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

RECEIVED

AUG 04 2017

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 REPLY BRIEF OF APPELLANT

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

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

v.

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

Respondents

FINAL REPLY BRIEF OF APPELLANT

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

TABLE OF CONTENTS

Statement of the Facts for the Right Hand Mainly and Discussion 1

Dr. Merritt's Injury Mechanism of Action 1

Why Walmart Refused Dr. Merritt's Accommodations and Work Status Restrictions 2

Reasons why Patient Unable to Perform most Physical Therapy 2

Why Patient was sent to Dr. Merritt 3

Physical Therapy Evaluation better than Doctor's Care Evaluations 3

DIRECT EVIDENCE OF INJURY IN OBJECTIVE TESTING 5

- Dr, Tamadon's abnormal nerve result testing and diagnosis 5
- Dr. Watson's abnormal nerve result testing and diagnosis 7
- First Physical Therapy Evaluation not restricted by Walmart dated 03/08/13 9
- Functional Capacity Exam (FCE) 10
- Dr Haskin IME 12

ARGUMENTS 13

Facts of Law in October 13, 2015 Commissioner Campbell Order 15

ARGUMENT 16

What Dr. Merritt's impairment ratings were based on (from Dep) 17

ARGUMENT 18

ABANDONMENT allegations 19

CONCLUSION 22

STATEMENT OF THE FACTS FOR THE RIGHT HAND MAINLY and DISCUSSION

The Defendants' have known from the start of this accident(the accident video and the associate incident report, along with her recorded statement that she was denied a copy of) what body parts were involved and they have picked and chosen not to choose any of these, unless forced to.

Dr. Merritt's Injury Mechanism of Action

With video and knowing how the patient was injured, the Defendants refused to provide the video to any of the medical providers until after Dr. Merritt's MMI and even then he was sent a video that was encrypted so he could not open it to view the **MECHANISM OF ACTION** (R. pp. 215-216,Dr Mer Dep p48 line 12 – p52 line 5). Then he looks at clear pictures in color printed from the subpoenaed accident video (that were supposed to be attached to his Deposition as Claimant's Exhibit 1 after they were turned in). **His perception at the end of his Deposition is changed from a simple slip and fall from standing height at the beginning to: " Her right hand was in the – trash can. Falling to the floor – on the left side – and rolling to their back. It looks like maybe he's trying to sit back up."** Do you see where the right hand is? "**It's in the waste basket"** Does that leave any doubt with you that she did land on her right hand? "**The right hand was in the waste basket --- as she went down**" Is it consistent with her description of having a twisting fall? "**Yeah, It looked like she started to go down on the left side and kind of – twisted 40 to 50 degrees. A fall from a height , you know, you can twist or strain your knee.**" If her foot had been caught in a type of wire, a cable wire, the type that doesn't move – you know when you have computers, not a plug like those that will snap right out, could that cause the jerking and twisting with her coming down? "**That could have created -- twisting – of the knee as well.**"

If he had seen this at the beginning of his treatment and the beginning of his Deposition, do you think his answers would probably have changed to match his changed perception and a better diagnosis with treatment?

Dr. Merritt states, "so that I felt that her symptoms were related to the fall", "Her complaint – her complaints are related to her fall", and when asked about the complaints being related to the evidence, "Yes, She – you know, they're related to her fall" (R. pp. 212-213,Merritt Dep p36 line 9-10, p37 line 9-10,p37 line 14-18)

Now look at the ***Respondents' Initial Brief*** (p 9 line 15-19) **"**(R. p. 216,Merritt Dep p.50), Dr Merritt, after reviewing the pictures in this matter, testified that it looked like she fell onto her left arm and that her right hand went into a trash basket. Dr. Merritt did not offer any opinion as to the legitimacy of any right hand injury or causation of any right hand injury.**" How closely does this match his testimony? Why did he keep making hand referrals to worker's comp for this injury?** The Brief left out the 40 – 50% twisting from above. If you were to twist 40 to 50%, that would almost be like turning the top of your body 50% (halfway) so the front top of your body sat on the back bottom of your body. Do you think that would cause a normal person pain? What about someone who at the same time was receiving a rubber band type of injury where the weight of the body was on the right hand pulling down and away while the computer cord had the right ankle, twisting the leg and not allowing it to go forward until the cord ripped out of the wall?

Dr. Merritt requested referrals for the hand which were ignored and Dr. Merritt states (R. p. 215,Dr. Mer Dep p47 line 24), "I referred her to Dr. Leak (a hand specialist)" and "She is still waiting worker's comp approval to have her hand seen by hand specialists" (R. p. 363 under ASSESSMENT, Claimant APA 125 dated 01/09/14)and note WITH THE PATIENT PAYING ,a one time physical therapy session was arranged so the patient could be evaluated and given physical therapy exercises to be doing at home.

Why Walmart Refused Dr. Merritt's Accommodations and Work Status Restrictions

Dr. Merritt's restrictions to the right hand and arm are continuously noted in work status reports and accommodation reports (R. pp. 332, 343-346, 348, 350,354, 361,364 Claimant APA pp94, 105,106,107,108, 110, 112,116,123,126), (R. pp. 252,253,259 in Def APA pp19,20,26) Other doctor hand restrictions (R. pp. 266, 269, 270 in Def APA pp33,36, 37) After October 2013, all of Dr. Merritt's work status restrictions and Accommodation requests were ignored. One reason was Hanna Wiley,.an adjuster sent an email to a Walmart manager, Hamp Manning, in October 2013 that form 14B was the latest work status and there were no restrictions other than lifting more than 20 pounds, which he then used as a reply to the Accommodations Department of Walmart in a different email stating the Workers' Comp case was closed and she had no restrictions, but the above from Hanna.

And Dr. Scott notes in diagnosis "Contusion/ sprain right hand and arm" at the first medical visit following the accident (R. p. 272 in Def APA 39dated 02/22/13) A CONTUSION means very bad bruising like the Claimant stated in her testimony. (R. p. 78 in 010815 Hearing Tr. p20). Yet he does nothing except state full duty. Every visit later has multiple restrictions. Patient has trouble dropping things, hand/arm pain and cramping and other body part pain. (R. p. 254 in Def APA 21 dated 04/24/13)

Reasons why patient unable to perform most physical therapy

Physical Therapy authorized by Dr. Merritt(R. p. 299 in Def APA p66 dated 6/12/13) Under Summary of Objective Findings, 1) **Cogwheel** (muscle rigidity at endpoint glides) present with all motions of strength testing, 2) able to walk about 5 feet before antalgic gait begins and unable to walk or stand for greater than 10 to 15 minutes due to increasing complaints of pain, 3)**UNABLE TO PERFORM MOST THERAPY secondary to refusal and inability to use right hand and right foot**. And suggested to discontinue therapy due to hitting a secondary plateau where no improvement is being seen, which was authorized again by Dr. Merritt on 6/21/13, but denied by Dr. Baens who actually stopped the therapy. (see Criminal complaint file from Dr. Care) Physical Therapy (R. p. 306 in Def APA p73) "**Patient refuses to do most therex for various reasons that do MATCH injury/complaints**." (R. p. 309 in Def APA 76 dated 5/1/13)

Now look at ***Respondents' Initial Brief*** (p9 line 4-6) (p14 line 21-23), where he states "Physical therapy notes also indicated that the Claimant refused to perform almost all physical therapy that was introduced for reasons that did not match her injury or complaints (R. p. 307 in Def APA p74)" and gives a reference that does not state that. Look at what it actually says, **does it match his statement?**

"Patient is hesitant to participate in minimal therapeutic exercises due to her multiple complaints of pain and severity. If she continues to be resistant, she may benefit from aquatic therapy, which is not offered at this facility." And aquatic therapy is mentioned again (R. p. 312 Def APA p79 dated 4/22/13).

Why patient was sent to Dr. Merritt

The **claimant was not sent for any muscle-wasting in the leg** to Dr. Merritt, as Dr Baens claimed patient to have stated (R. pp. 269, 258 Def APA pp36, 25 and R. pp. 99 -100, in 010815 Hearing Tr p42 line 25-p43 line 14), she was sent for an evaluation of right arm, wrist,hand, and neck sprain and later shoulder was added.(Dr. Merritt's authorization sheet dated 031513 and R. p. 258 in Def APA 25) Dr. Merritt happened to specialize in shoulder and knee and so it was his diagnosis and the MRI that made the shoulder and knee covered parts.

Now look at the ***Respondents' Initial Brief*** p7 line 11-12 and p13 line 3-4), he states," At the Claimant's first visit to the orthopedist, Dr. James Merritt, she did not even complain about a right hand injury, but instead complained about various other injuries. (R. p. 258 Def APA 25)" (See Def APA p25 under History line 9-10) "She also gets discomfort in the wrist and hand. She points to pain between the ring and small finger, which she states she injured when she fell."

At the first evaluation following the accident Dr. Scott states with hardly any diagnosis and almost no evaluation, "**Contusion,Sprain of right hand and arm**" (R. p. 272 Def APA 39). A contusion is a bad bruise (formed by damaged blood vessels leaking into an area), so here he actually admits to bruising and sprains of the right hand and arm . His diagnosis (R. p. 271 APA 38) matches what was **preprinted** on the evaluation form when he received it blank to fill out in his own writing and he refuses to evaluate certain other body parts, stating"patient refuses evaluation" and "full duty".. Very convenient, **<u>so he can match</u>** 1)the preprinted form and 2)not take the patient out of regular work capacity, even though clearly injured, the "contusion" and "sprain", even if he didn't evaluate the rest of her.

Also look at this statement in ***Respondents' Initial Brief*** (p7 line 3-4 and p12 line21-22)which states, " The Claimant was diagnosed with a right arm and hand strain based upon her subjective complaints, but the doctor indicated there were signs of questionable malingering" and uses R. pp. 298-299 Def APA 65-66 which are physical therapy reports on those pages. But you can clearly see above (R. p. 272 Def APA 39) A CONTUSION is a verifiable objective finding (the doctor saw it and noted it on his report) and (R. p. 271 Def APA 38)"Had swelling of right ring finger, bruise on leg, some pain with grip though 3+ (usually out of 5)" WHICH WAS ALSO NOTED IF NOTHING ELSE WAS.

Even so with all these evaluations (R. pp. 265-272 Def APA 32-39) from Drs Care doctors, how does a physical therapist do better in evaluating and diagnosing the patient than two supposedly well-educated and trained physicians here? (R. p. 270 Def APA 37) Under discharge instructions, diagnosis of "**paresthesias**" are noted. Paresthesia is defined as an abnormal sensation of the body, such as numbness, tingling, or burning, usually referring to nerve sensations. And this is what Dr. Baens said Claimant had symptoms that made no sense (R. p. 265 APA p 32)and here it is **IN HER DIAGNOSIS**.. And wouldn't you think that if body parts are overstretched maybe even abnormally to get a good picture in the X-ray that there would be more pain and more paresthesias because of it?

Physical Therapy Evaluation better than Doctor's Care Evaluations

Under Physical Therapy Assessment (R. p. 319 APA 86) dated 030813 - "This patient presents with the above functional limitations, affecting ADL and work capacity. Signs and symptoms are consistent with multiple upper and lower body strains after a **TRAUMATIC FALL**. She will benefit from physical therapy to **restore prior levels of function** and **return to previous work capacity**. Patient was hesitant to begin exercises today due to her multiple complaints of pain."

1. What do you think the physical therapist meant by Traumatic Fall?
2. Is he saying she needs physical therapy to restore body function in order to have the same work capacity as before the accident?
3. If the physical therapist believes injury from what he sees and measures, then why doesn't either one of the two Doctor's Care Doctors? They definitely don't do objective evaluations (Def APA and make false statements. (R. pp. 265, 269 Def APA 32,36). Was that a reason to give the upcoming lawyer something to make statements about being subjective, see above *Respondents' Initial Brief p7* with the wrong sources?And they lay the ground work for every doctor's perception later.
4. They certainly don't respond in the same way and do not make any change in the injured patient's scheduled work hours. (See email adjuster032113 at 5:24pm Barbara Cowan to Ann)
5. Dr Scott states Full Duty (R. 271-272 APA 38-39 dated 022213) and next visit Dr. Baens puts some restrictions but leaves at regular hours (R. p. 270 APA 37 dated 022813). So if the pharmacist has "no high repetitive hand activities for extended periods of time",
   how does she (whose dominant hand is the right one)
   1) Type prescriptions, 2) use a mouse, 3) open prescription bottles to identify (make sure right)drug is correct inside the bottle, 4) grip and clamp a staple gun to seal each prescription in a bag, and 5)transcribe and write up prescriptions that doctors' office leave in voice mail and call directly in with on a daily basis along with hand signing all controls she fills?
   Even older patients have trouble opening bottles, wouldn't this lead you to believe this would re-injure and make the injury worse, especially if she was given restrictions not to do it, but was forced to? Was it 40 or 50 or more than150 prescriptions that had to be checked and bagged in this manner on a daily work basis?

6. How is it even possible for a pharmacist to work a regular shift standing for 8 to 12 hours, doing or trying to maintain regular work if employer actually adhered to the restrictions of the Doctor's Care physicians. How is it possible for anyone to work regular hours under those restrictions? (R. pp. 267-269 APA 34-36)
7. **What do you believe happened?**

Ever since April 1, 2013, (R. p. 378 Claimant Email p3)when Barbara Cowan confirmed in writing the body parts that were covered in this workers comp claim, the **right hand** (especially the right little finger) has been a covered body part (along with all the other parts of right arm, neck, and right knee so specified in the above writing). From the beginning the adjusters withheld the medical information (viewable mechanism of action) of the video from claimant and her doctors , which left all doctors with the erroneous belief of the accident similar to Dr. Merritt's before he viewed the pictures from the video. The adjusters just continued to ignore :

1) my requests (many emails over many months and phone calls) for evaluation and treatment of the hand and arm,
2) Dr. Merritt's referrals to hand specialist to be evaluated , (see R. p. 215 Merritt Dep p47line22-p48line3 and R. p. 363 ClaimantAPA125) under assessment Dr Merritt states, "She is still waiting worker's comp approval to have her hand seen by hand specialist", and

3) DIRECT EVIDENCE OF INJURY IN OBJECTIVE TESTING listed below of four different objective evaluations which are Dr. Tamadon's EDX testing, Dr. Watson's EDX testing, 03/08/13 First (only non-employer controlled) Physical Therapy Evaluation, and 08/13 Functional Capacity Exam.

1. **Dr. Tamadon's EDX testing** dated 08/01/12 (R. p. 264 Def APA 31)objectively shows abnormal ranges of nerves under **Results (2)** "Prolonged distal latency of the bilateral median sensory response to digits #3 (R=4.72ms, L=3.81 ms, NML<3.6ms) and #1 (R=3.66ms, L=3.13ms, NML<3.0ms) as well as right median motor to APB (R=5.11ms, L=3.8ms,NML<4.6ms), with intact amplitudes.

   This was the ONLY electrodiagnostic of the hands done that was listed and no other nerve tests were done to rule out cubital syndrome of the ulnar nerve. Yet every result here was abnormal for the right hand..

   1. The first test median sensory to digits #3 was abnormal on the right by 4.72-3.6 and then divided by 3.6 = .31 which is abnormal by **31%** over the top range of normal of 3.6ms and on the left it was abnormal by **5.8%**. Here the Right was more than 5 times more abnormal than the left.
   2. The next test median sensory to digit #1 was abnormal on the right by 3.66-3 and then divide by 3 = .22 which is abnormal by ***22%*** over the top range of normal of 3.0ms and on the left it was abnormal by **4.3%** . Here the Right was more than 5 times more abnormal than the left and
   3. The next test median motor to APB(Abductor Pollicis Brevis) was abnormal on the right by 5.11-4.6 and then divide by 4.6 = .11 which is abnormal by **11%** over the top range of normal of 4.6ms and on the left it was within Normal range. Here the Right is **34%** different from the Left which was 3.8ms and lies within the normal range, not at the very top of it.

Sensory nerves account for hot, cold, touch , burning, tingling, cramping, numbness and pain.

Motor nerves account for movement and motion, such as gripping, holding, dropping things, shaking,and any kind of co-ordinated movement of the body part

The median nerve also affects the thumb and gripping too. Note here the Left median nerve was affected showing abnormal range (not as much as the Right) and can corroborate the claimant's statement that her left thumb was hurt in the accident, when she landed on the floor on her left hand and left leg.(See R. pp. 215-216 Dr. Mer Dep p48 line 12- p52 line 5)

Dr. Tamadon states," the myelin of the motor and sensory fibers on the right are affected and the myelin of sensory fibers on the left." and states "diagnostic studies are positive for carpal tunnel", but he does no other studies to see what else was affected .,.......... is that because :

- there were no radial nerve tests done - The radial nerve starts at the shoulder and courses down the arm to supply movement to the triceps muscle at the back of the upper arm. It then continues through the forearm and into your hand. This is the nerve that lets you extend your wrist and fingers. It also provides feeling in the wrist, to much of the back of the hand and to part of the thumb. Compression or damage to the radial nerve can cause weakness in the wrist and fingers and affect your ability to open your hand to grasp objects. In severe cases, the hand droops downward from the wrist and the fingers are curved. The back of the hand might lose feeling.
- he only did the testing he was authorized and paid to do and only gave the preceding results confirming his diagnosis?
  The median nerve travels the length of the arm, through the forearm and into the hand. It supplies sensation to the thumb, index and middle fingers as well as the thumb side of the fourth finger. When the median nerve is damaged, the thumb and first two fingers may be numb or have a burning sensation or tingling. Median nerve palsy impedes your ability to use your thumb to pinch. It adversely affects your ability to grip items.
  The ulnar nerve travels along the medial (closer to mid-body) side of the arm, passing close to the skin's surface at the inner elbow. The nerve crosses the elbow's cubital tunnel – the "funny bone" area. The ulnar nerve then runs down the inside of the forearm and into your wrist before branching across the palm into the little and ring fingers. The ulnar nerve controls almost all of the little muscles that manage fine movements. It also controls some of the larger forearm muscles needed to create a strong grip. Ulnar nerve damage results in a pins-and-needles feeling and hand weakness. Severe ulnar nerve palsy can result in muscle wasting (atrophy) and a deformity called "claw hand." This is caused from muscles tightening to the point where the fingers are frozen in a bent position.
- he is not a hand and arm specialist who might push for more inclusive testing to make a more accurate diagnosis that would include all of the symptoms that the patient was experiencing along with a more accurate assessment for treatment options?
- Since many other tests were not done, other specific diagnoses could not be made such as amplitude values which were done in Dr Watson's study following this and tests where the arm was bent instead of out straight for conduction studies of compression results, and nerve testing in the spine or back for radiculopathy and other nerve disease states results, which neither one did. But the amplitude values were not accounted for in her diagnosis either. And noting here, neither Dr. Watson nor Dr. Tamadon are hand and arm specialists. They are just looking at objective values of what they tested to draw their diagnoses from and not any of

- the patient's symptoms. Also note, in the below statement Dr. Tamadon states if this is an "approved" (proving Walmart approves what doctors are allowed to diagnose and treat) body part, then patient should return to the orthopedic service for treatment. **<u>It appears this is also a referral to a hand and arm specialist here too,</u>** if the body part is approved.

  (R. p. 263 Def APA 30 #7 line3) Dr. Tamadon states, "If right CTS(carpal tunnel syndrome) is approved (was not one of the body parts included for this IME), claimant should return to the orthopedic service for treatment. In that case, her work restrictions are sedentary/office work with sitting or standing privileges and a 10 minute productive break after every 45-60 minutes of continuous work." (R. p. 263 Def APA 30 #8 line 6) If right CTS is accepted as a part of this injury, claimant is not at MMI. The MMI status for CTS is typically reached 6-8 weeks after carpal tunnel release surgery if there has been no complication."

  - Now take a look at the ***Respondents Initial Brief*** (p8 line 2-5 and p 13 line 19-22) He states, "Dr. Alan Tamadon, a pain management doctor, performed an EMG study on august 1, 2013, which revealed moderate carpal tunnel syndrome in both hands. He stated that he was not sure how this could be related to her fall and that **her only diagnosis** was myofascial pain which was completely subjective. (R. p.p. 262-263 Def APA 29-30)." How closely does this match Dr. Tamadon's testing report as quoted above?

2. **<u>Dr. Watson's EDX testing</u>** dated 04/14/14 (R. p. 370 Claimant's APA 132)also shows abnormal test results, but she decided to heat the right hand up to the same temperature the left was already at of 32 degrees C, so her results are affected by the increase in blood flow and circulation that comes with heating a normally cold hand up to what the normal temperature she thought it should be.

The testing should have been done "AS IS" to actually see what is happening when the right hand is trying to function without having to heat it up. But even with her heating the right hand up the results were abnormal.

Dr. Watson's objective nerve testing showed

A)Prolonged Median Motor amplitude where R=5.9mV, L= 9.4 mV, and Normal range is 3-4,

Results show **RIGHT** is 5.9-4 (top range) =1.9 divided by 4 = .475 which is abnormal by **<u>47%</u>** more than the top of the range, with **LEFT** 9.4 – 4 = 5 divided by4 = 1.25 which is abnormal by **<u>125%</u>** more than the top of the normal range

B)Prolonged Ulnar Motor amplitude where R=6.9 mV , L=3.0mV, And Normal range is 3-5,

Results show **RIGHT** 6.9-5 =4.9 divided by 5 = .98 which is **<u>98%</u>** abnormal more than the top range of normal, shows **LEFT** as low normal, and Right-Left =6.9-3 = 3.9 divided by 3 = 1.3 which is **<u>130%</u>** . The Right measurement is

130% over the Left and from the bottom of the range of normal.
C)Prolonged distal latency of bilateral median sensory response where R=4.2ms, L=3.9ms, and NML<3.6ms

Results show Right 4.2-3.6 = .6 divided by 3.6 = .167 which is **16.7%** abnormal over the top of the range of Normal, Left 3.9-3.6 = .3 divided by 3.6 = .083 which is **8.3%** over the top of normal range

D)Prolonged distal latency of the Right median motor response where R=4.7ms, L=3.8ms, and NML<4.3ms

Results show R 4.7-4.3 = .4 divided by 4.3 = .093 which is abnormal by **9.3%** over the top range of normal and 4.7-3.8 = .9 divided by 3.8 =.236 which is **23.6%** difference in Right over Left.

Dr. Watson also diagnosed Carpal Tunnel Syndrome. AS you can see, Dr Watson affected her abnormal results by choosing to heat the right hand up to the same temperature as the left and they were not as high as Dr. Tamadon's abnormal results who did not do so.

Heating the right hand does not provide results of what is closely happening when it is not normal to use heat continuously to keep the right hand at a normal temperature when it is not

Now, if you stood in her shoes with this condition just imagine the pain she could have experienced from these nerves (which extend from the spine traveling to the extremities) when doing exercise for the cervical neck, shoulder, etc along with gripping to stand and do knee and or hip exercises.

Not only did the physical therapist 1)not notice the inflammation or internal swelling here in the hand, 2)had no reason to believe her "non-organic"complaints or symptoms of pain, (because she did not have access to these objective tests or Dr. Pappas diagnoses, R. pp. 244-246 Def APA 11-13), and 3) believed she was malingering, giving sub-maximum effort in her testing, and couldn't understand why the nerves in the neck(upper back), arm and hand were so involved with why the pain was traveling and moving around so and was not allowed to evaluate the hand or the back (lower, PT Eval040313WC denied)by the adjusters to determine why and how the hip and knee were affected when she was not allowed to evaluate or treat the foot and lower leg either. When treating the only isolated body parts she was allowed to, she was more than probably not paying attention to their interconnectedness with pain sensations.

After looking at the above nerve damage and explanations, what do you think about these statements following? Look at ***Respondents' Initial Brief*** (p12 line 1-10) he states, "At the hearing, the Claimant complained that her right hand was hurting severely, and that her right hand was so bad that she couldn't use a stapler, she couldn't use a computer mouse. She indicated that she was having severe cramping in the right hand and had to use a compression glove on the hand at night. She indicated that that her right hand hurt so bad that she has to have her husband cut up all food for cooking because she cannot cut anything with her right hand. (R. pp. 75-80 Hearing Tr. 17-22). Of

course, none of these complaints are supported by any medical documentation in the claim. As indicated above, the law on this case is that these complaints regarding her right hand complaints are not credible or reliable." The reference (talks about email coverage of body parts, etc.) he uses does not match his statement . Now look at what was actually said at the hearing,(R. pp. 80-81 in 010815 Hearing Tr p22 line 10-p23 line30) "I have a lot of cramping, gripping. My hand gets cold, in the wintertime I'm having to heat it up, it stays colder during – it gets worse with the cold. I – a lot of times I have to heat it up and I sometimes wear a compression glove on it to keep it from getting irritated at night. But I'm having trouble writing, doing repetitive motion. My husband has to cut up all the vegetables that need cutting because it's a pushing type thing that pushes into like a board. He cuts up things for me and leaves them in ziploc bags so that I can cook." (What sort of things at your job would you have trouble doing?) " Writing, typing, using the mouse, clipping and stapling bags together; I'm right handed. So almost everything and I don't know how to do – I haven't developed the left hand to where I can do that much with."

3.**First Physical Therapy Objective Evaluation** dated 03/08/13(R. p. 319Def APA 86) by Mike Miller, before the adjusters started refusing, denying or ignoring body parts and restricting treatment under Dr. Merritt

03/08/13 PHYSICAL THERAPY EVALUATION by Mike Miller, DPT

Patient presents with complaints of pain for R shoulder, elbow, wrist, hip, knee pain after tripping on computer cord at work and falling onto her right side. Complains of intermittent headaches and diffuse right extremity numbness/tingling.

- Right Lower Extremity WNL with all motions with complaints of pain at end ranges
- **Right Upper** Extremity Shoulder flexion/abduction restricted to 110 degrees due to anterior shoulder pain, elbow movement and wrist extension **below normal** in measurements
- **STRENGTH**- Left Upper and Left Lower extremity 5 out of 5. **Right Upper 3+/5** with diffuse pain complaints, Right Lower Extremity 4/5 with lateral hip pain complaints and AND **GRIP----- Right** is **30** and Left is 60
- **POSTURE 1) Increasing Cervical Lordosis** (increasingly inward curvature of upper spine or neck vertebrae)**, pushing the head forward** causing it to sit lower toward the shoulders **causing back and neck pain and 2)Increasing Lumbar Lordosis** (increasingly inward curvature of lower spine) Increasing Lordosis is usually caused by imbalances in muscle strength and length which can affect how trunk mass is situated over pelvis affecting the gait), and 3)**IncreasingThoracic Kyphosis** (increasing abnormal curvature in the opposite convex direction) producing round back or hunchback. 4) Rounded shoulders and slumped
- **GAIT** - independent, but **ANTALGIC:** favors left side due to **right sided** body **pain.**

- **Summary of objective findings**
- **Right** (dominant) Upper Extremity Functional Index Score **14/80 14 out of 80 on the scale**
- **Right Lower Extremity Functional Index Score 25/80 a 25 out of 80 on the scale**
- **Tenderness on palpation, stiffness at end range of flexion and decreased glides**
- **Neck Oswestry 44% and Low Back Oswestry 38% (see rating scale at** https://en.wikipedia.org/wiki/Oswestry_Disability_Index) **Scoring**
- 0 to 20: Minimal disability
- 21-40: Moderate Disability
- 41-60: Severe Disability
- 61-80: Crippling back pain

ASSESSMENT

- This patient presents with the above functional limitations, affecting ADL (Activities Of Daily Living) and work capacity. Signs and symptoms are consistent with multiple upper and lower body strains after a **TRAUMATIC** fall.

NOTE after reviewing this, the only thing the physician has emphasized by underlining is: "Compliance may be an issue in the future", which follows the sentence before" the patient seems to be more interested in pain modalities" (STOPPING THE PAIN).

Usually people with traumatic injuries get pain meds for pain and to be used to relieve the EXTRA PAIN when injured parts are being rehabilitated, but this patient was DENIED Prescription Pain Blockers the entire time until Dr Merritt took over. The truth of this can be found in a DHEC drug filing list available to doctors and other medical personnel.

4.FUNCTIONAL CAPACITY EVALUATION (FCE)08/27/13-08/28/13
COMPLETE 11 page evaluation including page 7 which was missing in Defendants' APA 40-55 (R. pp. 273-288) being submitted into evidence without it.

**WFL means Within Functional Limits

As with most long-term rehabilitation situations, a course of work conditioning to improve safety with return to work is indicated. (p2 last line)

- **PAIN REPORT** – Reported discomfort in the right neck, shoulder, arm, elbow, wrist, hand, hip, buttock, leg, knee and foot was part of the reason for limitations with lifts and carries. OBJECTIVE signs coincided with the client's reports of discomfort. (p3 lines 1-6) (R. p. 275)
- **SAFETY TESTING** –Testing as modified for floor lifts to allow client to safely complete the activity.(p3line8) (R. p. 275)

- **QUALITY OF MOVEMENT** –Asymmetry of movement was noted in walking and this interfered in safe performance. Compensatory movements were noted during /following activities involving hip hiking.(p3line1-2) (R. p. 275)
- **LIMITATIONS** – Ms. Stevenson is limited in her ability to walk, climb stairs, carry, stoop, kneel and work overhead. (p3 last line) (R. p. 275)

TEST RESULTS AND INTERPRETATION

- See Limitations and Recommendations minimize overhead work and work at waist level (R. p. 276)(p4), limited walking, minimize stairs and low level work on a stool (R. p. 277)(p5)
- Hand Function –Notice the dominant hand (Right) should be stronger than the left, but it is not. Left grip is near top range and right is close to bottom. On co-ordination with round blocks in hole, the dominant hand is 31% less than the non-dominant one.

Under Musculoskeletal System .... Neck and Trunk Anything that is not WFL, is matched to normal and also lowered muscle strength within the body movement.
Certain **Right shoulder** ranges of motion (ROM) are about **2/3 of normal** and less than half strength of the Left. (R p. 278 for pg 6)(p6-7) (R. p. 279 should have been page 7 but look at what is removed)
Notice **Right Wrist** some movements and strengths are lowered by **one-third to one-half** of normal.
The Hip where ranges are **below** normal, as is strength.
Knee Flexion (Bending the knee) ROM and strength is **lowered** in Right knee (p7)

Ankle see Dorsiflexion is **ZERO** where normal is 20 and the left is also restricted to between one-third to half of normal. Also **Eversion** ROM is **less than one-third** and strength also for both movements.
Toe Rise Reps -on the **Right** is **ZERO,** while the left is normal.
Knee squat was able to do half squat three times compared to 20 regular squats.

Second Day Summary of Physical Exam

- Client reports discomfort in right foot, heel, leg and hip (5/10), rating her pain 5 out of 10.
- **White bump** has shown up on medial foot at heel **(possibly ligament) (R. p. 280)** (p8)

Mechanism /Type of Injury – Client reports she tripped when her ankle was caught in a computer cord, and hit her hand on a hazardous waste bin, separating her small finger from the other fingers of her right hand. On 2/16/13. (p11)(R. p. 283)

- see (R. p. 113 in 010815Hearing Transcript p56 line2 -line 18), about something ripping in right foot in May from walking and it was poking out
- see (R. p.245) 071213 (Def APA 12) Dr Pappas under HPI line 6 in the paragraph – small palpable nodule that forms along the medial heel.

5. The other objective findings are the 1) MRIs and x-rays of which some are reading errors were made about neglecting to read the joint space narrowing and spurs , 2) the Corrected MRI and corrected X-ray readings which led to more accurate diagnoses with suggested treatment and accounted for radiating pain

(pain changing and moving around) by doctor and physical therapist along with the non-organic symptoms described by the physical therapist (R. p. 305 Def APA 72), and 3)Dr Merritt's objective testing for the shoulder along with Shoulder MRI (of continued rotator cuff tendonitis)in his decision for 2% impairment to that body part and 3 % impairment rating to the knee because of the objective results of the MRI (R. p. 211 in Dr. Merritt's Dep p30 line21-p31line21).

Dr. Merritt states, "so that I felt that her symptoms were related to the fall", "Her complaint – her complaints are related to her fall", and when asked about the complaints being related to the evidence, "Yes, She – you know, they're related to her fall" (R. pp. 212-213 Merritt Dep p36 line 9-10, p37 line 9-10,p37 line 14-18) When asked what the physical exam revealed, He stated ,"I mean, she had a lot of myofascial pain in the neck, shoulder and leg. She kind of, all on the right side, was having a lot of pain. So it was kind of hard to see exactly where her pain was coming from, but I felt mostly – you know, I mean, she had myofascial pain in the neck, low back, right leg and right shoulder region as well as the right hand and wrist. The muscles and ligaments hurt when you move or touch that area of the body." (R. p204-205 and p. 215 Merritt Dep p4 line 25 – p5 line12 and p46 line 22-p47 line 7) " I think that the pain people have in their back and neck is more ligament and muscle related. There's a lot more nerve endings around at the joints and facets of the spine. And when those areas have – get inflamed or irritated or you get swelling in that area from an injury, whether it be a ligamentous or muscle injury, you get a lot of muscle spasm and discomfort and I feel that would be much more likely the root of someone's pain after an injury of a fall." And his perception of the accident change near the end of his testimony (R. pp. 215-216 Dr. Mer p48 line 12 – p 52 line 5) "twisted 40 to 50 degrees."
6. Dr. Haskin (at Coastal Ortho) was seen as an IME on April 2,2014(R. pp. 367-369 Claimant APA pp129-131) states " The patient has absolutely no symptoms compatible with the diagnosed carpal tunnel syndrome. I would recommend electodiagnostic 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**. However, I do not see where she ever had any injury to the left hand, and carpal tunnel syndrome in the left hand but not be related." Claimant did state she landed on her left hand and her left thumb was injured. (R. pp. 88-91 in 10815 Hearing Tr pp 30-33)
This repeat electrodiagnostic study was done by Dr. Watson on April 14, 2014 and it was confirmed for carpal tunnel syndrome.

If I had been sent to a better sports specialist who was not only an ortho, but trained in body physiology, he would have diagnosed cubital syndrome with cervical radiculpathy which was not done until after the hearing. The nerve damage was there no matter what,

but the difference is how you interpret it along with how good the doctor is at interpreting it, and whether a "butcher" is able to get hold of you because of an inability to correctly diagnose.

Now look at ***Respondents' Brief*** (p14 line14-16), he states"(R. p. 368 Claimant's APA 130)Dr. Haskin did not establish legitimacy of any right hand injury or causation of a right hand injury." How closely does that match what Dr. Haskin wrote in his report ?

The Claimant saw Dr. Pappas (a foot/ ankle ortho specialist) on referral from Dr. Merritt, on her own, paying for her treatment as a regular patient(but had to get on a waiting list for about 2 months), because something had ripped in her foot after having to walk on that injured body part , it was not healing, very painful and worker's comp had been dragging their feet and not doing anything about the foot or the hand. The more she had to walk, the worse it got. This was no IME, she was a regular patient who was being seen, diagnosed and treated. IMEs do not treat. Look under Assessment and Plan (R. p. 246 in Def APA p13). (R. pp. 244-246 in Def APA p11-13) Look under Chief Complaint -Right foot pain, Right ankle pain.

Now look at the ***Respondents Initial Brief*** (p 7 line 22 – p8 line 1 and p13 line16-18) he states, "Claimant was seen for an independent medical evaluation by Dr. Alexander Pappas on July 12, 2013, and only complained about problems with her right knee, right hip, right leg, low back and right shoulder. (R. pp. 244-245 in Def APA 11-12)" If the doctor only specializes in ankle and feet ,why would you waste valuable time with him complaining about something he doesn't treat?

(R. p. 67 of 010813 Hearing Tr. p9 line 2 – 12) **Mr. Baxley states**, " With regard to the right foot, again, there is – there have been a good bit of evaluation of the foot, but **every doctor has basically said they can't find anything, including a foot and ankle specialist, Dr. Pappas,** who she saw and you'll – you'll hear about at some point; so again, not statement of causation from any doctor, no statement that there's a legitimate injury to the right foot, not statement that there is any sort of permanent impairment or permanent disability to the right foot." Look at Dr. Pappas complete examination with diagnoses. (R. pp. 244-246 in Def APA 11-13). And again the reason why there is no impairment or disability statement is because, after phone conversations and telling the claimant in an email (Email 5/31/13 11:31am Hanna Wiley to Ann) that they were not refusing the foot, but it must go through the right channels and then at litigation denied it as a covered body part. The other treating doctors – Dr. Merritt, and the two Doctors Care doctors did not evaluate or treat the foot.

QUESTIONS

Did the Commissioners err in basing their decisions, Facts of Law, conclusions, orders, and on drawing up proposed orders on assuming the credibility of the Defendants' attorney's statements and misinformation provided along with missing evidence? And if so how could incorrect, misleading and false statements and removed evidence become the basis of this case?

ARGUMENTS

1) Defendants' Brief (12/29/15)(p6 line 9-10) **"Any assertion that the Defendants admitted a right hand injury is simply incorrect and disingenuous."** (p6line17-line 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.

2)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 Orthopaedic 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 Hearing Tr p7 line18 - p8 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 in Deposition p30line 12 thru p32 line 3) Quoting her questions too would waste time for both of us, so best to go straight to the source, his deposition and read it. 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."**

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.

How closely does Mr. Baxley's statement match Dr Merritt's from his deposition? **The October 13, 2015 Order was signed with his information.**

FACTS OF LAW FOUND IN THE OCTOBER 13, 2015 ORDER FROM COMMISSIONER CAMPBELL

Fact of Law 11. " On December 18, 2013, in deposition testimony, Dr. Merritt testified that his impairment ratings were based mostly on claimant's subjective complaints. How well does this agree with Dr. Merritt's actual testimony presented in this brief from his Deposition?

Fact of Law 18. " The claimant's alleged injuries to her neck, back, right hand, and right foot/ankle are hereby denied. I specifically find that the claimant failed to prove, through proper medical evidence, a causal connection between these alleged injuries and her work- related accident. I have serious doubts as to the legitimacy of these alleged accidents in the first place. All of these body parts were evaluated by several doctors, and no doctor could identify any objective injury, nor could any doctor give a legitimate objective diagnosis for any of these alleged injuries. The claimant also failed to prove by a preponderance of the evidence medical causation between any of these alleged injuries and her work-related accident. The claimant's testimony, which lacks credibility and reliability, is insufficient to prove by a preponderance of the record the compensability of these allege body parts."

How are the MRIs for the shoulder and knee accounted for here? How do they account for the nerve tests done to the hands that proved damage? What about the diagnoses from the nerve tests? What about the doctors' statements in their reports about causation?

Fact of Law 4 and Fact of Law 5 and Fact of Law 21 should be voided because they are false statements. And Fact of Law 22 is related to the credibility, because when the truth was stated, it was ignored due to false statements by the Defendants' lawyer made at the hearing.

(R. p. 69 of the 010815Hearing Tr. P 11 line 3-7) Mr. Baxley states, "We would ask for a finding about credibility, especially since everything in this case is based upon subjective complaints and we don't think that there's a basis for an award of temporary total going back in this case."

As you can see this statement is false from all of the evidence provided here in the Evidence of the Case from Dr. Merritt, Physical Therapy evaluations, and nerve tests which was presented into evidence at the hearing.

Fact of Law 4"Claimant's testimony and subjective complaints lack credibility."

Take a look at the Objective Evidence presented in this brief. How the nerve damage matches most of her complaints and at the physical therapy where she was unable to do therapy the symptoms and complaints are associated with these.

These statements that are called Facts of Law, appear to give the appearance that the "criminal" was judged guilty and not allowed to be "heard", because the prosecutor got away with a lot of false statements that the judge believed. Is this the way it is with most Workers' Comp cases?

QUESTION

Did the Commissioners err in basing their decisions, conclusions, orders, and on drawing up proposed orders on assuming the credibility of the Defendants' attorney's statements and misinformation provided along with missing evidence? And if so how could incorrect, misleading and false statements and removed evidence become the basis of this case?

ARGUMENT

1A) Defendants' Brief (12/29/15)(p6 line 9-10) **"Any assertion that the Defendants admitted a right hand injury is simply incorrect and disingenuous."** (p6line17-line 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. EMAILS ARE ADMISSIBLE UNDER CURRENT LAW as written statements agreement. (See arguments in Initial Brief for UETA)

B)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 Orthopaedic 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 "MIGHT POSSIBLY' have been detrimental to the Defendants. We are not sure if the prejudice from false statements would have translated into that too.

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 Transcript p7 line18 thru p8 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 Dep p30line 12 - p32 line 3) Quoting her questions too would waste time for both of us, so best to go straight to the source, his deposition and read it. 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."**

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.

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

1. (R. pp. 67-68 in the010815 Hearing Tr. P9 line 23-p10 line 9) Mr. Baxley states,"There is no statement that says to a reasonable degree of medical certainty that the most probable cause of her right hand problem is her work accident. There is no indication that there is a legitimate injury that came from the work accident" and "there's no indication of any kind of permanent impairment for that as well."

   How well does it match the doctor's statements and evidence presented in this brief? Also how could there have been a rating for a permanent impairment when the hand was never evaluated under any of Dr. Merritt's referrals to a hand specialist sent to the Workers' Comp adjusters, NOR Dr. Tamadon's? There was 1)no evaluation, 2)no treatment, and so definitely no impairment rating because the adjusters ignored treatment after saying it was covered, neglected to update their filings to the S.C. Workers' Compensation Commission (see filing of Form R08 updated filing R. p. 182)and then after litigation started, Defendants' lawyer denied the right hand and other body parts that were stated as covered in the claim in the email statements.

QUESTION

Should all of the body parts argued under the Appellant's Initial Brief be included for consideration? Yes.

ARGUMENT

1)Commission Panel Decision only **reaffirmed the single Commissioner's Decision and they made no new rulings.** This is stated in their Proposed Order which was sent to Mr. Baxley with instructions on what to include in the Order. So that is what is being appealed here is their reaffirmation of the findings and the actual findings from January 8, 2016 Hearing under Commissioner Campbell and both Orders,

2) false statements and misrepresentations,
3) TAMPERED WITH evidence (Functional Capacity Exam- FCE),
4) a DISRUPTION BY THE OPPOSING ATTORNEY (of the court)during the original Hearing blocking evidence and exhibit presentation on the emails(R. pp. 76-77 in the 010815 Hearing Tr. P 18 line 8 – p19 line 25),
5) and in giving false information to block admission of truthful statements.

If these reasons are not enough along with the ones below to allow all of the body parts, even after considering all of the actual objective evidence, criminal, falsification, and collusion activity that would be a reason to do so (which was discovered in September 2016). And if your reasoning is the attorney representing the claimant did not preserve her rights to appeal, thereby neglecting his duties to do so and not representing the clients interests, sabotaging any chance of an appeal by his actions and his abandonment of the client weeks before the Appeal to the Court of Appeals was due, that should all be taken into account also.

This injured employee has never abandoned any of her body parts or claims and stands by them. There have never been any perjury charges filed, so there must not have been any proof to do so. But yet I have been called a "liar" in court by an attorney, an officer of the court who is supposed to uphold justice, not prevent it and incite damage.

6)All body parts stated in both the Initial Brief and the Reply Brief should be considered for the reasons found within each of the briefs.

7)Let's look at allegations of "abandonment" we have :

1. **Proposed Order Request of Full Commission January 29, 2016**
2. **Claimant's Pre-Hearing Brief 58 , Brief 30, Brief to Commission 12/14/15**
3. **Defendants' (Respondents') Initial Brief**
4. **Full Commission Hearing Transcript January 11, 2016 and**
5. **Full Commission order**

The **proposed order request** states, "This matter was heard before the South Carolina Workers' Compensation Full commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **FULLY AFFIRMATION** the single Commissioner's Decision and Order. Mr. Baxley please prepare a proposed order and submit to the Judicial Department within 30 days of this notice. The Proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. **Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner."**

Form 58 Prehearing Brief (122914)(R. p. 181) states body parts: neck, right shoulder, right hand, low back, right knee,and right foot/ ankle.
Form 30 Request for Review (102315) (R. p. 175) states neck, low back, and right hand and not at MMI plus.

Claimant's brief to Commission (12/14/15)(R.pp.218) , states under Statement of the Case p1line 3 – 10), states, " The issues for determination being whether the Defendants were entitled to stop payment of temporary total compensation; whether Defendants were entitled to a credit for overpayment of benefits, whether Claimant was at MMI for the right shoulder and right lower extremity as of October 10, 2013, whether the Claimant was entitled to temporary total disability compensation past October 13, 2015 and if so until when, and compensability and entitlement of benefits for the neck, right hand, low back, and right foot/ ankle alleged injuries, and any other issues which may timely come before the Commission." Mr. Martling statements about low back and hand p 3. But he does not directly Argue anything but the hand, reserving the other body parts in the above sentence.

Defendant's Initial Brief , under Statement of the Case, **states**(R. p. 221) p4 line 4 -line 10), "the Brief filed by Claimant on December 14, 2015, only asserted that the Commissioner erred in denying the right hand and consequently in finding that the Claimant had reached maximum medical improvement. The **Brief abandoned the appeals regarding the neck and the low back.** (Appellant Brief to Full Commission 12/14/15, R. pp. 218-225). **Counsel confirmed at oral arguments before the Appellate Panel of the Commission that Claimant was abandoning and dismissing the Form 30 Grounds for Appeal !1 and #2,** which were the appeals regarding the neck and the low back. (R. p. 31 in Appellate Panel 3/28/16 Order p.4)." (and R. p.46 (p19 line 10 -13)"Additionally, the **Claimant abandoned her appeal** regarding the neck and low back by fa**iling to address or argue those grounds in her Brief** to the Appellate Panel of the Commission. **Further, counsel for Appellant confirmed in oral arguments before the Appellate Panel that they were abandoning and dismissing the appeals regarding the neck and low back."**

- **See what was stated in the Claimant's Brief, the body parts were addressed in the brief, they just were not argued in the Brief.**
- **But the Brief did not abandon the neck and low back.**
- **Counsel did not confirm at oral arguments before the Appellate Panel of the Commission that Claimant had abandoned or dismissed any appeals (see the transcript of that hearing). That statement was placed there in the order by Mr. Baxley and was not part of the Request for a Proposed Order.**

(R. p. 157)Trans 1/11/16(p3 line 22 -)Mr. Martling states, " Ms. Stevenson had a work fall on February 12, 2013, and sort of set off the stage to where we are right now. An issue has been the two things, really the nature and the extent of the accepted body parts and whether or not other claims by Ms. Stevenson should be accepted and brought into the case. Admittedly, not every single one of those body parts that we've looked at and every bit of evidence relating to them is as strong as the other. So, I'm really here to discuss with you the compensability of her right hand. The right hand quite honestly is the – literally, is the first thing that hit the ground, or more accurately, hit the material wastebasket when Ms. Stevenson fell that day. She has been complaining of the right hand since literally day one.. the record is fraught with the treatments provided to her right hand throughout by Dr. Merritt. The defense provided an IME with Dr. Tamadon. Ms. Stevenson went and got her own IME with Dr. Haskins. Dr. Merritt has continued to treat her after the initial first hearing that we had in 2013, He treated her through out 2014. To my knowledge he is still probably still treating her , on her own dime, at this point, I will add." He continues on about the right hand.

(R. p. 162 Panel Tr p8 line 11-24)" I'm not here arguing about anything else, because I have to make a command decision where I feel the evidence points, and while I don't – I'm not going to sit here and argue to the commission over the weight of evidence in regard to certain other body parts. The weight of evidence with regard to this one body part is – it's more than we ask for in most cases and just – to be honest with you, I'm not even dealing with the credibility issue. Okay. I understand that in terms of it, though, everything is related to the fact that this lady just likes to argue with her doctors left and right, and I understand that she's been her own worst enemy many times throughout."

Then look at what has been placed in the Order by Mr. Baxley.

It is your decision, based on what really happened, but the Commission only reaffirmed the single Commissioner's decision and findings.

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 and her employer. 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 action 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 and having to continually use damaged body part in her restricted day to day activities..

There was blatant misrepresentation, false statements to and for the court(in the order by the one who drew it up), to the patient, and to the doctors, many different types of fraud, and tampered with Evidence of the FCE evaluation missing p 7 (which was the main body part injury page) that was placed into exhibit with the court by the Defendants'.

All **proposed orders** from the court sent to attorneys to draft should always be a part of any case, because they are the direct decision on which the Order is supposed to be based, and then the rest of the Order is the opinion and statements of the winning attorney.

For the reasons stated, within this brief and within the Initial Brief, this Court should reverse the judgment of the Appellate Panel of the SC Worker's Compensation Commission and allow the Commission to retry this case in the actual atmosphere of the Justice Scales instead of prejudism because of false statements, perceptions, and impressions.

Thank you for your time, consideration and efforts in the constant pursuit of justice, truth, fairness, and honesty in the judicial system.

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
2261 Greenleaf Drive
Conway,S. C. 29526
843-347-5151
Appellant