THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1511478

Monica Murphy, Employee, ... Appellant,

v.

Halocarbon Products Corporation, Employer, and
Commerce & Industry Insurance Company
c/o AIG Claims, Inc., Carrier, ... Respondents.

INITIAL BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES, REGULATIONS & COURT RULES

STATEMENT OF ISSUES ON APPEAL

I. DID THE COMMISSION PROPERLY EXCLUDE THE LATE-FILED EXPERT REPORT OF DR. EDELMAN?

II. DID THE COMMISSION PROPERLY FIND THAT CLAIMANT FAILED TO MEET HER BURDEN OF PROVING A COMPENSABLE INJURY FROM HER AUGUST 11, 2015 EXPOSURE?

III. DID CLAIMANT FAIL TO PRESERVE ANY OTHER ISSUE ON APPEAL?

STATEMENT OF THE CASE

This case was initiated when Claimant Monica Murphy filed a Form 50 alleging injury to her heart and lungs, bones, smell and taste, and neurological system as the result of inhaling hydrofluoric acid ("HF") fumes on August 11, 2014, while working for Respondent Hydrocarbon Products Corporation ("Employer"). (Form 50, dated September 11, 2015). Employer and its workers' compensation carrier, Respondents herein, filed a Form 51 denying that Claimant's "exposure was of such a degree to cause any lasting effects," and contending that she "developed minor temporary symptoms affecting her respiratory system which resolved without producing any disability." (Form 51, dated October 8, 2015).[1]

The parties filed their Form 58 Pre-Hearing Briefs, (Cl. Form 58 Pre-Hearing Brief and list of APA submissions, dated February 20, 2017) (Def. Form 58 Pre-Hearing Brief and list of APA submissions, dated February 27, 2017), and were set for hearing on March 7, 2017 before Single Commissioner Susan S. Barden. On the day of the hearing, less than two hours before the hearing was scheduled to start, Claimant's counsel sought a continuance due to personal family medical issues. (Email from Rick Hall to Angela Kicklighter, et al. dated March 7, 2017, sent 12:21PM re "CORRECTED Hearing Notice – WCC# 1511478: Murphy"). Claimant later filed a Motion explaining his need for a continuance on an emergency basis due to personal family medical reasons, which also

[1] Claimant later filed an amended Form 50 alleging injury to her "mind/psyche" as well. (Amended Form 50, dated December 5, 2016). Respondents again denied her claim on the same bases. (Form 51, dated January 5, 2017).

noted "further grounds are that additional discovery will need to be conducted." (Notice of Motion and Motion for Continuance, filed March 7, 2017).

The hearing was rescheduled for April 27, 2017. On April 12, 2017, Claimant submitted an additional Pre-Hearing Brief including as APA #28 an expert report and CV of Dr. Philip Edelman, which had not been submitted previously. (Claimant's Form 58 Pre-Hearing Brief and APA submissions, dated April 12, 2017). Respondents advised that they would rely on their previously filed Pre-Hearing Brief and APA submissions. (Letter from Jim Lichty to Commissioner Susan S. Barden dated April 17, 2017). Thereafter, Claimant submitted additional evidence and APA submissions, including APA #35-#45. (Claimant's Supplemental Notice of Witnesses and Written Medical Reports to be Introduced as Direct Evidence on Behalf of Claimant, dated April 20, 2017) (Claimant's Second Supplemental Notice of Witnesses and Written Medical Reports to be Introduced as Direct Evidence on Behalf of Claimant, dated April 26, 2017).

At the hearing, Claimant testified on her behalf, and a former employee of Halocarbon Products, Todd Lawrence, also testified on Claimant's behalf. Three current employees, Ken McDowell, George Campbell and Lonnie Parsons, testified on behalf of Employer. Respondents objected to the inclusion of Claimant's APA #28, the expert report of Dr. Edelman. After hearing argument, the Single Commissioner indicated she would take the matter under advisement. (Tr. p. 5, line 16 – p. 7, line 15).

Commissioner Barden issued her Decision and Order on March 12, 2018. The Single Commissioner found, among other things, that the testimony of Claimant and Mr. Lawrence was not credible or reliable. Conversely, the Single Commissioner found Mr. McDowell's, Mr. Campbell's and Mr. Parsons' testimony to be credible. Finding this to

be a medically complex case, the Single Commissioner gave greater weight to Respondents' experts than to Claimant's experts. The Single Commissioner concluded that "Claimant's heart condition is not compensable," that any respiratory injuries Claimant suffered as a result of inhaling HF "were very minor," and that "[t]he greater weight and preponderance of evidence simply does not establish that Claimant was exposed to HF in a quantity or for a duration that would result in any permanent injury." The Single Commissioner sustained Respondents' objection to Claimant's APA #28 (Dr. Edelman's expert opinion and CV), noting that she had "re-set the hearing for April 27, 2017, **specifically for the sole purpose of accommodating [Claimant's counsel's] need to be with his ill mother** ... the continuance was not granted in order for Claimant to obtain more evidence to prove-substantiate her case and to counter [Respondents'] evidence in the case." The Single Commissioner noted that "Claimant's counsel could have withdrawn the Form 50 for the purpose of obtaining additional evidence, but he chose not [to] do so." The Single Commissioner concluded that Claimant failed to meet her burden of proving she is entitled to any benefits under the Workers' Compensation Act ("Act"). (Single Commissioner Decision and Order, filed March 12, 2018) (emphases in original).

Claimant filed a timely Form 30, Request for Commission Review, listing 12 separate issues. (Form 30, as amended on March 28, 2018). An Appellate Panel of the Full Commissioner heard oral argument on June 18, 2018 and issued its decision on July 23, 2018. The Commission affirmed the Single Commissioner's Decision, including her credibility determinations and her decision to afford greater weight to Respondents' experts. With respect to the exclusion of Claimant's expert, Dr. Edelman, the

Commission explained that the continuance from the initial hearing date "was granted to allow the Claimant's attorney to be with his mother and was not granted to allow for additional discovery. This is evidenced from the fact the Single Commissioner did not allow the Claimant's attorney to submit newly developed evidence when the hearing was reconvened on April 27, 2017. Had the Single Commissioner granted the continuance to allow for additional discovery, she would not have refused to allow this additional evidence into the record ..." The Commission confirmed that, "[h]ad the Claimant wished to submit this evidence for consideration, she could have withdrawn her hearing request and sought a hearing at a later date. The Claimant opted not to do so ..." The Commission found Claimant failed to meet her burden of proving she suffered a compensable injury by accident and, as a result, she is not entitled to any benefits under the Act. (Appellate Panel Decision and Order of the South Carolina Workers' Compensation Commission, filed July 23, 2018) ("Commission Decision").

Claimant timely appealed to this Court.[2]

BACKGROUND FACTS

I. Lay testimony and evidence.

Claimant testified that she was 57 years of age at the time of the Single Commissioner hearing. (Tr. p. 14, lines 16-19). She is remarried and has two children from her first marriage. (Tr. p. 15, lines 5-16). Her daughter was born in 1987 and her son was born in 1989. (Cl. Dep. p. 9, lines 10-12)

[2] Claimant includes argumentative and hyperbolic language in her Statement of the Case, in violation of Rule 208(b)(1)(C), SCACR. (*See* App. Br. p. 2, opining that HF "is one of the most lethal chemicals used in all of industry"). While Respondents have not and do not contest that HF is dangerous under certain circumstances, as is discussed in more detail below, there is no evidence showing that HF is the most lethal of chemicals used in all of industry.

Claimant worked for Employer, a chemical manufacturing company located in North Augusta, South Carolina, as a Quality Control Laboratory Technician. In that position, she tested chemical samples, working "in radio hoods where there's ventilation." She also collected samples for testing and occasionally disposed of waste. (Tr. p. 14, lines 22-25; p. 16, line 15 – p. 17, line 12). When disposing of waste, she wore protective gear, which included her lab coat, a sleeved "acid apron" that came down to her shoes, neoprene "gauntlet gloves," safety glasses, a hard hat with a face shield, and safety shoes. (Tr. p. 20, lines 9-24).

Previously, Claimant had worked as an E.N.T., as a hospital admissions representative, a hospital discharge planner/utilization review coordinator, an office receptionist and medical records clerk and, for 28 years, at the Savannah River Site ("SRS"). At SRS, she initially worked in a clerical position, then as a lab technician, and later as an OSHA coordinator. She recounted that she has "seen a lot of terrible things happen to people working in an emergency room environment in my young formative years, and so I'm a very safety conscious person." (Tr. p. 18, line 24 – p. 19, line 23) (Cl. APA pp. 268-270).

Claimant testified that, prior to August 11, 2015 she felt her general health was "very good," and that, with respect to activities, she "did whatever I wanted to do that a girl with some overweight can do .... The only thing that I had had some problems was a hip, and I went to physical therapy. I had right osteoarthritis ... and that resolved. It caused some muscle spasm, and so I was on some medication for that, and that has been it." (Tr. p. 46, lines 22-25; p. 49, lines 12-25).

The lab where Claimant worked is a long room on the second floor of Employer's facility. The lab has a door at each end that goes out to the process area, which is where the chemicals are made. (Tr. p. 20, line 24 – p. 21, line 7; p. 22, lines 20-23).[3] On August 11, 2015, in the early morning and near the end of her shift, Claimant was disposing of two containers of hazardous waste: a container of organic waste and a container of flammable waste. (Tr. p. 20, lines 10-12). She first went down the grated stairs and out a door to one end of what is referred to as the North Patio to dump the organic waste. (Tr. p. 22, lines 2-9). At some point while dumping the organic waste, she saw Mr. Parsons in the process area. She went back upstairs to retrieve the container of flammable waste which she took downstairs. Claimant testified that, when she started to open the door at the other end of the "Patio" to dump the flammable waste, she "got some resistance, and so I pushed harder, and as I opened the door … this air come in, and the air, you know, just come in and so I breathed, and when I breathed … it was awful awful pungent sharp chemical …. I coughed like a choking, and I got several breaths … and so I'm trying to get the door pulled closed, and I get the door closed as I'm feeling as if I'm going to collapse." (Tr. p. 22, lines 11-14; p. 23, line 24 – p. 24, line 1; p. 25, lines 10-24; p. 29, lines 5-16). She confirmed that she "took at least three, no more than four [breaths] because I was coughing and choking … and I felt as if I was going to collapse." (Tr. p. 27, lines 20-22; *see also* Cl. Dep. p. 72, lines 10-11 (Claimant testifying she "took three breaths of it, strong")). She did not open the door all the way or go through it. (Tr. p. 30, lines 13-17; *see also* Cl. Dep. p. 66, line 13 – p. 67, line 2; p. 71, lines 5-6 (Claimant stating the door was open only "seconds")).

[3] Mr. McDowell explained that that area, sometimes referred to as the patio, is covered by a roof but open to the air "similar to a carport." (Tr. p. 156, lines 9-19).

Claimant felt that she had to get out of that area, so she "got the container, and I held my breath the best I could in going down the corridor to get to the other door that I had went out with the organic waste to get to where I saw that – Lonnie [Parsons] that was out there." (Tr. p. 29, line 24 – p. 30, line 10). She testified she needed to find someone because her heart was pounding and she was experiencing shortness of breath. She heard someone coming down the stairs, and it was Mr. Parsons. Claimant testified that she told Mr. Parsons that a draft of chemicals had come in through the door, which Mr. Parsons told her was HF. She testified she was in "shock," so Mr. Parsons offered to dump the flammable waste for her. Mr. Parsons was wearing personal protective equipment similar to that worn by Claimant. Mr. Parsons took the container back down the hall, dumped the flammable waste and brought the container back to Claimant. She testified that, at that point, she noticed a carboy was fuming, "billowing white smoke like up over two feet, and it was trailing off toward like where the door is ..." (Tr. p. 31, line 9 – p. 34, line 3).

On cross-examination, although Claimant confirmed that when she first saw Mr. Parsons he was "down in that – in that general area," near where the "venting carboy" was, she insisted she did not see the two foot plume of white smoke coming from the carboy at that time. She also confirmed that, when she first saw Mr. Parsons, he did not appear to be in any distress. (Tr. p. 78, line 3 – p. 79, line 25). She also acknowledged that, when she saw Mr. Parsons after she had breathed the HF fumes, he was not showing any signs of physical distress, even though he was coming from the direction of the "venting carboy." Claimant agreed that, in order to dump the flammable waste for her,

Mr. Parsons had to walk by the "venting carboy" twice but when he handed the container back to her, he was not showing any signs of distress. (Tr. p. 84, line 13 – p. 87, line 4).

Claimant testified that she went back up the stairs slowly, coughing, heart pounding "and I'm having shortness of breath, and I just feel overwhelmed …" She saw Mr. Campbell coming up the other stairs. "I just went straight to the lab. And I notified my co-workers that I had inhaled HF …. I put the container up. I tell them that I have inhaled HF." She testified that, when she was told they were working on the 3-K system, she "was angry, and I said that 'somebody is going to get somebody killed down there … the way things are going. What's it going to take for somebody to get killed?'" (Tr. p. 36, line 10 – p. 37, line 24).

Claimant testified that she went to the control room and told the assistant Production Supervisor, Chip Babb, that she had inhaled HF "and that I needed an incident report." (Tr. p. 38, lines 1-11). Claimant testified that she asked for oxygen or a nebulizer treatment with calcium gluconate, but that Mr. Babb told her, "[n]o, you just need to be in fresh air." She said she told Mr. Babb she was experiencing dryness and burning in her mouth and nose, starting to have a headache, "coughing and then my throat started feeling as if it was closing up." She asked for water, which she drank. (Tr. p. 40, line 17 – p. 41, line 14). She repeated to Mr. Babb, "'[w]hat's it going to take, is somebody going to have to get killed in this place for people to do the right thing," and expressed concern for Mr. Parsons. (Tr. p. 41, lines 18-24). On cross-examination, Claimant explained that she did not ask to be seen by a medical provider at that time because she was in "shock." (Tr. p. 89, lines 10-23).

Claimant testified that, after sitting for about 30 minutes, she was feeling better and asked to go back to the lab. Claimant alleges that a co-worker, Janice Tierney, told her that her face was red, which she confirmed in a bathroom mirror. (Tr. p. 42, lines 1-12; *see also* Cl Dep. p. 59, line 22 – p. 60, line 7). Ms. Tierney was not called as a witness to confirm this statement.

Once back in the lab, Claimant penned an email to her assistant supervisor, Emily Parrish, telling her what had happened. (Tr. p. 43, lines 9-18). The email states that Claimant had been exposed to HF vapor and that she had asked Mr. Babb to write an incident report. She closed with, "I would like to discuss this incident with management and safety when possible. Thank you and have a great day!" (Cl. APA p. 162). She acknowledged that she did not ask Ms. Parrish for medical attention at that time. (Tr. p. 91, lines 18-23).

Claimant testified that she went home at the end of her shift but had difficulty sleeping. She experienced six bouts of diarrhea, abdominal pain and weakness, burning and dryness in her throat and sinuses, and a headache. Ms. Parrish texted Claimant, at which point Claimant asked for medical treatment, which Ms. Parrish arranged with Urgent M.D. in North Augusta. Claimant testified that Urgent M.D. performed a physical, drew blood and sent her back to work without any restrictions. (Tr. p. 44, line 3 – p. 45, line 21).

Claimant went on to work that shift doing her normal job. (Cl. Dep. p. 86, lines 3-20). She returned to Urgent M.D. two days later on August 13, 2015. Claimant testified that she had lost her senses of smell and taste. Her voice was raspy, "[i]t comes and goes," and she had numbness and tingling in her hands and lower arms. She testified

that she saw a P.A. named Julie Buird, correcting the spelling of Ms. Buird's name for her counsel. (Tr. p. 51, line 1 – p. 53, line 1). The providers at Urgent M.D. sent her to the University Hospital ER for a chest x-ray and blood tests. (Tr. p. 54, lines 17-20).

Claimant testified that she was tested at University Hospital and given an albuterol nebulizer treatment "by P.A. Velasquez." (Tr. p. 55, lines 12-23). She also was given something for her headaches, "the generic for Imitrex," but it made her condition worse so she discontinued it. She was released with light-duty restrictions of no fumes or vapors and was written out of work until August 19. (Tr. p. 56, lines 3-12).

Claimant testified that, between August 13 and August 19, her symptoms increased, with new symptoms of "femur bone pain, muscle spasms in these muscles atop my femurs … and the headache is excruciating," and she had not had a bowel movement since the earlier diarrhea. (Tr. p. 56, line 18 – p. 57, line 22).

Claimant returned to her normal work duties on August 19, other than not being near any fumes or vapors. She met with "Ken McDowell and Harold Stein about the incident, and … spoke with them at length about how upset I was that – what had happened to me …" (Tr. p. 58, lines 1-19). She testified that the nebulizer treatment helped with the shortness of breath but she still was coughing and in pain. After lunch, the pain "was overwhelming," so she asked if she could go to the emergency room. Claimant testified that Mr. McDowell told her she could go to Urgent M.D. instead, where she was seen by Timber Wages. She testified she was having pain in her feet, in her right toe, numbness on the side of her leg "and then it would go from like these tremendous pain to like a numbness on the bottom of my feet. And my ankles were hurting." She complained of raspiness and dry throat and sinuses. Claimant testified

that, after testing, including two EKGs, the medical provider told Claimant that her lab work was within limits and her chest x-ray was good but that the EKG "had some conduction abnormality." (Tr. p. 59, line 3 – p. 60, line 22).

Claimant testified that, by the time she left Urgent M.D. that day, her shift was over so she went home. Although she was scheduled to work on August 20, she was weak and called out from work. She returned to work on August 21, still "very weak, symptoms very much strong ..." She testified that she was unable to perform her normal duties and contacted her supervisor. Employer had set up an area away from any fumes where Claimant could perform light duty. She did her nebulizer treatment and then walked to the room where they had set up a phone and a computer for her to work with. After lunch, Claimant called her supervisor and told her she was in respiratory distress and then got down on the floor. Employer called an ambulance and she was taken to University Hospital. The EMTs administered a calcium gluconate treatment on the way there. (Tr. p. 61, line 7 – p. 68, line 11). Claimant was admitted and later a pacemaker was inserted because she was in total heart block. (Tr. p. 70, lines 16-19).

Claimant agreed that she was evaluated by a pulmonologist at the hospital, Dr. Alfred L. Brannen, and was instructed to follow up with him upon discharge. However, she testified she had been told "he didn't take workman's comp." (Tr. p. 109, lines 4-21) (*see also* Cl. APA p. 56 (Dr. Brennan's notes indicate Claimant was diagnosed with "[m]ild to moderate restrictive defect. No airflow obstruction. Mild reduction in DLCO")). She acknowledged that she had expressed health concerns about traveling from North Augusta to Charleston to see Dr. John A. Mitchell when that appointment was arranged by Respondents, explaining that she has difficulty traveling long distances.

Nonetheless, the pulmonologist she had been seeing and that she asked the Commission to assign as a treating physician, Dr. William F. Alleyne, is in Rock Hill, over two hours away. She explained that Dr. Alleyne took workers' compensation. When pressed as to who recommended Dr. Alleyne to her, she finally conceded it was her workers' compensation attorney. (Tr. p. 110, line 1 – p. 111, line 14). At the hearing, Claimant testified that her condition continues to deteriorate and that she still experiences shortness of breath and still coughs, "I still have – I have RADS, and so I still do cough." (Tr. p. 73, lines 9-24).

On cross-examination, Claimant had to be prompted to speak up normally, to continue to speak just as she had on direct examination. (Tr. p. 76, line 21 – p. 77, line 3). Claimant agreed that, at her deposition, she reported perceived safety issues to management "all the time." Nonetheless, she had not experienced any permanent health issues from any of the prior incidents that she reported. (Tr. p. 77, lines 5-23; *see also* Cl. Dep. p. 44, lines 12-14; p. 46, lines 18-24).

Todd Lawrence also testified on Claimant's behalf. Mr. Lawrence testified that he was unemployed, after having been discharged by Employer for failing two drug tests. He said he had been accused of having diluted his urine sample, but that in the process of applying for unemployment benefits, which Employer initially denied, he produced records saying he had a medical condition that required him to consume water. (Tr. p. 115, line 22-25; p. 121, line 18 – p. 122, line 9).

Mr. Lawrence testified that Employer's system could vent HF to a scrubber system and also to carboys, "and that's where it can become dangerous at right there." (Tr. p. 118, lines 9-17). He testified that Employer vented HF to the carboys "all the

time," (Tr. p. 119, lines 10-11), and suggested that his abdominal rupture and/or high blood pressure might be attributable to being around HF but denied any heart failure or pulmonary treatments. (Tr. p. 129, line 4 – p. 130, line 11).

Mr. Lawrence acknowledged that he only had a high school diploma and no degrees or certificates in industrial hygiene. (Tr. p. 127, lines 3-10). He also admitted that he is facing a D.U.I. charge. (Tr. p. 127, lines 11-15). Mr. Lawrence testified that he took the calcium gluconate treatment to the office where Claimant was on August 21 and that he did not like the way Mr. McDowell spoke to Claimant. (Tr. p. 120, line 6 – p. 121, line 7). He also testified that he was not angry when Employer contested his application for unemployment benefits but, when asked if he felt that Halocarbon was not doing the right thing by him, Mr. Lawrence answered, "Yes, yes." (Tr. p. 130, line 16 – p. 131, line 5).

Mr. McDowell testified that he is the Director of Regulatory Affairs and Director of Safety for Employer. (Tr. p. 135, lines 14-25). Mr. McDowell testified that, at the time of Claimant's exposure, the HF "leak had been secured, but there was insulation on there that would have been saturated with the material that was H.F., sevoflurane and some H.F.I.P. It was more than H.F. that was in there." (Tr. p. 139, lines 13-22). Mr. McDowell later explained that the billowing Claimant alleged may have been because "there were other chemicals that also vaporize." (Tr. p. 165, lines 8-15). Furthermore, the presence or absence of white smoke from a carboy does not indicate the concentration of HF in whatever chemical is being vented. (Tr. p. 170, lines 14-19).

Mr. McDowell explained that the saturated insulation would have been about 12 feet from the door Claimant attempted to open, and the nearest venting carboy would

have been 25 feet away. (Tr. p. 140, line 20 – p. 141, line 1). Mr. McDowell explained that the Incident Report, (Cl. APA p. 167), indicated that the release consisted of trace HF fumes, which meant the amount "would not really be measurable … you're going through in this case a carboy to attempt to neutralize that. So, what comes through that afterwards is generally very – generally very small amounts." (Tr. p. 141, line 22 – p. 143, line 8). An email from the plant manager confirmed that, while "[t]he material inside the equipment contained 40% HF[, t]he concentration of HF in the air several feet away will be much, much lower." (Tr. p. 144, lines 2-16) (Cl. APA p. 182). Mr. McDowell also explained that a worker would not be able to go near HF at 40% without respiratory protection: "the odor threshold is around point one part per million, and this is just – you're going to want to get away from it, and you're just – your body is just not going to allow that to happen." (Tr. p. 145, lines 8-16). A statement Mr. McDowell prepared on August 12, 2015 indicated that, when he met Claimant at Urgent M.D., Dr. Wages asked him what percent HF Claimant potentially had been exposed to. Mr. McDowell, "called the plant and Chip and Lonnie stated that it could be up to 40%." (Cl. APA p. 163).

Mr. McDowell also testified about his experience with other employee exposures to HF, "both inhalation and skin … over the years." He testified that Claimant's lack of symptoms right after the exposure was very unusual. (Tr. p. 146, line 1 – p. 149, line 10). Mr. McDowell explained that, after any exposure, if there is distress, they would treat with a nebulizer. However, the first step would be to provide fresh air and see how the employee responded. Claimant's symptoms on August 11, 2015 did not trigger a more

intensive response than the one provided. (Tr. p. 154, lines 7-19; p. 166, lines 20-24; p. 168, lines 7-14; p. 169, lines 14-21; p. 170, line 20 – p. 171, line 13).

Mr. McDowell testified that he asked Mr. Babb to make a written statement that evening. (Tr. p. 143, lines 9-16). Mr. Babb's written statement indicated that Claimant first complained that "she felt something in the back of her throat that was inducing a cough. She commented at the time that some things needed to change around here before someone really gets hurt and needed to know what she needed to do .... I went to check on Monica @ 06:34 hrs and she said she was doing better and that the coughing had subsided. This can be verified by Janice Tierney and Ruby Patterson." (Cl. APA p. 179).

Mr. McDowell testified that Claimant was a "competent employee," who presented management challenges in that she had difficulty getting along with coworkers. He testified that Claimant expressed concerns about safety issues frequently and that Employer investigated her concerns every time. Some of Claimant's concerns were "more suggestions and truly concerns and/or misunderstandings. Some of the complaints were certainly legitimate," such as odors in the lab, and led to actions by Employer. (Tr. p. 151, line 17 – p. 152, line 24). Mr. McDowell confirmed that Claimant did not pass her initial pulmonary function test ("PFT") test when she began working for Employer. (Tr. p. 154, line 20 – p. 155, line 3).

Mr. Campbell testified that he works as a Chemical Operator for Employer. His job requires him to dispose of organic or flammable slops periodically. (Tr. p. 173, line 16 – p. 174, line 1). He testified about his encounter with Claimant on the morning of August 11, 2015. He had just come inside from outside, where he had dumped some slops in the flammable storage drum. He testified that he had been outside for two or

three minutes and encountered HF fumes. He testified that "[i]t took my breath away. It made my eyes start burning, the coughing. Of course, it makes you cough. So, that was about it. It was hard – hard to catch my breath." His symptoms lasted about five minutes and, after getting some air, "it cleared up." (Tr. p. 174, line 5 – p. 175, line 16). He testified that he had not developed any long-term health problems as a result of his exposure. (Tr. p. 176, line 21 – p. 177, line 4).

Mr. Parsons testified that he also works for Employer as a Chemical Operator. (Tr. p. 184, lines 19-22). Mr. Parsons testified that, on August 11, 2015, he was working on the patio on a piece of equipment and was near the venting carboy, "[t]wo or three feet away, sometimes even standing over top of it, moving to and from." At times, he was working close to the HF-soaked insulation. (Tr. p. 185, line 6 – p. 186, line 21; p. 194, lines 2-11). He testified that he was in that area "probably right at eight hours during the night," but did not develop any adverse physical conditions as a result. (Tr. p. 188, line 18 – p. 189, line 8; p. 196, lines 18-24).

Mr. Parsons testified that he saw Claimant coming out a door and he stopped her and told her she should stay back, but she was not demonstrating any signs of distress, or coughing, shortness of breath or redness in her face. (Tr. p. 187, line 5 – p. 188, line 4). He offered to dump the flammable slops for her, which he did. In that process, he had to pass the carboy two times, once there and once back. (Tr. p. 188, lines 7-17).

II. Medical evidence and opinions.

Medical notes from Claimant's August 11, 2015 visit to Urgent M.D. at 7:20pm, indicate that Claimant reported symptoms of sore throat, dry nose, and headache. Her current medications included Flexeril and Triamterene-HCTZ. Not present were rash,

cough, shortness of breath, chest pain or pressure, fluttering in chest, constipation, diarrhea, nausea or vomiting. Claimant's oxygen was "99% (Room air)." Her breath sounds were normal and her chest and lung exam revealed "normal excursion with symmetric chest walls and quiet, even and easy respiratory effort with no use of accessory muscles." She had "normal heart sounds, regular rate and rhythm with no murmurs." Her mental status was normal with appropriate mood and affect, "able to articulate well with normal speech/language, rate, volume and coherence." She was diagnosed with headache "[l]ikely caused by brief exposure to HF," which was reported by Mr. McDowell as "40% concentration." The healthcare provider "[e]xplained to patient that symptoms usually occur immediately with such a high concentration." Claimant was "happy with care and management plan." (Cl. APA pp. 5-8).

Medical notes from Urgent M.D. for August 13, 2015 indicate that Claimant stated "she is not feeling well, having shortness of breath and her voice 'comes and goes.'" She reported that her symptoms had worsened over the previous 24 hours, including shortness of breath with exertion and lying flat, sore throat with hoarseness, coughing, headache, nausea, weakness and numbness in her fingers. Her oxygen level was 96% on room air. Her breathing and heart sounds were normal; however, her "mood and affect are described as – anxious (tearful)." Claimant was referred to the ER for further evaluation and treatment, but she "declined ambulance transport." (Cl. APA pp. 9-11).

Medical records from University Hospital indicate that Claimant was seen at the ER on August 13, 2015 with complaints of "cough, sore throat, SOB, lower abdominal pain, diarrhea, HA, feeling 'dry' mouth and nasal passage, numbness and tingling to

hands." She was negative for chest tightness, wheezing, chest pain or rash. Her oxygen was 100%. Her mood and affect were normal, as were her speech, judgment, cognition and memory. Her potassium, calcium and alkaline phosphatase levels were with normal limits. An x-ray of Claimant's chest indicated "[c]hronic appearing pulmonary markings bilaterally without acute airspace consolidation." She was given an albuterol breathing treatment, after which Claimant "states she was feeling 'much better.'" Poison control was called and provided with Claimant's lab results "specifically ionized calcium." After treatment, Claimant was noted to be stable, and was discharged. Her care and treatment was performed by a Physician's Assistant "in conjunction with Daniel McCall, MD." (Cl. APA pp. 21-41).

Notes from Urgent M.D. dated August 15, 2015 indicate that Claimant was out of work until August 19 and was "doing a follow up for workers comp inhalation injury." She reported being told that her lab tests from University Hospital were normal. She also reported that "[h]er sore throat, hoarseness, cough and shortness of breath have significantly improved." Not present were rash, shortness of breath, wheezing, chest pain or pressure, fluttering in chest, difficulty speaking or focal neurological symptoms. Symptoms noted included cough, mild hoarseness and "dry nose," but her lungs and heart were normal. (Cl. APA p. 12-13).

Notes from Claimant's August 19, 2015 visit to Urgent M.D. indicate Claimant complained of "a constant cough which cause[s] her to feel nausea, headache, right jaw pain, the nausea come[s] in waves at times, pain in both legs and pelvis area. Patient feel[s] very weak, not able to taste food, can't smell and tingling feeling in her hand." Electrolyte levels had been evaluated on August 11, August 13 and August 15, and found

to be normal each time. Claimant would not "answer clearly if [albuterol treatments] improve her condition," but only would state that they are "not as effective as oxygen." Her oxygen level was 99% on room air. Claimant specifically mentioned to the healthcare providers that "she might have pulmonary edema and/or cardiac arrhythmia secondary to HF exposure[.] Reassured patient that chest x-ray was normal ... [and] [e]lectrolytes have been normal on three separate occasions ..." Claimant demonstrated "[p]oor effort on strength testing of bilateral hip flexors and quadriceps[.] Patient complains of exquisite tenderness to palpation with light touch of bilateral lower legs – disproportionate to exam findings ..." Her heart and chest exams were normal; however, her EKG suggested "conduction abnormality that is chronic (i.e., non-industrial) in nature." She was referred to a toxicologist, "ENT and pulmonology for patient reassurance." (Cl. APA pp. 14-19).

At her deposition, Claimant testified that she still was in respiratory distress when she arrived at the hospital on August 21, 2015, and could not hold a full conversation. (Tr. p. 101, line 22 – p. 102, line 7; *see also* Cl. Dep. p. 102, line 21 – p. 103, line 14). However, medical records by Dr. Golam Chand note that, on Claimant's admission to University Hospital, "there was no evidence of respiratory distress at the time [o]f admission. Patient was comfortable and history was given by the patient without difficulty ... Oxygen saturation 100% on room air. She did not require any oxygen." Spirometry tests showed Claimant had a mild to moderate restrictive defect. "There was no evidence of wheezing at that time." (Cl. APA p. 47). When asked about the discrepancy between her deposition testimony and Dr. Chand's notes, Claimant said, "I don't remember Dr. Chand." (Tr. p. 102, lines 12-21). She later explained that Dr.

Chand "was a hospitalist. He was somebody that discharged me."[4] When confronted with notes taken 10 minutes after her admission that stated the same thing – that her oxygen saturation was 100% and she was able to speak in full sentences without any difficulty, (Cl. APA p. 49), she continued to dissemble. (Tr. p. 103, line 23 – p. 106, line 5).

Claimant, who was seen by numerous healthcare providers during her stay, was monitored and found to have a third degree "atrioventricular block with associated junctional bradycardia." The notes reveal past medical history as including hypertension, osteoarthritis, struvite kidney stones, scoliosis, septicemia and rosacea, among other things. They also note that Claimant's past medical history was significant "for hypertension (originally treated with atenolol but switched to triamterene-HCTZ last year due to bradycardia)." (Cl. APA pp. 42-57). Dr. Kellie Lane, who also attended Claimant during her hospitalization, noted that Claimant reported a "previous episode of syncope while pregnant with her son … No known exposure that would cause this degree of heart block without an electrolyte abnormality. That is not present." (Cl. APA pp. 65-66). Dr. Patrick Aquilina performed the implantation of the pace maker on August 24, 2015. (Cl. APA pp. 58-62). Claimant was discharged on August 25, 2015. (Cl. APA p. 47). Claimant testified that she continued to treat with Dr. Aquilina, who monitored her pacemaker. (Tr. p. 108, lines 2-12).

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[4] Claimant also insisted that she had been admitted by Dr. Elgin Hobbs, "and he said he was admitting me for inhalation hypophosphatemia and a work up on the respiratory distress and shortness of breath …" (Tr. p. 103, line 25 – p. 104, line 5). However, Dr. Hobbs' notes indicate that Claimant's history was taken "from patient and Employer." He noted her symptom onset was "severe, now is moderate," that she was "well appearing, in no apparent distress," her chest was clear, no wheezes, rails or rhonchi, symmetric air entry. Good breath sounds." Her speech and behavior were normal. (Cl. APA pp. 44-45).

Dr. Lane, a general cardiologist, (Lane Dep. p. 5, lines 1-2), opined for the first time at her deposition that Claimant's heart block was caused by the "severe coughing that she had" in response to the HF exposure. (Lane Dep. p. 15, line 13 – p. 16, line 25). She based her opinion on Claimant's history of a vasovagal episode when she was pregnant with her son, which would have been many years prior. (Lane Dep. p. 21, line 11 – p. 22, line 17). Dr. Lane maintained this opinion despite acknowledging that she had not seen any medical documentation confirming a prior vasovagal episode. (Lane Dep. p. 23, lines 1-17). On cross-examination, Dr. Lane admitted that she had discussed this case for "about 30, 40 minutes" with Claimant's counsel prior to her deposition. (Lane Dep. p. 20, lines 16-22). She also listed a number of causes for heart block, including "having underlying renal disease, chronic kidney disease, having risk factors otherwise for blockage, or coronary artery disease, such as hypertension, smoking, diabetes." Dr. Lane could not recall whether Claimant had a history of hypertension, (Lane Dep. p. 25, line 15 – p. 26, line 1), nor did she recall that Claimant's medication for her hypertension had been changed from Atenolol before her HF exposure. (Lane Dep. p. 34, lines 1-23).

At his deposition, Dr. Aquilina, a cardiac electrophysiologist, (Aquilina Dep. p. 4, line 21 – p. 5, line 8), flatly disagreed with Dr. Lane's causal opinion, stating that a vasovagal reflex is completely unrelated to development of Claimant's heart block. If a vasovagal response had caused Claimant's heart block, it would have been a "transient" or "very intermittent heart block," for which Dr. Aquilina would not have inserted a pacemaker. (Aquilina Dep. p. 12, line 17 – p. 14, line 1; p. 17, lines 3-14). Dr. Aquilina testified that the causes of heart block are unknown and, as a result, he could not testify

as to what caused Claimant's heart block. (Aquilina Dep. p. 6, line 22 – p. 9, line 2 ("we do see heart block in all age groups throughout patients' lives and we don't really know what causes them most of the time"); p. 10, lines 3-11). He testified that low phosphorus, or hypophosphatemia, rarely causes heart block, "not that I've ever seen actually." (Aquilina Dep. p. 18, line 21 – p. 19, line 8).

Respondents submitted a January 27, 2017 expert opinion by Dr. Michael A. Mackinnon, an expert in HF exposure and treatment. Dr. Mackinnon based his opinion on his "more than 35 years as a physician at a plant that produced both 100 percent and 70 percent hydrofluoric acid," and "having developed medical protocol for treating HF injuries," as well as other professional experience dealing with HF exposure. (*See* Mackinnon Dep. p. 10, line 16 – p. 13, line 22) (Def. APA pp. 433-459). Dr. Mackinnon explained that "the greatest controversy in this case is just how much exposure [Claimant] had to HF, both in length of time and in concentration of the alleged vapors." Dr. Mackinnon opined, to a reasonable degree of medical certainty, that had Claimant "received any serious HF exposure, she would have had multiple other signs of injuries, such as painful skin burns to the head and neck region and severe respiratory distress, not just coughing spells…" Dr. Mackinnon explained that Claimant's prior PFTs performed at SRS showed pre-existing restrictive lung disease that was exacerbated by her morbid obesity.[5] Dr. Mackinnon also explained that, while "[s]ignificant HF exposure can cause problems with the heart very early on [and c]hanges such as prolongation of the QT interval may occur due to rapid and severe reductions in the calcium and magnesium

[5] Claimant is approximately 5'2" tall and, on August 11, 2015, weighed 206 pounds with a resulting Body Mass Index ("BMI") of 37.22. (Cl. APA p. 6). Her weight subsequently increased to over 220 pounds with a corresponding BMI of 40.6. (Cl. APA p. 481).

serum levels," there was no evidence this occurred. Furthermore, Claimant's heart problems did not arise until 10 days after the exposure. Based on his lengthy experience in dealing with HF exposure and treatment, Dr. Mackinnon concluded that there was not "any significant exposure to HF, and ... [found] the opinions connecting her multiple symptoms to HF to be incorrect." (Def. APA pp. 391-394).

At his deposition, Dr. Mackinnon agreed that the effects of HF exposure can be delayed "up to 24, sometimes 48 hours. With mild, very weak acid, skin burns may not show up right away .... But cardiac problems, in my experience, show up because of changes in the chemistry of the blood: calcium and magnesium and potassium. And that happens with an acute exposure, and it's usually within the first 24 hours." (Mackinnon Dep. p. 35, line 19 – p. 36, line 6; p. 55, line 17 – p. 56, line 19). When asked whether evidence of a prolonged QT interval was consistent with an HF exposure, Dr. Mackinnon agreed that, "[i]t could be," but "[t]here are other causes of QT interval changes ... had there been ... a significant exposure, yes, you're going to get QT interval changes." (Mackinnon Dep. p. 42, lines 12-22). Dr. Mackinnon agreed that he would defer to a cardiologist regarding the cause of Claimant's heart block. (Mackinnon Dep. p. 62, line 24 – p. 73, line 7). Dr. Mackinnon confirmed that none of the information Claimant's counsel presented to him at his deposition changed his January 27, 2017 opinion. (Mackinnon Dep. p. 60, line 25 – p. 61, line 4).

Claimant was seen by Dr. Gordon Early for an Independent Medical Evaluation ("IME") on November 23, 2015. Dr. Early's notes indicate that Claimant explained to him that she did not seek medical care in the "first few hours after exposure ... primarily because she did not know how to access care in the Worker's comp system." He

confirmed that the "amount of HF needed to cause hypocalcemia or hypomagnesemia is substantial," whereas Claimant's exposure was very brief. "Electrolyte abnormalities are usually noted in the first 24 hrs., after exposure, but sometimes can occur up to 48 hrs after exposure. It would be highly unusual to have normal electrolytes at 48 hours after exposure and then develop a phosphate of 1.1 on day 10 and have this be due to HF exposure." After reviewing her medical files and examining Claimant, Dr. Early concluded that Claimant's "8-21-15 arrhythmia and subsequent pacemaker are not attributable to or aggravated by her HF exposure." He also explained that RADS is diagnosed by pulmonary tests demonstrating obstructive changes, not restrictive changes. He noted that he did not have her prior PFTs and stated he wanted to review those. (Def. APA pp. 395-403). Claimant's PFTs from 2008-2011 were provided to Dr. Early, after which he noted that Claimant "had restrictive lung disease with FVC and FEV1 in the 65-80% of expected in these tests." (Def. APA p. 406).

On May 2, 2016, Claimant was seen for an IME by Dr. John A. Mitchell, who is board certified in internal medicine, pulmonary care, critical care, and sleep medicine. (Mitchell Dep. p. 5, line 3; p. 6, lines 9-12). Among other things, Dr. Mitchell noted that Claimant reported "sensitivity to various odors and chemicals such as cleaners ... the patient does have 2 cats at home ... she is also sensitive to pollens outside and she will wear a mask when she goes outside." Dr. Mitchell concluded that Claimant "does not have an obstructive limitation in her pulmonary function test, she has restrictive limitation," some of which "could be related to her weight." After reviewing Claimant's historical PFTs, Dr. Mitchell observed that Claimant "has a restrictive pulmonary impairment dating back to at least 1993." Dr. Mitchell opined, to a reasonable degree of

medical certainty, that there is no causal relationship between Claimant's HF exposure and her heart block. He also opined that Claimant's HF exposure did not result in permanent injury to her heart, lungs, bones, or neurological system. (Def. APA pp. 417-418).

At his deposition, Dr. Mitchell confirmed that he believed Claimant's heart block was due to her pre-existing condition, (Mitchell Dep. p. 6, line 17 – p. 7, line 9; p. 9, lines 140-20), but agreed that he would defer to a cardiologist with respect to a causal relationship between her HF exposure and her heart block. (Mitchell Dep. p. 12, lines 2-6; p. 20, lines 15-24). Dr. Mitchell agreed that the patient's history is an important part of diagnosing RADS, but confirmed that Claimant's medical history did not indicate she had RADS. (Mitchell Dep. p. 28, line 10 – p. 29, line 15; p. 32, line 5 – p. 33, line 15). Dr. Mitchell stated that nothing he had been presented with during his deposition changed his prior opinions in this case. (Mitchell Dep. p. 44, line 1 – p. 47, line 25; p. 51, line 21 – p. 52, line 7).

Dr. Selwyn Spangenthal reviewed Claimant's medical records and also opined that Claimant has a long-standing restrictive lung condition, which is likely due to her morbid obesity. He opined that Claimant's history, physical examination and PFTs do not support a diagnosis of RADS, and that Claimant's "exposure to the hydrofluoric acid has not had a long-term negative impact on her pulmonary system." (Def. APA pp. 419-423).

Dr. Barry J. Feldman also assessed Claimant's medical records and explained that "it is physiologically improbable that there is a causal relationship between Hydrofluoride inhalation exposure and high-grade heart block." He also opined that it

was "of low medical certainty that a chronic vaso-inhibitory reflex would result in a chronic complete heart block," disagreeing with Dr. Lane's opinion that a vasovagal cause resulted in Claimant's complete heart block. (Def. APA pp. 424-425).

Claimant submitted medical records from Dr. Alleyne's treatment. Dr. Alleyne diagnosed Claimant with "RADS as a result of hydrofluoric acid exposure and inhalation." He also noted her complete heart block and need for a pacemaker, which he attributed to the HF exposure. Dr. Alleyne noted several times throughout her treatment that Claimant has pets/animals in the home. (Cl. APA pp. 125-155).

At his deposition, Dr. Alleyne stated that a patient's "history is really the key to the diagnosis" of RADS. (Alleyne Dep. p. 9, lines 14-17; *see also* p. 34, line 10 – p. 36, line 1 (dismissing objective evidence in the form of FEV1/FVC "[b]ecause RADS is really based on your history ...")). He testified that RADS can present as either an obstructive or a restrictive disease. (Alleyne Dep. p. 12, lines 4-8). Dr. Alleyne dismissed the importance of Claimant's PFTs from her years working for SRS because "her history is classic for RADS ..." (Alleyne Dep. p. 14, lines 6-21). Dr. Alleyne assigned Claimant a 30% impairment to each lung. (Alleyne Dep. p. 27, lines 13-16). Although he is a pulmonologist, and not a cardiologist, (Alleyne Dep. p. 38, lines 1-3), Dr. Alleyne opined multiple times that Claimant's heart block also was caused by her HF exposure. (Alleyne Dep. p. 14, line 22 – p. 15, line 16; p. 16, line 20 – p. 17, line 4). Furthermore, despite the fact that his area of expertise is pulmonology, not cardiology, Dr. Alleyne insisted several times that he would not defer to a cardiologist with regard to the causation of Claimant's heart block. (Alleyne Dep. p. 38, line 18 – p. 40, line 16). On cross-examination, Dr. Alleyne admitted that he had talked with Claimant's counsel

about this case three or four times prior to his deposition. (Alleyne Dep. p. 33, lines 8-12).

Claimant submitted an expert report by Dr. John F. Setaro, who reviewed records but did not examine Claimant. Dr. Setaro opined that Claimant's HF exposure "was a substantial causative factor" in her heart block and need for a pacemaker. (Cl. APA pp. 238-242).

Claimant also submitted an evaluation report from Dr. Robert E. Hooper, a licensed counseling psychologist. Although he diagnosed Claimant with PTSD as a result of her HF exposure "and subsequent various injuries/effects," Dr. Hooper noted that her "thought processes were fully intact." Claimant "reported that she has very difficult feelings regarding the management of [Employer] and believes she was poorly protected before the incident ... and poorly cared for since, primarily in the interest of the company 'always pushing for money.'" Her results on the "standardized psychological personality test indicate a number of extreme symptoms." Dr. Hooper stated that her profile was "probably valid but may reflect some exaggeration of symptoms due to her heightened level of psychological distress." Claimant appeared "to be extremely angry and suspicious that others are taking advantage of her and is overly sensitive to criticism .... She appears to be somewhat aloof, detached and rigidly moralistic ... blaming others and harboring grudges." (Cl. APA pp. 289-294).

Claimant was seen at the University Medical Center ER on July 17, 2016 for a suspected insect bite to her ear that caused swelling. No shortness of breath or coughing were observed. Her mood and affect were noted to be appropriate. (Cl. APA pp. 475-482).

ARGUMENTS

I. The Commission properly excluded the late-filed expert report of Dr. Edelman.

A. Standard of Review.

The "Commission has broad discretion in procedural matters." Marquard v. Pacific Columbia Mills, 278 S.C. 323, 324, 295 S.E.2d 870, 871 (1982). "An administrative or *quasi* judicial body is allowed a wide latitude of procedure ..." Hallums v. Michelin Tire Corp., 308 S.C. 498, 504, 419 S.E.2d 235, 239 (Ct. App. 1992) *quoting* Jacoby v. South Carolina State Bd. of Naturopathic Exam'rs, 219 S.C. 66, 90, 64 S.E.2d 138, 149 (1951). A Single Commissioner exercises "considerable latitude and discretion in" determining whether to admit or exclude late-filled evidence. *See* Brown v. La France Indus., 286 S.C. 319, 325, 333 S.E.2d 348, 351 (Ct. App. 1985).

B. Argument.

Contrary to Claimant's argument, the Commission did not err in refusing to admit her late-filed expert report from Dr. Edelman. As set out above, the original hearing before the Single Commissioner was scheduled for March 7, 2017. Both parties timely filed their Pre-Hearing Briefs and APA submissions. Less than two hours before the hearing was scheduled to start, Claimant's counsel sought a continuance due to personal family medical issues. (Email from Rick Hall to Angela Kicklighter, et al. dated March 7, 2017, sent 12:21PM re "CORRECTED Hearing Notice – WCC# 1511478: Murphy"). His subsequent motion for a continuance mentioned in passing the need for "additional discovery."

Due to the eleventh-hour nature of Claimant's request, the Single Commissioner convened a telephonic conference to discuss the motion. There is no transcript of that

call. As they did before the Commission, Respondents continue to dispute Claimant's assertion in footnote 4 of her Brief that the need for rebuttal testimony was part of this conversation. (*See* Respondents' Brief to the Full Commission, dated May 25, 2018, p. 4). Regardless of whether Claimant's counsel raised her alleged need for additional discovery or rebuttal evidence on the telephone call, however, it is clear that the Single Commissioner granted her motion based on Claimant's counsel's family emergency and not on any alleged need for rebuttal testimony. As the Commission pointed out, "[t]his is evidenced from the fact the Single Commissioner did not allow the Claimant's attorney to submit newly developed evidence when the hearing was reconvened on April 27, 2017. Had the Single Commissioner granted the continuance to allow for additional discovery, she would not have refused to allow this additional evidence into the record ..." (Commission Decision, pp. 63-64).

Claimant's reliance on this Court's decision in Fore v. Griffco of Wampee, Inc., 409 S.C. 360, 762 S.E.2d 37 (Ct. App. 2014), is misplaced. First, in Fore, the claimant submitted her amended Pre-Hearing Brief and Notice of Witnesses immediately after receiving the employer's Pre-Hearing Brief and APA submissions. 409 S.C. at 366, 762 S.E.2d at 40. Here, in contrast, Claimant waited for over a week, until the morning of the hearing and just hours before it was scheduled to start, to request a continuance based on personal family circumstances that, understandably, compelled the postponement. The request for "additional discovery" appears to have been an afterthought, attached at the end of the motion filed later that day. In any event, Claimant has not and cannot explain why, if she felt a need to supplement the record pursuant to Reg. 67-611, she did not make her motion immediately upon receipt of Respondents' Pre-Hearing Brief and APA

submissions but, instead, waited until she had another more compelling reason to move for postponement.

Second, in Fore, the issue was whether Claimant could present a rebuttal fact witness at the hearing, not whether she could solicit and present an expert report after the applicable deadline. *See* 409 S.C. at 364, 762 S.E.2d at 39 (Mr. Owens had employed the claimant after her work injury). Here, Claimant was not attempting to submit lay or even expert testimony but, rather, to submit a newly solicited and crafted expert report, which is addressed in Reg. 67-612.

In fact, Claimant studiously avoids any mention of Reg. 67-612, which specifically addresses submission of expert reports.[6] That provision provides, in pertinent part, that a "written expert's report to be admitted as evidence at the hearing must be provided to the opposing party as follows: (1) The moving party must provide the report to the opposing party at least fifteen days before the scheduled hearing. (2) The non-moving party must provide to the moving party any report not provided by the moving party at least ten days before the scheduled hearing." S.C. Code Reg. § 67-612(B). The same regulation warns that the "[f]ailure to provide reports and notices as required under this section **may result in the exclusion of such reports** from the evidence of the case." S.C. Code Reg. § 67-612(E) (emphasis added). Thus, it is clearly within the Single Commissioner's and Commission's discretion to exclude or allow a late-filed expert report. *See, e.g.,* Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414,

[6] The Commission is empowered to "promulgate all regulations relating to the administration of the workers' compensation laws ..." S.C. Code Ann. § 42-3-30. The Commission's regulations "have the force of law" so long as they do not alter the Act. Goodman v. City of Columbia, 318 S.C. 488, 490, 458 S.E.2d 531, 532 (1995). There are no provisions in the Act addressing the admission of evidence or, more specifically, expert reports.

426, 593 S.E.2d 462, 468 (2004) (explaining that the use of the term "may" in statutes is "permissive and not mandatory").

The Commission's discretion is constrained only where the parties "consent to the admission of a report," in which case "the Hearing Commissioner **shall** receive such report into evidence without regard as to whether the parties have complied with this section." S.C. Code Reg. § 67-612(F) (emphasis added). *See, e.g.*, Wigfall v. Tideland Utils., 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003) (explaining that the use of the "term 'shall' in a statute means that the action is mandatory"). Here, however, both parties clearly did not consent to the admission of Dr. Edelman's report. (Tr. p. 5, line 16 – p. 7, line 15).

Although Claimant asserts that the Commission abused its discretion in excluding Dr. Edelman's report, she fails to demonstrate that the Commission's ruling on this issue is "wholly unsupported by the evidence or ... controlled by an error of law." Thompson v. South Carolina Steel Erectors, 369 S.C. 606, 619, 632 S.E.2d 874, 881 (Ct. App. 2006), *citing* Steinke v. South Carolina Dept. of Labor, Lic. And Reg., 336 S.C. 373, 398, 520 S.E.2d 142, 155 (1999) ("[a]n abuse of discretion arises where the trial court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support"). The evidence supports the Commission's conclusion that the Single Commissioner did not grant a continuance so that Claimant could go out and solicit additional expert opinions. And, as noted above, Claimant's reliance on Fore is misplaced. There is no legal error. There is no abuse of discretion.

Claimant complains that she did not have time to depose the three experts named by Respondents. This is the one avenue that was open to Claimant and, in fact, she took

advantage of it, deposing Dr. Mackinnon on April 5, 2017. Reg. 67-612 makes a clear distinction between "a party's right to call a witness (lay or expert) or present evidence (lay or expert) in the form of a deposition," S.C. Code Reg. § 67-612(A), and a party's ability to submit a late-filed expert report over the objection of the opposing party. As noted above, unless the parties agree to a late-filed report, the Commission may or may not exclude it from the case, pursuant to Reg. 67-612(B), (E) & (F). However, pursuant to Reg. 67-612(A), those provisions do not apply to a party's right to call a witness (as was the case in Fore) or present deposition testimony.

Claimant argues that, because she had a right and duty to supplement her Form 58 and APA submissions pursuant to S.C. Code Reg. § 67-611, she had a right and duty to both solicit and submit Dr. Edelman's expert report, even though the deadline to do so had passed. Citing a non-binding Commission decision, Morse v. Sodetal USA, Inc., W.C.C. File No. 0319134, 2006 SC Wrk. Comp. LEXIS 1132 (SC Wrk. Comp. Feb. 9, 2007), Claimant accuses Respondents of "trial by ambush" by naming three experts in their filed Pre-Hearing Brief. However, even Claimant acknowledges that Respondents filed their Pre-Hearing Brief, naming their experts and lay witnesses, in a timely manner. (App. Br. p. 15). Claimant's allegations of unfair treatment are belied by her concession that Respondents complied with the Commission's regulations.

Claimant also complains that the naming of three new experts in Respondents' timely-filed Pre-Hearing Brief did not leave her "the typically required 10 days to move for postponement of the hearing." (App. Br. p. 10). However, given the timing embedded in the regulations, *see* Reg. 67-612(B)(1)&(2), discussed above, this will always be the case. The moving party, in this case Claimant, was required to submit her

expert reports 15 days prior to the scheduled hearing, while the responding party, in this case Respondents, were to submit their export reports 10 days before the hearing. Claimant has not been treated unfairly and the Commission did not abuse its discretion by excluding her late-filed expert report.

Finally, as the Commission properly found and concluded, Claimant had the opportunity to withdraw her hearing request in order to pursue whatever additional discovery she deemed necessary. (Commission Decision, p. 5, 59-60, 68). Claimant declined to withdraw her hearing request pursuant to S.C. Code Reg. § 67-609 and, instead, decided to proceed with the hearing knowing that Dr. Edelman's opinion might be excluded. She cannot now complain that she was treated unfairly and/or that she had no possible avenue for properly submitting Dr. Edelman's expert report.

For all the reasons stated herein, this Court should affirm the Commission's appropriate exercise of its discretion under S.C. Code Reg. § 67-612 and hold that Dr. Edelman's report and CV properly were excluded from the record.

II. The Commission properly found that Claimant failed to meet her burden of proving a compensable injury from her August 11, 2015 exposure.

A. Standard of Review.

Judicial review of a Commission decision is directed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). A reviewing court should affirm the decision of the Full Commission unless it is clearly erroneous in view of the substantial evidence of the whole record. Lark, 276 S.C. at 136, 276 S.E.2d at 307. The reviewing court may not substitute its own judgment for that of the Full Commission as to the weight of the evidence on a question of fact, but may reverse if the decision is

affected by an error of law. S.C. Code Ann. § 1-23-380(5). The Administrative Procedures Act "mandates that the commission take the evidence, judge the credibility and weight of that evidence, and from that judgment determine the facts of the case." Rogers v. Kunja Knitting Mills, Inc., 312 S.C. 377, 381, 440 S.E.2d 401, 403 (Ct. App. 1994).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the administrative agency reached in order to justify its action. Pierre v. Seaside Farms, Inc., 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence." Sharpe v. Case Prod., Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999). Instead, the findings of the Full Commission are presumed correct and can be set aside only if unsupported by substantial evidence or based on an error of law. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 186, 414 S.E.2d 162, 163 (1992).

"The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission." Brunson v. American Koyo Bearings, 395 S.C. 450, 455, 718 S.E.2d 755, 758 (Ct. App. 2011). Furthermore, it is the Commission's prerogative to believe or disbelieve expert testimony. *See* Pack v. South Carolina Dept. of Transp., 381 S.C. 526, 536, 673 S.E.2d 461, 466-67 (Ct. App. 2009) (observing that the "Commission need not accept or believe medical or other expert testimony, even when it is unanimous, uncontroverted, or uncontradicted"). Where there is a conflict in

the evidence, either by different witnesses or the testimony of the same witness, the factual findings of the Commission are conclusive. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492-93, 541 S.E.2d 526, 528 (2001).

B. Argument.

As a preliminary matter, Claimant essentially has abandoned her second issue because she failed to cite any legal authority in support of her argument. Other than citing two cases and the relevant portion of the Administrative Procedures Act, which properly should have been set out in a separate Standard of Review, *see* Rule 208(b)(1)(D), SCACR, she has presented this court with "no legal authority to support her argument." *See* Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011); *citing* Pack, 381 S.C. at 532, 673 S.E.2d at 464. Here, as was the case in Potter, Claimant's Brief "suggests other facts that could have been considered by the Appellate Panel, [but she] gives this court no substantive legal authority upon which to rely." 395 S.C. at 24, 716 S.E.2d at 127. As a result, her second argument on appeal, which is no more than a biased recitation of highly selective evidence in an apparent attempt to convince this Court to abandon the proper standard of review by overturning the Commission's resolution of conflicting evidence, should be deemed abandoned.

Nonetheless, and out of an abundance of caution, Respondents address the substance of Claimant's second argument. Although Claimant pays lip service to the applicable standard of review, she then proceeds to cherry pick certain pieces of evidence or statements, in isolation, in order to argue that the evidence overwhelmingly supports her claim. Claimant erroneously asserts that the Commission "mishandled" or "ignored" certain evidence favorable to her case and that, as a result, its Decision is not supported

by substantial evidence. On the contrary, there is ample, substantive, reliable and probative evidence in this record to support the Commission's determination that Claimant failed to meet her burden of proving she suffered any compensable injuries from her August 11, 2015 exposure.

Claimant begins her argument by alleging that "contemporaneous memos of this incident for the most part indicate that it was pure HF to which Murphy was exposed." (App. Br. p. 19). However, it is entirely understandable that the memos in response to Claimant's allegations of HF exposure just reference "the HF leak" since that is what was being investigated. Furthermore, some of the contemporaneous documents mention "HF, TFAC, or TFA" in reference to the leak. (*See* Cl. APA p. 166). Critically, the Supervisor's Incident Report, filled out by Mr. Babb on the date of the exposure indicates that Claimant was exposed to "Trace HF fumes." (Cl. APA pp. 167, 169, 182). Thus, even if the HF was "pure," as Claimant suggests, it was only a trace amount of vapor or fumes that she inhaled. As Mr. McDowell explained, the amount of HF in the air was so small that it was not measurable. (Tr. p. 142, lines 5-16). Furthermore, Claimant's argument disingenuously attempts to conflate the potential concentration of HF in the pipe with the level in the air to which she was exposed, many feet away. Finally, it is axiomatic that it is not Employer's burden to disprove her case; instead, it is Claimant's burden to prove she is entitled to benefits under the Act, including exposure and causation. *E.g.*, S.C. Code Ann. § 42-1-160(E) ("[i]n medically complex cases, an employee shall establish by medical evidence that the injury arose in the course of employment"); Clade v. Champion Labs, 330 S.C. 8, 11, 496 S.E.2d 856, 858 (1998) (a "claimant has the burden of proving facts that will bring the injury within the workers'

compensation law, and such award must not be based on surmise, conjecture or speculation").

Claimant suggests that this really is not a medically complex case after all, because substantial evidence supports her claim. (App. Br. p. 23). This is a nonsensical argument.[7] The designation of a medically complex case is pursuant to Section 42-1-160(E), which provides that the phrase "'medically complex cases' means sophisticated cases requiring highly scientific procedures or techniques for diagnosis or treatment excluding MRIs, CAT scans, x-rays, or other similar diagnostic techniques." S.C. Code Ann. § 42-1-160(E). Thus, it is the type of claim – a sophisticated case requiring highly scientific procedures or techniques for diagnosis or treatment – that determines whether a case falls under the requirement of Section 42-1-160(E). Claimant does not even attempt to argue that this case does not require 'highly scientific procedures or techniques for diagnosis or treatment. She simply argues that Employer's own documents "prove the case." Not only is her statement incorrect (Employer's own documents prove she was exposed to some trace levels of HF, but provide no further support for her claim (*see* Cl. APA pp. 167, 169, 179, 182)), but it is nothing more than an attempt to circumvent her failure to "establish by medical evidence that the injury arose in the course of employment." *See* S.C. Code Ann. § 42-1-160(E); *see also* Smith v. Michelin Tire Corp., 320 S.C. 296, 299, 465 S.E.2d 96, 97 (Ct. App. 1995) (in a medically complex case, causation must be established by competent medical evidence).

[7] Furthermore, at the hearing before the Appellate Panel, Claimant's counsel asserted that this is a medically complex case. (Full Comm'n Tr. p. 4, lines 17-20) (*see also* App. Br. p. 1). Parties are bound by concessions made by their counsel. *See, e.g.*, Pope v. Heritage Comm., Inc., 395 S.C. 404, 430-431, 717 S.E.2d 765, 779 (Ct. App 2011); Smith v. Pearson, 210 S.C. 524, 530-531, 43 S.E.2d 479, 481-482 (1947) (finding party was bound by its counsel's prior statement).

Claimant then offers up pieces of evidence that she argues support her claim. (App. Br. pp. 23-36). However, she fails to acknowledge the substantial conflicting evidence in the record as well as the well-established rule that, where there is a conflict in the evidence, either by different witnesses or the testimony of the same witness, the factual findings of the Commission are conclusive. *E.g.*, Anderson, 343 S.C. at 492-93, 541 S.E.2d at 528; Sharpe, 336 S.C. at 160, 519 S.E.2d at 105; *see also* Lockridge v. Santens of Am., 344 S.C. 511, 518, 544 S.E.2d 842, 846 (Ct. App. 2001) (upholding Commission denial of benefits where one expert attributed heart attack to work but the other expert "either would not or could not").

As was noted to the Commission, even Claimant's own experts disagree about whether there is any causal link between her HF exposure and her heart block. On one hand, Dr. Lane, who is a general cardiologist, testified that the heart block was due to the "severe coughing that [Claimant] had" in response to the HF exposure. (Lane Dep. p. 15, line 13 – p. 16, line 25). Dr. Lane based this opinion, expressed for the first time at her deposition,[8] on Claimant's report of a vasovagal episode when she was pregnant with her son many years prior. (Lane Dep. p. 21, line 11 – p. 22, line 17). She maintained this opinion despite acknowledging that she had not seen any medical documentation confirming a prior vasovagal episode. (Lane Dep. p. 23, lines 1-17).

On the other hand, Dr. Aquilina, a cardiac electrophysiologist, (Aquilina Dep. p. 4, line 21 – p. 5, line 8), flatly disagreed with Dr. Lane's causal opinion, stating that a vasovagal reflex is completely unrelated to development of Claimant's heart block. If a

[8] On cross-examination, Dr. Lane admitted that she had discussed this case for "about 30, 40 minutes" with Claimant's counsel prior to her deposition. (Lane Dep. p. 20, lines 16-22).

vasovagal response causes a heart block, it would be a "transient" or "very intermittent heart block" for which he would not have inserted a pacemaker. (Aquilina Dep. p. 12, line 17 – p. 14, line 1; p. 17, lines 3-14). Dr. Aquilina testified that the causes of heart block are unknown and, as a result, he could not testify as to what caused Claimant's heart block. (Aquilina Dep. p. 6, line 22 – p. 9, line 2 ("we do see heart block in all age groups throughout patients' lives and we don't really know what causes them most of the time"); p. 10, lines 3-11). He testified that low phosphorus, or hypophosphatemia, rarely causes heart block, "not that I've ever seen actually." (Aquilina Dep. p. 18, line 21 – p. 19, line 8). Tellingly, Claimant does not even discuss Dr. Aquilina's deposition testimony.

Other experts agree with Dr. Aquilina. Dr. Feldman opined both that "it is physiologically improbable that there is a causal relationship between Hydrofluoride inhalation exposure and high-grade heart block," and that it was "of low medical certainty that a chronic vaso-inhibitory reflex would result in a chronic complete heart block," disagreeing with Dr. Lane's opinion that a vasovagal cause resulted in Claimant's complete heart block. (Def. APA pp. 424-425). Dr. Early also concluded that Claimant's "8-21-15 arrhythmia and subsequent pacemaker are not attributable to or aggravated by her HF exposure." (Def. APA p. 401).

Thus, not only do Claimant's treating physicians disagree as to the cause of her heart block, there is substantial evidence to support the Commission's conclusion that she failed to meet her burden of proving it arose from her HF exposure. *See, e.g.*, Anderson, 343 S.C. at 492-93, 541 S.E.2d at 528 (where there is a conflict in the evidence, either by different witnesses or the testimony of the same witness, the factual findings of the

Commission are conclusive); Sharpe, 336 S.C. at 160, 519 S.E.2d at 105 (same); *see also* Lockridge, 344 S.C. at 518, 544 S.E.2d at 846 (same).

Apparently recognizing the weakness of her case, Claimant points to alleged "discrepancies" in Dr. Mackinnon's testimony and alleges that they prove her case. First, she mischaracterizes the testimony and evidence, asserting that "one of the most significant clinical factors associated with HF induced heart block is prolongation of the QT interval on electrocardiogram." (App. Br. p. 24). While Dr. Mackinnon agreed that a prolonged QT interval would be "some evidence" of an HF exposure, he explained that "[t]here are other causes for QT interval changes," and that "had there been a significant exposure, yes, you're going to get QT interval changes." (Mackinnon Dep. p. 42, lines 16-22). He also testified that, if there had been a significant exposure to HF, the prolonged QT interval "should happen within a very relatively short time, a number of hours, after the exposure." (Mackinnon Dep. p. 43, lines 15-24).[9] Dr. Mackinnon's testimony falls short of establishing a prolonged QT interval as "one of the most significant clinical factors," and certainly does not prove either that Claimant "had a significant exposure" to HF, or that her prolonged QT interval resulted from her minimal HF exposure. Second, Dr. Mackinnon readily agreed that he would defer to a cardiologist as to whether there was any causal link between Claimant's HF exposure and her heart block. (Mackinnon Dep. p. 62, line 24 – p. 73, line 7). Finally, despite Claimant's colorful language regarding incomplete medical records and evidence, (App. Br. pp. 27, 30), she had an opportunity at his deposition to present Dr. Mackinnon with whatever additional medical records, including Claimant's version of her exposure, she

[9] The first mention of a "Prolonged QT" was in Dr. Hobbs' notes from August 21, 2015, (Cl. APA p. 44), a full ten days after Claimant's exposure.

felt he should see. Importantly, Dr. Mackinnon confirmed that none of the information Claimant's counsel presented him at his deposition changed his January 27, 2017 opinion. (Mackinnon Dep. p. 60, line 25 – p. 61, line 4). This is nothing more than a hyperbolic red herring.[10]

Claimant takes issue with Dr. Early's opinion, and the Commission's "heavy reliance on the lack of abnormal electrolyte findings ..." (App. Br. p. 35). Dr. Early noted the references in the August 21-24, 2015 medical notes to a phosphate level of 1.1, but pointed out that that was ten days after her exposure. A number of experts, including Dr. Early, opined that a low phosphate (or other electrolyte level) found 10 days after the incident would not be due to Claimant's HF exposure. Dr. Early explained that "[e]lectrolyte abnormalities are usually noted in the first 24 hrs., after exposure, but sometimes can occur up to 48 hrs after exposure. It would be highly unusual to have normal electrolytes at 48 hours after exposure and then develop a phosphate of 1.1 on day 10 and have this be due to HF exposure." (Def. APA pp. 397-399). Even Dr. Lane's notes indicate that "[n]o known exposure ... would cause this degree of heart block without an electrolyte abnormality. That is not present." (Cl. APA p. 66). Dr. Aquilina, while acknowledging that phosphorous is an electrolyte, testified that he had never seen a

[10] Incongruously, Claimant asserts that Mr. Campbell's testimony establishes that her exposure to HF fumes was substantial because he testified that it took his breath away. (App. Br. p. 30). Mr. Campbell also testified that it made his eyes burn and caused him to cough. However, he also explained that, "the worst part of it probably lasted about five minutes if that, but after that, after I got some air, it cleared up." (Tr. p. 175, lines 7-16). Furthermore, he testified that he experienced no long-term breathing, heart or any other health problems from his HF exposure. (Tr. p. 176, line 212 – p. 177, line 4). This is yet another instance of Claimant cherry picking evidence in an attempt to convince this Court to abandon proper application of the substantial evidence standard of review.

case where one reading of low phosphorus caused an irregular rhythm. (Aquilina Dep. p. 18, line 25 – p. 19, line 10 (adding, "I would not consider that one thing")).

As to Claimant's pulmonary and other alleged problems, again, the evidence is in conflict, and substantial evidence supports the Commission Decision, which should be upheld. While Dr. Alleyne diagnosed her with RADS, as well as PTSD,[11] the Commission declined to afford his opinion much weight. The APA "mandates that the commission take the evidence, judge the credibility and weight of that evidence, and from that judgment determine the facts of the case." Rogers, 312 S.C. at 381, 440 S.E.2d at 403; Brunson, 395 S.C. at 455, 718 S.E.2d at 758 ("[t]he final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission").

First, Claimant implausibly testified that she could not find a pulmonologist in or near North Augusta, South Carolina who would accept workers' compensation patients. After much prodding, she reluctantly acknowledged that her legal counsel had selected Dr. Alleyne, located across the state in Rock Hill, even though she protested going as far as Charleston for an appointment with Dr. Mitchell. (Tr. p. 110, line 1 – p. 111, line 14) (Cl. Dep. p. 108, lines 6-24). Second, Dr. Alleyne admitted that he had discussed this case with Claimant's counsel three or four times prior to his deposition. (Alleyne Dep. p. 33, lines 8-12). Finally, the Commission determined that "Dr. Alleyne's testimony comes across as the most outcome-determinative of any" expert in this case for all the reasons set forth in Finding of Fact No. 73. (Commission Decision pp. 48-51). Where the medical experts are in direct conflict, the Commission's findings are conclusive and should be upheld by this Court. *See, e.g.*, Anderson, 343 S.C. at 492-93, 541 S.E.2d at

[11] There is no indication that Dr. Alleyne is trained in psychology.

528 (where there is a conflict in the evidence, either by different witnesses or the testimony of the same witness, the factual findings of the Commission are conclusive). As is the case here, the fact that Claimant can point to some evidence in the record that may support her claim does not mean she has met her burden of proof. Sharpe, 336 S.C. at 160, 519 S.E.2d at 105 ("[t]he possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence").

In the end, the isolated "nits" that Claimant picks with the expert opinions that do not support her case, and her allegations that Respondents' experts actually do support her claim, are nothing more than an exercise in viewing the evidence through blinders that ignores any evidence that does not support her claim. That is not the proper measure under the substantial evidence standard of review. Pierre, 386 S.C. at 540, 689 S.E.2d at 618 (substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the administrative agency reached in order to justify its action). While there may be some evidence that supports her claim, there is other evidence, substantial, reliable and probative evidence that supports the Commission Decision. As a result, and under the applicable standard of review, this Court should affirm the Commission's determination that Claimant failed to meet her burden of proving she is entitled to workers' compensation benefits as the result of her August 11, 2015 exposure.

III. Claimant failed to preserve any other issue on appeal.

Claimant has condensed the issues in this appeal to two main arguments, one relating to the exclusion of her late-filed expert's report, and the other that the Commission "ignored" substantial evidence that would support her claim. Any other arguments raised to the Commission have been abandoned on appeal.

For example, Claimant has not argued that the Commission erred in finding her testimony lacks credibility or that she was "merely trying to 'stick it' to her Employer ... by having her employer pay for all of her 'unrelated' health concerns." She also has not taken issue with the Commission's reliance on Mr. Parson's testimony. (Cl. Form 30, amended attachment). She has presented no argument regarding the Commission's denial of compensable injury to her bones, senses of smell and taste, neurological system or her psyche. Those issues, therefore, are not preserved for appellate review, and Claimant cannot cure that failure on reply. *See* Emerson Elec. Co. v. South Carolina Dept. of Rev., 395 S.C. 481, 489 n.6, 719 S.E.2d 650, 654 n.6 (2011) (declining to consider argument raised for the first time in a reply brief); Simmons v. SC Strong, 402 S.C. 166, 173 n.2, 739 S.E.2d 631, 634 n.2 (Ct. App. 2013) (argument not preserved for appellate review where it was raised for the first time in a reply brief); Lister v. NationsBank of Delaware, N.A., 329 S.C. 133, 494 S.E2d 449 (Ct. App. 1997) ("an appellant may not use the reply brief to argue issues not argued in the appellant's initial brief").

This Court should hold that issues raised by Claimant in her Form 30 but not addressed in her opening Brief are deemed abandoned on appeal.

CONCLUSION

For all the reasons stated herein, this Court should affirm the Commission Decision and dismiss this appeal with prejudice.

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December 7, 2018

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1511478

Monica Murphy, Employee, ... Appellant,

v.

Halocarbon Products Corporation, Employer, and
Commerce & Industry Insurance Company
c/o AIG Claims, Inc., Carrier, ... Respondents.

PROOF OF SERVICE

I certify that on the 7th day of December 2018, I served the **Initial Brief of Respondents** and Respondents' **Designation of Matter** on Monica Murphy by depositing a copy of them in the United States Mail, postage prepaid, addressed to her attorney of record:

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December 7, 2018

Via U.S. Mail
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Monica Murphy v. Halocarbon Products Corporation and Commerce & Industry Insurance Company c/o AIG Claims, Inc.
Date of Accident: August 11, 2015
WCC File No.: 1511478
Our File No.: 2094.18147
Claim No.: 555-185578
Appeal No.: 2018-001526

Dear Ms. Kitchings:

Enclosed for filing please find the following documents:

1. original and one copy of the Initial Brief of Respondents;
2. original and one copy of the Designation of Matter to be Included in the Record on Appeal; and
3. original and one copy of Respondents' Proof of Service concerning items one and two.

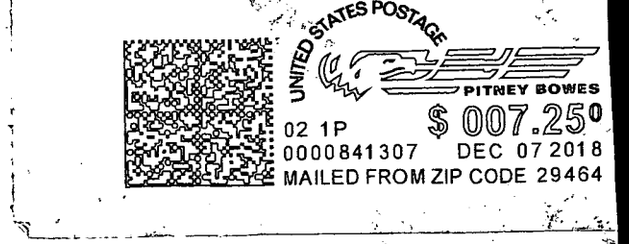
Please file these documents and return the clocked-in copies in the enclosed, self-addressed stamped envelope.

Yours truly,

McAngus Goudelock & Courie, LLC

Helen F. Hiser

Enclosures
cc: Frederick I. Hall, III, Esquire
AIG WC Worklist Hub, AIG Claims, Inc.
George Hinson, AIG Claims, Inc.



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