered successive injuries to the same body part close together in time, to circumvent the operation of statutes entitling an employer to credit for previously paid permanent disability benefits by seeking compensation for the second injury before seeking compensation for the first injury. *See Hodges v. Rainey*, 341 S.C. 79, 87, 533

S.E.2d 578, 582 (2000) ("A choice of language in [an] act will not be construed with literality when to do so will defeat the lawmakers' manifest intention, and a court will reject the ordinary meaning of words used in a statute when, to accept the ordinary meaning, will lead to a result so plainly absurd that it can not possibly have been intended by the legislature." (quoting *S.C. Bd. of Dental Exam'rs v. Breeland*, 208 S.C. 469, 480, 38 S.E.2d 644, 650 (1946))); *id.* ("[T]his [c]ourt has interpreted statutes in accord with legislative intent despite contrary literal meaning in cases where there has been an oversight by the legislature that is clearly in conflict with the overall intent of the statute . . . .").

Therefore, we affirm the Appellate Panel's decision denying Harrison's claim for permanent partial disability benefits associated with his 2008 workplace injury.

AFFIRMED.

SHORT and KONDUROS, JJ., concur.

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PETITION FOR REHEARING

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ATTORNEY FOR THE APPELLANT

INTRODUCTION

This is an appeal of a workers compensation claim for an accident which occurred on September 17, 2008. The Appellant sought compensation for permanent loss of use of the spine and continuing medical treatment. The Full Commission of the South Carolina Workers Compensation Commission denied the claim of Appellant based upon the grounds of laches and intervening accidents. On appeal, this Court did not address Appellant's arguments in regard to those issues. In its Opinion Number 5528, filed January 10, 2018, this Court determined the pursuit of this claim by Appellant was barred because he settled a compensation claim for a subsequent injury to the same area. The Court concluded the settlement of the second claim, prior to the pursuit of the initial (this) claim, barred pursuit of Appellant's initial workers compensation claim of September 17, 2008.

Appellant respectfully petitions the Court for a rehearing for reconsideration of this appeal on the grounds the Court overlooked or misapprehended the facts and law applicable to this appeal as follows:

ARGUMENT I

THE COURT MISAPPREHENDED OR OVERLOOKED THE CONTROLING LAW AND FACTS IN CONCLUDING THE SETTLEMENT OF APPELLANT'S CLAIM OF OCTOBER 4, 2010, PRECLUDED THE SUBSEQUENT PURSUIT OF HIS CLAIM FOR THE FIRST ACCIDENT OF SEPTEMBER 17, 2008.

As the Court is aware Appellant Robert Harrison suffered an on the job injury with Owen Steel Company on September 17, 2008, when he suffered an injury to his

spine. This resulted in an anterior cervical discectomy with fusion and instrumentation at C5-C6, performed by the authorized treating physician on Dr. Holbrook on Nov 10, 2009. Subsequently, on July 21, 2010, Dr. Holbrook determined Appellant had reached maximum medical improvement with a fifty (50) pound lifting restriction, and a twenty-five percent (25%) impairment to the whole person. Thereafter, an independent medical evaluation was conducted by Dr. Johnson on September 29, 2010, also resulting in a determination Appellant had reached MMI with a twenty-five percent (25%) impairment rating to the whole body.

On October 4, 2010, Appellant reinjured the same body part while working for the same Employer. After conservative treatment with no further surgery, Dr. Sweet, the authorized treating physician for the October 2010 accident, by Form 14 dated November 23, 2010, stated Appellant had reached maximum medical improvement and assigned a fifteen percent (15%) impairment to the total body. Dr. Sweat also changed Appellant's lifting restrictions from not over fifty (50) pounds to not over thirty (30) pounds. Furthermore, the statement noted that the date of injury or illness was October 4, 2010. The Appellant settled the claim for the second injury of October 4, 2010, prior to pursuing the claim for the injury which occurred on September 17, 2008, and is the subject of this appeal.

At oral argument Court raised the question as to whether or not the Form 14 of Dr. Sweet was intended to be an impairment rating of Appellant's spine for both accidents. Furthermore, the Court questioned if the settlement of the second injury prior to resolution of the first injury precluded recovery or the first injury. Appellant would respectfully submit neither of these issues were addressed by either party in their briefs as

these were not issues raised in the last hearing before the Workers Compensation Commission.

Initially, Appellant would point out the purpose of the Form 14, as completed by Dr. Sweet, is to provide an impairment rating for a specific accident to allow resolution of a claim. The Form 14 specifically referred to the workers compensation accident of October 4, 2010. Although the Court concluded the impairment rating provided by Dr. Sweet included an overall impairment rating for the spine, including the initial accident of September 17, 2008, Appellant respectfully submits the Court misconstrued the purpose of the Form.

The Form 14 is used for purposes of resolving workers compensation claims as a result of an injury. If the Form provided an assessment of a current, overall lifetime impairment of a claimant's spine, it would be worthless. For instance, assume a claimant had a pre-existing 15% impairment of his spine, for an automobile accident which was totally unrelated to work. Then that claimant suffered an on-the-job injury to the spine and the treating physician completed a Form 14 indicating the claimant had a 20% impairment of the spine. The Form would simply be providing an overall impairment rating for the claimant's entire life, without specificity to the workers compensation accident which the physician was treating. This would make the Form totally useless for purposes of the workers compensation claim.

In its Opinion the Court referred to the AMA Guide, which provides a treating physician should deduct any prior impairments before arriving an impairment rating for an accidental injury. This would mean the impairment rating provided by the treating physician would provide an impairment rating for a specific accident. Appellant would

respectfully submit that is what the Form 14 is intended to do, and that is exactly what Dr. Sweet did.

Appellant respectfully submits even Employer did not take the position the rating of Dr. Sweet was a rating for both of Appellant's workers compensation accidents. It is important to note Appellant's lifting restrictions went from a maximum of 50 pounds for the first accident to a limit of 30 pounds, given by Dr. Sweet after the second accident. This was not an indication his condition improved. His lifting ability was significantly decreased by the second accident. Although theoretically an injury can improve over time and an impairment rating could lessen over time, the report of Dr. Sweet shows a significant decrease in Appellant's lifting abilities.

The report of Dr. Holbrook establishing an impairment rating as of July 21, 2010. The report of Dr. Johnson established an impairment rating as of September 29, 2010. Those were impairment ratings for the first workers compensation accident. Dr. Sweet's report was issued on November 23, 2010, just two months later. Although theoretically, an injury can improve over time, it is very unlikely such a dramatic improvement could occur over a period of less than two months. This is especially true in view of the fact a second accidental injury occurred to the same body area less than a week after Dr. Johnson's report was issued.

The above particular issues raised in oral argument and in the Court's Opinion were not addressed in the parties' briefs on appeal as they were not raised before the Commission. Even the Employer did not take the position below the impairment rating by Dr. Sweet was intended to include impairment from the first accident. The Employer did not take the position before the Commission that Appellant's spine condition

improved from September 29, 2010, through November 23, 2010. This is especially true in view of the fact an additional injury had occurred to the spine within days of the report of September 29, 2010. Furthermore, the Form 14 prepared by Dr. Sweet showed a significant diminution in Appellant's lifting strength.

Appellant respectfully submits the Form 14 was created by the Commission to provide specific impairment ratings for specific workers compensation accidents. That is exactly what the report of Dr. Sweet did and it was not intended to include any impairment from the first workers compensation accident.

Additionally, the Court concluded the settlement of the second accident prior to the conclusion of the first accident precluded Appellant from pursuing the current workers compensation claim. Again, this issue was not argued in the briefs of the parties as it was not in any manner addressed by the Full Commission. The Court is aware, however, there were two hearings before a Single Commissioner and two appeals to the Full Commission in this claim. As the issue of the settlement of the second accident was tangentially raised in the first hearing, the transcript of the hearing putting the settlement of the second claim on the record was submitted at the initial hearing. The transcript set forth exactly what was being settled in that claim.

If the Court believes the settlement of the second claim effected the current claim Appellant would respectfully request the Court allow the current record be supplemented to allow the Court to see exactly what was said at the settlement hearing. Again, this particular issue was not raised on appeal because it was not addressed in the final Commission Decision which is currently under appeal. For that reason portions of the record below which may have been relevant to this issue were not included in this appeal.

In reaching its decision the Court determined the scheme of the Workers Compensation Act did not allow a claimant to have a double recovery for an injury to the same body part. It therefore concluded Appellant was not entitled to recover on his first workers compensation claim because he settled the second compensation claim prior to resolution of this, the first claim. The Appellant respectfully submits the Court erred in reaching this conclusion.

Section 42-9-170 specifically provides that in cases in which an employee has one or more injuries while employed with the same employer, the employer is entitled to a credit for disability compensation paid in the first claim. In other words, if an employee was compensated for 250 weeks of disability payments for an initial injury, the most employee could recover for a second injury with the same employer would be 250 weeks of disability payments for a maximum of 500 weeks. The statute is intended to ensure an employer is not required to pay more than the 500 week maximum for more than one injury when it elects to retain an injured employee.

S.C. Code Section 42-9-150 also addresses workers compensation injuries to employees who had pre-existing permanent injuries. This Section provides that an employer is only responsible for additional impairment specifically resulting from the workers compensation accident. The scheme of the Workers Compensation Act shows the employer should only be responsible for permanent injuries specifically caused by a workers compensation accident without requiring payment for prior permanent injuries or impairments.

In its Opinion, the Court noted in a footnote counsel for Appellant admitted at oral argument prior counsel for Appellant sought to circumvent Sections 42-9-150 and

42-9-170. The use of the word "circumvent" is not entirely appropriate. At oral argument current counsel did state he believed prior counsel, who is deceased, had a reason for settling the second claim first. Current counsel believed the strategy may have been to settle the second injury first because there would be no credit or limit of award for the first accident under Section 42-9-170 based upon the settlement of the second claim. This was not an attempt to "circumvent" the two Sections, but to comply with the Sections, use them, and recover the maximum and legally proper amount due the Appellate.

Appellant respectfully submits the scheme of the Workers Compensation Act does not prohibit the current Claimant from pursuing his first workers compensation accident after settling the second workers compensation accident of October 4, 2010.

ARGUMENT II

THE COURT MISAPPREHENDED OR OVERLOOKED THE CONTROLLING LAW AND FACTS IN NOT RULING UPON THE ISSUES RAISED IN APPELLANT'S BRIEF.

As the Court relied on other issues to affirm the Full Commission it did not address the issues raised in Appellant's Brief. The Court in a footnote did briefly acknowledge laches and intervening accidents, as relied upon by the Full Commission, were not applicable based upon the timely reports of Dr. Holbrook and Dr. Johnson. Appellant would respectfully request, however, the Court reconsider and issue an opinion addressing the issues of failure to plead latches, error in applying latches, and error in denying the claim based upon intervening accidents.

CONCLUSION

Appellant respectfully submits the Court misconstrued the facts and law in reaching its decision. The Form 14 completed by Dr. Sweet was intended to address only impairment resulting from the accident of October 4, 2010. The common practice and use of the Form is to provide impairment ratings only for the injury resulting from the specific accident for which the position is treating a claimant. Any other interpretation of the Form would render it useless.

Although it is theoretically possible for a spinal injury to improve the evidence does not support a finding of any improvement to Appellant's spinal injury after the reports of Dr. Holbrook and Dr. Johnson were issued. Employer did not argue Appellant's condition had improved before the Commission. Furthermore, there was no showing and no reason to believe Appellant's spine condition actually improved between September 29, 2010, and November 23, 2010. This is especially true in view of the fact there was an additional injury involving spine within that time. Also, the Form 14 completed by Dr. Sweet actually placed additional lifting restrictions on Appellate. That was not an indication of physical improvement in Appellant's spine condition.

For all of the above reasons Appellant would respectfully request the Court reconsider its Opinion in this matter to conclude Appellant is entitled to pursue his workers compensation injury of September 17, 2008. Appellant also requests the Court address

the issues raised in the Brief of Appellant.

Respectfully submitted.

January 25, 2018

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 0824526

Robert L. Harrison, Employee,.....Appellant,

v.

Owen Steel Company, Inc., Employer, and
Old Republic Insurance Company
c/o Gallagher Bassett Services, Inc., Carrier,.....Respondents.

RESPONDENTS' RETURN IN OPPOSITION TO PETITION FOR REHEARING

Respondents Owen Steel Company, Inc. and Old Republic Insurance Company c/o Gallagher Bassett Services, Inc. hereby oppose Appellant Robert L. Harrison's ("Claimant") Petition for Rehearing ("Petition"). As an initial matter, Claimant's Petition cites no case law or other authority for his positions. This both serves as a ground to deny his Petition, *see* In the Matter of the Care and Treatment of McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) (a cursory and unsupported argument is deemed abandoned on appeal), and also reveals the lack of any legal support for his positions. Although Respondents disagree with this Court's resolution of the laches issue, this Court was correct in, and did not overlook or misapprehend any facts or law in confirming the Commission's denial of benefits for the 2008 claim.

I. This Court properly held that Claimant's 2008 claim is barred by the fact that he settled a 2010 injury to the same body part based on an impairment rating that was lower (15%) than the impairment ratings he obtained following his initial injury (25%).

Despite the fact that Claimant's counsel opened oral argument with the assertion that he knew why prior counsel had settled the 2010 claim before pursuing the 2008 claim, Claimant now insists that this Court improperly ruled on that basis. Claimant's counsel explained that prior counsel had purposefully orchestrated the settlement of the 2010 injury before pursuing an award for the 2008 injury in order to avoid (circumvent) a deduction under Sections 42-9-150 to 42-9-170 of the Act. It is disingenuous at best for Claimant to now argue that the Court should not have ruled on this basis when his own counsel raised it at oral argument.

Furthermore, the issue of whether Respondents should be entitled to a credit was raised before the Commission. Defense counsel argued at the August 1, 2014 hearing before Commissioner McCaskill that, at a minimum, they were entitled to a credit for the 28 percent settlement to the back (which equates to 90 weeks) paid in 2011. (R. p. 185, lines 10 – p. 186, line 7). Claimant's counsel argued that, because Claimant had settled his second injury first, Respondents were not entitled to any credit. (R. p. 178, line 23 – p. 179, line 8).

Claimant's assertion that he merely was complying with and using Sections 42-9-150 and 42-9-170 to "recover the maximum and legally proper amount due" to Claimant requires an absurd interpretation of the Act, one which runs counter to the stated policy of our workers' compensation law. Under Claimant's interpretation, despite strong policies preventing double recovery expressed throughout the Act, *see, e.g.*, Section 42-1-450 (a claimant can recover from a subcontractor or a principle contractor, but not from both);

Section 42-9-170 (as stated by Claimant, where "an employee has one or more injuries while employed with the same employer, the employer is entitled to a credit for disability compensation paid in the first claim");[1] Medlin v. Greenville County, 303 S.C. 484, 488-489, 401 S.E.2d 667, 669 (1991) (limiting the claimant to maximum compensation for total loss of use of the back despite subsequent injury to the back), a claimant could recover twice for some or all of his injury by settling his second claim prior to his first claim. Such a result produces absurd results, which could not be what the legislature intended. *See, e.g.*, Kiriakides v. UA Commc'ns, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) ("[h]owever plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention").

Claimant also attacks this Court's reliance on Dr. Sweet's Form 14-B. Contrary to Claimant's assertion that Respondents did not take the position that Dr. Sweet's rating accounted for impairment from both the 2008 and 2010 injuries, Respondents' Brief to this Court argued that there was no evidence "that Dr. Sweet's 15% whole body impairment rating did not also include some of the impairment that is reflected in Drs. Holbrook and Johnson's 25% whole body impairment ratings." (Resp. Br. p. 19).[2] Thus,

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[1] Respondents note that Claimant does not take issue with this Court's interpretation of Sections 42-9-150 to 42-9-170 and their applicability to this claim. He only argues, contrary to the position he took at oral argument, that there was no intent to circumvent those sections.

[2] In addition, one of the Commissioners on the Appellate Panel (Commissioner Beck) raised this very question at the May 18, 2015 review hearing. To the extent this Court grants Claimant's request to supplement the Record, which Respondents oppose, Respondents request that that transcript also be entered into the Record. Respondents note that the May 18, 2015 transcript also contains Claimant's counsel explanation of the

this issue was raised properly on appeal. *E.g.*, Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 904 (2010) (a "respondent 'may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court'").

Claimant argues that this Court should allow him to supplement the Record with the transcript of the 2011 settlement hearing. Claimant could have but did not designate the transcript of the 2011 settlement hearing for inclusion in the Record. There is no good reason to allow him to supplement the Record at this late date, *see* Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 339, 611 S.E.2d 485, 487-88 (2005) (the appellant bears "the burden of providing a sufficient record" for appellate review), and Respondents oppose any such request.

In any event, regardless of what Claimant may or may not have believed he was settling in 2011, the Act dictates what he is and is not entitled to in terms of benefits. Furthermore, it is not the 2011 settlement that this Court focused on but, instead, Dr. Sweet's impairment rating following the 2010 injury: "Harrison is entitled to only the compensation he received for his second injury because the 15% impairment represents the totality of his impairment resulting from his 2008 and 2010 injuries." This Court reached that result by following the AMA Guides' procedure for apportionment: "[T]he most recent permanent impairment rating is calculated, and then the prior impairment rating is calculated and deducted." The specifics of what Claimant believed he was settling in 2011 do not enter into or affect this analysis.

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strategy behind settling the second injury prior to prosecuting the first injury, which was to prevent Respondents from obtaining any credit for the second injury.

Despite Claimant's argument to the contrary, it is not at all clear that Dr. Sweet's Form 14-B was limited to the 2010 accident. Claimant cites to no statutory, regulatory or case law authority to support his novel argument – that, where there are two injuries to the same body part, a Form 14-B rendered after the second injury reflects only the degree of additional impairment caused by the second injury – for the simple reason that there is none. There is no verbiage on the form itself that so limits an impairment rating. Instead, the Form 14-B captures a claimant's impairment at the time it is rendered.

There is absolutely no indication in either Dr. Sweet's medical notes or his Form 14-B that suggests he was even attempting to separate out the impairment of Claimant's spine caused by the 2010 accident from that caused by the 2008 accident. (R. pp. 141-146). Claimant could have but did not depose Dr. Sweet or even offer into evidence a questionnaire indicating any such attempt at a division or allocation of impairment.

Instead, without any indication that he was separating out symptoms or impairment between Claimant's 2008 and 2010 accidents, Dr. Sweet provided conservative treatment only and, on November 18, 2010, released Claimant after just two appointments. On November 2, 2010, Dr. Sweet noted that Claimant's pain was "averaging 7, sharp, throbbing, constant. He feels he is getting worse." By November 18, 2010, however, Claimant's pain had "settled down" and he was "having only some achy neck pain without arm pain." (R. pp. 141-146).

Thus, despite Claimant's criticism that Dr. Sweet's impairment rating does not make sense in light of the change in lifting restrictions, Dr. Sweet's treatment notes indicate a clear improvement. There simply is no indication whatsoever in this Record that Dr. Sweet was limiting his impairment rating to the effects of the 2010 injury, as

separated or apportioned out from the 2008 injury. Claimant bears the burden of proving by a preponderance of the evidence that he is entitled to benefits. *E.g.*, Crisp v. SouthCo, Inc., 401 S.C. 627, 645, 738 S.E.2d 835, 844 (2013).

Under the AMA Guides, if a physician is asked to apportion impairment between two sequential injuries to the same body part "the analysis must consider the nature of the impairment and its relationship to each alleged causative factor, providing an explanation of the medical basis for all conclusions and opinions." AMA Guides, p. 21. Clearly, Dr. Sweet's Form 14-B does not contain any such analysis. In addition, in the example provided in the AMA Guides "apportioning a spine impairment, first the current spine impairment rating is calculated, and then an impairment rating from any preexisting spine problem is calculated. The value for the preexisting impairment rating can be subtracted from the present impairment rating to account for the effects of the intervening injury or disease." Id. There is no indication or evidence in this Record that Dr. Sweet performed such an analysis to arrive at his 15% impairment rating.

Claimant's argument that a Form 14-B that indicated a claimant's overall condition at the time it was rendered would be "totally useless," fails to acknowledge the AMA Guides process for dealing with exactly that situation. In fact, the scenario described by Claimant – where a claimant has a pre-existing non-work-related impairment of his spine of 15% and then suffers a work-related injury, following which a physician assigns him a 20% impairment rating – is precisely what the AMA Guides instructions address. In the scenario described by Claimant, the Commission would deduct the first impairment from the second, with a resulting 5% impairment caused by the second, work-related injury. Thus, the Form 14-B would not be "useless" but,

instead, would provide the Commission with the claimant's latest impairment rating so that the additional impairment caused by work-related injury, if any, could be determined.

Claimant apparently misunderstands or intentionally misconstrues this Court's explanation of the AMA Guides' direction on apportioning loss of use or impairment between subsequent injuries to the same body part. First, the AMA Guides indicate that "[i]n some instances, the physician may be asked to apportion or distribute a permanent impairment rating between the impact of the current injury and the prior impairment rating." AMA Guides p. 11. As noted above, there is no indication Dr. Sweet was asked to or intended to provide an apportioned rating. If he had, in order to arrive at a 15% impairment rating from just the 2010 injury, Dr. Sweet would have had to have found that Claimant's total impairment at the time of his release from treatment was 40%, which he did not.[3] There simply is no evidence that Dr. Sweet assigned Claimant a 40% overall impairment rating that, after the prior ratings were subtracted out, would have resulted in an apportioned rating of 15% for the 2010 injury.

Further, this Court did not rule that Claimant was not entitled to additional benefits simply because he "concluded the settlement of the second accident prior to the conclusion of the first accident." Instead, this Court candidly acknowledged that, "the order in which an employee settles two compensable injuries would not matter so long as the injuries are distinguishable." However, this Court ruled that Claimant "is entitled to only the compensation he received for his second injury because the 15% impairment represents the totality of his impairment resulting from his 2008 and 2010 workplace

[3] As this Court noted, "the most recent permanent impairment rating is calculated, and then the prior impairment rating is calculated and deducted." AMA Guides p. 12.

injuries" to the same body part. In other words, because Claimant settled his second injury first, and his impairment rating after the second claim was lower than the impairment ratings he had obtained in 2010, he is not entitled to any additional compensation, since subtracting the first impairment rating from the second results in a negative number or, at best, zero. In addition, this Court held that a claimant cannot circumvent Sections 42-9-150 to 42-9-170 the Act and "our courts' express proscription against double recovery" by settling a later claim first. That is not to say a claimant cannot settle a later claim first, but he cannot do so in order to circumvent the Act and obtain a double recovery.

Finally, Claimant fails to address this Court's authority to decide this case on a basis not raised by either party. *See* Bartles v. Livingston, 282 S.C. 448, 465, 319 S.E.2d 707, 717 (Ct. App. 1984) ("[w]hile this Court is generally confined to the issues raised by the exceptions, it is not limited to the reasoning of the parties or the trial court in addressing those issues"); Rule 220(c), SCACR (an appellate court can rule on any basis appearing in the record). While Respondents do not concede that the basis for this Court's affirmation is the only basis on which the Commission should be upheld, it is clearly permissible and serves as another reason to uphold the Commission's denial of additional disability compensation to Claimant.

II. Laches also bar Claimant's claim in this case.

Despite Claimant's arguments to the contrary, the issue of laches was properly before and properly decided by the Commission. As explained more fully in Respondents' Brief at pp. 14-17, Claimant's counsel acknowledged at the February 18, 2014 oral argument before the Appellate Panel that, "**[l]aches was pled as a defense**, and

it's my understanding that the order ruled against [Respondents' counsel] because it did not find for it in the Commissioner's order." (R. p. 332, lines 19-22) (emphasis added). In addition, laches was clearly pled on Respondents' 2014 Form 58, (Resp. 2014 Form 58, R. p. 118), with the result that Claimant had a full and fair opportunity to respond. Thus, the issue of laches was properly before and decided by the Commission. *See* King v. Wesner, 198 S.C. 49, 62, 16 S.E.2d 289, 295 (1941) (the "niceties of pleadings and process in the law Courts" are not required in workers' compensation proceedings); *cf.* Staubes v. City of Folly Beach, 339 S.C. 406, 413-414, 529 S.E.2d 543, 546-547 (2000) (finding negligence cause of action properly before the court and preserved for appeal where, although not pled in the complaint, both parties treated the negligence claim as having been raised, and where the defendant both argued the issue at oral argument below and had ample opportunity to respond to the claim).

This Court dismissed the Commission's finding that laches bars Claimant's recovery for his 2008 injury because "Dr. Holbrook and Dr. Johnson examined Harrison before any of his successive injuries and determined he had suffered a 25% whole-person impairment as a result of his September 2008 injury." (Opinion n.2). Respectfully, had Claimant pursued his 2008 claim in a timely manner and prior to the subsequent injuries to his back, this Court's reasoning would be fully applicable.

However, it is Claimant's condition at the time of the hearing, in this case 2014, that is determinative of any permanent disability award based on his 2008 injury. "The Commission is concerned with conditions existing prior to and **at the time of the hearing.**" Keeter v. Clifton Mfg. Co., 225 S.C. 389, 394, 82 S.E.2d 520, 523 (1954) (emphasis added); *see also* Burnette v. City of Greenville, 401 S.C. 417, 424 & 429, 737

S.E.2d 200, 204 & 206-207 (Ct. App. 2012) (holding that the claimant's testimony as to her condition "at the time of the hearing" is relevant to the determination of her impairment rating); Fishburne v. ATI Sys. Int'l, 384 S.C. 76, 681 S.E.2d 595 (Ct. App. 2009) (Commission properly based its disability rating on medical evidence and testimony at the hearing). Questions put forth by Claimant's counsel at the August 1, 2014 hearing recognize this underlying principle. For example, Claimant was asked, "[d]o you have any injuries or physical problems **now** that you relate to this accident of September 17th of 2008?" (R. p. 192, lines 18-20) (emphasis added).

And, because a disability rating is more art than science, involving consideration of medical opinions but also opinions of vocational experts, as well as testimony by the claimant and other lay witnesses, Burnette, 401 S.C. at 429, 737 S.E.2d at 206-207; *see also* Lyles v. Quantum Chem. Co., 315 S.C. 440, 443-445, 434 S.E.2d 292, 294-295 (Ct. App. 1993) ("[t]he commission may find a degree of disability different from that suggested by expert testimony"), reliance on outdated and stale impairment ratings is insufficient to establish entitlement to an award. Furthermore, as explained in more detail in Respondents' Brief, pp. 17-19, where the medical evidence is stale or outdated, as is the case here, the Commission understandably and necessarily must rely on other evidence and testimony. *See* Smith v. South Carolina Dept. of Mental Health, 329 S.C. 485, 499, 494 S.E.2d 630, 637 (Ct. App. 1997) (expressing concern over relying on medical evidence that was "more than two years old at the time of the hearing," and remanding so that full testimony could be elicited regarding "the impact of [the claimant's] injuries and the extent of his physical capabilities"). As this Court properly concluded, Dr. Sweet's 2010 impairment rating indicates Claimant's condition had

improved by November of 2010. Thus, to base a permanent award in 2014 on stale and superseded impairment ratings unquestionably would be prejudicial to Respondents.

Furthermore, an award of permanency made six years after an injury, with intervening work-related and non-work-related injuries to the same body part necessarily requires speculation. It is nonsensical to ask the Commission or this Court to determine "permanency" as of a point in time years before and in isolation of all that has occurred, including both work and non-work-related injuries to the same body part.

The 2010 impairment ratings provided by Drs. Holbrook and Johnson were complicated and overtaken by events that occurred between when they were rendered and the date of the hearing. As a result, and as the Commission properly found, it would require speculation to determine in 2014 what Claimant's "permanent" disability was from the 2008 accident, particularly when he had been compensated for some or all of that alleged disability in 2011 and had suffered other non-compensable injuries to the same body part. It would be absurd to make an award for "permanent partial disability" in 2014 based on medical records and opinions rendered in 2010 that had been superseded by later injuries and treatment to the same body part. Just as an award of permanent partial disability cannot be awarded for conditions that might develop in the future, Keeter, 225 S.C. at 394, 82 S.E.2d at 523, it cannot be awarded for a point in time years prior to the hearing, particularly when subsequent injuries have occurred to the same body part. Claimant sat on his rights and attempted to "game" the Act by settling his 2010 injury first, which inevitably included compensation for disability caused by the 2008 accident, and then attempted to double-recover by prosecuting the instant claim.

Interestingly, Claimant agreed at the August 8, 2013 hearing that his "current neck pain" was the result of all three events (the September 2008 work injury, the 2010 work injury and the 2012 incident with his daughter). (R. p. 323-A, lines 1-18). Furthermore, the problems he was experiencing in 2013 from the 2008 accident were the same as the problems he was experiencing in 2013 from the 2010 accident. (R. p. 326, lines 12-23). As a result, and setting aside the proper apportionment pursuant to the AMA Guides, it is impossible at this point in time to determine how much, if any, of Claimant's impairment is caused by his 2008 accident, as opposed to his 2010 work-related accident and other non-work-related injuries to the same body part.

Finally, as this Court held, in order for a claimant "to be entitled to additional permanent partial disability compensation for a second injury, when the claimant has already received permanent partial disability compensation for a previous injury to the same body part, the evidence must show the degree of disability attributable only to the second injury in order to avoid double compensation." This express intent to avoid double recovery for the same injury is the key to the prejudice that Respondents would suffer if this claim were allowed to go forward. Thus, despite Drs. Holbrook and Johnson providing a 25% impairment rating to the whole body in 2010, Claimant failed to pursue his claim at that time and, in fact, purposefully settled a subsequent injury to the same body part in order to circumvent the operation of Sections 42-9-150 to 42-9-170. This attempt to double-recover is clear evidence of prejudice and fully supports Respondents' laches argument.

As a result, Claimant's current claim is also barred by laches, which was properly before and properly decided by the Commission.

CONCLUSION

For all the reasons stated herein, this Court should deny Claimant's Petition. This Court also should rule that, alternatively, his claim is barred by laches.

Respectfully submitted,

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February 2, 2018

The South Carolina Court of Appeals

Robert L. Harrison, Employee, Appellant,

v.

Owen Steel Company, Inc., Employer, and Old Republic Insurance Company c/o Gallagher Bassett Services, Inc., Carrier, Respondents.

Appellate Case No. 2015-002093

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

J.

J.

Columbia, South Carolina

cc:
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Jason Wendell Lockhart, Esquire

FILED
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