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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM ABBEVILLE COUNTY

Eugene C. Griffith, Jr., Circuit Court Judge
Trial Court Case No.: 2012-CP-01-00195

Appellate Case No.: 2013-001348

PHTS Risk Management Services (Carrier) and Abbeville County Memorial Hospital (Employer), ...Respondents,

v.

South Carolina Second Injury Fund, ...Appellant.

(IN RE: Billie New v. Abbeville County Memorial Hospital)

FINAL BRIEF OF RESPONDENTS

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ISSUE ON APPEAL

1. Under S.C. Code Ann. §§ 1-23-380 (1976) and 42-9-400 (2003), did the circuit court properly reverse the decision of the Appellate Panel of the Workers' Compensation Commission denying Second Injury Fund reimbursement to Respondents on the ground that the reliable, probative and substantial evidence on the whole record supported reimbursement in favor of Respondents?

STATEMENT OF THE CASE

Appellant, the South Carolina Second Injury Fund, appeals from the Order of the Honorable Eugene C. Griffith, Jr., filed with the Abbeville County Clerk of Court on May 14, 2013, wherein Judge Griffith reversed the Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission ("Appellate Panel") denying Respondents full Second Injury Fund reimbursement pursuant to S.C. Code Ann. § 42-9-400 (2003) for benefits paid or to be paid to the injured employee, Billie New ("Ms. New"), stemming from Ms. New's July 12, 2005 work accident, and wherein Judge Griffith found the reliable, probative and substantial evidence of the whole record supported granting full Second Injury Fund reimbursement in favor of Respondents.

Ms. New injured her neck on July 12, 2005 when she attempted to catch a falling patient while she was employed at Abbeville County Memorial Hospital (R. p. 1, ¶1). PHTS Risk Management Services admitted the claim and authorized appropriate medical treatment (R. p. 3, ¶3). Ultimately, the underlying workers' compensation claim was concluded by settlement (R. p. 95). Specifically, the settlement agreement included claims for "any and all injuries, disability . . . ailments, illnesses, and diseases or other damages, consequences or results, past, present or future in any way connected with, or arising from the alleged injury sustained by [Ms. New] on or about 07/12/2005 . . . ." (R. p. 2, ¶ 5).

Prior to the July 2005 work accident, Ms. New complained of and sought treatment for pain affecting her neck and experienced radicular symptoms affecting her left upper extremity. In addition, Ms. New was diagnosed with anxiety and depression in 2002 and received treatment in relation to those conditions prior to her work accident in July 2005. Accordingly, Respondents sought Second Injury Fund reimbursement on the basis of Ms. New's preexisting arthritis under S.C. Code § 42-9-400(d)(4) (2003) and her preexisting neck condition and preexisting anxiety and depression under S.C. Code § 42-9-400(a) (2003) (R. p. 42, lines 14–15 & p. 47, lines 20–21). Additionally, because Ms. New's preexisting impairments combined with her July 2005 work accident to result in impairment in excess of seventy-eight (78) weeks, Respondents also sought reimbursement based upon *all* of Ms. New's preexisting impairments under S.C. Code § 42-9-400(d)(34)(b) (2003) (R. p. 46, line 15). The Fund denied the claim for reimbursement, contending Ms. New did not have preexisting arthritis and her preexisting neck condition, anxiety and depression were not permanent and serious enough so as to constitute a hindrance or obstacle to her employment under S.C. Code § 42-9-400(d) (2003) (R. pp. 52–53).

The parties appeared before Commissioner Avery B. Wilkerson, Jr., on September 7, 2011 and argued their respective positions. On October 28, 2011, Commissioner Wilkerson issued a Decision and Order finding: Ms. New had preexisting anxiety for which she was treated with medication; Ms. New had prior incidents of pain in her neck, shoulder, and legs, as well as radiating pain into her back and shoulders; Ms. New did not have preexisting arthritis and alternatively, if Ms. New had preexisting arthritis, it was not serious enough to constitute a hindrance to her employment as she

only missed worked periodically; Ms. New's anxiety and depression were well-controlled with medication prior to her work accident and therefore her anxiety was not permanent and serious enough to constitute a hindrance to her employment; and Ms. New's preexisting neck and shoulder problems were not permanent and serious enough to constitute a hindrance to her employment. Thus, Commissioner Wilkerson denied reimbursement to Respondents (R. pp.15–18).

On November 11, 2011, Respondents filed an Application for Full Commission Review of Commissioner Wilkerson's Decision and Order (Form 30). The application contained One Hundred Two (102) Grounds for Review and Exceptions (R. p. 96–113, ¶¶ 1–102). The parties submitted briefs in support of their respective positions and appeared before the Appellate Panel on March 19, 2012 for oral argument. On May 22, 2012 the Appellate Panel issued its Decision and Order wherein it affirmed the Decision and Order of the Hearing Commissioner (R. pp. 20–25).

On June 21, 2012, Respondents appealed the Decision and Order of the Appellate Panel to the Abbeville County Court of Common Pleas. The parties once again submitted briefs in support of their respective positions and appeared before the Honorable Eugene C. Griffith, Jr. on February 1, 2013 (R. p. 28). Specifically, Respondents contended the Decision and Order of the Appellate Panel was not supported by substantial evidence because Respondents had submitted medical testimony and evidence supporting reimbursement, whereas Appellant, in arguing against reimbursement, had failed to present *any* evidence supporting its position and instead simply pointed to isolated medical records and asked the courts to render medical opinions (Feb. 1, 2013 Hearing Tr. pp. 66–78, 88–93). On May 14, 2013, Judge Griffith

filed an Order with the Abbeville County Clerk of Court reversing the Decision and Order of the Appellate Panel on the ground its decision was not supported by substantial evidence in the record and granting Respondents full reimbursement (R. p. 26). Specifically, Judge Griffith noted Respondents presented uncontroverted medical evidence in the form of expert testimony and supporting medical records establishing the elements of reimbursement pursuant to S.C. Code § 42-9-400 (2003), but Appellant failed to present any reliable, probative and substantial evidence contradicting the evidence presented by Respondents (R. p. 31–34).

On June 19, 2013, Appellant filed a Notice of Appeal and Proof of Service regarding the same with the Court. This appeal followed.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions by the Appellate Panel of the Workers' Compensation Commission. Fredrick v. Wellman, Inc., 385 S.C. 8, 15–16, 682 S.E.2d 516, 519 (Ct. App. 2009); see Lark v. Bi-Lo, Inc., 276 S.C. 130, 134–35, 276 S.E.2d 304, 306 (1981). Under the scope of review established by the APA, the Court may not substitute its judgment for that of the Appellate Panel as to the weight of the evidence on questions of fact, but may reverse or modify the Appellate Panel's decision if the appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Carolinas Recycling Group v. South Carolina Second Injury Fund, 398 S.C. 480, 483, 730 S.E.2d 324, 326 (Ct. App. 2012); see S.C. Code Ann. § 1-23-380 (1976). Substantial evidence is defined as evidence that, in viewing the

record as a whole, would allow reasonable minds to reach the same conclusion as the Appellate Panel. Carolinas Recycling Group, 398 S.C. at 483, 730 S.E.2d at 326 (citing Lark, 276 S.C. at 135, 276 S.E.2d at 306). More specifically, substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the same conclusion the Appellate Panel reached. Bazen v. Badger R. Bazen Co., Inc., 388 S.C. 58, 62, 693 S.E.2d 436, 438 (Ct. App. 2010) (citing Shealy v. Aiken Cnty., 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000)).

ARGUMENT

I. THE CIRCUIT COURT PROPERLY REVERSED THE DECISION AND ORDER OF THE APPELLATE PANEL OF THE WORKERS' COMPENSATION COMMISSION DENYING RESPONDENTS SECOND INJURY FUND REIMBURSEMENT BECAUSE THE RELIABLE, PROBATIVE & SUBSTANTIAL EVIDENCE OF THE WHOLE RECORD ONLY SUPPORTS GRANTING RESPONDENTS FULL SECOND INJURY FUND REIMBURSEMENT.

a. Respondents Submitted Reliable, Probative and Substantial Evidence Satisfying all Elements of Reimbursement.

Respondents have submitted evidence proving each and every requirement for reimbursement as set forth in S.C. Code Ann. § 42-9-400 (2003). Accordingly, the circuit court properly reversed the Decision and Order of the Appellate Panel on the ground that the Appellate Panel's decision denying reimbursement was not supported by the reliable, probative and substantial evidence of the whole record. Thus, the Order of the circuit court should be affirmed.

The substantial evidence in the record supports Ms. New suffered from a neck condition and/or cervical arthritis prior to her work accident of July 12, 2005. Specifically, in July 1991 Ms. New presented to her primary care physician complaining

of continued numbness in the tips of her left fingers (R. p. 119). At the time, her physician indicated it may be related to a shoulder injury but suggested she continue to monitor her symptoms (Id.). In March 1998, Ms. New presented to her physician after suffering "a couple of episodes" of pain radiating into her back, shoulders and neck (R. p. 120). In April 2005, Ms. New once again complained to her physician of aches in her shoulders and neck (R. 123). Ms. New's supervisor at Abbeville County Memorial Hospital likewise noted Ms. New complained of and missed work due to pain in all parts of her body, including her neck, during this time and prior to her work injury on July 12, 2005 (R. p. 160). Therefore, while there may not have been a specific diagnosis of arthritis prior to her work accident, the medical records and statement from Ms. New's employer establish she was suffering from symptoms involving her neck, which are consistent with arthritis, well before her work accident. Respondents would contend the strongest support for Ms. New having preexisting arthritis and/or a prior neck condition is in the medical records and opinion from Dr. Kilburn, who treated Ms. New and performed surgery following the July 2005 work accident. Approximately one month after her work injury, Dr. Kilburn performed a cervical discectomy and his surgical note indicates postoperative diagnoses of stenosis and spondylosis affecting Ms. New's cervical spine (R. p. 124). Several months after this surgery, Dr. Kilburn was asked about his diagnoses and he confirmed Ms. New's prior neck condition, cervical stenosis and osteophytes of the cervical spine are the same as arthritis and each condition existed prior to the July 2005 work accident (R. p. 165). Thus, the surgeon who was most intimately familiar with Ms. New's cervical condition, and who had the requisite level of training and expertise to opine on the issue, confirmed Ms. New suffered from arthritis

and/or cervical stenosis and/or a neck condition before her July 2005 work accident. Appellant contends the lack of formal diagnosis predating Ms. New's work accident establishes the condition did not exist prior to July 2005 (Appellant's Final Br. pp. 3–5). While such a formal diagnosis before July 2005 would support the condition preexisted, the lack of such is not conclusive of the issue and is only one of several ways to prove the condition preexisted. Another more compelling method for proving the condition preexisted is present in this instance—the treating surgeon provided an opinion directly on the issue shortly after treating Ms. New and he confirmed she suffered from a preexisting neck condition, cervical stenosis and osteophytes of the cervical spine. Thus, Respondents have presented reliable, probative and substantial evidence establishing Ms. New had a prior neck condition and/or arthritis prior to her July 2005 work accident.

The substantial evidence in the record likewise supports Ms. New suffered from preexisting anxiety and depression. It does not appear Appellant challenges these conditions preexisted Ms. New's work accident, but the medical records support the same. In April 2002, Ms. New indicated to her primary care physician she had suffered "anxiety attacks" and requested medication for the condition (R. p. 121). Her physician prescribed Zoloft and Ativan at that time (Id.). One month later, Ms. New presented for a recheck of her anxiety and depression (Id.). She reported feeling better while taking Zoloft and her prescription was renewed for six months (Id.). She received refills in June 2004 and then again in March 2005, only months before her work accident (R. p. 122, 123). Additionally, Dr. Nicholas Lind, who evaluated Ms. New following her work accident, opined Ms. New had anxiety with treatment prior to her July 2005 work accident (R. pp. 166–67). Accordingly, the reliable, probative and substantial evidence

of the whole record establishes Ms. New had preexisting anxiety and depression for which she received treatment before her work accident.

There is also substantial evidence in the record supporting Ms. New's aforementioned preexisting impairments were permanent and serious enough so as to constitute a hindrance to her employment or reemployment. See S.C. Code § 42-9-400(a) & (d) (2003). While Appellant attempts to define permanency and hindrance by resorting to authorities outside of the statute, its formulation misses the mark (Appellant Final Br. p. 6). For one, Crisp v. SouthCo., Inc., 401 S.C. 627, 738 S.E.2d 835 (2013) and the associated case Sparks v. Palmetto Hardwood, Inc., Nos. 2011-186526, 27229, 2013 WL 2245133 (S.C. May 22, 2013) define physical brain damage as used in S.C. Code § 42-9-10(c), which entitles claimants to lifetime benefits. The South Carolina Supreme Court explained in order for a claimant to be entitled to lifetime benefits, the physical brain damage must be both permanent *and* severe. Crisp, 401 S.C. at 644, 738 S.E.2d at 843–44; Sparks, 2013 WL 2245133 at *4 (emphasis added). Appellant improperly attempts to use the court's formulation of severity specific to a brain damage case to define permanency and hindrance in a non-brain damage case. See Crisp, 401 S.C. at 642, 738 S.E.2d at 842 (citing specialized healthcare and inability to return to gainful employment as requirements to make the requisite showing of severity of a brain injury entitling a claimant to lifetime medical benefits under S.C. Code § 42-9-10(c)). The standard of hindrance or obstacle as contemplated by S.C. Code § 42-9-400(d) (2003) does not require a showing the person be unable to return to work, but only that the preexisting impairment interfere with the individual's ability to perform his or her job duties. Adopting Appellant's proposed interpretation of "hindrance or obstacle" as prohibiting a

return to work is at odds with the relevant Second Injury Fund reimbursement statutes, which clearly contemplate a scenario where an individual with a preexisting impairment has returned to work in some capacity and has sustained a *second* injury. Accordingly, Respondents contend the requisite showings of permanence and hindrance and/or obstacle via substantial evidence have been satisfied. Ms. New's supervisor at Abbeville County Memorial Hospital indicated Ms. New complained to other hospital staff about "aches and pains" and periodically missed work on account of the same (R. p. 160). Certainly missing work would constitute an obstacle and/or hindrance to employment or reemployment. Ms. New's physicians, who treated and evaluated her following her work accident and who reviewed her previous medical records, likewise confirm her preexisting impairments were both permanent and serious enough to constitute hindrances and/or obstacles to her employment or reemployment (R. pp. 165–67). In addition, Respondents have relied upon several statutory provisions granting them a presumption of permanency and hindrance in this instance. Specifically, having established Ms. New suffered from preexisting arthritis, Respondents rely upon the presumption provided in S.C. Code § 42-9-400(d)(4) (2003) for that impairment.[1] Further, because the evidence in the record supports Ms. New's preexisting impairments combined with or were aggravated by her July 2005 work injury to result in impairment in excess of seventy-eight (78) weeks, Respondents are afforded a presumption of permanency and hindrance for each and every of Ms. New's preexisting impairments under S.C. Code § 42-9-400(d)(34)(b) (2003). Thus, Respondents have satisfied their

[1] Appellant states "there is no indication that Claimant's ability to do her job was hindered in any way, it is unlikely that the presence of arthritis would have prevented her from securing employment" (Appellant's Final Br. p. 6). Not only is this statement pure speculation on the part of Appellant, it is at odds with the statute, which presumes the presence of arthritis is a hindrance or obstacle to an individual seeking or holding employment.

burden to prove Ms. New's preexisting neck condition, arthritis, anxiety and depression were a hindrance or obstacle to her employment or reemployment through independent evidence and by relying upon the statutorily provided presumptions.

Respondents also presented substantial evidence establishing Ms. New's preexisting impairments combined with or were aggravated by her work accident to result in substantially greater liability for Respondents.[2] See S.C. Code § 42-9-400(a) (2003). In particular, Respondents relied upon the opinions of Ms. New's physicians, who evaluated and treated her following her work injury, both of whom opined to a reasonable degree of medical certainty her preexisting neck condition, cervical stenosis, osteophytes of the cervical spine, anxiety and depression combined with or were aggravated by the July 2005 work accident to result in greater lost time from work, increased permanent disability and additional medical costs (R. pp. 165–67). Respondents contend these physicians are in the best position and have the requisite skills and training to opine on this particular issue.

Lastly, Respondents have satisfied the employer knowledge requirement of S.C. Code § 42-9-400(c) via substantial evidence.[3] As the aforementioned evidence establishes, Ms. New suffered from a neck condition, cervical stenosis, osteophytes of the

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[2] The Commission never ruled on this particular issue, instead it based its decision to deny reimbursement solely on whether the impairments preexisted or constituted a hindrance to employment (R. pp. 21–24). However, after reviewing the evidence in the record, the circuit court stated Respondents "satisfied each and every requirement for Second Injury Fund reimbursement pursuant to S.C. Code § 42-9-400 via expert medical opinions, supporting medical records, evidence in the record and/or presumptions as provided for in S.C. Code § 42-9-400" (R. p. 33, ¶1). Thus, the circuit court found in favor of Respondents' on this requirement of S.C. Code § 42-9-400(2003).

[3] The Commission also did not rule on this particular issue (R. pp. 21–24). Therefore, Appellant's statement "the Commission gave much greater weight to the totality of the evidence on issues of knowledge . . ." is unsubstantiated (Appellant's Final Br. p. 9). The circuit court found Respondents satisfied employer knowledge with respect to the preexisting neck condition and/or arthritis based upon the statement by Ms. New's supervisor (R. p. 32). Further, the circuit court found Ms. New concealed her preexisting anxiety and depression from her employer, thus meeting the requirement for those impairments based upon concealment (R. p. 32–33).

cervical spine, and/or arthritis prior to her work accident. Prior to July 2005, Ms. New complained to her supervisor and other staff members of the hospital regarding her aches and pains, including those affecting her neck, and missed work on account of the same. Thus, Respondents contend notice of Ms. New's symptoms attributable to her arthritis and/or preexisting neck condition is sufficient to establish employer knowledge under 42-9-400(c) (2003).[4] Additionally and alternatively, Respondents contend Ms. New concealed her preexisting neck condition and/or arthritis by failing to indicate the same on her employee health questionnaires. While she may not have been diagnosed with arthritis at the time she completed the questionnaire, she certainly had experienced symptoms related to her condition and she failed to complete any of the sections inquiring about "arthritis" or "any other pre-existing disease, condition or impairment not listed above" (R. p. 161–64). Furthermore, the medical evidence unequivocally shows Ms. New had been diagnosed with anxiety and depression prior to her work accident in July 2005 and was receiving treatment for the same shortly before her work accident, but she failed to indicate the same on her Employee Health Questionnaire or otherwise give notice to her employer. These omissions constituted intentional concealment of those preexisting impairments under 42-9-400(c) (2003) and thus Respondents have satisfied this requirement for each and every of Ms. New's preexisting impairments via reliable, probative and substantial evidence in the record.

Based upon the foregoing, Respondents submitted reliable, probative and substantial evidence satisfying all of the elements entitling them to reimbursement pursuant to S.C. Code Ann. § 42-9-400 (2003). Thus, the circuit court properly reversed

[4] Appellant concedes the employer knowledge statement is "sufficient to establish knowledge of [Ms. New's] prior neck pain " (Appellant's Final Br. p. 4).

the Appellate Panel's Decision and Order denying reimbursement to Respondents because the Appellate Panel's decision was not supported by substantial evidence. Accordingly, the Order of the circuit court granting full reimbursement in favor of Respondents should be affirmed.

b. Appellant Failed to Rebut the Reliable, Probative and Substantial Evidence Submitted by Respondents.

Once Respondents presented substantial evidence supporting their claim for reimbursement, the burden then shifted to Appellant to present reliable, probative and substantial evidence sufficient to rebut that presented by Respondents. See Carolinas Recycling Group v. South Carolina Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (Ct. App. 2012). The circuit court correctly determined Appellant failed to satisfy its burden and therefore the Decision and Order of the Appellate Panel denying reimbursement to Respondents was not supported by substantial evidence (R. p. 33–34). Accordingly, the Order of the circuit court granting Respondents full Second Injury Fund reimbursement should be affirmed.

Appellant failed to present any expert medical evidence or expert testimony supporting its position. The issues involved in this action call for a level of expertise beyond laymen's knowledge. The only expert medical evidence and testimony in the record favors reimbursement. When the specific issues relevant to reimbursement were presented to the experts possessing the skills to offer such an opinion, each determined Ms. New suffered from preexisting impairments that combined with or were aggravated by her work accident to result in greater liability than would have resulted from the work accident alone. Appellant simply points to isolated references in the medical records submitted by Respondents and has presented no medical evidence supporting its position.

Appellant attempts to rely upon Wynn v. People's Natural Gas Co., 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961), to support its position that "findings of fact by the Commission are conclusive" (Appellant's Initial Br. p. 8). However, Appellant attempts to use an isolated quote, taken out of the context of the whole decision, to support its flawed position. In Wynn, the South Carolina Supreme Court actually reversed the Commission on the finding of total disability. Wynn, 238 S.C. at 12, 118 S.E.2d at 818. In so doing, the court held that a "bare statement" in contravention of medical testimony is not sufficient to support a decision of the Commission. Wynn, 238 S.C. at 12–13, 118 S.E.2d at 818. The court went on to hold:

> [R]eliance on lay testimony and administrative *expertise* is not justified when the medical question is no longer an uncomplicated one and carries the fact-finders into realms which are properly within the province of medical experts . . . [t]he increasing tendency to accept awards unsupported by medical testimony should not be allowed to obscure the basic necessity of establishing medical causation by expert testimony in all but simply and routine cases."

Id. (citing Larson's Workmen's Compensation Law § 79.54).[5] Certainly, this matter presents complicated medical issues outside the scope of laymen's knowledge and therefore resort to medical experts is necessary. The only medical opinions presented in this action favor Respondents and reimbursement. The Appellate Panel, in accepting Appellant's contentions in the absence of any medical support, rendered medical opinions based upon its own interpretation of isolated medical records; such an approach

[5] It bears mentioning in several of the other cases Appellant relies upon to support its position that medical evidence should not be deemed conclusive, there were disputes between medical experts as to the interpretation of the evidence, not uncontroverted expert opinions as in this instance. See Glover v. Columbia Hosp. of Richland Cnty., 236 S.C. 410, 414–418, 114 S.E.2d 565, 567–569 (S.C. 1960) (noting the Commission as fact finder must weigh conflicting expert opinions as to causation); Anderson v. Campbell Tile Co., 202 S.C. 54, 24 S.E.2d 104, 105 (1943) ("[t]here is a sharp conflict in the testimony of the two experts"). In Wynn, where the expert testimony was only controverted by the claimant's bare statement unsupported by medical evidence, the South Carolina Supreme Court found that the claimant's bare statement was not sufficient to support a decision of the Commission.

seemingly has been prohibited as outside the scope of the Commission's authority. See Burnette v. City of Greenville, 401 S.C. 417, 737 S.E.2d 200 (Ct. App. 2012) (rejecting a finding of the Commission containing a medical opinion that did not originate from a medical provider and remanding the claim to the Commission to enter findings consistent with the substantial evidence in the record). In the absence of any medical evidence or testimony contradicting that submitted by Respondents, the Appellate Panel could only find in favor of reimbursement and the circuit court properly reversed the decision of the Appellate Panel.

Assuming *arguendo* Appellant was not required to present expert medical evidence or medical testimony supporting its position, it has failed to present any evidence sufficient to rebut the evidence submitted by Respondents. Medical opinions can be disregarded where "other competent evidence" is presented. See, e.g., Ballenger v. Southern Worsted Corp., 209 S.C. 463, 40 S.E.2d 681 (1946). However, under the holding of Burnette, Appellant's laymen interpretation of isolated medical records does not constitute "other competent evidence" sufficient to overcome the evidence favoring reimbursement submitted by Respondents. Again, Appellant has failed to put forth *any* evidence of its own to support its position denying reimbursement.

Appellant also contends the existence of a medical impairment, such as arthritis, and whether the medical impairment constitutes a hindrance to employment is not solely a medical issue and therefore medical evidence is not required to support its denial of reimbursement (Appellant Final Br. p. 7–8). For one, Appellant's position is in conflict with the Second Injury Fund's instruction on the manner and method of seeking reimbursement. Specifically, the Second Injury Fund indicates carriers seeking

reimbursement should have a *physician* provide an opinion on these issues (R. pp. 114–18). The guidebook authored by the Second Injury Fund clearly contemplates the existence of a preexisting condition and whether such constitutes a hindrance or obstacle to employment are medical issues, not vocational or otherwise, as Appellant now tries to allege. Regardless of whether these are medical issues or not, the same substantial evidence standard of Carolinas Recycling applies; where the decision of the Appellate Panel is not supported by substantial evidence, it must be reversed. Respondents remain the only party to have presented any evidence regarding Ms. New's preexisting impairments constituting a hindrance or obstacle to her employment. Appellant has failed to present any evidence of its own, either vocational or medical in nature, to rebut the evidence submitted by Respondents. To the extent Appellant attempts to rely upon the vocational evaluation submitted by Respondents to support its position that Ms. New's preexisting impairments were not a hindrance to her employment (Appellant's Final Br. p. 11), it is imperative to note the evaluator was never asked to opine on the issues relevant to Second Injury Fund reimbursement and only addressed her relative employability following her work accident (R. pp. 150–57). Therefore, Appellant's reliance upon this evidence is misplaced.

The foregoing authorities establish where evidence favoring one party is uncontroverted, either because all of the medical evidence/medical testimony is consistent or where no other competent evidence is provided, the Commission lacks anything upon which to base a decision going against the uncontroverted medical evidence. Respondents submitted uncontroverted medical evidence and expert medical opinions establishing each and every element of reimbursement under S.C. Code § 42-9-

400 (2003), whereas Appellant has failed to rebut Respondents' evidence with medical evidence/expert medical opinions of its own *or* "other competent evidence." For these reasons, the reliable, probative and substantial evidence of the whole record only supports granting reimbursement in favor of Respondents. The circuit court properly reversed the Decision and Order of the Appellate Panel because it was not supported by substantial evidence and the Order of the circuit court should be affirmed.

CONCLUSION

For the reasons set forth herein, the Decision and Order of the Appellate Panel denying Respondents full Second Injury Fund reimbursement for medical and compensation payments pursuant to S.C. Code § 42-9-400 is not supported by the reliable, probative and substantial evidence of the whole record and the Order of the circuit court reversing the Appellate Panel and granting Respondents full Second Injury Fund reimbursement should be affirmed.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

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Date: January 21, 2014
Greenville, SC

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[In Re: Billie New v. Abbeville County Memorial Hospital]

PROOF OF SERVICE

As attorneys of record for the Respondents, the undersigned do hereby certify that on the 21st day of January, 2014, a copy of the **RESPONDENTS' FINAL BRIEF and CERTIFICATE OF COMPLIANCE** was served upon the Clerk of Court for the South Carolina Court of Appeals, the attorney for the Appellant, and others as specified below, by placing a copy of the same in the United States Mail, with due and proper postage affixed thereto, as follows:

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CERTIFICATE OF COMPLIANCE

As attorneys of record for the Respondents, the undersigned do hereby certify that the **RESPONDENTS' FINAL BRIEF** is compliant with SCACR 211 (b).

[SIGNATURE PAGE FOLLOWS]

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