THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM APPELLATE PANEL OF THE S.C. WORKER'S COMPENSATION COMMISSION

T. Scott Beck, Commissioner

Melody L. James, Commissioner

Gene McCaskill, Commissioner

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SC Court of Appeals

WCC File No. 1303465

Appellate Case No. 2016-000790

Ann Stevenson Claimant/Appellant

v.

Wal-Mart Stores,Inc.,Employer
AND
New Hampshire Insurance Co.,Carrier,

Respondents

FINAL BRIEF OF APPELLANT

Ann Stevenson
2261 Greenleaf Drive
Conway, S.C. 29526
843-347-5151
Appellant / Claimant

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Khoury v. Tomlinson,--- S.W.3d ----, 2016 WL 7671376 (Tex. App. Dec. 22, 2016), here the Appellate court held 1)an electronic signature is "an electronic sound, symbol, or process attached to or logically associated with a record" and was executed or adopted by a person with the intent to sign the record, 2)concluding first that Tomlinson's name and email in the "From" field was a symbol logically associated" with the email, and 3) further deciding the name in the "From" field can be construed to be "executed or adopted by the person with the intent to sign the record.".

Kluver v. PPL Mont.,293 P .3d 817 (Mont. 2012) Court held that "from" field in email and statement of approval in body of the email established that email was signed.

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STATEMENT OF ISSUES ON APPEAL

1. Did the Single Commissioner and Commissioners err in Finding of Fact #18 and Conclusion of Law#3? The error being that the Claimant's allegation of an injury by accident to the neck was denied despite being previously accepted by the carrier and supported by the greater weight of accurate medical evidence and that the Defendants should have been barred by estoppel from asserting a denial at hearing.
2. Did the Single Commissioner and Commissioners err in Finding of Fact#18 and Conclusion of Law#3? The error being that the Claimant's allegation of an injury by accident to the hip was denied despite being previously accepted by the carrier and supported by the greater weight of medical evidence and that the Defendants should have been barred by estoppel from asserting a denial at hearing.
3. Did the Single Commissioner and Commissioners err in Finding of Fact#18 and Conclusion of Law#3? The error being that the Claimant's allegation of an injury by accident to the ankle/foot and the back were denied despite being supported by the greater weight of medical evidence?
4. Did the Single Commissioner and Commissioners err in Finding of Fact#18 and Conclusion of Law#3? The error being that the Claimant's allegation of an injury by accident to the right arm was denied despite being previously accepted by the carrier and that the Defendants should have been barred by estoppel from asserting a denial at hearing.
5. Did the Single Commissioner and Commissioners err in Finding of Fact #18 and Conclusion of Law#3? The error being that the Claimant's allegation of an injury by accident to the right hand was denied despite being previously accepted by the carrier and supported by the greater weight of medical evidence and that the Defendants should have been barred by estoppel from asserting a denial at hearing.
6. Did the Single Commissioner and Commissioners err in Finding of Fact #16 and Conclusion of Law #5? The error being that the Claimant was not at maximum medical improvement and impairment ratings on all approved parts were never produced or determined.

7. Did the Single Commissioner and Commissioners err in Finding of Fact #19 and Conclusion of Law # 7? The error being that the Claimant was not at maximum medical improvement by the greater weight of accurate medical evidence.

8. Did the Commissioners err in basing their Order conclusions and decisions of MMI, TTD,etc. on medical statements, radiological readings, evidence, and material from medical practitioners of diagnosis, treatment, conclusions, and observations that were based upon radiological readings (X-rays and MRIs)? The error of which other radiologists and specialist physicians found to have reading errors that sufficiently broadened the diagnoses affecting more injury treatment and delays in treatment?

9. **Did the Single Commissioner and Commissioners err in not addressing or accepting the evidence exhibits of Defendants written statements that stated which specific body parts were accepted under the claim , and did they also err in not providing the guidance due under SC Code of Laws Title 26,UETA ?** The error of which was not applying UETA Code of Laws.

10. Did the Commissioners err in basing their conclusions and decisions upon disregarding patient testimony under oath as being non-credible and weighted accordingly upon these same findings and that of statements made by the Defense? Did they also err in their findings, if there was no direct evidence provided proving false statements made by the Claimant?

11. Did the Commissioners err in basing their decisions, conclusions and orders on assuming the credibility of the Defendants' attorney's statements and evidence provided? And if so how could incorrect, misleading and false statements become the basis of this case?

12. Did the Commissioners err in their consideration of the complete FCE report - the recommendations,physical observations, restrictions, and objective body part quantification of FCE report upon which Dr.Merritt based his objective decisions of MMI and decisions on form 14B? And was this error created by removal of page 7 (objective testing results) of the 11 page report in the FCE report provided as evidence under Defendants' APA

13. Were there Workers Compensation Regulations violated in this case and was no action taken on these violations? Were there other laws violated by the Defendants and their agents?

STATEMENT OF THE CASE

On the morning of Saturday, February 16,2013, Ann Stevenson's injuries were sustained in a work-related accident while working as a NC and SC territorial rotating relief pharmacist at the Walmart Pharmacy 4664, 151 Myrtle Ridge Drive, Conway,SC 29526. (R. p. 74, line8 -p. 75 line 12)The accident occurred when she walked down to the counsel window to talk to a mom about a child's antibiotic and realized it was just powder, not mixed. Turning to ask a tech to mix it, her foot stepped through into a coiled computer data cord wrapped several times around her ankle that was notched into the data socket in the wall. When she tried to take a step with the right foot the data cord pulled tight jerking her foot out from under her, up and over turning her sideways with her left side under her, still in the air coming down when the cord broke out of the socket, as she was thrown forward ramming her right hand/wrist and fingers into the division of the bottom of the large blue hazardous waste bin, and ramming her right arm up past the bicep through one of the small holes in the bin top where it broke off as she rolled off of it with her right hand still trapped in the division coming down on her as she hit the floor with her left hand still holding the prescription bag and the outside of her left leg hitting the ground. The two places of main injury contact were the right hand/wrist and fingers which took her weight on initial impact and the right ankle which was not released until the data cord broke, both parts of which defendants' have denied since litigation began, but there are several emails stating certain body parts are covered on the claim. (R. pp. 376-380). These **Accident Pictures** which are parts of the actual **accident videos**(received from the Defendants' attorney under the part of the subpoena that was complied with after Defendants' medical treatments were stopped) are supplied for corroboration of the accident description. Only the similar pictures from the accident were allowed to be presented (R. pp.382-385)

We are still waiting for material from subpoenas that were never complied with and have one outstanding........... Two subpoenas were issued by Carter Martling (Appellant's lawyer) on October 18, 2013. One subpoena required as the list of documents: The complete adjuster's file including and any and all accident reports, in store video of the incident in question, and all investigative materials. The second subpoena required as the list of documents: The complete employment file including any and all accident reports, in store video of the incident in question, and investigative materials. On November 7,2013, Defendants' attorney requested," that this commission issue an Order quashing the subpoena requesting production for the entire insurance claim file in this matter." Nowhere did they request witness accident reports be withheld or even listed . On November 22,2013, Commissioner Wilkerson signed The Quash Order, granting the Motion to Quash Subpoena for Carrier File.
On December 3,2014, Carter Martling (Claimant's lawyer) issued another subpoena requiring list of documents: The updated since 12/19/2013 employment file including

any and all accident reports, in store video of the incident in question, and investigative materials. Most of the employment file contained about 138 pages of blank time sheets that were never filled in, numerous physician accommodation requests along with restrictions, and blank forms with a few interoffice emails.
None of the witness reports, nor both of the verbal accident injury conversation recordings of the claimant were ever produced under any of the three subpoenas and they were not requested to be Quashed either, so Defendants never complied with those subpoenas.
Dr Merritt's Deposition was taken on December 18,2013 with an exhibit added to page 49 of five pictures of the defendant falling, but was not produced in Defendants' APA(so the Court allowed similar pictures of the accident to be presented (R. pp. 383-385)
Ann Stevenson's Deposition was taken on November 26, 2013. (R. pp. 183-202)
A hearing on the Defendant's Form 21 was held before Commissioner Wilkerson on December 19, 2013. After hearing the testimony from which he decided the only credible testimony was that of the defendants' lawyer, Commissioner Wilkerson issued an Order dated March 5, 2014. In that Order he made Statements of Fact suggested by the Defendants' lawyer that the Claimant's statements and testimony was exaggerated, not believable, unreliable,and not credible. Some of the material used for this came from statements and a letter a doctor, Dr Baens who illegally accessed this patient's medical file of Dr Merritt (not-professionally related in practice) in June 2013 (after March 27,2013 she had been removed), denying Dr Merritt's written prescription for physical therapy with the paperwork supplied by a claims adjuster via fax/phone across state lines.(A criminal complaint is currently being invested by the state and there are copies of the HIPPA complaints under investigation.). This denial of physical therapy by the wrong doctor appears to have saved the Defendants several weeks of physical therapy.
From that Order the Claimant/Appellant appealed. The Full Commission heard that appeal and vacated the previous order on the basis that all body parts, both admitted and denied, should have been adjudicated at one time.

A second hearing was then held before Commissioner Michael Campbell on January 8,2015, and an Order was issued on October 13, 2015, of 6% permanent partial disability to the right knee and 4% permanent partial disability to the right shoulder, with a total indemnity award of $17,626.16 of TTD for benefits of a max of $743.72/ week. The Order stated, 1)"that the Claimant is not entitled to any on-going or future medical treatment , and " that Claimant's application for benefits for injuries to the neck, low back, right hand, and right foot/ankle is denied and her claims for benefits associated with these body parts is dismissed with prejudice." There was also a disruption in testimony of Claimant about the claimant/adjuster emails of coverage during the hearing.

Commissioner Campbell found that the defendants' were entitled to stop payment of temporary total disability compensation as of October 10, 2013, the date on which Dr Merritt decided the claimant had reached maximum medical improvement on the right shoulder and right knee body parts of her injury, stating would probably need pain therapy and was restricted by the FCE results.. Commissioner Campbell appeared to have only considered the MMI portion of form 14B, by awarding permanent disability benefits to the defendants' lawyer's admitted body parts (right knee and right shoulder) and awarding a credit for overpayment of temporary compensation after October 10,2013 avoiding any decision on work restrictions and denying the pain therapy most likely needed as stated by the physician determining the Maximum Medical Improvement on that form. Commissioner Campbell found that the claimant was not entitled to ongoing or future medical treatment, while denying compensation for any other claimant injuries of cervical neck, low back, right hand/wrist, right arm, and right foot/ankle which the defense argued they had denied these parts. The Claimant appealed, filing Form 30, appealing this denial and the findings that the she had reached maximum medical improvement. The Appellate Panel Review was held on January 11,2016

Claimant states the Commissioners erred in placing her at maximum medical improvement as of October 10,2013, awarding the credit for TTD payment past that date, and there is compensable damage sustained to the right hand/wrist and other body parts injured in the work accident on February 16,2013 which the adjusters chose not to cover, but were accepted and admitted to in emails to her and under the body parts sent to physical therapy for authorized treatment as noted in Physical Therapy notes.

FACTS OF THE CASE

The Appellant worked as pharmacist for Walmart, where her accident occurred and was timely reported on February 22, 2013. As to accident, see statement of the case, video, and pictures

The Appellant was initially seen at Doctor's Care on February 22,2013, after her work injury where she was diagnosed with a right arm and hand strain. (R. pp. 265 -272) After that, she was authorized to treat at Progressive Physical Therapy from March 8,2013 through June 12, 2013. (R. pp. 298-320) In Dr Baens Physical Therapy order (02282013)she lists ICD 9 Diagnosis codes, "cervical, R should, R arm, R wrist, R hand and R lower extremity." She also states " patient would like to try pain relief modalities that a chiropractor would offer to alleviate multiple pain joint/ muscle discomfort mainly right side" with a notation " Fridays only" She also writes the ICD 9 Diagnosis on each specific prescription written thereby correlating their medical effectiveness and how they were connected for medical use. Additional, the Appellant was provided diagnostic imaging tests including x-rays of her right elbow and hand at Doctor's Care. . After the first two to three weeks, the main form of communication between claimant and adjuster was via emails, with directions to take action and to do diagnostics notified by email.

The Appellant was authorized to treat with Dr. James Merritt at Strand Orthopaedic Consultants on several occasions between March 27, 2013 and October 8, 2013. (R. p. 258) She was diagnosed with a "probable low back strain with some sciatic discomfort down the right leg, and right shoulder rotator cuff injury, cervical strain, and wrist and hand strain." She has continued to complain of symptoms related to all these body parts consistently ever since, including the hand and neck. In his deposition, Dr. Merritt states she was "having problems with her hand .. I referred her to our hand specialist for that." (R. p. 208, Merritt Deposition p. 19 line 1-3) When asked in the same deposition whether he had any reason to believe she did or didn't injure her hand, he replies, "I don't have any reason to believe that she didn't. I have no history of another injury or anything like that." (R. p. 215,Merritt Deposition p 47, line 19-20)

The Appellant was sent to Dr. Alan Tamadon, a physiatrist in Wilmington, North Carolina, for an IME on August 1,2013.. He was charged with evaluating her for " right foot, hand, shoulder, knee, hip and neck pain associated with right hand weakness." (R. p. 260-264) When asked whether her symptoms "in total" were related to her accident, he simply replies, "No." He further opines that " all objective findings with the exception of the myofascial pain are pre-existing.." He then further notes he has no "access to any prior medical/alternative medicine records."

In regards to whether or not her right hand is at MMI, Dr. Tamadon (a physiatrist) states, "Yes, if right CTS is not an approved diagnosis." He then states in regards to MMI, " If right CTS is accepted as part of this injury, claimant is not at MMI.:
(R. p. 263, section 8)

On October 10, 2013 Dr. Merritt issued a Form 14B placing the Appellant at MMI for her right shoulder and knee and assigned impairment ratings of 2% and 3% respectively and said to see FCE for full restrictions.(more than page 7 was missing in Def APA of FCE report) (R. pp. 273-288). He was not sent the Defendants' tampered with FCE report, but was sent the non-adulterated one and that is where he got his restrictions from, which was verified by asking the office whether they had the missing pages information.

The procedural aspects that followed are outlined above in the Statement of the Case.

We are also waiting on evidence to be supplied by Form 27 Subpoena issued by Amy Bracy on November 22,2016, requesting materials that had never been provided from the other subpoenas. This Subpoena requests copies of 1)The updated employment file since 12/12/14, any and all accident materials, including those accident reports filled out by co-workers on the day of the accident, and the two verbal audio recordings made of the claimant's statement for the accident and injuries by her recorded by the adjusters over the phone. The subpoena specifically identifies what the other included, but were not provided. We have reason to believe that this material will confirm the Appellant's claims of injuries and specifically the foot and other body parts of contention. The date to be provided for was December 9, 2016, giving the Defendants' at least 15 days to comply. Some of this subpoenaed information under discovery may belong under the Statement of Facts or in one of the arguments..

The above Subpoena was noted to be void due to the case continuing at the Court of Appeals out of the Commission's jurisdiction and the material is being held pending outcome per Commission Order.

QUESTION

1)Did the Single Commissioner and Commissioners err in Finding of Fact #18 and Conclusion of Law#3? The error being that the Claimant's allegation of an injury by accident to the neck was denied despite being previously accepted by the carrier (R. p. 377) and supported by the greater weight of accurate medical evidence

ARGUMENT

_____In Dr Baens Physical Therapy order (02282013)she lists ICD 9 Diagnosis codes, "cervical, R should, R arm, R wrist, R hand and R lower extremity(which must have been her diagnosis, even if she did not write it up on her visit evaluation sheet). She also states " patient would like to try pain relief modalities that a chiropractor would offer to alleviate multiple pain joint/ muscle discomfort mainly right side" with a notation " Fridays only" She also writes the ICD 9 Diagnosis on each specific prescription written thereby correlating their medical effectiveness and how they were connected for medical use.

The Claimant began treatment with Dr. Merritt on March 27, 2013,(released from Doctor's Care) and was diagnosed with a " low back strain , right should rotator cuff injury, cervical strain, and wrist and hand strain." (R. p. 258) He states, she is also complaining of tightness in the neck and does not seem to want to move this."

Medical statements, radiological readings, evidence, and material from medical practitioners of diagnosis, treatment, conclusions, and observations that were based upon *faulty radiological readings* (X-rays and MRIs) which other radiologists and specialist physicians found to have reading errors that sufficiently broadened the diagnoses linking more symptoms associated with objective records, affecting more injury treatment and delays in treatment of the approved body parts.

QUESTION

2)Did the Single Commissioner and Commissioners err in Finding of Fact#18 and Conclusion of Law#3? The error being that the Claimant's allegation of an injury by accident to the hip was denied despite being previously accepted by the carrier (R. p. 380) and supported by the greater weight of medical evidence and that the Defendants should have been barred by estoppel from asserting a denial at hearing.

ARGUMENT

The right hip was authorized for treatment under Dr. Merritt and physical therapy, even though being an accepted part was denied at litigation (R. p. 380),. Also see UETA

QUESTION

3)Did the Single Commissioner and Commissioners err in Finding of Fact#18 and Conclusion of Law#3? The error being that the Claimant's allegation of an injury by accident to the ankle/foot and the back were denied despite being supported by the greater weight of medical evidence?

ARGUMENT

Adjuster- Claimant email (053113 at 11:31am) Hanna Wiley's written statement is, " We are in the process to set you up with specialist to address all your issues and we will not be able to treat you for your **foot/ ankle** until after this appointment. **We are not refusing treatment**, but must go through the proper channels.

On the associate incident report (R. p. 202,Defendants' exhibit 1 from Stevenson Deposition), filed the date of the accident, February 16, 2013, under a description for "Nature of Injury", Ms. Stevenson states"Cord pulled right foot out and twisted down when hand was caught in plastic lid."

In Dr Baens Physical Therapy order (02282013)she lists ICD 9 Diagnosis codes, "cervical, R should, R arm, R wrist, R hand and R lower extremity(which must have been her diagnosis, even if she did not write it up on her visit evaluation sheet). She also states " patient would like to try pain relief modalities that a chiropractor would offer to alleviate multiple pain joint/ muscle discomfort mainly right side" with a notation " Fridays only" She also writes the ICD 9 Diagnosis on each specific prescription written thereby correlating their medical effectiveness and how they were connected for medical use.

In the above report and every description of the accident, Ms. Stevenson has consistently stated that the foot/ankle was involved (R. p. 74, line 12-p75, line 9) (R. p. 202 and pp.191-192, Stevenson Deposition p33 line 3 – p37 line3). The Defendants' accident video surveillance and pictures (R. p. 385) shows a loose coiled computer cord near the bottom of the Claimant's leg. The Claimant began treatment with Dr. Merritt on March 27, 2013 , where he stated , "also having problems with cramping in the calf on the right side as

well"and was diagnosed with a " low back strain , right should rotator cuff injury, cervical strain, and wrist and hand strain." (R. p.258). He referred her to Dr Pappas (a foot and ankle ortho specialist) having to wait almost two months on the waiting list to be seen as a new patient.

She treated with Dr Pappas several times of which the initial visit was (R. pp. 244-246)on July 12,2013, where he took a history stating, "a complicated medical history following an injury sustained on on 2/16/13" " she reports that she was at work when the cord wrapped around her right leg, creating a falling injury to the right leg. She sustained a twisting injury to the knee, hip, and leg. Since, that time, she's had persistent radiating pain throughout the right lower extremity radiating from the region of the low back through the posterior thigh and lateral knee into the foot and ankle. She reports that depending on her position she has numbness and burning sensations to the right lower extremity. " She also concerned about the small palpable nodule that forms along the medial heel intermittently, she says when this form she has significant pain. She does report that she had a large area of purplish discoloration around the lateral side of the right knee at the time of the injury that has remained.
She has treated by Dr. Merritt, to date. She reports undergoing a course of physical therapy without significant improvement, none of this related to the right foot." (Defendants' denied as a covered part to Dr. Merritt and physical therapists and refused the physical therapy Dr. Merritt had written for the back-related problems, so no physical therapy for back or foot).
" She is scheduled for a second opinion, with a physician in Wilmington regarding her right foot, she has refused any radiographs today" (Thinking the adjusters had agreed to a second opinion, the claimant refused the radiographs because she was paying for the services of Dr. Pappas because Workers Comp was taking to long to get her foot approved).

(R. pp. 245-246) All of the following are quoted from this. " Edema right is pedal 2+, varicosities with capillary refill test normal and varicosities, antalgic gait, no limp. Ankles and feet – swelling. With Bony palpation ---Tenderness of the lateral ankle, the calcaneal tuberosity, the tarsometatarsal joints, and the interior tibiofibular joint; Tenderness with palpation along the distal fibula. With soft tissue palpation no tenderness of the achilles tendon or the peroneus longus and brevis, but --- tenderness of the plantar fascia, the sinus tarsi, and the anterior talofibular ligament, tenderness along the tarsal tunnel. With some tingling developing throughout the plantar forefoot with compression. Strength Right: extensor hallucis longus 4/5m, tibialis anterior 4/5 and gastrocnemius 4/5. No claw and no hammer toes. Neurological systems Exquisite tenderness with palpation along the region of the common peroneal nerve near the fibular head.

Skin ---Right lower extremity. There is an area of purplish discoloration around the later leg, near the fibular head.
See assessment and plan, discussion, etc.
His diagnosis was tarsal tunnel syndrome, tenosynovitis of foot and ankle, plantar fascial fibromatosis , plantar fascitis, and other mononeuritis of lower limb. **Patient advise to avoid running and walking, regarding work, no prolonged standing, no kneeling or squatting. He believes her issues are related to common peroneal nerve neurapraxia and has symptoms consistent with sciatica and has radicular findings. I recommend EMG nerve study to evaluate nerve function and believe most of her symptoms are related to nerve issue higher in the leg and low back.**

Claimant has continued to seek medical treatment for this injury including physical therapy (over the course of several years)prescribed by different body part medical specialists.

We are also waiting on evidence to be supplied by Form 27 Subpoena issued by Amy Bracy on November 22,2016, requesting materials that had never been provided from the other subpoenas. This Subpoena requests copies of 1)The updated employment file since 12/12/14, any and all accident materials, including those accident reports filled out by co-workers on the day of the accident, and the two verbal audio recordings made of the claimant's statement for the accident and injuries by her recorded by the adjusters over the phone. The subpoena specifically identifies what the other included, but were not provided. We have reason to believe that this material will confirm the Appellant's claims of injuries and specifically the foot. The date to be provided for was December 9, 2016, giving the Defendants' at least 15 days to comply. There is information to believe this holds more evidence as to the foot and ankle involvement.

QUESTION

4)Did the Single Commissioner and Commissioners err in Finding of Fact#18 and Conclusion of Law#3? The error being that the Claimant's allegation of an injury by accident to the right arm was denied despite being previously accepted by the carrier (R. pp. 377-378) and supported by the greater weight of medical evidence and that the Defendants should have been barred by estoppel from asserting a denial at hearing.

ARGUMENT

See most of the argument for the right hand which can also apply to the arm. (R. pp. 377-378)

In Dr Baens Physical Therapy order (02282013)she lists ICD 9 Diagnosis codes, "cervical, R should, R arm, R wrist, R hand and R lower extremity(which must have been her diagnosis, even if she did not write it up on her visit evaluation sheet). She also states " patient would like to try pain relief modalities that a chiropractor would offer to alleviate multiple pain joint/ muscle discomfort mainly right side" with a notation " Fridays only" She also writes the ICD 9 Diagnosis on each specific prescription written thereby correlating their medical effectiveness and how they were connected for medical use.

QUESTION

5)Did the Single Commissioner and Commissioners err in Finding of Fact #18 and Conclusion of Law#3? The error being that the Claimant's allegation of an injury by accident to the right hand was denied despite being previously accepted by the carrier (R. pp. 377-378) and supported by the greater weight of medical evidence and that the Defendants should have been barred by estoppel from asserting a denial at hearing.

ARGUMENT

In Dr Baens Physical Therapy order (02282013)she lists ICD 9 Diagnosis codes, "cervical, R should, R arm, R wrist, R hand and R lower extremity(which must have been her diagnosis, even if she did not write it up on her visit evaluation sheet). She also states " patient would like to try pain relief modalities that a chiropractor would offer to alleviate multiple pain joint/ muscle discomfort mainly right side" with a notation " Fridays only" She also writes the ICD 9 Diagnosis on each specific prescription written thereby correlating their medical effectiveness and how they were connected for medical use.

Since the moment the Appellant fell her right hand has been one of the central issues to this claim. The Respondents' Form 12A dated February 22, 2013 (R. p. 171)lists her ring finger(s) as the initial body parted reported as injured. "The report of the accident made by the employer to the Commission pursuant to its rules or to requirements of the statute is competent prima facie evidence of the facts stated, subject to be explained or contradicted .." [Sligh v. Newberry electric Cooperative, 216 SC 401, 417-418] The Respondents' APAs are wrought with authorized treatments with multiple providers

where the hand is addressed. The Respondents have scheduled and paid for multiple diagnostic studies to address the Appellant's hand complaints. It was evidenced above that the primary authorized treating physician, Dr. Merritt, has noted a likely and related hand injury necessitating a referral to a hand specialist. Dr. Merritt also stated there was no evidence to suggest any previous injury. At no point have the Respondents provided any evidence to suggest a previous injury to the hand because none exists. The only suggestion of such is noted in the IME of Dr. Tamadon, who curiously, also states that his opinion is made " without access to any prior medical/alternative medicine records.: (R. p. 262, section 5) One need only view the security footage , see Dr. Merritt's reaction , Claimant Ex. 1, attached to the original Deposition (R. pp. 215-216, Dr Merritt's Testimony p. 48, line 12 – p.52, line 5) to agree that from the instant the Appellant fell, her right hand has been involved.

The Claimant began treatment with Dr. Merritt on March 27, 2013,(released from Doctor's Care) and was diagnosed with a " low back strain , right should rotator cuff injury, cervical strain, and wrist and hand strain." (R. p. 258) On May 19,2013, the Claimant was placed on work restrictions by Dr. Merritt to include "No repetitive movements or gripping with the right wrist/hand". (R. p. 253) The Claimant continued with Dr. Merritt after the initial hearing for the remainder of 2013 and all through 2014. On December 27, 2013, he wrote the Claimant to work restrictions including no repetitive use of the right arm. (R. p. 364) On January 9, 2014, Dr. Merritt filled out a Medical Questionnaire provided by Walmart in which he reiterated these restrictions,. (R. p. 361) Dr. Merritt again treated her on March 27,2014 (R. pp. 351-352) and May 22, 2014. (R. pp. 349-350) On May 29, 2014, Dr. Merritt filled out another Medical Questionnaire where he again put in place restrictions of no lifting greater than 10 pounds, no repetitive use of the right arm, and no repetitive gripping with the right arm. (R. pp. 344-346) On June 20,2014 she again treated with Dr. Merritt who diagnosed her with carpal tunnel syndrome and suggested she see a hand specialist. (R. pp. 340-342) On November 3, 2014 she returned to Dr. Merritt for additional treatment and he once again kept the same work restrictions in place. (R. pp. 332-335) It should be noted that the **Employer has not to date provided work within the restrictions place on the Claimant by Dr. Merritt.** Dr. Merritt was deposed on December 18, 2013. The doctor references "problems with her hand, I want to say I thought that I referred her out to our hand specialist for that. (R. p. 208,Deposition p 19, line 1-3)(R. p. 215, Deposition p. 47. line 22-25) When asked upon cross examination whether he had "any reason to doubt that she may or may not have injured her hand in the accident ..." Dr. Merritt replied, "I don't have any reason to believe that she didn't." (R. p. 215, Deposition p47, line 16-21) On April 2, 2014, the Claimant presented to Dr. Stewart Haskins of Coastal Orthopaedics for an independent medical evaluation of her right hand. Dr. Haskins opined "I would recommend electrodiagnostic studies be repeated. If repeat electrodiagnostic studies are confirmatory for right carpal tunnel syndrome, and she had an injury to the right hand, then the carpal tunnel syndrome would be related to her fall."

(R. p. 368, under PLAN)) An electrodiagnostic study was completed on April 14, 2014 and confirm carpal tunnel syndrome on the right side. (R. p. 370)

Despite the confusing nature of the record on the whole, the totality of medical evidence is replete with confirmatory diagnoses, references. And records confirming what all parties have known since the very outset of this claim, that Ms. Stevenson injured her right hand when she fell at work on February 16, 2013. The injury by accident to the right hand was confirmed by video evidence, by medical evidence, and in the employer's first report of injury The overlying issue is that the Defendants have never at any point in this case proven maximum medical improvement to what had been from the the very start an admitted body part. (R. pp. 377-378) Had there ever been a statement of MMI, an impairment rating, or anything of the sort, then the premise of this part of the appeal would be moot. Instead, the Defendants reversed course on their Form 51 and denied the right hand despite the fact that they had repeatedly provided treatment for such and even paid TTD for several months based on the work status reports of Dr. Merritt which repeatedly included restrictions to the right hand. The Defendants have continually picked and chosen when Dr. Merritt's recommendations should be given weight and when they should be ignored on legal convenience.

In the case of ***Anderson v. Baptist Medical Center*** [343 SC 487], the claimant disputed a finding of maximum medical improvement by the Commission because impairment ratings were not provided for all claimed body parts. The Claimant ultimately lost because it was determined she failed to carry her burden of proof that all body parts, not just those rated by the doctor, were related. The clear implication is that had she proven such by a preponderance of the evidence then ratings (or statements of MMI) would have been required to support the finding. Here, Ms. Stevenson has provided voluminous information that she suffered an injury by accident to the right hand. At issue should have been the more legitimated argument between the parties as to the extent of those injuries, whether or not she was at MMI, and whether or not she was entitled to a permanent partial disability award for that body part. The Single commissioner and the Commission erred by issuing a denial to the Claimant's right hand rather than acknowledging a legitimate injury by accident and issuing a supported opinion on MMI and permanent partial disability no matter what that may have been.

QUESTION

6)Did the Single Commissioner and Commissioners err in Finding of Fact #16 and Conclusion of Law #5? The error being that the Claimant was not at maximum medical improvement and impairment ratings on all approved parts (R. pp. 376-380) were never produced or determined.

ARGUMENT

This Error pertains to meeting legality of UETA as legally written agreements. See the argument under UETA. The Defendants had accepted these parts, later reversing on litigation. So there were no MMI or impairment ratings ever done. Also with more objective results from the corrected MRI / X-rays as to more treatment.

QUESTION

7)Did the Single Commissioner and Commissioners err in Finding of Fact #19 and Conclusion of Law # 7? The error being that the Claimant was not at maximum medical improvement by the greater weight of accurate medical evidence.

ARGUMENT

See **ARGUMENTS** under each specifically related parts and the radiological reading errors.

QUESTION

8)Did the Commissioners err in basing their Order conclusions and decisions of MMI, TTD,etc. on medical statements, radiological readings, evidence, and material from medical practitioners of diagnosis, treatment, conclusions, and observations that were based upon *faulty radiological readings* (X-rays and MRIs) which other radiologists and specialist physicians found to have reading errors that sufficiently broadened the diagnoses linking more symptoms associated with objective records, affecting more injury treatment and delays in treatment of the approved body parts?

ARGUMENT

The sports medicine specialists , Dr. Tupis and Dr. Mills,who found the errors were also able to associate a correct diagnosis to match symptoms and complaints that did not before. The symptoms Dr. Merritt did not understand of the knee and surrounding tissue were linked to the corrected radiological readings and suggested for treatment. The worsening of the symptoms of the cervical neck were associated with the corrected readings including spurs. and diagnosis of cervical radiculopathy.

Dr Tupis(a sports specialist) who reread the Right knee MRI from 5/7/13 adding what had been left out of the original reading–objective signs of patellofemoral joint space narrowing and medial joint space narrowing, along with objective diagnosis and surgical options, and cc-ed his report to Dr Haskin.. Dr.Merritt was deprived of the most accurate knee MRI reading when he diagnosed patient with not having an isolated meniscal tear in his testimony from symptoms that did not completely match the faulty MRI reading he was given by Dr Russell Derrick, These radiologic reading errors resulted in lack of correct medical treatment, prolonged time and pain in injured physical state without the treating practitioners being aware that the symptoms were accounted for not exaggerated or invented. Is the employer liable for the mistakes, errors, or criminal activity made by their designated healthcare provider or just liable for the costs associated with these?

QUESTION

9)Did the Single Commissioner and Commissioners err in not addressing or accepting the evidence exhibits of Defendants written statements that stated which specific body parts were accepted under the claim (R. pp. 376-380) , and did they also err in not providing the guidance due under SC Code of Laws Title 26,UETA ?

ARGUMENT

By simply ignoring, the written statements of coverage sent via email, is that a defacto denial of the legality of these statements as Body parts designated to be covered on this Workers Compensation Claim? Is that a defacto- denial of applicability under the UETA?

In Commissioner Campbell's Order, there was a statement placed into the Order by the drafting attorney, Mr. Baxley, that states, "The undersigned also reviewed all of the emails between the claimant and the adjuster on this claim." (R. p. 15, line 9-10)

There is confusion in why this is here if there was never a ruling made on them and if Commissioner Campbell meant for this to be there, why did he not rule on it? Why leave the issue lying out there in limbo, when the determination is contingent on body parts acceptance or denial from the Commissioner so that action can be taken?

Upon reviewing the 010815Hearing Transcript (R. pp. 76-78,line 8- line 10), **THERE WAS A DISRUPTION** which interrupted and engaged Claimant's lawyer in conversation during the hearing, that blocked the reading and **presentation** by Claimant of these emails in the Commissioner's presence and a direct question directed to the injured employee to answer. Since he may not have heard much, could that be the answer to why they were not addressed?

During the above disruption, Mr. Baxley states, "I've seen it," in reply to Mr. Martling saying, " This is an email from April 1, 2013" Does this answer lead to the question of did Mr. Baxley have prior knowledge email written communications stating body part acceptance? And did he have it when he makes his statements of Defendants' have denied body parts from the beginning, which are throughout his testimony and filings?

When an individual (who has the position and ability to make the choice to take action) specifically states in writing the terms of that action taken and then states the conclusion or decision resulting from it, it becomes part of the agreement contract between the two parties when authenticated by an e-signature, e-stamp or other specifically identifying mark, showing intent of the action and it's conclusion as long as it conforms to UETA

In the case of ***Forcelli v. Gelco Corp.*****, [109 A.D.3d 244, N.Y.S.2d]**, where an insurance claims agent had negotiated with opposing counsel terms of settlement of a personal injury suit and the negotiations were conducted almost exclusively by email, the court found that the claims agent's email message set forth the material terms of the agreement and that the settlement was not conditioned on any further occurrence. In addition, the court found that the agent's typed name at the end of the email message was sufficient to constitute a signature that rendered the agreement binding.

Khoury v. Tomlinson,--- S.W.3d ----, 2016 WL 7671376 (Tex. App. Dec. 22, 2016), Here the Appellate court held 1)an electronic signature is "an electronic sound, symbol, or process attached to or logically associated with a record" and was executed or adopted by a person with the intent to sign the record, 2)concluding first that Tomlinson's name and email in the "From" field was a symbol logically associated" with the email, and 3) further deciding the name in the "From" field can be construed to be "executed or adopted by the person with the intent to sign the record.".
Kluver v. PPL Mont.,293 P .3d 817 (Mont. 2012) Court held that "from" field in email and statement of approval in body of the email established that email was signed.

Int'l Casings Grp. v. Premium Standard Farms , 358 F. Supp. 2d 863 (W.D. Mo. 2005) Court held that the email header with name of sender constitutes a signature under the Missouri UETA.
Under UETA SECTION 26-6-50, There was agreement of the parties (sender and receiver) to conduct “transactions” by electronic means, by continuing to use email communication almost exclusively other than Claimant using for emergency or high priority medical need (when phone conversations were used, but since they were not in writing and not recorded, they were unenforceable.)

By continuing to use the email communication, stamping their individual name and identifier, making agreements or statements without denying or correcting them signified intent by their conduct and acceptance to provide the remedy sought, stated and accepted, without any other requirements made.

SECTION 26-6-70 A)A record or signature must not be denied legal effect or enforceability solely because it is in electronic form, B) A contract must not be denied legal effect or enforceability solely because an electronic record is used in its formation, C) an electronic record satisfies a law requiring a record to be in writing, and D) an electronic signature satisfies a law requiring a signature.

Under SECTION 26-6-90 A) An electronic record or electronic signature is attributable to a person if it is the act of the person. The act of the person may be shown in any manner. In each of the claimant adjuster emails, they are attributable to the specific individual who placed their uniquely identifying information or stamp and position in the claims process as one who can determine requirements and/ or specifications and may negotiate to conclusion, and it was not conditional on any other occurrence.

Under SECTION 26-6-120, these emails satisfied law requiring a record to be maintained A) 1) accurately reflects the information in the record after it was first generated in its final form as an electronic record and 2) remains accessible for later reference. Finally under SECTION 26-6-130, Admissibility as evidence - Evidence of a record or signature may not be excluded in a proceeding solely because the record or signature is in electronic form.

These emails fully identified the senders with their identifying personal signature stamps containing the same as would be in a formal business letter of 1) name, 2) business address, title, company, telephone number and email address.

These emails carry the same effect as if it was a letter signed with a pen mailed to the receiver and cannot be ignored just because 1)delivery was by electronic means instead of postal mail and 2)they are electronic, just as all these court case **e-filings and inter government emails are.**

Email communication was the main form of communication as to diagnostic testing location and assignment, appointments, questions, clarifications, and all other information used between adjuster and claimant. Since almost everything was communicated by email, why would there be a problem communicating the acceptance of covered parts?

These emails were provided to the receiver with the intent to confer information and acceptance, by the conduct and actions stated, agreements to include were designated. And if the **intent** of the Defendants was not to do an action as stated in the email written agreements and statements, is this action then coming under the Statutes of Fraud?

Appellant's email exhibits from Commission Review of Adjuster and Claimant **Written Communication** p1-5 of emails from
1) 04/16/2013 at 11:46am Hanna Wiley, Case Manager alsop4&5
2) 04/03/2013 at 3:29pm Krystal Rogers, Supervisor II, SC Worker's Comp
3) 04/01/2013 at 8:50am Barbara Cowan, Case Manager SC

Hanna Wiley's written statement is, "After I reviewed you claim, we decided to include the right hip to be a part of this claim."041613 (R. pp.376,379,380)

Krystal Rogers' written statement is, " I have had a chance to completely review your file. I have spoken to Barbra and we will cover your right knee, neck, right shoulder, elbow, and hand. Those will be the the parts of body that will be covered under your work comp claim. Barbra has been instructed to call your treating physician and inform him of this information. Dr. Merritt should not be completing a medical LOA unless he believes you are physically capable of not working. I hope I have addressed your concerns. Please let me know if you need anything else."040313 (R. p.377)

Barbara Cowan's written statement is, "Compensable body parts: At your initial office visit you indicated injury to your right upper arm, right elbow and right hand/fingers. When I interviewed you on 2-28-13, 12 days after your injury and plenty of time for any other injures to surface, you indicated that your injuries were to the right hand (especially the right little finger), right arm, neck, and right knee. These are the only body parts that are covered in this workers' comp claim."040113 (R. p. 378) ....**What do these communications state, imply and agree to?**

Worker's Compensation Commission **R08 updated first report dated 041713** (R. p.182) was filed after the statements of coverage were given and accepted, but there is no name of the filer attached and no acknowledgment on that e-form other than the company name identified. **Should they not also be bound by the prior email notifications of written statements of coverage and accepted injury body parts?**

QUESTION

10)Did the Commissioners err in basing their conclusions and decisions upon disregarding patient testimony under oath as being non-credible and weighted accordingly upon these same findings and that of statements made by the Defense? Did they also err in their findings, if there was no direct evidence provided proving false statements made by the Claimant?

ARGUMENT

See information under UETA and the argument directly below this which apply here also.

The hearing testimony by Mr. Baxley, is often repeated that patient refused therapy and even has physical therapy exhibits, but Dr Baens who prescribed the physical therapy sent a PT prescription (see Dr Baens Physical therapy order 031213)(R. p. 316 brings in rx for modalities only) for Pain Relief only for 2 weeks3times a week that also states specific ICD9 diagnosis codes of Shoulder, neck, knee pain and muscle strain.

In Dr Baens Physical Therapy order (02282013)she lists ICD 9 Diagnosis codes, "cervical, R should, R arm, R wrist, R hand and R lower extremity(which must have been her diagnosis, even if she did not write it up on her visit evaluation sheet). She also states " patient would like to try pain relief modalities that a chiropractor would offer to alleviate multiple pain joint/ muscle discomfort mainly right side" with a notation " Fridays only" She also writes the ICD 9 Diagnosis on each specific prescription written thereby correlating their medical effectiveness and how they were connected for medical use.

See the 1)description of the accident in the Statement of the Case (p4) and the 010815 Hearing (R. pp. 74-75, line 8-p. 75,line 12) , see 2) Dr. Merritt's

realization of what he perceives in looking at pictures (actual parts of the video, he had been prevented access), (R. p216,Deposition p49 line 3 - p52 line5) before he is **interrupted** by an objection, to saying what he sees and then associating it with the injuries, complaints, her complaints and mechanism of injury. Further agreeing with Claimant's description of the fall, where before the accident had always been described incorrectly as a simple trip and fall. (R. p. 216,Dep.p51 line1 - p52 line5) Dr Merritt, " Yeah. It looked like she started to go down on the left side and kind of --- -- twisted 40 to 50 degrees. It's a little difficult to see what the right knee is doing, but certainly a fall from a height, you, you can twist or strain your knee. That could have created – twisting --- of the knee as well." **"OBJECTION !!"**

Just think, what would have happened in this case, if all the medical practitioners treating the patient, could tell from the video and/or pictures what actually happened, what parts actually were damaged (such as the 40 to 50 degree twisting), correlate the symptoms and the complaints made by her and be able to treat exactly what was injured, instead of saying everything is subjective and we don't understand why someone 3 or 4 months out from a simple fall (working regular hours) has not improved, you would have thought so. Your symptoms and complaints appear to be non-organic, exaggerated and or unbelievable, or maybe there is a mental problem that is causing you not to get better. All of this when a good slow motion of the accident video can tell the story so much better, than a patient who doesn't seem to be reliable and her complaints are not believable .... so she continues to suffer, after all "EVERYTHING IS SUBJECTIVE if it isn't broken bones, unless someone does specialized x-rays that show soft tissue damage." It does seem pointless to take bone x-rays when the damage is ligamentous, muscle, fascia , or tendons.

The biggest lesson learned here is that an injured employee who is refused access to everything about her accident, including video footage and other material to the doctors to be used as medical evidence to create diagnoses .... **can actually request a subpoena from the Clerk of Court to get the Surveillance Injury Video for their doctors to complete his diagnoses with the actual perception of seeing it as it occurs, the action as the injury moves through the body and how and what parts are affected.**

So how many does that knowledge actually help, if no-one is provided with it?

But in most cases, no-one is helping the injured employee who actually believes the adjusters dealing with workers compensation are really there to coordinate patient care/ repair and is confronted on all fronts with pain, lack of sleep, forced to re-injure damaged areas on a daily basis by being forced to work regular hours under regular conditions, forced to wait up to 2 hours on off time to see assigned doctors, premeditated adjuster actions and some premeditated actions by selected First Treat doctors who place what they want or don't want in the records and all the other treating physicians who use those "false records" in their evaluations.

And if honesty is not a quality found in the workers compensation process, is that why the injured patient feels like a criminal on trial held in a mental jail by the process and held in a physical jail by the denials to care so they are unable to escape?

QUESTION

11)Did the Commissioners err in basing their decisions, conclusions and orders on assuming the credibility of the Defendants' attorney's statements and evidence provided? And if so how could incorrect, misleading and false statements become the basis of this case?

ARGUMENT

Defendants' Brief (12/29/15)(R. p. 231, line 9-10) **"Any assertion that the Defendants admitted a right hand injury is simply incorrect and disingenuous."** (R. p. 231, line17- 21) **"In fact, this argument that the Defendants previously accepted the right hand injury and that they should be barred by estoppel from asserting a denial was raised for the first time in the Form 30 appeal dated October 23, 2015. As indicated above, The Defendants have denied the compensability of the right hand injury from the beginning of the claim and the claimant's estoppel argument is without merit."** These quotes from Mr. Baxley do not appear to match the written email statements individually signed and charged to the adjuster who made the statements and produced the emails, before the case went to litigation. (See UETA argument)

Also see **FCE ARGUMENT BELOW** as to accuracy in statements.

Dr Merritt's Deposition November 18,2013 and pictures submitted with it(pictures which the Defendants' have, but were not in the Complete WC file picked up in September 2016 from WCC). There is **confusion** in the first **hearing December 19,2013** about them being submitted later. My copy of this hearing (from WC file) does not have page lettering, scanned sideways and missing some detail. But by counting if in order would be p5 lines 1-14) " **something about all I could print" and "they will be in the original in better format**". Hard to tell if they were ever turned in........ ...

If these were never turned in, then this Commissioner never saw the actual pictures of the accident happening and probably "drew his conclusions from the Defendants' statements in testimony" which were incomplete, when you match to the Claimant's statements which are closely matched to what you can actually see in the footage.

See the above prior **ARGUMENT** about how video footage and pictures which are parts of the videos (just slowed down) change perceptions about what actually occurred when there is some question as to whether the Claimant is lying under oath about the accident and how it occurred.

The hearing testimony by Mr. Baxley, is often repeated that patient refused therapy and even has physical therapy exhibits, but Dr Baens who prescribed the physical therapy sent a PT prescription (R. p. 316 brings in rx for modalities only)(see Dr Baens Physical therapy order 031213)for Pain Relief only for 2 weeks3times a week that also states specific ICD9 diagnosis codes of Shoulder, neck, knee pain and muscle train. Wouldn't this increasing use of pain therapy be a rationalization that the injuries were getting worse, the symptoms were getting worse, the pain was getting worse or the doctor would not have written for it with correlating ICD9 diagnosis.

On Physical therapy Report 031313, Kristin Courtney states, "Patient brings in RX for modalities only (R. p. 316) and states she is not to do any exercises. She states she is being sent to another MD. Patient declines any therex, difficult to assess the secondary location of pain (which) are sporatic." Secondary locations are associated with the primary ones but radiate out and since sporatic she was unable to determine what was happening. Since muscle fibers slide in and out with movement and **cogwheel rigidity** (connection points where muscles and tendons are attached to structure which is tissue or bone)had been diagnosed on the March 8,2013 PT evaluation, that could clearly be the reasoning why pain symptoms were changing. As the patient moves, so do the connections in sliding together to produce physical motion.

She also states, " patient observed carrying heavy items in R upper extremity" which must have been with the patient walked in carrying her Dr and PT notebook under the right arm wedged against her ribs, because she was using a cane in the left hand and **could not grip it** with her **right hand.**

In Dr Baens Physical Therapy order (02282013)she lists ICD 9 Diagnosis codes, "cervical, R should, R arm, R wrist, R hand and R lower extremity (which must have been her diagnosis, even if she did not write it up on her visit evaluation sheet). She also states " patient would like to try pain relief modalities that a chiropractor would offer to alleviate multiple pain joint/ muscle discomfort mainly right side" with a notation , " Fridays only" She also writes the ICD 9 Diagnosis on each specific prescription written thereby correlating their medical effectiveness and how they were connected for medical use.

QUESTION

12)Did the Single Commissioner and Commissioners err in their consideration of the complete FCE report (Defendants'APA of the FCE p7 was missing)- the recommendations,physical observations, restrictions, and objective body part quantification and measurements of FCE report upon which Dr. Merritt should have been able to base his objective decisions of MMI and decisions on form 14B along with the restrictions found in the report?

ARGUMENT

And was this error created by removal of page 7 (objective testing results) of the 11 page report in the FCE report provided as evidence under Defendants' APA If this page was not removed at the Defendants' attorneys' office, and it was sent to them with page 7 removed, could the same incomplete report that was entered in as evidence have been used in Dr Merritt's Deposition and sent to Dr Merritt thereby affecting his conclusions that he used to provide information on form 14B and sent to other physicians by the adjuster? --

We do not know what happened to p7 of the FCE report, but the **facts** are it was **not included** in the Defendants' APA under the Workwell FCE dated 8/27/13 (R. pp. 273-288).

In the REQUEST FOR PROPOSED ORDER sent to Mr. Baxley, **Commissioner Campbell specifically states** on item 4, "On 10/08/13 the ATP, Dr. James Merritt of Strand Ortho paedic Consultants, placed Claimant at MMI and assigned a 2% impairment to the right upper extremity and a 3% impairment to the right lower extremity. In addition, Dr. Merritt assigned work restrictions of 20 lbs. lifting and referred to the FCE for full capabilities. Dr. Merritt opined Claimant would need future medical treatment in the form of possible pain management. (Defendants' p5) (Drafting party to provide details of FCE.)"

The FCE objective measurements, findings, conclusions, guidelines, and restrictions .... .ie "full capabilities" were never drafted and there would have been a problem to have accurately done this because, the missing page may have been discovered missing in evidence and it would have been detrimental to the Defendants.

Commissioner Campbell states on item 6, "On 12/18/2013, in deposition testimony, Dr. Merritt testified his impairment ratings were based mostly on Claimant's subjective complaints. (Drafting party to provide details of the deposition.)"

This is very similar to Mr. Baxley's statement from the 01/08/2015 Hearing(R. pp. 65-66, line18 - p66 line14) , " I will point out to you, and – and I've just handed in the deposition of Dr. Merritt; Dr. Merritt, has stated with regard to those impairment ratings, the two percent impairment rating that he gave to the right upper extremity is based solely upon subjective complaints The MRI – there was nothing on the MRI, there was really nothing in there that he --based it on objective -- based it on objective -- -- BASED UPON SUBJECTIVE COMPLAINTS AND THEN that LEADS to the determination as to whether or not the subjective complaints are legitimate or not. With regard to the knee there was --- the MRI showed an equivocal meniscus tear and frankly Merritt said her symptoms didn't match with the meniscus tear and so his exact words were, ' I'd be hard pressed to say that there's actually a tear in there", but he gave her the benefit of doubt and gave her a three percent rating as if there were a tear in there. But again, that goes back to subjective complaints and so, you know, the – the disability awards need to bear in mind that how credible are the complaints themselves; because that's all the rating are based upon."

The **ACTUAL STATEMENTS** made by Dr. Merritt can be found in his

deposition in answers to the questions placed by Sara Verstraten as she sat beside him, opposite the Appellants. (R. p. 211,Deposition p30,line 12 -- p32 line 3) Best to read his deposition here. Dr Merritt's answers are in quotes.a Dr. Merritt, 2 percent impairment to "her shoulder", based on "continued shoulder rotator cuff tendinitis", the findings, "Well mostly subjective. I mean there are some objective findings. She did have some impingement when you would – like Neer and Hawkins maneuvers, when you kind of pinch some tendon, it bothered her – she would have reactions, I mean to that. So there – I think – I did base that on that there were some objective findings for that."
3 percent impairment to right lower extremity, He states**"Correct"**"Yes, I think that was equivocal for a meniscal tear and I think I gave her the benefit of saying there was a tear. So I'm pretty sure that's where that 3 percent came from" Based on, "The MRI – and again it wasn't a large tear and her symptoms weren't consistent, you know, with an isolated lateral meniscus tear. That's why I wouldn't be comfortable operating on it. I don't think it would help most of her symptoms. But that is how I gave her that – that **impairment."**

See the corrected radiological error for MRI of the knee and it's diagnoses, by Dr. Tupis as the reasons why most of the symptoms did not match the diagnosis based on the radiological error. ( )
Diagnosis of the injury or illness in this case, Dr. Merritt states"Shoulder strain and knee strain. I think I also had her as a cervical sprain, but I think her symptoms really localized in the shoulder and knee.

See the corrected radiological errors for the x-rays and MRIs of the Cervical Spine, by both doctors, Dr. Russell Derrick and Dr. William Mills.. ( )

How closely does Mr. Baxley's statement match Dr Merritt's from his deposition? The Order was signed with Mr. Baxley's information

In Commissioner Campbell's Order(R. p. 15, line 9-10), there was a statement placed into the Order by the drafting attorney that states, "The undersigned also reviewed all of the emails between the claimant and the adjuster on this claim."
There is confusion in why this is here if there was never a ruling made on them and if Commissioner Campbell meant for this to be there, why did he not rule on it?

But the Order was signed anyway without the drafting requirements. And without this being drafted correctly, restrictions from the FCE were ignored and so were Dr. Merritt's work status restrictions submitted to the Employer, so they conveniently refused to allow her work under the restrictions of the FCE or Dr. Merritt.

A written statement emailed from Hanna Wiley, Case Manager on October 21, 2013 at 8:59am and was sent to 1)Ms. Stevenson's direct supervisor, Hamp Manning, 2) his direct supervisor, Katrina Jamison,3) Hanna's direct supervisor, Krystal Rogers, and Ann Stevenson, Claimant. It states , " Good Morning , Please find enclosed the latest work status which shows the only restriction is a 20lb lift limit. No work hour restriction. Please let me know when Mrs. Stevenson is on the schedule for her regular work hours." the attachment was form 14B MMI.

This statement was used to deny Ms. Stevenson the right to work with restrictions from Dr Merritt and from the FCE, so Walmart, her employer never allowed her to return, but she had about 4 months of personal time accumulated over 13 years of rarely being out that she slowly used over a year until she was terminated and they refused to pay the rest of her personal time and vacation time.

Two emails from Ms. Stevenson personnel file(delivered from subpoena), Email dated Monday, February 10,2014 at 5:36 Pm says to have employee submit current restrictions for accommodation and the reply from, Hamp Manning, (Wednesday,February 5,2014 @ 2:05pm) states "The workman comp issue is resolved with Ann Stevenson at 586(specific store). The only limitation is a 20 lb weight limit restriction. This is within the normal job functions. The associate requested to submit the accommodation form for review again."

The above email further denied her access to working under the restrictions of the FCE and the employer continued ignoring Dr. Merritt's restrictions.

By refusing to follow Dr. Merritt's restrictions along with the Dr's Care restrictions and lack of restrictions and treatment (as seen the the Index of Time and their faulty evaluations of first and second visit to be treated, , the employer, adjusters, and colluding physicians interfered with the practice of pharmacy (see SC Code of Laws Title 40 Professions and Occupations), allowing a damaged pharmacist to work full duty, endangering the public.

A Complete copy of the 11 page FCE report was obtained in September 2016 from Georgetown Hospital System and is not included, because it was ruled against.

How does Rule 407 apply in this case?

QUESTION

13)Were there Workers Compensation Regulations violated in this case and was no action taken on these violations? Were there other laws violated by the Defendants and their agents?

ARGUMENT

Under WCC 67–1308.Communication Between Parties And Health Care Providers.

A. A health care provider who provides examination or treatment for any injury, disease or
condition for which compensation is sought under the provisions of this title may discuss or
communicate an employee's medical history, diagnosis, causation course of treatment, prognosis, work restrictions, and impairments with the insurance carrier, employer, their respective attorneys or certified rehabilitation professionals or the Commission without the employee's consent.

B. The claimant must be:

(1) Notified by the employer, carrier or its representative requesting the discussion or communication with the health care provider in a timely fashion, but no less than ten days notice unless the parties agree otherwise. Notification may be oral or in writing.

(2) Allowed to attend and participate, along with claimant's attorney, if any.

(3) Advised by the employer, carrier or its representative requesting the discussion or communication prior to the discussion or communication.

(4) Provided a copy of the written questions at the same time the questions are submitted to the health care provider and provided a copy of the response by the health care provider.

HISTORY: Added by State Register Volume 34, Issue No. 2, eff February 26, 2010.

On Wednesday, December 18,2013 , at Dr Merritt's Deposition (held at the Defendants' request), I believe Sarah Verstraten, Esquire, Willson, Jones,

Carter, and Baxley,PA, 421 Wando Park Blvd, Suite 100, Mt. Pleasant, SC 29464Attorney for the Defendants violated regulation 67- 1308 , by not **producing the list of questions before or at the same time as Dr Merritt was questioned.** I never saw her hand Carter Martling (Appellant attorney) anything at the beginning of Dr Merritt's Deposition. When she arrived, she shook hands and handed the reporter something. I do not know if she produced anything afterwards. I obtained my copy from the court reporter, in September 2016. Carter would have to be specifically asked about that.

Several dates after March 27,2013, when Dr Baens office had been removed as treating physician and replaced with Dr Merritt(but she had removed herself by refusing to come back in the examining room on 3/12/13 and refusing to see me on 3/14/13), where there was faxed/phone conversation instigating a letter notification along with physical therapy records(not her practice), Dr Merritt's information statements from adjuster, and her faxed denial of Dr Merritt's physical therapy in June 2013 in records that were just obtained in September 2016 after more than 2 years of trying to pick up my medical file (which is a violation of regulation 67-1308 and HIPPA laws). I am still trying to get "the HIPPA log of releases that would further show HIPPA law breaches to those who had access to the file and knew about the laws that were broken. There is also a Defendants' exhibit with 12 hour work stipulation dated (03/15/13) that is not signed by the patient because the patient was not there and never given information about this discussion between Defendants and Dr Scott as noted on that evaluation sheet.

CONCLUSION

Ms. Stevenson's best chance of recovery rested in the hands of the two physicians at Doctor's Care and the actions taken by the adjusters. In looking at their actions, broken promises, illegal action, breaking of HIPPA laws, a non-treating physician denying another physician's order for Physical Therapy (interfering in the patient's medical treatment with probable cause to believe physically damaging the patient further) and probable actions of collusion from the very beginning, is no wonder why the patient is still suffering due to damage, ossification, and scarring of the soft tissue amongst denial of medical treatment .

For the reasons stated, this Court should reverse the judgment of the Appellate Panel of the SC Worker's Compensation Commission..

Respectfully submitted
Thank you,

Ann Stevenson, Claimant/Appellant
2261 Greenleaf Drive
Conway, S.C. 29526
843-347-5151

FORM 16
CERTIFICATE OF APPELLANT IN FINAL BRIEFS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM APPELLATE PANEL OF THE S.C. WORKER'S COMPENSATION COMMISSION

T. Scott Beck, Commissioner

Melody L. James, Commissioner

Gene McCaskill, Commissioner

WCC File No. 1303465

Appellate Case No. 2016-000790

Ann Stevenson — Claimant/Appellant

vs.

Wal-Mart Stores,Inc., Employer
AND
New Hampshire Insurance Co. — Carrier,
Defendants. Respondents

CERTIFICATE OF APPELLANT

The undersigned certified that these Final Briefs comply with Rule 211(b)AND 208(b)(7), whereby the Clerk of the Appellate Court was notified by letter, with a copy to all counsel, setting forth the new supplemental citations for addition to Initial Brief,.of SCACR. With the exception of a notation stating the outcome of the waiting subpoena after the Initial Brief had been filed and that the complete FCE was not enclosed.
August 3, 2017

Ann Stevenson, Pro Se
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843-347-5151
Appellant