THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

G. Bryan Lyndon, Commissioner

Case No. 2012-210487

Emma Hamilton, Employee/Claimant.....Appellant,

v.

Martin Color-Fi, Inc., Employer,
And Liberty Mutual Insurance Company, Carrier.....Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

Appellant Emma Hamilton ("Claimant") sustained a work related injury to the right hand on July 22, 2008. On October 12, 2009, Respondents Martin Color-Fi, Inc. ("Employer") and Liberty Mutual Insurance Company ("Carrier") (collectively "Respondents") filed a Form 21 requesting a hearing. The Form 21 specifically requested that the Commission allow Respondents to stop payment of temporary compensation due to the Claimant reaching maximum medical improvement and to pay permanency. Respondents further request credit for overpayment of temporary compensation. On November 21, 2010, Claimant filed a Form 50 requesting additional treatment for the right wrist and hand. Respondents timely filed a Form 51 on December 21, 2010 admitting the accident, but denying the extent of the injuries as alleged by the Claimant and denying the Claimant's need for additional medical treatment. Respondents maintained that Claimant was at maximum medical improvement for all injuries, and the claim was ready for a determination of permanency and stop payment of temporary compensation.

A hearing was held on December 15, 2010 before Commissioner G. Bryan Lyndon to determine the issues set forth in the Form 21, 50, and 51. Commissioner Lyndon issued an Order dated February 24, 2011 finding the Claimant reached maximum medical improvement ("MMI") on June 30, 2010, sustained a 10% permanent partial disability to her right upper extremity, was not entitled to additional medical treatment, and the Respondents were entitled to a credit for overpayment of temporary total compensation since the date of MMI. (R p 8-9, #21,22 and 23).

Within the statutory period, the Claimant filed an Application for Review. In an Order dated January 23, 2012, the Commission affirmed Commissioner Lyndon's Order in full. The Claimant filed her Notice of Appeal on February 22, 2012.

STATEMENT OF THE FACTS

The Claimant was born December 4, 1964 and has a high school diploma. (R. p. 303, line 16; p. 304, line 18). Claimant attended one and a half years of schooling to be a paralegal at Central Carolina Technical College. (R. p. 304, lines 18-22). Claimant testified that she previously worked for the Sumter County Library, held a supervisory role at the South Carolina Vocational Rehabilitation Department, and took the United States Postal exam. (R. p. 307, lines 3-5; p. 310, lines 11-12; p. 311, line 7). Claimant has also performed a variety of construction jobs and other labor intensive work in the past. Claimant began working for the Employer in 2001 as a machine operator. (R. p. 314, lines 9-14).

On July 22, 2008, Claimant was involved in a work-related accident when she got her right hand and forearm caught in rollers. Claimant testified that she is right hand dominant. Claimant present to Tuomey Emergency room on the day of the accident with complaints of right wrist and hand pain. (R. p. 28-29). The following day, July 23, 2008, Claimant was seen by an orthopaedist, Dr. James Gee. (R. p. 52). Claimant began treatment with Dr. Gee on a nearly weekly basis, and on August 13, 2008, Dr. Gee noted "steady progress." (R. p. 60). Dr. Gee placed the Claimant through additional physical therapy and on October 22, 2008, Dr. Gee's records stated that "Ms. Hamilton really loves her physical therapy and is really pleased with the progress she has made." (R. p. 69). Due to her complaints of neurogenic type sensations, Dr. Gee recommended a nerve conduction study at that time. (*Id.*). An MRI of the right wrist was also performed at Dr. Gee's request on November 26, 2008, which was essentially normal and showed no tendon or ligament injury. (R. p. 87). On December 3, 2008, Dr. Gee met with the

Claimant and explained that both her nerve conduction studies and MRI tests appeared to be normal, and he felt she would have to just continue to improve with time. (R. p. 76). Claimant testified that she was frustrated with the ongoing restrictions in her hand motion and became dissatisfied with the treatment she received from Dr. Gee. Claimant further testified that she felt Dr. Gee acted nasty towards her. (R. p. 21, #7, 9). The medicals note the Claimant was not nice or pleasant towards Dr. Gee. (R. p. 129).

Claimant next saw Dr. Michael Green for an evaluation on February 11, 2009. At that time, the Claimant continued to present with complaints of numbness, tingling, pain and weakness in her hand. (R. p. 88). Dr. Green opined that the Claimant was at maximum medical improvement and had no work restrictions. Dr. Green did not recommend any future treatment and assigned 1% impairment to the right hand as a result of the accident. (R. p. 90-91). Claimant testified that Dr. Greene was nasty to her, much like Dr. Gee. (R. p. 21, #9).

Following the Claimant's appointment with Dr. Green, the carrier authorized Work Hardening. The Claimant voiced concerns to the provider about participating in the Work Hardening. (R. p. 86). The Work Hardening provider discontinued the treatment because of Claimant's continued reports of pain. (R. p. 239).

Claimant returned to see Dr. Gee again on May 27, 2009. At that time, Dr. Gee advised the Claimant that she had been evaluated by three physicians, a neurologist, an orthopaedic surgeon, and a hand specialist, she underwent both nerve conduction testing and an MRI examination, and nothing revealed any significant damage to any structures of the right wrist and arm. (R. p. 85). Dr. Gee stated that he agreed with Dr. Green that Claimant has some degree of impairment, but it would not be a large impairment. (*Id.*).

Dr. Gee stated that Claimant no longer required any medications and it was "up to her" to work on strengthening. (*Id.*).

Claimant was also seen by Dr. Blake Moore on June 1, 2009, for an independent evaluation scheduled by her attorney. Dr. Moore opined Claimant was not at maximum medical improvement and was a candidate for ongoing conservative treatment, including pharmacotherapy, orthotic bracing and possible TENS provisions. (R. p. 263).

Following her exam with Dr. Moore, Claimant returned to Dr. Gee on February 25, 2010. Dr. Gee recommended an evaluation with another hand specialist. (R. p. 132). As such, Respondents arranged for Claimant to be seen by Dr. David Fulton on June 30, 2010. (R. p. 92-93). Dr. Fulton saw no signs of ongoing swelling or loss of mobility, and he opined that any cystic changes in her lunate were chronic and unrelated to the injury. *(Id.)*. Dr. Fulton stated that all treatment to date was appropriate for her injury and placed the Claimant at MMI as of June 30, 2010. Dr. Fulton stated that he saw no contraindication to return to work without restriction, no evidence of permanent impairment, and no need for additional future medical treatment or testing. *(Id.)*.

Claimant testified she continued to work light duty in the lab for the Employer until December 2008, when she was laid off along with half of the other plant employees. (R. p. 316, lines 16-19). Claimant testified that during the time she worked light duty, she continued to receive the same wages as prior to the accident. (R. p. 318, line 4). Outside of work, Claimant testified that she continues to be able to do her chores around the house and yard work. (R. p. 341, lines 6-13). In response to questioning by the Commissioner, the Claimant testified that she used a posthole digger one time. (R. p. 21,

#13). Claimant further testified that she has not looked for any work because she is considering returning to school.

STANDARD OF REVIEW

In workers' compensation cases, the South Carolina Workers' Compensation Commission is the trier of fact. *Hunter v. Patrick Const. Co.*, 289 S.C. 46, 344 S.E.2d 613 (1986). The South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-380(A)(6) (1976), establishes the "substantial evidence" rule as the standard for judicial review of a decision of the Commission:

> The court shall not substitute its judgment of that of the agency as to the weight of evidence on questions of fact. The court may affirm the decision of the administrative agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
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> . . .
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> (d) Affected by other error of law;
> (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
> (f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

An appellate court, in workers' compensation appeals, may only overturn a conclusion of the Workers' Compensation Commission if that conclusion is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981).

> The test is whether the decision of the Commission is supported by substantial evidence. Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action.

Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995).

"[W]hen factual findings are supported by substantial evidence, analogous to a jury's findings of fact on disputed issues, the Commission's conclusions must be affirmed." *Ross v. American Red Cross*, 298 S.C. 490, 381 S.E.2d 728 (1989) (internal quotations and citations omitted). "The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence." *Bass v. Kenco Group*, 366 S.C. 450, 458, 622 S.E.2d 577, 581 (Ct. App. 2005).

ARGUMENT

I. The Commission correctly determined the Claimant reached MMI on June 30, 2010.

The Commission's finding the Claimant reached maximum medical improvement on June 30, 2010 is supported by substantial evidence. (R. p. 22, #21). Maximum medical improvement means "a person has reached a plateau that, in the physician's opinion, no further medical care or treatment will lessen the period of impairment" and "signals the end of entitlement to temporary total benefits." *Curiel v. Env. Mgmt. Serv.*, 376 S.C. 23, 29, 665 S.E.2d 482, 485 (2007). Maximum medical improvement is a factual determination by the Commission which must be upheld on review unless unsupported by substantial evidence. *(Id.)*.

The evidence shows the Respondents provided the Claimant with a great deal of medical support and treatment. The Commission relied on the overwhelming evidence to support the finding of facts and conclusions of law in the Order. As such, the Commission's findings should be affirmed. The evidence indicates the Claimant is at maximum medical improvement and is not entitled to additional medical treatment.

Following her injury, the Respondents provided the Claimant with extensive treatment. Three doctors, two of which are upper extremity specialists, addressed the Claimant's impairment as she was at MMI. (R. p. 88-93).

The first doctor to see the Claimant was Dr. Gee, who the Claimant saw intermittently beginning with the day after her accident. (R. p. 52). After initially seeing the Claimant on a weekly basis, Dr. Gee noted that the Claimant was "doing extremely well and has recovered really nicely." (R. p. 64). Dr. Gee referred the Claimant to physical therapy to speed up her recovery, where significant progress was also made. (R. p. 64-67). At the insistence of the Claimant, Dr. Gee conducted an MRI, which was normal save for evidence of the trauma caused by the accident. (R. p. 76). He consistently instructed her that the injury would continue to improve with time. (R. p. 69).

On May 7, 2009, Dr. Gee completed a 14B stating that he deferred to Dr. Greene, the hand specialist to whom he referred the Claimant. (R. p. 84). He further stated that the Claimant would not need future medical care related to her work injury to a reasonable degree of medical certainty. (*Id.*). Dr. Gee's May 27, 2009 report states that he agreed with Dr. Greene's opinion that she no longer had a large degree of impairment and no further medication was required. (R. p. 85). Furthermore, in this report, Dr. Gee stated that "[a]t some point between February 25, 2009 and March 25, 2009" the Claimant reached maximum medical improvement. (*Id.*). As such, Dr. Gee placed the Claimant at maximum medical improvement. While Dr. Gee did discuss a subsequent MRI on February 18, 2010, it was because the Claimant was insistent on further treatment after being evaluated by Dr. Moore. (R. p. 129). Dr. Gee did not change his opinion, based on his findings or the findings of Dr. Green, that the Claimant had reached maximum

medical improvement and must work hard to improve her strength. (*Id.*). In addition, to Dr. Gee's opinion providing support for the Claimant being at MMI it also supports the proper filing of the Form 21.

As mentioned previously, the Claimant saw Dr. Michael Green, a hand specialist, at the referral of Dr. Gee for an evaluation on February 11, 2009. (R. p. 88). Dr. Greene opined that the Claimant did not need any future treatment and assigned 1% impairment to the right hand as a result of the accident. (R. p. 91). Dr. Greene opined that the Claimant would respond well to work-hardening to increase her strength. (R. p. 89). Dr. Greene further stated that the Claimant was at maximum medical improvement and could work without restrictions. (*Id.*).

Dissatisfied with Dr. Green, Claimant then saw Dr. Blake Moore on June 1, 2009 for an independent evaluation at the direction of her attorney. (R. p. 260). Dr. Moore focused on the finding of "subchondral cystic degeneration along the lunate bone", which he found to be consistent with an ulnar abutment syndrome or an evolving avascular necrosis. (R. p. 263). Dr. Moore did not find the Claimant to be at maximum medical improvement. (*Id.*).

Greater weight was given to the opinions of Dr. Green and Dr. Fulton, who the Claimant saw after Dr. Moore, because of their status as hand specialists. (R. p. 22, #17). Therefore, the fact that Dr. Moore did not place the Claimant at MMI does not overshadow the fact that Dr. Gee and Dr. Green opined that the Claimant was at maximum medical improvement. Dr. Fulton also addressed Claimant's impairment.

After returning to Dr. Gee following her evaluation with Dr. Moore, Dr. Gee suggested the Claimant see another hand specialist. (R. p. 129). Respondents arranged for

the Claimant to see Dr. Fulton. Dr. Fulton stated that he did not "believe the cystic changes in her lunate were likely related to the injury, but rather represent likely pre-existing chronic changes...." (R. p. 93). He held that the Claimant could return to work without restriction and saw "no evidence of permanent partial impairment to the right hand or wrist." (*Id.*). He further stated that he did not believe "any further treatment or testing is medically necessary." (*Id.*).

The substantial evidence supports the Commission's finding the Claimant is at maximum medical improvement. The Respondents went great lengths to provide the Claimant with the additional medical support she requested. Each physician retained by the Respondents opined that the Claimant is at maximum medical improvement. The Commission took into consideration the whole of the evidence before correctly determining that the Claimant reached maximum medical improvement on June 30, 2010.

Additionally, as temporary benefits are only available from the date of the injury through the date of MMI, *Curiel*, *supra*, 376 S.C. at 29, 655 S.E.2d at 485, the Commission correctly credited the Respondents for overpayment of all temporary benefits after June 30, 2010.

II. The Commission correctly denied additional medical treatment.

The Commission found "there is no evidence from an authorized provider that Claimant needs any additional medical treatment or imaging that would tend to lessen the period of Claimant's disability (see Form 14-Bs)." (R. p. 22, #21). The substantial evidence supports this finding.

As addressed above, Dr. Gee, the authorized treating physician, completed a Form 14B stating the Claimant would not need future medical treatment related to her work

injury within a reasonable degree of medical certainty. (R. p. 84). This opinion was shared by both Dr. Green and Dr. Fulton. (R. p. 91, 93). The only conflicting evidence in the record is the testimony of the Claimant and the opinion of Dr. Moore.

This conflicting evidence was considered by the Commission and each was assigned its appropriate weight. "Where there is conflicting medical evidence, as in this case, the findings of fact of the commission are conclusive." *Nettles v. Spartanburg Sch. Dist.*, 341 S.C. 580, 592, 535 S.E.2d 146, 152 (Ct. App. 2000). Accordingly, the Commission's finding should be affirmed.

III. Substantial evidence supports the Commission's finding of 10% permanent partial disability.

"The extent of an injured workman's disability is a question of fact for determination by the Appellate Panel and will not be reversed if it is supported by competent evidence." *Fishburne v. ATI Sys. Int'l*, 384 S.C. 76, 86, 681 S.E.2d 595, 600 (Ct. App. 2009). The Commission's finding the Claimant sustained 10% permanent partial disability to her right upper extremity is supported by substantial evidence.

Dr. Green, to whom Dr. Gee deferred, assigned an impairment rating of 1% to the Claimant's right hand. (R. p. 84, 90-91). Dr. Fulton opined there was no evidence of permanent impairment. (R. p. 93). A functional capacity examination determined the Claimant's "overall work rated at a LIGHT strength level. (R. p. 178-197). The Claimant testified she was able to work light duty after the accident until she was laid off in December 2008. (R. p. 316, lines 3-18). She further testified she was able to do common household chores and yard work. (R. p. 341, lines 6-19).

The Commission considered this evidence, assigned each the appropriate weight, and generously awarded the Claimant a permanent partial disability of 10% to the right

upper extremity. The Respondents respectfully request the Commission's findings be affirmed.

IV. The Commission assigned the appropriate weight to the evidence.

The Claimant argues the Commission improperly found the Claimant not credible. (Appellant's Brief, pp. 18-22). "The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission." *Shealy v. Aiken County*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). "It is not the task of [the appellate court] to weigh the evidence as found by the Full Commission." *(Id.)*

The Hearing Commissioner had the opportunity to observe the Claimant's testimony first hand and consider it in light of the other evidence in the record. The Full Commission also had the opportunity to consider the Claimant's testimony in light of the other evidence in the record. The Full Commission affirmed the findings of fact of the Hearing Commissioner in full. The Respondents respectfully request the Commission's findings of fact be affirmed.

CONCLUSION

Respondents respectfully request that the Commission's Order be affirmed in full. The Commission's findings that the Claimant reached MMI, is not entitled to additional medical treatment, and sustained a 10% permanent partial disability to her right upper extremity are findings of fact supported by substantial evidence in the record. The weight assigned to the evidence, such as the credibility of the Claimant, is within the sound province of the Commission as the finder of fact. Therefore, and for the reasons set forth above, the Respondents respectfully request the Court affirm the Order of the Commission.

Respectfully Submitted,

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October 5, 2012

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Respondent's Final Brief complies with Rule 211 (b) of the SCACR.

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for Appellant with a copy of the Final Brief of Respondents of Martin Color-Fi, Inc. and Designation of Matter to be Included in the Record on Appeal by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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October 5, 2012
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