THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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SC Court of Appeals

Appellate Case No.: 2012-213606

Cindy Dozier, Employee/Claimant..Appellant,

v.

American Red Cross, Employer,
and Sedgwick CMS, Carrier.. Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

I. Does substantial evidence exist in the record to support the Commission's finding that Appellant did not meet her burden of proving a compensable RSD/CRPS injury?

II. Does substantial evidence exist in the record to support the Commission's finding that Appellant was entitled to a permanent partial disability award to each arm, but was not permanently and totally disabled?

III. Do the legal doctrines/theories of *estoppel*, *waiver*, and *res judicata* apply to prevent Respondents from denying that Appellant sustained related RSD/CRPS?

IV. Does the doctrine of *res judicata* apply to Appellant's claim for a compensable RSD/CRPS injury where she did not appeal the Commission's Order failing to find a compensable RSD/CRPS injury?

V. Does the Supreme Court's opinion in Michau v. Georgetown County lessen the weight that the Commission should have given the medical opinions of Dr. Bitting?

STATEMENT OF THE CASE

Cindy Dozier ("Appellant"), sustained an admitted injury by accident to the left arm on January 17, 2008. The parties entered into a Consent Order whereby they agreed that, "Appellant sustained a January 17, 2008, compensable injury to her left wrist as a result of her employment with American Red Cross." Treatment was initiated with several medial providers. (R. pp. 1-2)

Appellant filed an August 6, 2009, Form 50 alleging injury to, "arms, back/neck," and "psychological overlay." Appellant sought further medical treatment for the "neck, back, arms, psyche." (R. pp. 91-93) On August 14, 2009, Respondents filed a Form 51 admitting an injury to the "left wrist only." (R. p. 94)

A hearing was held before a Single Commissioner on November 3, 2009. At this hearing, position of the parties was read into the record as follows:

> The Claimant takes the position she suffered injuries to both arms, also to her neck and the back. She seeks payment of all causally related medical treatment received to date. She seeks an award of compensation for temporary total disability from September 8, 2008, forward. And seeks additional treatment for her arms, in particular for reflex sympathetic dystrophy and asks that Dr. Moore be assigned as her treating physician. The defense admits an injury to the left arm only. They deny all other body parts and I assume that you also deny the request for Dr. Moore to be the treating physician.
>
> **Mr. Shull:**
>
> Yes, Sir. And we also take the position the Appellant is at MMI.

R. p. 144, lines 23-25; R. p. 145, lines 1-14.

Appellant's counsel did not object to the above statement by the Single Commissioner at the November 3, 2009, hearing.

The Single Commissioner emailed counsel for the parties requesting that Claimant's counsel draft a proposed Order finding, "Claimant suffered injuries to both arms, including RSD, and her neck. Defense to pay all causally-related medical bills to date and additional treatment to be directed by Dr. Moore." (R. p. 572).

The Single Commissioner issued a December 17, 2009, Decision & Order. This Decision & Order found as fact that, "The Claimant suffered injuries to both arms by accident arising out of and in the course of her employment." The Commissioner specifically ordered, "The defense shall provide the Claimant with medical treatment for both of her arms through a physician of their choosing." (R. pp. 5-6)

On December 30, 2009, Appellant filed a Form 30 Notice of Appeal with the following exceptions:

1. Whether the Single Commissioner erred as a matter of fact and law in failing to order past causally related medical treatment to be paid by the Carrier pursuant to § 42-15-60?

2. Whether the Single Commissioner erred as a matter of fact and law in allowing Defendants to designate a treating physician when good cause existed to designate Dr. Moore or one of the other treating physicians, such good cause being shown by Defendant's willful failure to provide treatment through the agreed upon authorized treating physician and the fact Defendants obtained *five* IMEs?

3. Whether the Single Commissioner erred as a matter of law in failing to assess the mandatory 25% penalty for improper termination of temporary compensation?

R. p. 105; R. pp. 600-601.

On January 4, 2010, Appellant filed an Amended Form 30 adding the following exceptions:

4. Whether the Single Commissioner erred as a matter of fact and law in failing to find Appellant injured her neck/back when such finding was supported by the opinions of the treating physicians?

5. Whether the Single Commissioner erred as a matter of fact and law in failing to exclude the report of Dr. Bethea?

R. pp. 114-115.

Oral arguments were heard on April 20, 2010. Appellant chose not to argue the issues of medical provider, compensability of her alleged neck injury, or the 25% penalty. The South Carolina Workers' Compensation issued a November 23, 2010, Order which stated in the "Statement of the Case:"

> Claimant contends she has been diagnosed with carpal tunnel syndrome and Complex Regional Pain Syndrome (CRPS/RSD), both conditions being work-related. She seeks treatment as directed by Dr. Blake Moore, contending that although the parties agreed to Dr. McIntosh as the authorized treating physician, she was sent to Dr. McIntosh for a defense medical evaluation rather than for treatment.

R. p. 8.

This November 23, 2010, Order was drafted by Appellant's counsel and included all five original issues for appeal, including the issue of whether or not the Hearing Commissioner erred by failing to find that Appellant injured her neck/back and the issue of whether or not the Hearing Commissioner erred by failing to authorize Dr. Moore as the authorized treating physician (at that point in time, Dr. Moore had opined that Appellant suffered from RSD/CRPS). Neither party appealed this Order.

Appellant filed a subsequent Form 50 on October 17, 2011. Appellant alleged an additional injured body part, making her allegations, "both arms, central nervous system." At this hearing, Appellant requested a lump sum award for permanent total disability

benefits. (Form 50, 10/17/11). Respondents filed a November 15, 2011, Form 51 which admitted "only injury to the bilateral wrists. All other alleged injuries are denied." (R. p. 123)

A hearing was held before the Single Commissioner on February 6, 2012. Appellant argued that she was entitled to a finding of permanent and total disability under S.C. Code Ann. § 42-9-10 (2007) based on the medical restrictions placed on her by her authorized treating physicians. Specifically, she contended that the 5-pound lifting restriction placed on her by Dr. Shealy and Dr. Zgleszewski left her unable to return to the workforce. In addition, Appellant argued that she was unable to return to work due to Dr. Zgleszewski's assertion that she would not be able to use either upper extremity on a repetitive basis "secondary to her CRPS and chronic pain from her failed CTS surgery."

Respondents argued that Appellant was entitled to a permanent partial disability award to each wrist only but that Appellant had not met her burden of proving permanent and totally disability and that her argument for such award was based upon her alleged and denied RSD/CRPS.

Respondents further argued that Appellant previously sought a finding of compensable RSD/CRPS with treatment for the same with a provider of her choosing at the prior November 3, 2009 hearing. However, the resulting December 17, 2009, Decision & Order did not make any findings to this effect or order treatment for RSD/CRPS. Rather, the December 17, 2009, Order gave Respondents the right to choose Appellant's treating physician. (R. pp. 5-6). In addition, Respondents argued that Appellant had chosen not to pursue the issue of RSD/CRPS in her appeal of the December 17, 2009 Order. Instead, other issues were appealed, argued, and ruled upon by the Full Commission in the

November 23, 2010, Order that was drafted by Appellant's attorney. Respondents argued that Appellant had already sought a finding of compensable CRPS/RSD and treatment for same and could not attempt to re-litigate the issue at a subsequent hearing pursuant to the doctrine of *res judicata.* In the alternative, Respondents contended that the overwhelming preponderance of the credible evidence did not support a medical diagnosis of RSD/CRPS.

The Single Commissioner issued a May 24, 2012, Decision & Order finding, inter alia: (1) Appellant did not suffer from RSD/CRPS related to her January 17, 2008, wrists injuries (Finding of Fact #33); (2) Appellant reached MMI on August 9, 2011 (Finding of Fact #4); and (3) Appellant sustained 20% permanent partial disability to each arm (Finding of Fact # 36). (R. pp. 55, 62, 63)

On May 31, 2012, Appellant filed a Form 30 Notice of Appeal and the Full Commission heard the case on September 18, 2012. (R. pp. 605-607) On November 15, 2012, the Full Commission fully affirmed the Single Commissioner's May 24, 2012, Decision & Order. (R. pp. 67-87) Appellant filed her Notice of Appeal with this Court on December 14, 2012. This appeal follows.

STATEMENT OF THE FACTS

Appellant was 41-years-old on the date of the February 6, 2012 hearing. (R. pp. 294, lines 9-10) Appellant graduated High School after the 12th grade and also obtained training and licenses as a Certified Nurse's Assistant and as a Phlebotomist. (R. p. 294, lines 17-23) Prior to working for Respondent, Appellant worked at a Certified Nurse's Assistant for 18 years. (R. p. 295, lines 1-7) Claimant had not applied for any jobs since she had been released by her doctors. (R. p 320, lines 18-25; R. p 321, lines 1-5)

Although the parties had entered into a Consent Order on January 17, 2008, pursuant to which Respondents were providing treatment, Appellant sought treatment on her own, and without Respondent's knowledge, with Dr. Blake Moore from August 15, 2008, through July 30, 2009. (R. pp. 362-398) In a letter dated August 20, 2008, Dr. Moore wrote Appellant's prior attorney a letter. (R. p 393) Dr. Moore noted, "She was noted with marked hypersensitivity in her left hand. She described temperature sensitivity, and was noted with resting edema." (Id.)

On August 30, 2008, September 20, 2008, and April 9, 2009, Claimant treated with Dr. Moore, who indicated that Appellant's skin was warm and that the color was good. (R. p. 392, 381, 363) Dr. Moore's hand-written notes do not indicate that he observed abnormal skin temperature, that the skin color was not anything less than "good," or that he observed mottled skin, brittle nails, or hair loss. (Id.)

Appellant treated at First Choice Healthcare from January 26, 2009, through August 27, 2009, upon referral by Dr. Moore. (R. p. 554-566) On January 26, 2009, Dr. Lisa Mancuso wrote Dr. Moore a letter stating, "Thank you very much for sending Ms. Dozier to me for her chronic arm pain. I doubt that she has complex regional pain

syndrome, formerly know [sic] as reflex sympathetic dystrophy, for a few reasons. One – there is no specific precipitating event, two – both limbs are affected, three – there are no sudomotor changes." (R. p 554)

Appellant was given a health history questionnaire when her treatment at First Choice Healthcare began on January 26, 2009. This questionnaire contained a review of systems portion in which Appellant was asked: "Please check all symptoms or illnesses that you have currently." (R. p 555) Specifically, Appellant was asked to check several boxes indicating which of the symptoms or illnesses that she had. Appellant was specifically asked to indicate whether or not she had the following symptoms: "Neurological: 1. Loss of sensation. 2. Muscle weakness; Skin: 1. Color changes. 2. Texture changes. 3. Itching. 4. Hair changes. 5. Nail changes; Paralysis." (R. p. 620) With respect to the neurological changes, Appellant failed to indicate that she had sustained a loss of sensation or muscle weakness. With respect to the skin changes, Appellant not only failed to indicate that she had any of them, but affirmatively chose to indicate, "none of the above." (Id.) This review of systems was signed and dated by Appellant. (Id.)

On January 26, 2009, Dr. Mancuso stated in her medical report, "[Ms.] Dozier is a 38 year old patient seen for consultation in the office today, kindly referred by Dr. Moore for what pt says is consideration of a stellate ganglion block for chronic arm pain ... The pain began approximately 1 year ago. The onset was sudden. There was no precipitating event. The mechanism of injury was unknown. The pain is poorly localized. The pain quality is achy, deep, sharp, shooting ... Denies temp changes or sudomotor changes in her arms/hands. Has not had a three phase bone scan." (R. p 556) Under the "SENSATION" portion of the physical exam from this report, Dr. Mancuso noted, "Sensation to touch and

pressure intact." (R. p 557) Under the 'PLAN' portion from this note, Dr. Mancuso stated, "I doubt she has CRPS Complex Regional Pain Syndrome (formerly RSD) b/c: both limbs are affected and there are no sudomotor changes." (R. p 558)

Appellant underwent a three-phase bone scan on February 3, 2009. On the report from this bone scan the radiologist stated:

> A triple-phase bone scan of the hands and wrist and distal forearms was performed following intravenous administration of 25.1 mCi of Tc 99m MDP. On early blood flow images there appears to be slight asymmetric increased activity projecting over the distal left forearm and midcarpal region and MCP region. Activity appears fairly symmetric on the blood pool and three-hour delayed images. Slight degree of activity in the radiocarpal regions bilaterally could reflect a component of degenerative change although is very minimal nonspecific although plain film correlation may be useful.

R. p 567.

On February 10, 2009, Appellant returned to FirstChoice Healthcare and was treated by Dr. George A. Bitting, Dr. Mancuso's medical partner, who stated, "Reports were reviewed and scanned into the chart: MRI report, test results. Bone scan was nonspecific, degenerative changes; neg RSD changes." (R. p. 559) On the 'GENERAL EXAM' portion of the physical exam of this note, Dr. Bitting noted, "SKIN: Warm, dry, no significant lesions, irritation, rashes or ulcers." (R. p. 560)

On March 17, 2009, Appellant returned to FirstChoice Healthcare and was treated by Dr. Bitting, who noted, "SENSATION: PERIPHERAL NERVES: Sensation to touch and pressure intact ... SKIN: Warm, dry, no significant lesions, irritation, rashes or ulcers." (R. p. 561) Appellant treated again with FirstChoice Healthcare on April 16, 2009. On this date, the authorized treating physician stated, "Three phase bone scan arms, this can pick up CRPS changes. I doubt she has CRPS Complex Regional Pain Syndrome (formerly

RSD) b/c: both limbs are affected and there are no sudomotor changes." (R. p. 562) On this date, a referral was made to a hand surgeon. (Id.)

Appellant treated with Dr. Andrew H. Rhea, a neurosurgeon, on April 6, 2009. (R. pp. 416-422) On this date, Dr. Rhea noted:

> 38-year-old female from Sumter South Carolina, referred through First Choice Healthcare. She complains of pain in the wrists and hands. This has been present since January 2008. She states it is related to her work. She states that she was involved in some repetitive work for the Red Cross involving pulling and lifting . . . She also has some neck pain but states that this came on after her cervical injections. She has some numbness and tingling in both hands.

R. p. 416.

Dr. Rhea's neuro/musculoskeletal exam revealed, "Sensory: Sensory exam was intact to light touch and pinprick throughout all 4 extremities and proprioception seems full." (R. p. 417) Dr. Rhea's impression was, "Vague pain in the wrists and forearms. She does have some cervical pain as well, but I don't believe her wrist and arm pain is a manifestation of cervical radiculopathy. She states it is secondary to repetitive injury and this may be some type of a sympathetic mediated pain syndrome". (*Id.*)

Appellant returned to FirstChoice Healthcare on May 15, 2009. It was noted that Appellant's "Sensation to touch and pressure was intact." Her skin was noted to be, "Warm, dry, no significant lesions, irritation, rashes or ulcers." It was recommended that Appellant "Continue conservative care." (R. p. 563)

On May 22, 2009, Appellant underwent a, "Bilateral upper extremity sensory and motor nerve conduction velocity study." The neurologist's impression from this study was, "Electrophysiological evidence suggestive of a mild median mononeuropathy consistent with a mild carpal tunnel syndrome affecting both extremities, affecting the sensory

component. There is no electrophysiological evidence of a cervical motor radiculopathy based on this study in the nerves and muscles tested." (R. p. 564)

Appellant returned to treat with Dr. Bitting on July 29, 2009. Dr. Bitting stated, "Pt. able to obtain gainful employment, no work restrictions from condition." (R. p. 565)

Appellant last treated at FirstChoice Healthcare on August 26, 2009. Dr. Bitting reiterated, "Imaging studies include an MRI of the cervical spine. Cervical spine series. Three phase bone scan arms, this can pick up CRPS changes. I doubt she has CRPS Complex Regional Pain Syndrome (formerly RSD) b/c: both limbs are affected and there are no sudomotor changes." A functional capacity evaluation was requested. (R. p. 566) However, Appellant never returned to treat at FirstChoice Healthcare.

When asked at the February 6, 2012, hearing whether she reported any symptoms of RSD/CRPS to Dr. Bitting or Dr. Mancuso, Appellant testified that her nails had become brittle by the time her treatment began with Dr. Mancuso on January 26, 2009. (R. p. 311, lines 9-12) Appellant was asked if she reported the "brittle nails, blotchy skin, and hair falling out" to her chosen physicians, Dr. Mancuso and Dr. Bitting, and she testified that she did report them to Dr. Mancuso, but not to Dr. Bitting because she had only "seen him I think once." (R. p. 313, lines 14-24)

Prior to the November 3, 2009 hearing, Appellant saw Dr. Timothy M. Zgleszewski for an independent medical examination on September 8, 2009, scheduled at Appellant's counsel's request. (R. pp. 514-517) Dr. Zgleszewski included in this report an explanation of the examination, stating:

> Analysis is based upon the subjective complaints, history given by the examinee, review of medical records, tests provided to me and objective clinical findings on physical examination. History was provided by the examinee. Approximately 30 minutes were spent

> with the examinee. This included taking a history and performing a detailed physical examination …

R. p. 514.

With respect to the diagnostic testing that Dr. Zgleszewski had reviewed in preparation for his independent medical report, Dr. Zgleszewski stated:

> The examinee has had interventional spinal procedures in the past with no reported benefit. The examinee has progressed through physical therapy and chiropractic therapy wit [sic] no reported benefit. The examinee is taking Lyrica, Tramadol, Soma, Lortab, Darvocet and Darvon for the pain with little reduction of her discomfort. The examinee's diagnostic testing includes x-rays, Cervical MRI, EMG/NCS and a bone scan performed to date.

R. p. 515.

Dr. Zgleszewski further noted:

> There is a positive Phalen's in both the right and left wrist. There is a positive Tinel's sign at the wrists bilaterally. There is a negative Tinel's sign at the bilateral elbow. There was a negative Finkelstein's bilaterally. There are negative neural tension sings [sic] in both arms in the median, radial and ulnar biases. Bilateral upper extremity motor examination was normal. Bilateral upper extremity sensory examoinat [sic] was normal to soft touch and pinprick. Deep tendon reflexes at the bilateral biceps, triceps and brachioradialis are normal and symmetric today.

Id.

Dr. Zgleszewski's diagnoses were, "1. Left and right carpal tunnel syndrome 2. Cervical myofascial pain." (R. p. 516)

With respect to medical treatment that he felt necessary, Dr. Zgleszewski stated:

> The examinee will require myofascial stretch and release rehabilitation as well as rehabilitation therapy to address the upper crossed muscle imbalances as noted in the physical examination, but will require further diagnostic testing and treatment as [outlined] below prior to the initiation of rehabilitation therapy. The examinee will require trigger point injections the bilateral upper trapezius, levator scapulae and teres minor muscles … The examinee will

> require carpal tunnel injections to the bilateral wrists. If no long term benefit is obtained, then they will need to be considered for a Carpal Tunnel Release. She had one injection to the left wrist and it was painful, which makes me wonder if it was done correctly as it should be almost pain free if not pain free.

Id.

Nowhere in Dr. Zgleszewski's September 8, 2009, independent medical evaluation report did he note observations of allodynia, mottled skin, coolness of skin to the touch, hair loss or brittle nails, or any other sign or symptom of RSD/CRPS.

Because the Single Commissioner's December 17, 2009, Order ordered additional medical treatment, Defendants agreed to authorize Dr. Zgleszewski for the treatment he had recommended in his September 8, 2009 report. This included myofascial stretch and release rehabilitation, therapy, trigger point injections, and carpal tunnel injections. On January 26, 2010, Appellant returned to Dr. Zgleszewski, who noted, "Bilateral upper extremity sensory examination is normal to soft touch and pinprick today." Under the "Treatment Plan" portion of the note, Dr. Zgleszewski noted, "The patient will require his [sic] first therapeutic right stellate ganglion sympathetic block under fluoroscopic guidance." (R. p. 500) On March 18, 2010, Dr. Zgleszewski performed a right stellate ganglion block. (R. pp. 497-498)

On March 30, 2010, Dr. Zgleszewski noted, "Ms. Dozier reports absolutely no relief of pain and increased pain in the shoulders and increased hand symptoms s/p her last stellate ganglion block. She states she has had effective blocks before but the [sic] were done through an anterior approach." (R. p. 494) On May 6, 2010, Appellant underwent a repeat right stellate ganglion block. (R. pp. 491-492)

On May 18, 2010, Dr. Zgleszewski noted, "Ms. Dozier reports little to no relief of pain s/p repeat stellate ganglion blocks, any pain relief that she did have only lasted several hours after the procedure and was felt in the beck [sic] only. She states she has had effective blocks before done in an anterior approach that decreased some of her shoulder pain but never her arm symptoms." (R. p. 488)

On June 1, 2010, Appellant received a right carpal tunnel injection, performed by Dr. Zgleszewski. (R. pp. 486-487) Appellant underwent a left carpal tunnel injection performed by Dr. Zgleszewski on June 15, 2010. (R. pp. 481-482) On June 22, 2010, Dr. Zgleszewski performed a second right carpal tunnel injection. (R. p. 479) On July 13, 2010, Appellant underwent another left carpal tunnel injection performed by Dr. Zgleszewski. (R. pp. 473-474) On July 20, 2010, Appellant underwent a third right carpal tunnel injection. (R. pp. 471-472) On this date, Dr. Zgleszewski stated, "She has had 3 carpal tunnel injections with minimal benefit and will need to be evaluated by a hand surgeon for a carpal tunnel release." (R. p. 470)

On December 8, 2010, Claimant under went repeat MRIs of the upper extremities. In her report, the radiologist stated, "Fluid is present in the proximal carpal row without evidence of tendinous, ligamentous or osseous abnormality. Please correlate with clinical findings." (R. p. 411)

On December 8, 2010, Appellant also underwent a bilateral EMG. The neurologist noted, "Performed electrodiagnostic examination upper extremities. Findings consistent with bilateral carpal tunnel syndrome. Please see report for details. Follow up with surgeon as scheduled." (R. p. 409)

On December 16, 2010, Dr. Gerald Shealy, the upper extremity specialist provided per Dr. Zgleszewski's request for a surgical evaluation, noted:

> Ms. Dozier returns with the electrodiagnostic studies confirming that she does have a moderately severe right with a mild left carpal tunnel syndrome. This is consistent with her clinical history and physical examination. The MRI is not available to me. However, based on these electrodiagnostic studies, it is felt that surgical decompression of the median nerve in the right and left carpal tunnel needs to be undertaken in order to alleviate this lady's symptoms.

R. p. 408.

On January 11, 2011, Appellant underwent an "Exploration and decompression of the median nerve of left carpal tunnel" performed by Dr. Shealy. (R. p. 407) On March 3, 2011, Dr. Shealy performed a right carpal tunnel "Exploration and decompression of median nerve in right carpal tunnel." (R. p. 403) On May 23, 2011, Dr. Shealy stated:

> Ms. Dozier has reached maximum medical improvement following surgical decompression of the median nerve in both the right and left carpal tunnel. She is discharged from care to be followed for reevaluation in the future as needed. On evaluation today following measurements of her two-point discrimination, I am noting that she continues to be symptomatic with pain in the median nerve. It is my opinion that she has a 5% permanent residual impairment to her dominant right hand and a 5% permanent residual impairment to her nondominant left hand secondary to the surgery and the carpal tunnel decompression. At her request, she is provided with a permanent restriction of 5 pounds. She is advised that she may return to work on a limited-duty status and is to return for reevaluation by me in the future as needed.

R. p. 399.

On June 28, 2011, Dr. Zgleszewski performed a bilateral upper extremity electrodiagnostic evaluation. His impression from this EMG was, "1. Abnormal electrodiagnostic examination. 2. Moderate bilateral carpal tunnel syndrome. 3. No

evidence of a cervical radiculopathy, brachial plexopathy, peripheral polyneuropathy or myopathic process." (R. p. 439)

On July 21, 2011, Appellant underwent, "1. Left carpal tunnel corticosteroid injection. 2. Ultrasound Guidance, musculoskeletal." (R. p. 433-434) On July 26, 2011, Appellant underwent, "1. Right carpal tunnel corticosteroid injection. 2. Ultrasound Guidance, musculoskeletal." (R. p. 431)

On August 9, 2011, Appellant treated again with Dr. Zgleszewski, who stated, "She is status post bilaterl [sic] carpal tunnel injections. She reports that she recieved [sic] minimal benefit in the left thumb; she experienced decreased tenderness. Despite the reduction in tenderness she reports difficulty with use and pain that 'runs up my arm.' Ms. Dozier reports no benefit with the right side." (R. p. 428) Dr. Zgleszewski further stated on this date:

> Based on the AMA Guides to the Evaluation of Permanent Impairment 5th Edition, the examinee has a 5% impairment rating to the left upper extremity and 5% impairment rating to the right extremity secondary to her left and right carpal tunnel syndromes and continued pain complaints and loss of function despite carpal tunnel release surgery and ultrasound guided carpal tunnel injections . . . Secondary to her CRPS of the bilateral upper extremities, her central nervous system has been affected by the work accident. Based on the AMA Guides to the Evaluation of Permanent Impairment 5th Edition, she has a 6% impairment to the whole person for the right arm CRPS and a 6% impairment to the whole person for the left arm CRPS. The combined impairment rating for her CRPS is therefore 12% to the whole person.

R. pp. 429.

Respondent's took Dr. Shealy's deposition on August 26, 2011. (R. pp. 179-183) Dr. Shealy was questioned with respect to Appellant's work restrictions and testified that he rendered them, "at her request" because "she requested me to put on her permanent

limited duties-type restrictions … I typically don't – advise patients to do that." (R. p. 182, lines 10-25 of Transcript page 10) Dr. Shealy was also questioned regarding whether Claimant specifically requested these restrictions:

> Q: Did she – do you remember if she specifically asked you for five pounds?
> A: She did.
>
> Q: Okay. And typically you would not have done. What would you have typically given somebody who had bilateral –
> A: I'd send them back to full duty.
>
> Q: Full duty. Okay. Was there anything other than her asking you to do that that – with respect to this lady's case –
> A: That's exactly what I dictated.
>
> Q: Okay. Was there anything else that you can remember or from the chart that we've gone through that would have made you give her the five-pounds' restriction?
> A: No. Not that I recall.
>
> Q: All right. And then you stated, "She is advised that she may return to work on a limited-duty status." And when you said "limited-duty status," what exactly did you mean?
> A: Five-pound weight restriction.
>
> Q: Okay. Do you feel that she could work at a greater than five-pound weight restriction?
> A: My experience with these, and I've done many of them through the years, has been that most of these people are able to go back to their normal activities at that point in time. And I'm very reluctant to provide somebody with permanent restrictions, because I don't think they're usually indicated.
>
> Q: Did she tell you – do you remember if she told you why she wanted the restrictions?
> A: She said that she felt she couldn't get back to using her hands more than five pounds.

R. p . 182, lines 19-25 of Tr. p. 10; R. p. 182, lines 1-25 of Tr. p. 11; R. p. 182, lines 1-3 of Tr. p. 12.

In addition, Dr. Shealy testified with respect to Appellant's grip strength and claims of sensory loss and stated that he had measured her grip strength, but could not "put a whole lot of credibility" in the measurement results because "it doesn't constitute a normal bell curve." (R. p. 183, lines 10-25 of Tr. p. 15; R. p. 182, lines 1-6 of Tr. p. 16).

At the February 6, 2012, hearing, Appellant denied that she asked Dr. Shealy to give her a 5-pound lifting restriction. Appellant elaborated, "I can explain, sir. He told me – Dr. Shealy said he doesn't normally put any of his patients on a weight restriction. He asked me how many pounds could I lift, and I told him I couldn't even lift a gallon of milk. So he said he said he would put me on a five pound restriction." (R. p 307, lines 10-15)

Dr. Zgleszewski completed a Form 14B Physician's Statement on August 31, 2011. (R. p. 425) Dr. Zgleszewski stated that Appellant had a "5/5% medical impairment to RUE/LUE." Dr. Zgleszewski further opined that Appellant had sustained a "12% medical impairment to Central Nervous System." (Id.) Dr. Zgleszewski indicated that Appellant could not return to her current employment and stated that she would need future medical care and described this as, "She requires pain medication management along with appropriate physician follow up visits and medication compliance testing. She has the option of proceeding with an SCS trial if her medication regimen does not provide adequate pain control." (Id.)

At the February 6, 2012, hearing, Appellant stated that the surgeries performed by Dr. Shealy were unsuccessful and stated that she continues to have pain in, "both wrists, hands, both shoulders, and neck." When asked at the hearing by her attorney if the stellate ganglion blocks helped her, Appellant stated, "Yes. I got some relief for about a week," but after one week the blocks "wore off." (R. p. 299, lines 7-10)

On October 3, 2011, Dr. Zgleszewski issued another medical report which was apparently in response to an email sent to him by Appellant's counsel:

> Dear Attorney Samuels, I will address your questions from an email dated 10/3/2011.
>
> 1. I have reviewed the vocational evaluation from Corvel. There indeed is no mention of the diagnosis of Complex Regional Pain Syndrome (CRPS) in the report. The only diagnosis mentioned is of Carpal Tunnel Syndrome (CTS. I would agree Ms. Dozier can lift up to 5 pounds; but secondary to not only her chronic hand pain from her failed CTS release surgery, but also her CRPS of the upper extremities, she can not use her hands on a repetitive basis. In my review of the Corvel Vocational Rehabilitation report, there is no mention of the repetitive nature of her jobs, or the proposed jobs, including no detailed job description of her prior Phlebotomist position or any of the eleven positions recommended in the Corvel report. Knowing the detailed job description is vitally important for making any recommendations as to whether she would be able to return to those jobs based on her CRPS and CTS diagnoses. Her diagnosis of CRPS and her continued pain symptoms are ignored or omitted for whatever reason …
>
> 2. Ms. Dozier cannot return to work at her current job as a Phlebotomist. She has chronic pain secondary to her CRPS and CTS which would preclude her from any job position requiring lifting greater than 5 pounds ... She is unable to use either upper extremity on a repetitive basis secondary to her CRPS and chronic pain from her failed CTS release surgery. Apparently Dr. Shealy stated in his deposition that he 'normally releases with no restrictions.' Since no two patients are alike, and since Carpal Tunnel Release surgery is not 100% successful, one needs to treat each patient as an individual. Categorical statement regarding work restrictions and accommodations are not possible due to the wide range of clinical presentations in individuals with CRPS. Work restrictions and accommodations are based upon the interaction between a person's medical impairment (if any) and the job requirements. Therefore, in my medical opinion from a medical standpoint, Ms. Dozier cannot perform even at a sedentary position if the job requires anything greater then less then occasional use of her arms given the diagnoses she has of CRPS and CTS. She cannot use either upper extremity on a repetitive basis …
>
> 3. CRPS is a malfunction of part of the nervous system. The main symptom with CRPS is constant pain and often out of proportion to

> the severity of the initial injury. Nerves misfire, sending constant pain signals to the brain. It develops in response to an event the body regards as traumatic, such as an accident or a medical procedure. This syndrome may follow 5% of all nerve injuries. This is what Ms. Dozier has along with failed CTS surgery and continued pain symptoms.

R. pp. 423-424.

Respondents took Dr. Bitting's deposition on January 17, 2012. Dr. Bitting testified that Appellant was sent to his practice in order to perform stellate ganglion blocks to determine if Appellant had RSD/CRPS. Dr. Bitting explained his opinion that RSD/CRPS is "typically not in both limbs, and in this case Ms. Dozier was complaining of it in both limbs." (R. p. 185, lines 16-19) Dr. Bitting further explained that RSD/CRPS typically requires a precipitating event. (R. p. 186, lines 13-20) Dr. Bitting further testified that RSD/CRPS was not typically caused by repetitive trauma. (R. p. 186, lines 21-24)

Dr. Bitting stated that the bone scan performed on Appellant "was negative for the RSD that Mancuso was looking for." (R. p. 187, lines 23-25; R. p. 188, lines 1-17) Dr. Bitting further explained that the "degenerative changes" that were detected on the bone scan were most likely, "arthritic changes that people get, and I mean, a bone scan will just essentially light up if there is arthritis. In other words, you'll see it. So, I'm assuming degenerative changes would be – and it says, component of arthritic changes down in the impression, so that appears to be from arthritis." (R. p. 188, lines 20-25, p. 189, lines 1-2) Dr. Bitting was asked what "very slight increase in blood flow" indicated and answered that it, "probably doesn't indicate anything." (R. p. 189, lines 22-25)

Dr. Bitting was asked his opinion as to whether or not Appellant was suffering from RSD/CRPS during his treatment and testified that he "didn't believe she was suffering from RSD ..." (R. p. 190, lines 23-25; R. p. 191, lines 1-7) Dr. Bitting also commented on the

implications of the fact that no allodynia was found by either him or Dr. Mancuso and agreed that this fact was "also indicative that she did not have RSD …" (R. p. 192, lines 19-25; R. p. 193, lines 1-8) Dr. Bitting reiterated that he thought that the "bulk" of Appellant's problem was carpal tunnel syndrome, not RSD/CRPS. (R. p. 196, lines 22-25; R. p. 197, ll. 1-14)

Dr. Bitting was further questioned on whether it would be likely for Appellant to later develop RSD/CRPS, and it be related to her injury of January 17, 2008, if Appellant did not have RSD/CRPS and/or RSD/CRPS- type symptoms as of August 26, 2009 (Appellant's last treatment date with Dr. Bitting). He indicated that this would not be likely. (R. p. 197, lines 8-25; R. p. 198, lines 1-2)

Dr. Bitting also stated that the fact that Appellant received ineffective sypathetic blocks would most likely further indicate that Appellant did not have RSD/CRPS. (R. p. 200, lines 23-25, R. p. 201, lines 1-11)

Appellant took Dr. Zgleszewski's deposition on January 24, 2012. Dr. Zgleszewski explained that, in diagnosing a patient with RSD/CRPS Type II, he uses the diagnostic criteria promulgated by the "International Association for the Study of Pain" (IASP). (R. p. 213, lines 20-22)

Per Dr. Zgleszewski's testimony, the IASP contains four criteria, criteria. Criteria #1 is: "The presence of an initiating noxious event, or a cause of immobilization." (R. p. 215, lines 19-21) Dr. Zgleszewski testified that, in his opinion, criteria #1 of the IASP had been met due to the fact that, "within one or two months her initial treating doctors actually placed her in a cast, and while she was in the cast – and that would be the immobilization, and that was also, I think, treating a tendonitis with pain …" (R. p. 215, lines 24-25; R. p.

216, lines 1-3) Further, Dr. Zgleszewski testified, "So in my medical opinion, really, actually the cause of the CRPS or initiating factor was most likely the – or most probably the placement of her forearm and wrist into the cast, and that would fit Criteria 1 as immobilization …" (R. p. 216, lines 10-15)

Dr. Zgleszewski explained that criteria #2 under the IASP is: "Continuing pain, allodynia, or hyperalgesia in which the pain is disproportionate to any known inciting event." (R. p. 216, lines 24-25; R. p. 217, line 1)

He further testified that criteria #3 under the IASP is: "Evidence at some time of edema, changes in skin blood flow, or abnormal sudomotor activity in the region of pain." (R. p. 217, lines 9-12) In explaining how this criteria was met, Dr. Zgleszewski pointed to the March 14, 2008, medical note of Dr. Nichols and quoted Dr. Nichols as stating, "[She has] been having increasing pain and swelling in her left wrist and hand since application of the cast." (R. p. 216, lines 6-8)

Dr. Zgleszewski testified that criteria #4 under the IASP is: "This diagnosis is excluded by the existence of other conditions that would otherwise account for the degree of pain and dysfunction." (R. p. 218, lines 21 – 24) Dr. Zgleszewski again reiterated that it was his opinion that Appellant's left arm being placed in a cast was what initiated the alleged RSD/CRPS, stating, "Then a cast was placed, and that would be the immobilization, and that sort of set forth the process of the CRPS." (R. p. 219, lines 17-19)

With respect to Appellant's treatment for her alleged RSD/CRPS, Dr. Zgleszewski commented on the stellate ganglion blocks, stating, "I know per the records she had some good benefit with Dr. Patel with stellate ganglion blocks, but what can happen is some patients may over time become or have less of a favorable response. I know – I think I did

three stellate ganglion blocks, none of which had any long-term benefit, which is why I believe I stopped after undergoing – having her undergo three, so I think in her case if oral medications become ineffective, I don't believe that stellate ganglion blocks would be the next step." (R. p. 227, lines 6-16)

Dr. Zgleszewski explained that his ratings on the Form 14B were 5% to each arm for the carpal tunnel release surgeries and an additional 12% to the central nervous system based on CRPS Type II. (R. p. 229, lines 15-25) Dr. Zgleszewski admitted that, on the day he rendered Appellant's impairment ratings, he did not measure her range of motion or her sensory deficits, as is required by the A.M.A. Guides 5th Edition. (R. p. 232, lines 11-25; R. p. 233, lines 1-20)

Dr. Zgleszewski was presented with Table 16.3 of the *A.M.A. Guides Fifth Edition.* Dr. Zgleszewski agreed that a 6% impairment to the whole person would convert to a 10% upper extremity impairment. (R. p. 234 lines 22-25; R. p. 235, lines 1-15; R. p . 236, lines 14-19)

Dr. Zgleszewski testified that, at the time he saw Appellant on September 8, 2009 (nearly one year and four months after she went to work for the Respondents), he did not believe that she had CRPS. (R. p. 237, lines 5-17)

Dr. Zgleszewski was also asked to compare Appellant's objective physical condition on January 26, 2010, when he first listed RSD/CRPS as a diagnosis, with Appellant's condition on September 8, 2009, when he first evaluated her. He stated that her symptoms were unchanged from September 8, 2009. Dr. Zgleszewski indicated that this initial diagnosis of RSD/CRPS on January 26, 2010, was based upon Appellant's report to him that she had received a stellate ganglion block from another physician and that it gave

her some relief. (R. p. 239, lines 13 – 25; R. p. 240, lines 1, lines 17-25; R. p. 241 lines 1-9, lines 18-24)

With respect to the eleven criteria for RSD/CRPS under the *A.M.A. Guides Fifth Edition*, Dr. Zgleszewski testified that he only observed mild symptoms of three of the eleven criteria. He stated: (1) he "never personally witnessed" cyanotic skin (R. p. 243, lines 9-19); (2) he never noted that her skin was mottled (R. p. 244, lines 2-5); (3) he noticed that her skin temperature was "cool to touch, but not demonstrable enough for me to note in a medical record." (R. p. 244, lines 17-19); (4) he noticed sudomotor changes, but did not make note of it in his medical records because, "I could not tell since the rest of her skin was dry if the dry skin was related to CRPS." (R. p. 245, lines 2-12); (5) He never noted edema (R. p. 245, lines 24-25; R. p. 246, line 1); (6) he never noted "Trophic Changes" (skin, nail, hair changes) (R. p. 246, lines 7-10); (7) he never noticed soft tissue atrophy (R. p. 246, lines 13-15); (8) he noted joint stiffness, but did not document it in his reports because, "It was minimal" (R. p. 246, lines 16-25; R. p. 247, lines 1-6); (9) he never noted nail changes (R. p. 247, lines 7-10); and (10) he never noted hair growth changes, such as her hair falling out, or growing longer or finer. (R. p. 247, lines 14-16)

At the February 6, 2012, hearing, Appellant was asked if she was aware that Dr. Zgleszewski's notes contained no mention of hair loss and answered, "I don't know why, but he knows and his nurses as well because I reported it to them on visits that I went in." (R. p. 314, lines 12-16) Appellant further testified that she told Dr. Zgleszewski about nail changes and that he knew about the coolness of her hands that she claimed. (R. p. 313, lines 23-25; R. p. 314, lines 23-25; R. p. 315, lines 1-3) Dr. Zgleszewski testified at his deposition that Appellant did <u>not</u> meet enough criteria for a diagnosis of RSD/CRPS under

the *A.M.A. Guides Fifth Edition.* (R. p. 248, lines 6-11) However, even if Appellant had met the required criteria, Dr. Zgleszewski admitted that the 10% additional impairment to each arm for a diagnosis of RSD/CRPS when added to the 5% impairment for the carpal tunnel release surgeries, combined for a total impairment of, "15% to each arm combined ..." per the *A.M.A. Guides Fifth Edition.* (R. p. 249, lines 12-18)

On September 26, 2011, Appellant was evaluated by James R. Myers, MA, QRP, CCM, CRC. (R. pp. 568-571) In his vocational assessment, Mr. Myers found the following possible alternative employment opportunities for Appellant: (1.) Sorter (sedentary exertion level); (2.) Customer Service Representative (sedentary exertion level); (3.) Industrial Order Clerk (sedentary exertion level); (4.) Greeter (sedentary exertion level); (5.) Collection Clerk (sedentary exertion level); and (6.) EKG Tech (sedentary exertion level).

Mr. Myers also performed a Labor Market Survey based upon Appellant's 5-pound lifting restrictions. This revealed several positions that Appellant was qualified to perform, including a Collection Clerk for Snelling Staffing services of Lexington, SC. This job was described as, "Post charges and checks; Know how to speak and understand the billing questions while talking to a patient with a balance." The physical requirements for this job were described as "Sedentary." (R. p. 568)

Another position found by Mr. Myers was at Palmetto Health as an EKG Technician. This required, "C.N.A: certification upon hire or within 18 months of employment, BLS (Basic Life Support) mandatory as well as CCT (Certified Cardiac Training) certification preferred; Special Training: Completion of a SC DHHS approved C.N.A: program." (Id.)

Another job identified by Mr. Myers was as a Collections Clerk at the Lexington Medical Center. The minimum qualifications for hire for this job were described as, "Responsible for all patient account functions to include billing, collections, follow up and posting of charges and money in a timely and accurate manne [sic], conducts monthly billing cycle for patient statements according to third party requirements, keeps manager apprised on all significant issues, works regularly with information which is restricted to specific persons." The physical requirements for this job are listed as Sedentary. (R. p. 569)

Another job found by Mr. Myers' Labor Market Survey was working as a greeter at Wal-Mart in Columbia, SC. The minimum job qualifications for hire were described as, "Meet and greet customers coming into the store. As an Associate with Wal-Mart, you will receive competitive wages and may be eligible for a variety of traditional and non-traditional benefits that enhance your career, compensation, home and life." The physical requirements for this job were listed as Sedentary. (Id.)

Another job found by Mr. Myers' Labor Market Survey was as an EKG Technician at Lexington Medical Center, in West Columbia, SC. The minimum qualifications for hire for this job were listed as, "Performs various clinical/technical duties related to performing EKGs, the application of, monitoring and Scanning Holters, and performing Stress Testing, Reports results of each procedure to appropriate staff." The physical requirements for this job were listed as Sedentary. (Id.)

Under the Summary portion of Mr. Myers' report, he stated:

> Based on the results of the Labor Market Survey Collection Clerk, Customer Services Rep, Industrial Clerk, Sorter, EKG Tech and Greeter, these jobs exist in a variety of counties within the 50 mile radius of the Appellant's home. The majority of positions located were in and around the City of Columbia, SC. Based upon Ms.

Dozier's previous vocational experiences; it appears that she would qualify for all of the positions that were surveyed.

> As previously noted, 100% of the employers located during the Labor Market Survey were hiring. The average wage of these employers was based upon a sedentary physical demand level provided by the Department of Labor, which reflects wages above and below Ms. Dozier's reported pre-injury wage of 13.50 per hour. The average starting wage was 12.30 per hour based upon a 40 hour work week. The average median salary for a Phlebotomist was 14.40 per hour.
>
> Ms. Dozier lives in a urban area of South Eastern SC, is within a 50 mile radius of the City of Columbia SC, current unemployment is 8.1% compared to a state average of 11.9%. This information was obtained from the South Carolina Statistical abstract and US Department of Labor and is based on 2011 data: The City of Columbia, SC has a supported labor base of 250,000.

R. p. 571.

A Vocational Assessment was performed by Glen K. Adams on October 3, 2011, and submitted into evidence by Appellant. (R. pp. 526-541) Mr. Adams concluded:

> Mrs. Dozier's residual access to the labor market is defined by any remaining employment classified as "unskilled" and "sedentary" or modified "light" with a 5-pound lifting restriction and no repetitive use of the upper extremities. Based on these parameters, a labor market survey was conducted. Approximately 500 jobs were reviewed in the South Carolina Employment Security Commission database. No jobs were located in Mrs. Dozier's labor market for which she qualifies. Based on this analysis, Mrs. Dozier's access to the competitive labor market has been eliminated. Any remaining employment in her local or national economy is so limited in quantity, quality and dependability that she is considered to be totally and permanently vocationally disabled as a result of her bilateral carpal tunnel syndrome and complex regional pain syndrome stemming from her work as a phlebotomist at the American Red Cross.

R. p. 541.

STANDARD OF REVIEW

In workers' compensation cases, the South Carolina Workers' Compensation Commission is the trier of fact. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The appellate court's review of these findings of fact is limited to determining whether the findings are clearly unsupported by substantial evidence in the record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). "Substantial evidence" necessary to support a decision of the Commission is:

> such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . . It must be enough to justify, if the trial were [sic] to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. . . . This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.

Lark v. Bi-Lo, Inc., 276 S.C. at 136, 276 S.E.2d at 307.

The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission. Ford v. Allied Chem. Co., 252 S.C. 561, 167 S.E.2d 564 (1969). It is not the task of the Court to weigh the evidence or to substitute its judgment as to the weight of the evidence on questions of fact. Ellis v. Spartan Mills, 276 S.C. 216, 277 S.E.2d 590 (1981); Robbins v. Walgreen's, 375 S.C. 259, 652 S.E.2d 90 (S.C. App. 2007).

The appellate court is prohibited from overturning findings of fact of the Commission, unless there is no reasonable probability that the facts could be as related by the witness upon whose testimony the finding was based. Lowe v. Am-Can Transport

Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). The appellate court is not permitted to re-weigh the evidence and to substitute its own findings of fact for those of the Commission. Brown v. Jordan Oil Co., 291 S.C. 272, 353 S.E.2d 280 (1987). The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. Hicks v. Piedmont Cold Storage, 335 S.C. 46, 515 S.E.2d 532 (1999).

Section 1-23-380(A)(5) of the South Carolina Code also provides:

> The Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The Court may affirm the decision of the agency or remand a 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 . . . (d) affected by other error of law. . . .

S.C. Code Ann., § 1-23-380(A)(5) (2007).

Thus, "review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law." Rodriguez v. Romero, 363 S.C. 80, 84, 610 S.E.2d 488, 490 (2005) (citing Hendricks v. Pickens County, 335 S.C. 405, 411, 517 S.E.2d 698, 701 (Ct. App. 1999)). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Where there is a conflict in the evidence, either of different witnesses or the same witnesses, the findings of fact of the Commission as triers of fact are conclusive. Hoxit v. Michelin Tire Corporation, 304 S.C. 461, 405 S.E.2d 407 (1991).

ARGUMENT

I.

SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT THE COMISSION'S FINDING THAT APPELLANT DID NOT SUSTAIN COMPENSABLE RSD/CRPS.

The central issue in this case is whether there is substantial evidence to support the Commission's finding that Appellant did not sustain related RSD/CRPS. This is factual determination made by the Commission. Voluminous evidence exists to show that the Commission correctly concluded that Appellant's alleged RSD/CRPS was not related to her January 17, 2008, repetitive trauma injury. This evidence is substantial and includes: (1) Dr. Zgleszewski's medical reports and testimony; (2) the medical records and testimony of Dr. Mancuso and Dr. Bitting; (3) the three-phase bone scan; and (4) Appellant's failure to complain of the symptoms commonly associated with RSD/CRPS.

1. Dr. Zgleszewski:

Dr. Timothy Zgleszewski's independent medical examination report of September 8, 2009, diagnosed Appellant with, "1. Left and right carpal tunnel syndrome 2. Cervical myofascial pain." (R. pp. 517) Nowhere in this report (one year and eight months after her work for Defendant) did he note observations of allodynia, mottled skin, coolness of skin to the touch, hair loss or brittle nails. Nowhere in his report does he mention a diagnosis of RSD or CRPS. Nowhere in his report does Dr. Zgleszewski state that he feels Appellant needs treatment for RSD/CRPS. In fact, Dr. Zgleszewsk recommended "myofascial stretch and release rehabilitation as well as rehabilitation therapy to address the upper crossed muscle imbalances," and "trigger point injections the bilateral upper trapezius, levator

scapulae and teres minor muscles ... The examinee will require carpal tunnel injections to the bilateral wrists." (R. p. 516)

After the November 3, 2009, hearing, Respondents agreed to allow Dr. Zgleszewski to treat Appellant's wrists, based on his Sept 8, 2009, report.

In his deposition testimony, Dr. Zgleszewski:

- Admitted that he did not believe Appellant had RSD/CRPS when he first treated her on September 8, 2009, approximately one year and nine months after her Januar 17, 2008, repetitive trauma injury to her wrists;

- Admitted that what caused him to perform the first unsuccessful stellate ganglion block on January 26, 2010, was not his objective findings ("she was still reporting the same symptoms"), but rather that Appellant had told him that she had already received a successful stellate ganglion block from a "Dr. Patel;"[1]

- Admitted that Appellant did not sustain a "noxious or cause for immobilization" to the right wrist, as is required by the IASP, the diagnostic criteria he presented and used for his diagnosis of RSD/CRPS;

- Admitted that he never "personally witnessed," noted in his reports, many of the commons signs of RSD/CRPS, including; cyanotic skin, mottled skin, edema, trophic changes, soft tissue atrophy, nail changes, or hair growth changes;

- Admitted that Appellant did not meet enough criteria for a diagnosis of RSD/CRPS under the *A.M.A. Guides Fifth Edition*, the very same treatise he used to render Appellant's impairment ratings;

- Admitted that his impairment ratings he rendered to Appellant's whole person combined with her 5% impairment ratings of 5% to each arm for the CTS releases would equate to impairment of 15% to each arm for both the CTS and the alleged RSD/CRPS.

2. <u>Dr. Mancuso & Dr. Bitting</u>:

Dr. Lisa Mancuso and Dr. George Bitting treated Appellant for eight months, from January 26, 2009, through August 26, 2009. (R. p. 554-567) This treatment was initiated by Appellant. Claimant treated on numerous occasions with both doctors. Both Dr.

[1] Respondents note that no medical evidence from a "Dr. Patel" was submitted into evidence by either party. Dr. Zgleszewski testified that he did not know to which "Dr. Patel" Appellant was referring, but decided to proceed with the stellate ganglion block anyway. (R. p. 227)

Mancuso and Dr. Bitting were unequivocal in their opinions that Claimant did not have RSD/CRPS. Dr. Bitting was questioned extensively by both parties at his deposition regarding his opinion that appellant did not have RSD/CRPS. His opinion was unchanged.

3. Three-Phase Bone Scan:

Appellant underwent a three-phase bone scan on February 3, 2009, which was later interpreted as being negative for signs of RSD/CRPS by Dr. Bitting. Dr. Zgleszewski, in his September 8, 2009, report, stated that the report from this bone scan had been reviewed. Given Dr. Zgleszewski's diagnoses of Appellant at the time of the September 8, 2009 report, there was no evidence that he felt that it was indicative of RSD/CRPS, either. (R. p. 516) No medical opinion exists in the record of this case that interprets this diagnostic test as positive for RSD/CRPS.

Substantial evidence exists to support the Commission's denial of Appellant's claim for alleged RSD/CRPS. The Commission's decision should be affirmed.

4. Appellant's Failure to Report RSD/CRPS Symptoms:

On January 26, 2009, Appellant completed a health history questionnaire when her treatment at First Choice Healthcare began. She was asked to "check all symptoms or illnesses that you have currently." (R. p. 555; R. pp. 617-620) Appellant did not report any neurological or skin changes on this form, which she signed and dated. (Id.)

This questionnaire was completed more than one year after Appellant's injury. If Appellant sustained RSD/CRPS related to her January 11, 2008, injury, Respondent's submit that some sign or symptom would have existed by January 26, 2009, and she would have reported it accordingly. This evidence is especially compelling given that the reason

for Appellant's referral to FirstChoice Healthcare was for a diagnosis of possible RSD/CRPS.

Further, the medical notes from Dr. Zgleszewski, as well as his deposition testimony, indicate that Appellant made virtually no complaints of symptoms that would be associated with RSD/CRPS. Dr. Zgleszewski's diagnosis on January 26, 2010, nearly four months after his initial evaluation of September 8, 2009, was based primarily on Appellant's unsubstantiated verbal report that she had received prior successful stellate ganglion blocks by another physician and that one of her arms had been placed in a cast sometime in 2008. Dr. Zgleszewski went on to perform a series of three admittedly unsuccessful stellate ganglion blocks and ultimately sent Appellant for a surgical evaluation for carpal tunnel syndrome, which had been one of his original diagnoses. His opinion regarding RSD/CRPS was faulty and not based on credible objective criteria.

II.

SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT THE COMISSION'S PERMANENT PARTIAL DISABILITY AWARD.

"The commission may find a degree of disability different from that suggested by expert testimony." Lyles v. Quantum Chemical Co., 315 S.C. 440, 434 S.E.2d 292 (Ct.App. 1993). "No fact finding body is compelled to blindly accept an expert's opinion"). Id., quoting Windham v. City of Florence, 221 S.C. 350, 359, 70 S.E.2d 553, 556 (1952). Appellant's argument that she is permanently and totally disabled rests entirely upon a request for a finding that she suffers from related RSD/CRPS. Without that finding, her argument crumbles.

Appellant treated with Dr. Gerald J. Shealy, an orthopedic hand surgeon, from December 2, 2010, through May 23, 2011. (R. p. 399-415) The language quoted supra from Dr. Shealy's deposition shows that it was Appellant who requested a 5-pound lifting restriction which Respondent's submit was an effort to increase the value of her claim and delay its conclusion. This mirrors Appellant's earlier self-diagnosed RSD/CRPS and request for a stellate ganglion blocks from Dr. Zgleszewski. Had it not been for her own verbal request, Dr. Shealy would have placed Appellant back on regular duty work, as had Dr. Bitting, on July 29, 2009. (R. p. 182, lines 10-25 of Tr. p. 10; R. p. 182, lines 1-25 of Tr. p. 11; R. p. 182, lines. 1-3 of Tr. p. 12)Because the Commission found that Appellant did not sustain a compensable RSD/CRPS injury, the only work restrictions of any relevance involved in this claim were those of Dr. Shealy, who admitted that they were actually self-imposed restrictions that Appellant requested. Despite the self-imposed work restrictions for her carpal tunnel release surgeries, Respondents' vocational expert still found jobs that Appellant could perform. The Comission correctly took these employment suggestions by Respondents' expert into account in finding that Appellant was not permanently and totally disabled. Appellant, rather than looking for or applying for any work, decided to stay at home with her 8-year-old daughter (who was approximately 5-years-old at the onset of this claim). (R. p. 323, lines 20-22) Appellant failed to meet her burden of proving that she was not employable. Substantial evidence supports this conclusion, including Respondent's Vocational Assessment and Appellant's admission that she had failed to apply for any available jobs whatsoever.

The Commission's disability award of 20% to each arm is quadruple the impairment ratings of 5% rendered by both Dr. Zgleszewski and Dr. Shealy for her CTS

release surgeries. Dr. Zgleszewski, at his deposition, converted his "whole person" impairment ratings to 10% to each arm to account for the alleged RSD/CRPS, admitting that the combined impairment for both the alleged RSD/CRPS and the CTS release surgeries would equate to 15% to each arm. Thus, the Commission's disability award is higher than Dr. Zgleszewski's impairment ratings, even including the increase for the alleged but denied RSD/CRPS. The Appellate Panel's award of 20% permanent partial disability to each arm is supported by substantial evidence and should be affirmed.

III.

THE DOCTRINEs OF *RES JUDICATA*, *WAIVER* AND *ESTOPPEL* DO NOT BAR RESPONDENTS FROM MAINTAINING A DENIAL OF APPELLANT'S ALLEGED RSD/CRPS; RATHER *RES JUDICATA* APPLIES TO BAR APPELLANT FROM RELITIGATING HER RSD/CRPS CLAIM.

Whether the above legal doctrines apply to the factual scenario of this case is the only legal issue appealed and, therefore, is the only issue not governed by the substantial evidence standard. Appellant repeatedly states in her Initial Brief that Respondents' authorization Dr. Zgleszewski to treat Appellant after the November 3, 2009, hearing is somehow proof that they were conceding the issue of compensability of the alleged RSD/CRPS and are, therefore, not entitled to maintain a denial of the RSD/CRPS claim. ("During the pendency of the appeal, Employer designated Dr. Timothy Zgleszewski as the authorized treating physician and specifically authorized him to treat Dozier's CRPS/RSD" … "Respondents selected Dr. Zgleszewski as the authorized treating physician to treat her CRPS/RSD" … "Defendants settled on Dr. Zgleszewski – precisely because he is a physical medicine and rehabilitation doctor qualified to treat RSD" … "after all, they had

specifically authorized Dr. Zgleszewski to treat [RSD/CRPS]") As stated supra, Dr. Zgleszewski did not diagnose RSD/CRPS until January 26, 2010. Appellant fails to explain how or why Dr. Zgleszewski would or could have been chosen and authorized to treat a condition for which he had not made any diagnosis. If Respondents had wished to concede the issue of RSD/CRPS, they would have authorized Dr. Moore, who was the only doctor during that time period to have given any opinion that Appellant may have RSD/CRPS.

1. Estoppel:

The elements of estoppel have been summarized as: (As to the party being estopped): (1) Conduct which is calculated to convey the impression that the facts are inconsistent with those which the party subsequently attempts to assert (including misrepresentation or concealment of material facts); (2) Intention or an expectation that such conduct may be acted upon by the other party; and (3) Actual or constructive knowledge of the true facts; (As to the party asserting estoppel): (1) Lack of knowledge or means to know the true facts; (2) Reliance on the conduct of the other party; (3) Change of position to the extent that one party would be prejudiced or injured. *See* Provident Life & Accident Ins. Co. v. Driver, 371 S.C. 471, 451 S.E.2d 924 (Ct. App. 1994).

Dr. Zgleszewski was authorized by Respondents sometime after the November 3, 2009, hearing and his January 26, 2010, evaluation of the Appellant. At that point in time, Dr. Zgleszewski had not diagnosed Appellant with RSD/CRPS. Dr. Zgleszewski admitted under oath that he did not believe when he evaluated her on September 8, 2009, that she had RSD/CRPS. Dr. Zgleszewski made no mention of a diagosis of RSD/CRPS in his report from his September 8, 2009, evaluation. However, Dr. Zgleszewski does make

specific recommendations for treatment, <u>none</u> of which included treatment for RSD/CRPS. (R. p. 516)

After Respondents had authorized treatment, Dr. Zgleszewski performed a series of 3 unsuccessful stellate ganglion blocks. Though these stellate ganglion blocks were authorized by Respondents, this was the <u>only</u> treatment rendered by Dr. Zgleszewski for the alleged RSD/CRPS. After it became apparent, even to Dr. Zgleszewski, that these were not helping Appellant, he then reverted back to his original diagnosis of bilateral CTS, performed several more CTS injections, and ultimately referred Appellant to Dr. Shealy. Respondents provided and continued to provide, Carpel Tunnel Syndrome treatment with Dr. Zgleszewki and Dr. Shealy.

Essentially, Appellant argues that a carrier who provides any level of treatment for a certain condition is forever barred from raising the issue of compensability or causal relation of the condition to the admitted injury. For policy-driven reasons, this argument is faulty because it would only encourage delay or denial of medical treatment, whether causally related or not, for fear that providing any treatment for an unrelated condition would irrevocably affect the disability fate of a worker's compensation claim. This would only increase the time and cost of litigation of workers' compensation claims as well as result in a claimant's injuries being permanently worsened due to medical treatment not being provided in a timely manner. This result would be a step backwards for claimants as well as for employers and carriers.

Respondents should not be punished by being required to litigate the issue of a potential permanent and total disability award because they authorized three stellate ganglion blocks, rather than refusing to authorize them. A referral to authorize the stellate

ganglion blocks would have likely resulted in at least one additional hearing and further delay of the resolution of this claim.

In order for Appellant to prove *estoppel*, she must prove conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert. Provident Life & Accident Ins. Co. v. Driver, 371 S.C. 471, 451 S.E.2d 924 (Ct. App. 1994). Appellant cannot show evidence of such conduct. Respondents' authorization of Dr. Zgleszewski at a time when he had not diagnosed Appellant with RSD/CRPS cannot be interpreted as a "false representation" or "concealment."

Appellant, in her Brief, attempts to argue *estoppel* by referring to the Single Commissioner's November 4, 2009, email request for Appellant's attorney to draft an order finding compensable injuries to "both arms, including RSD, and her neck. Defense to pay all causally-related medical bills to date and additional treatment to be directed by Dr. Moore." Appellant, perhaps unknowingly, is arguing against her position on this issue because the Single Commissioner's decision to change his ruling indicates that he affirmatively intended to deny the RSD/CRPS portion of the claim.

For whatever reason, the Single Commissioner, between November 4, 2009, and December 17, 2009, changed his mind on this issue of the alleged RSD as well as the issues of the compensability of the neck, depression, and control of medical treatment. Appellant desperately attempts to argue that this indicates that the December 17, 2009, Order "required treatment" for CRPS by stating, "No mention was made of RSD one way or the other." Unfortunately for Appellant, the December 17, 2009, Decision & Order

also does not mention the issues of the compensability of Appellant's alleged neck condition or depression. Both the neck and depression were raised by Appellant at the November 3, 2009, hearing. The fact that the Single Commissioner may have originally requested that Appellant's counsel draft an Order finding compensable RSD and ordering medical treatment by Dr. Moore, but later issued an actual Order silent as to the issue of compensability of RSD, but permitting Respondents to retain control of the medical treatment of the claim logically indicates that the Single Commissioner's intentions were to fully set forth in the actual order that did not specifically find the RSD/CRPS compensable. In addition, Appellant must have interpreted the December 17, 2009, Order as a denial of the neck, depression and RSD/CRPS because she filed a Form 30 appealing these very issues, including the neck and the failure to provide medical treatment through Dr. Moore. (R. p. 105; R. p. 114-115; R. pp. 600-601)

Appellant further attempts to prove *estoppel* by alleging that she did not argue the issue of the control of medical treatment at the April 20, 2010, oral arguments based on the Respondent's authorization of Dr. Zgleszewski's treatment. However, Appellant gives no explanation as to why all of the other issues that were originally appealed on the December 30, 2009, Form 30 were not argued; namely, the compensability of the "neck/back," and the 25% penalty for alleged wrongful termination of benefits. Appellant must expect this Court to believe that Respondents' authorization for treatment with Dr. Zgleszewski was a "false representation" designed to fool Appellant into also believing that her back/neck had been accepted as parts of this claim because Dr. Zgleszewski had also opined that she had sustained compensable injuries to them (although only the left

wrist was admitted on the record and the Single Commissioner's Order does not find the neck/back compensable).

As stated above *estoppel* requires that the authorization of Dr. Zgleszewski was calculated by Respondents to "convey the impression that the *facts* are otherwise than, and inconsistent with, those which the party subsequently attempts to assert." The authorization of Dr. Zgleszewski in no way changed the facts of this claim or the wording of the December 17, 2009, Decision & Order. In fact, had the Single Commissioner issued an Order consistent with his November 4, 2009, email request to Appellant's attorney, Respondents would have filed a Form 30 appealing the issue of the compensability of the alleged RSD/CRPS. As such, *estoppel* should also apply to bar Appellant's position, as Respondents also relied upon the wording of the December 17, 2009, final Decision & Order.

2. Waiver:

Appellant further incorrectly asserts in her Initial Brief that Respondents did not raise a denial to Appellant's claim of RSD/CRPS until they filed their Form 58, ten days before the February 6, 2012, hearing. This is simply untrue. The hearing transcript from the November 3, 2009, hearing proves otherwise. (R. p. 144, lines 23-25, R. p. 145, lines 1-14)

In addition, Respondents filed a November 15, 2011, Form 51 that admitted an injury to "only to the bilateral wrists. All other alleged injuries are denied."

Appellant's reliance on Jervey v. Martint Environmental, Inc., 396 S.C. 442, 721 S.E.2d 469 (Ct. App. 2012), is misplaced. Jervey dealt with the issue of whether an employer could be time-barred under S.C. Code Ann. §42-9-260 (1996) from denying an accident as being compensable and terminate benefits after the expiration of the 150-day

period. In the instant case, Appellant's repetitive trauma or accident was admitted. Respondent's denial of the RSD/CRPS is essentially a denial of the extent of the injuries resulting from the trauma, not a denial of the compensability of the claim. To the extent Appellant attempts to use it, Jervey does not apply.

However, since this Court of Appeals in Jervey did state that S.C. Code Ann. § 42-9-260(F) (1996) would permit an employer to terminate benefits for any cause after the expiration of the 150 days, Jervey actually lends credence to the Commission's conclusion that Respondents were permitted to deny the alleged RSD/CRPS at the February 6, 2012, hearing. If an employer is permitted to deny the compensability of an accident well after the expiration of the 150-day period, then surely the denial of the extent of an injury from said accident after this period is permissible as well.

3. *Res Judicata*:

To establish *res judicata*, Respondents must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986). *Res judicata* applied to a decision of the Workers' Compensation commissioner, affirmed on appeal by the Circuit Court, that an injury to a finger did not cause psychological injury and prevented relitigation of the claim for psychological injury. Owenby v. Owens Corning Fiberglass, 313 S.C. 181, 437 S.E.2d 130 (Ct. App. 1993).

In the case at hand, the first element cited above is easily met, as the parties are the same. The language quoted supra in the "Evidence of the Case" that was placed on the record at the November 3, 2009, hearing indicates that Appellant proceeded with the issue of whether she had sustained related RSD/CRPS at the November 3, 2009, hearing.

The December 17, 2009, Order specifically stated, "The defense shall provide the Appellant with medical treatment for both of her arms through a physician of their choosing." This Order was in direct contravention of Appellant's position at the hearing that she wished for her treatment to be switched to Dr. Blake Moore for treatment of her RSD/CRPS. The record on this could not be any clearer. (R. p. 144, lines 23-25; R. p. 145, lines 1-14)

By Form 30 dated December 30, 2009, Appellant appealed this issue and then voluntarily withdrew the issue in her brief dated March 5, 2012, only after her January 26, 2010, appointment with Dr. Zgleszewski (at which time he agreed to provide a stellate ganglion block upon her insistence). Rather than argue this issue as part of her appeal, Appellant chose to withdraw the issue and rely on the fact that Dr. Zgleszewski had provided a stellate ganglion block at the January 26, 2010, visit. Under Appellant's theory, Respondents should, therefore, be forever barred from questioning this diagnosis.

Another possible reason for why Appellant chose not to argue the issue of control of medical treatment at the oral arguments of April 20, 2010, exists. Perhaps Appellant strategically decided not to make these arguments and appeals because, rather than moving forward with the appeal and facing the possibility of losing this issue, she opted instead to attempt to "back door" the issue of the compensability of the RSD/CRPS by insisting that Dr. Zgleszewski's provision of the stellate ganglion block (and Respondent's authorization of same) was an admission of compensability of the RSD/CRPS. Whether Appellant's decision to forego arguing this issue was strategic or otherwise is, however, irrelevant. Appellant chose not to appeal the issue further, and the Single Commissioner's denial of the RSD/CRPS became the law of the case.

In addition, Appellant reinstated into the appeal the issue of compensability of RSD/CRPS and control of the medical treatment upon drafting the unappealed November 23, 2010, Order of the Full Commission, which affirmed the original Hearing Commissioner with respect to this issue.

Appellant, in her Brief, argued that Drake v. Raybestos-Manhatten, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962), precludes the application of either collateral estoppel or *res judicata* because the Single Commissioner's December 17, 2009, Decision & Order is "vague." Drake involved an appeal made from the Appellate Panel to the Circuit Court. The Circuit Court affirmed the Commission in part and, upon its own motion, remanded the case back to the Commission for "further and more specific findings of fact relative to the timeliness of giving notice and filing of respondent's claim." The critical distinction between Appellant's case and Drake is that, in Drake, one of the parties had appealed one of the issues ruled on by the Commission to a higher court. The Circuit Court then remanded the case back to the Commission for further and more specific findings on that particular issue. The issue about before the South Carolina Supreme Court in Drake was to determine "the propriety" of the remand. Had one of the parties in this case appealed the issue of the compensability of the alleged RSD/CRPS further, perhaps it would have been remanded back for clarification and a more specific finding under Drake. However, the Supreme Court, in Drake stated, "We will not, however, to support an award of the Commission, imply a finding of fact as to the basic issues of liability of compensation, where, to do so, would impose upon this Court the function of determining such facts from conflicting evidence." Id., 128, 129. Appellant is asking this Court to do precisely what it refused to do in Drake; namely, to determine facts from conflicting evidence.

At the November 3, 2009, hearing, Appellant sought a finding of compensability for her alleged RSD/CRPS and also a finding switching control of the treatment to Dr. Moore in order to treat the alleged RSD/CRPS. This request was not granted by the Single Commissioner in his December 17, 2009, Order. The unappealed November 23, 2010, Order of the Full Commission affirmed the Single Commissioner on this point; therefore, this issue was fully adjudicated prior to the February 6, 2012, hearing and May 24, 2012, Order. All three elements of *res judicata* are present. Appellant should not be allowed to litigate this issue a second time.

IV.

***MICHAU V. GEOGETOWN COUNTY* DOES NOT LESSEN THE WEIGHT THAT SHOULD HAVE BEEN GIVEN TO THE OPINIONS OF DR. BITTING.**

Appellant, in her Brief, attempts to argue that Dr. Bitting's deposition testimony should "be given no weight" because he did not state his opinions regarding RSD/CRPS to a reasonable degree of medical certainty. This is premised on Michau v. Georgetown County, 396 S.C 589, 723 S.E.2d 805 (2012).

Appellant is misapplying this case. In Michau, the issue before the South Carolina Supreme Court was the *admissibility* of an independent expert's report because the opinion had not been given to a reasonable degree of medical certainty, per S.C. Code Ann. § 42-1-172 (2007). The issue before the Court in Michau was only the evidentiary issue of whether the Single Commissioner had erred by allowing the report of the employer's expert into evidence. In Michau, the attorney for the claimant had made an objection to said expert's report being submitted into evidence at the hearing because it had not been stated to a reasonable degree of medical certainty, and the Single

Commissioner allowed the report into evidence over his objection. In fact, the claimant's attorney in Michau appeared at the hearing with a Memorandum of Law outlining the argument behind his objection and stated said objection onto the record.

In the instant case, Appellant's attorney made no objection to Dr. Bitting's deposition testimony being submitted into evidence. Once this testimony was submitted and was made a part of the record, it became evidence that the Single Commissioner and Appellate Panel could consider and give whatever weight they wished. The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission. Ford v. Allied Chem. Co., 252 S.C. 561, 167 S.E.2d 564 (1969).

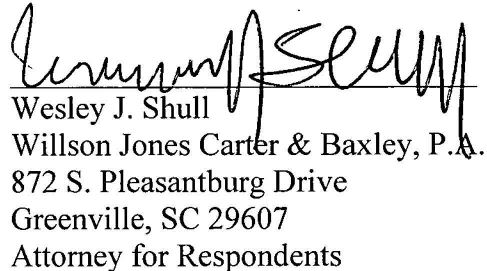
Appellant's argument that Dr. Bitting's testimony should have been given no weight is simply inapplicable to this situation and is only made because Dr. Bitting's testimony was damaging to her quest for a permanent and total disability award.

CONCLUSION

Substantial evidence exists in the record of this case to support the Commission's denial of Appellant's alleged RSD/CRPS injury. The rest of the issues appealed, but for the evidentiary issue that involves Michau, hinge on this factual issue. Thus, if this Court affirms the Commission's denial of the alleged RSD/CRPS claim, it need not go further.

The Commission's permanent partial disability award was fair and was supported by substantial evidence.

The legal doctrines argued, supra, do not affect the Commission's award, and Appellant has shown no error of law, as required.



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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Melody L. James, Susan S. Barden, T. Scott Beck, Appellate Panel

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Appellate Case No.: 2012-213606

RECEIVED
SEP 13 2013
SC Court of Appeals

Cindy Dozier,

Appellant,

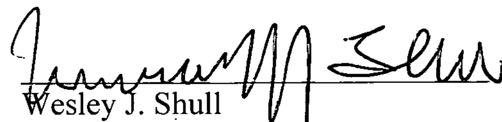
v.

American Red Cross, and
Sedgwick CMS,

Respondents,

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondents and Final Reply Brief of Respondents comply with Rule 211(b), SCACR.



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September 12, 2013

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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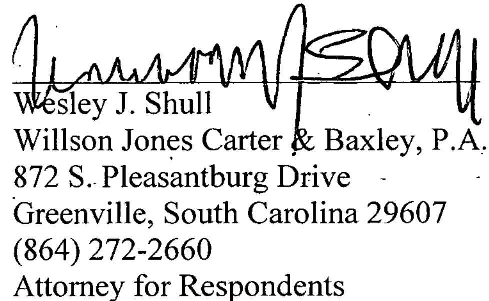
Respondents,

PROOF OF SERVICE

I certify that I have served the letter and Final Brief of Respondents on the Appellant by depositing a copy of it in the United States Mail, postage prepaid, on September, 2013, addressed to their attorney of record, Stephen B. Samuels, Samuels Law Firm L.L.C., 1527 Blanding Street, P.O. Box 50349, Columbia, SC 29250.



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