APPELLATE PANEL

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1713216

Angela Elmer, APPELLANT CLAIMANT,

vs.

City Of North Charleston, EMPLOYER,

AND

Companion TPA, CARRIER, DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina, on February 19, 2019, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed April 12, 2019

APPEARANCES:

Appellant Angela Elmer, Claimant represented by Richard C. Alexander, Esquire of Shelly Leeke Law Firm, LLC in North Carleston, South Carolina.

Defendants/Respondents represented by Johnnie W. Baxley, III, Esquire of Willson Jones Carter & Baxley, P.A. in Mt. Pleasant, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner Avery B. Wilkerson, Jr., on August 23, 2018, in Sumter, South Carolina. On October 29, 2018, he issued the following Order:

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. **That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Angela Elmer as Employee-Claimant and City Of North Charleston as Employer and PAI as Carrier, Defendants.**
2. **That the average weekly wage of Employee at the time of the above-described accident was $1,044.31, and his compensation rate was $696.24.**
3. **The undersigned Commissioner issued his directives to the parties on August 31, 2018.**
4. **Claimant was working as a Master Patrol Officer for the City of North Charleston. On September 7, 2017, she was stopped in her vehicle at a red traffic light when she was rear-ended. The accident involved a fairly minor impact with minimal damage to both cars. Claimant injured her low back and neck.**
5. **Claimant indicated that her back problems originally started in 2006. She ended up having low back surgery at one of the laser surgery places in Florida in 2012. The surgery was at L4-L5. Since that time, she has had intermittent pain and flare-ups. She has also seen a chiropractor regularly for adjustments since that surgery for monthly maintenance.**
6. **Claimant admitted that in 2015 she had a significant flare-up for which she treated with Dr. Shailesh Patel, who ordered an MRI scan, performed injections on her low back, gave her medications, and indicated she would require ongoing pain management parentheses including ongoing pain management, diagnostic films, EMG studies, injections, and medications) to manage her chronic back symptoms.**
7. **Even after the treatment that she received following the significant flare-up in 2015, she continued receiving chiropractic adjustments every other month and continued having intermittent pain in her back. Claimant admitted that she had intermittent back pain with certain activities even before the work accident.**
8. **Defendants provided medical treatment to Claimant. She was treated conservatively by CCOH and that she was released to return to full duty work in October 2017. Claimant was released from care and to return to full duty work with no restrictions on October 23, 2017.**
9. **Claimant testified at the hearing that she never told Dr. Weissglass that she was back to baseline; she simply told Dr. Weissglass that she was feeling better and that she wanted to go back to full duty work. However, she admitted that she told Dr. Weissglass that she had returned to baseline in her deposition. When confronted with her deposition testimony which was inconsistent with her hearing testimony, Claimant testified that she did not remember using baseline as a word but she did tell Dr. Weissglass that she was feeling better and could go back to work. She further testified that she stated during her previous deposition that she felt like she could go back to work at full duty and she felt like she was back to her baseline to the point where she could go back to work.**
10. **The submitted medical records clearly indicate that the Claimant had returned to her normal baseline by October 23, 2017. Despite a debate over some semantics during the hearing, it is**

clear that Claimant either told or indicated to the doctor that her symptoms had resolved and that she was back to her normal baseline by October 23, 2017. Further, the greater weight of the evidence indicates that Claimant had returned to her normal baseline by October 23, 2017, following this minor work-related accident.

11. Claimant admitted that all of her neck pain had resolved by October 23, 2017.
12. Claimant testified that medical treatment was provided to her through the City of North Charleston from the date of her accident through October 23, 2017. She further admitted that all of those medical bills have been paid and that she had not missed any time from work from the date of the accident through October 23, 2017.
13. Claimant did not seek any further medical treatment for her back until February 20, 2018, when she saw Dr. Forrest for an independent medical evaluation. There were no medical records submitted that indicate that Claimant sought medical treatment between October 23, 2017, and February 20, 2018.
14. From October 23, 2017, through February 20, 2018, which is a period of over four months, Claimant worked full duty with no work restrictions and she was able to complete all the aspects of her job. Claimant admitted that she did not take any medication for her back during that period of time, nor did she seek any medical treatment.
15. Every doctor on this claim agreed that the work accident on September 7, 2017, involved a very minor impact with minimal damage. Both Dr. Forrest and Dr. Weissglass agree that the Claimant sustained a temporary aggravation/flare-up which had completely resolved by October 23, 2017. The vast majority of the evidence in the record supports that conclusion. I find that the Claimant sustained a compensable work accident on September 7, 2017, that resulted in a temporary aggravation of her pre-existing low back condition, and that the temporary aggravation had completely resolved by October 23, 2017.
16. On March 8, 2018, Claimant returned to Dr. Weissglass for a flare-up of her low back pain. She testified that she did not do anything to cause the flare-up and she could not point to anything specific that caused it to happen. I give greater weight to the testimony of Dr. Weissglass on the issue of causal relationship of the March 2018 flare-up to the work accident in September 2017. Dr. Weissglass has had an opportunity to treat the Claimant since her work accident and see her several times and follow-up, and I give greater weight to his opinion than the independent medical evaluation and opinions of Dr. Forrest.
17. Based upon the testimony of the Claimant, the fact that she returned to baseline in October 2017, her ability to return to work full duty and full function for over four months, the submitted medical records, and the deposition of Dr. Weissglass, I find that the Claimant's flare-up in March 2018 is not causally related to her work accident of September 7, 2017.
18. I have personally reviewed the medical records and the deposition testimony of both Dr. Forrest and Dr. Weissglass. Regarding causation of the Claimant' s flare-up in March 2018, I give greater weight to the testimony of Dr. Weissglass. As of March 2018, Dr. Weissglass had seen the Claimant for several visits from September 2017 through March 2018, had seen the resolution of her symptoms, and had seen her in follow-up. At that point, Dr. Forrest had only seen her for a one time IME.
19. When Claimant reported a flare-up in March 2018 and sought medical treatment, she had been back to her pre-injury baseline for over four months, had had a complete resolution of her symptoms for over four months, had returned to full duty activities as a police officer and outside of work, and told every doctor that she saw that she could not explain how the flare-up

occurred. All of these factors support that the flare-up in March 2018 is not causally related to her work accident of September 7, 2017, which had completely resolved over four months prior to this subsequent flare-up.

20. Claimant sought treatment on her own through Dr. Forrest after the March 2018 flare-up had been denied as being compensable by the City. Based upon my determination that the March 2018 flare-up is not causally related to the original work injury on September 7, 2017, Defendants are not responsible for any medical treatment that the Claimant sought on her own for those issues, including treatment with Dr. Leonard Forrest, the 2018 MRI scan, her chiropractic treatment, and her visit with HealthFirst.
21. Claimant testified that she continued working until April 3, 2018, took annual leave from April 4, 2018, through April 23, 2018, used sick leave on April 24, 2018, through April 25, 2018, and took leave without pay from April 26, 2018 through her last day of employment which was May 17, 2018. Claimant resigned from the City of North Charleston Police Department on May 17, 2018.
22. Claimant went to work shortly thereafter as a police officer for the Summerville Police Department. She has been working there full duty without restrictions ever since.
23. Claimant requested payment of temporary total disability compensation from April 26, 2018, through May 17, 2018. I find the Claimant is not entitled to temporary total disability compensation for several reasons. First, I find that the unexplained flare-up in March 2018 was not causally related to the work accident in September 2017 as fully detailed above. Second, Claimant testified under oath that she could have been working during that period of time. Third, it would be disingenuous of the Claimant to suggest that she was unable to work light duty for North Charleston from April 26, 2018, through May 17, 2018, but was then able to turn around at work full duty for Summerville immediately thereafter. Finally, I do not believe that Claimant met the burden of proof in proving that she was entitled to temporary total disability compensation even if she had been able to prove that her flare-up March 2018 was causally related.
24. Claimant testified at length describing how the work accident and back problems have affected her life. Claimant stated that simple tasks like doing laundry, bending over, cutting grass, and lifting her baby from a crib are all uncomfortable and cause increases in her pain and temporary flare-ups. She said her biggest ordeal is picking up her young child from her crib. Claimant admitted that doing these activities outside of work can cause flare-ups or increase her pain. She further testified that she still has occasional flare-ups that happens with no explanation, sort of like the ones she had in March 2018.
25. Despite the several difficulties Claimant testified to regarding yard work and manual labor, Claimant was pictured in the Post and Courier on August 7, 2018, clearing out storm drains with a rake. These activities and her ability to work full duty as a police officer are somewhat inconsistent with her testimony regarding difficulty with certain activities.
26. Claimant testified that she has been working full duty as a police officer since May 2018, and that she is able to complete all of those work activities.
27. Based upon the greater weight of the medical evidence and the deposition testimony of Dr. Forrest and Dr. Weissglass, there is no major difference or significant worsening in any of the MRI scans from 2012 to 2015 to 2018.
28. Based upon the preponderance of the evidence submitted in this case, including the medical records, the testimony of the Claimant, and the testimony of the two doctors, it is clear that

Claimant has experienced intermittent pain, intermittent symptoms, aggravations, and flare-ups of her low back pain with radiculopathy since her back surgery in 2012. It is unclear as to exactly what causes the flare-ups. According to the evidence, some of the symptoms and flare-ups are due to activities of daily life, happen spontaneously, or are work-related.

29. Dr. Weissglass indicated on the Form 14B that the Claimant did not have any permanent impairment as a result of this temporary work-related aggravation. He further indicated in his deposition testimony that the Claimant clearly had impairment to her back as a result of her of her surgery in 2012, but that she had returned to her baseline of symptoms and function as of October 23, 2017, from the temporary aggravation following the work accident on September 7, 2017. As a result, he indicated that she had sustained no additional or new permanent impairment as a result of the temporary work-related aggravation.
30. Dr. Forrest agreed that Claimant had returned to her baseline in October 2017, but indicated that Claimant had an additional impairment of 6% whole person or 8% regional lumbar spine because he thought she would have more frequent flare-ups in the future. Dr. Forrest agreed that Claimant had returned to her baseline in October 2017 and again on May 16, 2018, and that her symptoms and functions at this time are exactly the same as her previous baseline before the work-related aggravation on September 7, 2017.
31. With regard to the testimony concerning impairment related to the accident on September 7, 2017, again I give greater weight to the testimony of Dr. Weissglass. First, Dr. Weissglass has much more experience seeing the Claimant over a period of time. Second, his testimony makes more logical sense. Dr. Forrest has testified that the Claimant is entitled to permanent impairment because she might need medical treatment in the future. This is not a legitimate basis upon which to base permanent impairment. According to the Fifth Edition AMA Guides, impairment is assigned by a physician for loss, or loss of use, of a body part. There is no basis in the Guide or in any other medical literature for giving a permanent impairment due to a need for medical treatment. In fact, under our workers' compensation laws, the ideas of impairment/disability and medical treatment are completely separate. Further, Category 2 of the Guide does not support a rating in this case; Category 2 supports a rating of 5% to 8% for findings compatible with a specific injury (muscle spasm, loss of range of motion, or radiculopathy at the time) or radiculopathy due to herniated disk; there is no indication that the Claimant has any such findings as a result of the work accident on September 7, 2017. If such symptoms exist at this time, they are the same symptoms that existed prior to the work accident according to both Dr. Weissglass and Dr. Forrest, hence the reason both doctors have said Claimant returned to baseline. There is no evidence which would support that the work accident has caused any further findings or symptoms. For these reasons, I give the opinion of Dr. Forrest regarding impairment very little weight. I give greater weight to the testimony of Dr. Weissglass which indicates that there is no additional impairment as a result of the September 7, 2017 car accident which had resolved by October 23, 2017. The testimony of Dr. Weissglass is relied upon in making this finding.
32. After consideration of the Claimant' s testimony, the medical records, and the testimony of Dr. Forrest and Dr. Weissglass, I find that Claimant has sustained 0% disability as a result of her work accident on September 7, 2017, which caused a temporary aggravation of her pre-existing back condition. The overwhelming majority of the evidence indicates that this aggravation had completely resolved by October 23, 2017, and that Claimant' s symptoms have resolved, she was fully functioning as a police officer, and fully functioning with activities of daily living. She

had clearly returned to her baseline of symptoms and function that she has experienced since her back surgery in 2012 and before her work accident. As a result, I find that she has sustained no additional disability as a result of her work accident on September 7, 2017.

33. Based upon the preponderance of evidence submitted in this matter, I find that Claimant' s non-work activities contribute to a greater degree to ongoing flare-ups than any of her work activities. Based upon consideration of all the evidence in the record, I do not believe that Claimant has proven that her flare-ups after October 23, 2017, are related to the temporary aggravation of her pre-existing condition that occurred due to work accident on September 7, 2017, which had completely resolved within 6 to 7 weeks.
34. Regarding future or ongoing medical treatment. I do not find the Claimant entitled to any medical treatment after October 23, 2017. Again, I give greater weight to the testimony of Dr. Weissglass regarding the lack of any scientific or medical research which would support the theory of Dr. Forrest that the Claimant will require more frequent medical treatment in the future due to the one temporary work aggravation as opposed to all of her other previous or subsequent aggravations. Dr. Forrest dated May 16, 2018, specifically states that no further treatment is needed at this time and no follow-up needs to be scheduled at this time and that Claimant may need further treatment intermittently as a result of the work injury. That report is inconsistent with the later deposition of Dr. Forrest; for those reasons, I give his testimony very little weight on this issue. Further, the medical report of The Claimant has failed to prove that any of her aggravations after October 23, 2017, are causally related to the work accident, and she has further failed to prove that she is entitled to any additional or ongoing medical treatment after October 23, 2017, which is the date upon which her symptoms resolved and she returned back to her normal baseline after the temporary work aggravation.

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under § 42-1-160, Claimant sustained a temporary aggravation of her pre-existing back and neck condition on September 7, 2017.
3. Under § 42-15-60, Claimant was entitled to medical treatment for the temporary aggravation of her pre-existing back and neck condition that was sustained on September 7, 2017, until she reached maximum medical improvement. I find that Claimant reached maximum medical improvement when she returned to her baseline with a resolution of her symptoms on October 23, 2017. Defendants are not responsible for any medical treatment after October 23, 2017.
4. Under § 42-9-10, Claimant is not entitled to temporary total disability compensation from April 26, 2018, through May 17, 2018. She missed this time from work as a result of an unexplained flare-up in March 2018. I find that the unexplained flare-up in March 2018 is not causally related to her work accident in September 2017 that had completely resolved with a return to baseline by the Claimant on October 23, 2017. Further, the facts would not support that Claimant was entitled to temporary total disability compensation during this period of time as specifically set forth in the Findings above.
5. Under § 42-9-30, Claimant has not sustained any additional permanent disability as a result of her temporary aggravation due to her work accident on September 7, 2017, which resolved in October 23, 2017.

ORDER/AWARD

IT IS HEREBY ORDERED that Claimant sustained a compensable aggravation of her pre-existing back condition in a work-related motor vehicle accident on September 7, 2017. Defendants provided medical treatment to the Claimant for that accident, and Claimant did not miss any compensable time from work as a result of that accident. Claimant had a resolution of her symptoms and returned her normal, free injury baseline as of October 23, 2017.

IT IS FURTHER ORDERED that Claimant is not entitled to any temporary total disability compensation as a result of her work related accident on September 7, 2017. Claimant is not entitled to any medical treatment from her work-related accident after October 23, 2017. Claimant has sustained no permanent disability as a result of her work-related accident on September 7, 2017. Claimant is not entitled to any other benefits under the South Carolina Workers' Compensation Act

No hearing costs are assessed in this instance.
IT IS SO ORDERED.

Within the statutory period, Claimant filed an Application for Review in the case, setting forth their reasons, copies of which were furnished to all interested parties. All parties appeared at oral arguments on February 19, 2019, and presented their case on appeal.

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

By appeal, it is respectfully submitted by the Claimant that the Hearing Commissioner erred in finding as fact and concluding as a matter of law in the following particulars listed below:

1. Did the Hearing Commissioner err as a matter of fact and matter of law by ignoring and/or excluding specific medical evidence and medical expert testimony that supports Claimant's claim?
2. Did the Hearing Commissioner err as a matter of fact and matter of law by allowing for the submission of Dr. Weissglass' deposition after the conclusion of the hearing?
3. Did the Hearing Commissioner err as a matter of fact and matter of law by admitting evidence produced by Defendants at the hearing that was in existence prior to the hearing and should have been included in the Pre-Hearing Brief?
4. Did the Hearing Commissioner err as a matter of fact and matter of law by ignoring and/or excluding specific testimony of Claimant that supports her claim?
5. Did the Hearing Commissioner err as a matter of fact and matter of law in Findings of Fact 5 and 7 by mischaracterizing the medical evidence and Claimant's testimony and finding Claimant experienced multiple, intermittent flare-ups since her 2012 surgery and had intermittent back pain with activities prior to the work accident?
6. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 10 by finding the greater weight of the evidence supported a return to baseline as of October 23, 2017?
7. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 13 by finding Claimant did not seek any medical treatment from October 23, 2017 until February 20, 2018 in direct contravention of her hearing testimony?
8. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 14 by mischaracterizing and/or ignoring Claimant's testimony to find she was able to complete all aspects of her

job, did not take any medication, and did not seek any medical treatment?
9. Did the Hearing Commissioner err as a matter of fact and matter of law in Finding of Facts 15, 18, 19, and 30 by ignoring and/or excluding specific medical evidence and medical expert testimony from Dr. Forrest to find Claimant's March 2018 flare-up was not causally-related to her September 7, 2017 work accident and that Claimant had returned to baseline from before the work accident?
10. Did the Hearing Commissioner err as a matter of fact and matter of law in Finding of Fact 16 by ignoring and/or excluding portions of the medical record and giving greater weight to Dr. Weissglass' opinion?
11. Did the Hearing Commissioner err as a matter of law and fact in Finding of Fact 17 by finding Claimant's March 2018 flare-up was not causally-related to her September 7, 2017 work accident?
12. Did the Hearing Commissioner err as a matter of fact and matter of law in Findings of fact 20 and 34 by giving greater weight to Dr. Weissglass' opinion and not finding Defendants are responsible for payment of Claimant's causally-related treatment from March through May 2018?
13. Did the Hearing Commissioner err as a matter of fact and matter of law in Finding of fact 23 by not finding Claimant is not entitled to TTD for the time she was out of work in April and May 2018?
14. Did the Hearing Commissioner err as a matter of fact and matter of law in Finding of Fact 25 by mischaracterizing Claimant's testimony regarding her daily activities and relying on a photo to find her testimony was inconsistent?
15. Did the Hearing Commissioner err as a matter of fact and matter of law in Finding of Fact 28 by finding the preponderance of the evidence showed an unclear etiology for her back pain?
16. Did the Hearing Commissioner err as a matter of fact and matter of law in Finding of Fact 31 by ignoring the medical evidence and determining what "makes logical sense" as the basis for relying on Dr. Weissglass' opinion as well as by going far beyond the medical evidence presented to make medical determinations that were not posited by any expert?
17. Did the Hearing Commissioner err as a matter of fact and matter of law in Finding of Fact 32 by finding the "overwhelming majority of the evidence" supported Claimant suffering a temporary exacerbation and having no permanent impairment?
18. Did the Hearing Commissioner err as a matter of fact and matter of law in Finding of Fact 33 by finding the preponderance of the evidence supported finding Claimant's non-work activities contributed to a greater degree to her ongoing flare-ups when no such evidence was presented?
19. Did the Hearing Commissioner err as a matter of law by ruling Claimant did not meet her burden under S.C. Code Ann. §§ 42-1-160, 42-15-60, and 42-9-35 for a permanent aggravation of her preexisting back condition that will require ongoing treatment?
20. Did the Hearing Commissioner err as a matter of law by ruling Claimant did not meet her burden under S.C. Code Ann. § 42-9-10 to warrant payment of TTD while Defendants kept her out of work for a work-related injury?
21. Did the Hearing Commissioner err as a matter of law in granting Motions to Quash to Defendants and a Third Party after initially denying said Motion?

In an Appellate Review, the Appellate Panel shall, pursuant to S.C. Code section 42-17-50, review the award, weigh the evidence as presented at the initial hearing, and if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent or inconsistent with those of the Hearing Commissioner.

The Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162 (1992). In this case, the preponderance of evidence in the record supports an affirmation of the Hearing Commissioner's

findings/conclusions.

DISCUSSION OF ISSUES ON APPEAL

Claimant asserts a number of errors, but as discussed in her Brief, those can be consolidated into main issues for appeal: (1) the Commissioner failed to find that she sustained a compensable aggravation of her preexisting back problem; (2) bias/weight of medical opinions; (3) failure to find a permanent aggravation of her back and award of appropriate benefits; (4) failure to allow submission of Dr. Weissglass' deposition; (5) failure to exclude Exhibit 3 (newspaper article and photograph); (6) failure to award TTD; and (7) granting of Defendants' Motion to Quash.

I. We find that the Hearing Commissioner properly found that Claimant sustained an aggravation of her back injury and that those work-related injuries had resolved by October 23, 2017.

Claimant was working as a Master Patrol Officer for the City of North Charleston. On September 7, 2017, she was stopped in her vehicle at a red traffic light when she was rear-ended. The accident involved a fairly minor impact with minimal damage to both cars. Claimant injured her low back and neck.

Regarding previous back problems, Claimant indicated that her back problems originally started in 2006. She ended up having low back surgery at one of the laser surgery places in Florida in 2012. The surgery was at L4-L5. Since that time, she has had intermittent pain and flare-ups. She has also seen a chiropractor regularly for adjustments since that surgery for monthly maintenance. (Hrg Tr. p. 40, line 18 – p. 41, line 9). Claimant admitted that in 2015 she had a significant flare-up for which she treated with Dr. Shailesh Patel, who ordered an MRI scan, performed injections on her low back, gave her medications, and indicated she would require ongoing pain management (including ongoing pain management, diagnostic films, EMG studies, injections, and medications) to manage her chronic back symptoms. (Def. APA #5); (Hrg. Tr. p. 48, lines 11-25; p. 49, lines 1-16). Even after the treatment that she received following the significant flare-up in 2015, she continued receiving chiropractic adjustments every other month and continued having intermittent pain in her back. (Hrg. Tr. p. 41, line 21 – p. 42, line 6). Claimant admitted that she had intermittent back pain with certain activities even before the work accident.

First, Claimant argues that the Commissioner erred in failing to find the work-related accident

caused a compensable aggravation of her back injury. This misapprehends the Commissioner's findings and the facts and posture of the claim. The Defendants admitted the injury to the back as compensable and provided treatment. Finding of Fact #4 acknowledges that Claimant injured her neck and back in the work accident, and Finding of Fact #8 acknowledges that Defendants provided medical benefits for the neck and back injuries.

The real issue in controversy is whether Claimant's work-related aggravation of her back injury resolved by October 23, 2017, and whether her symptoms after that time are causally related to her work accident.

After the work injury in September 2017, Claimant was treated conservatively by CCOH and that she was released to return to full duty work in October 2017. Claimant was released from care and to return to full duty work with no restrictions on October 23, 2017. With regard to the work accident that she sustained on September 7, 2017, Claimant admitted that Dr. Weissglass released her from care and to return to full duty work with no restrictions on October 23, 2017. (Hrg. Tr. p. 42, lines 11-18). Claimant testified at the hearing that she never told Dr. Weissglass that she was back to baseline; she simply told Dr. Weissglass that she was feeling better and that she wanted to go back to full duty work. (Hrg. Tr. p. 42, line 19 – p. 43, line 6). However, upon cross examination, she was shown a copy of her deposition transcript where she answered, "... he asked me about a baseline and I told him I was back to the baseline." When confronted with her deposition testimony which was inconsistent with her hearing testimony, Claimant testified that she did not remember using baseline as a word but she did tell Dr. Weissglass that she was feeling better and could go back to work. She further testified that she stated during her previous deposition that she felt like she could go back to work at full duty and she felt like she was back to her baseline to the point where she could go back to work. She agreed that that was an accurate reflection of her previous testimony. (Hrg. Tr. p. 43, line 7 – p. 44, line 4).

Claimant admitted that all of her neck pain had resolved by October 23, 2017, but stated that she was still having pain in her back with certain activities. Claimant admitted that even before the work-related car accident on September 7, 2017, she was occasionally having back pain depending upon activities. (Hrg.

Tr. p. 47, line 14 – p. 48, line 2).

On October 5, 2017, the medical reports indicate that the neck pain had completely resolved but that she was still complaining of some back pain on the right as opposed to the left side that she had been reporting previously; there was no explanation given as to why the back pain had changed sides. (APA 1, p.13). On October 23, 2017, the medical report indicates that Claimant "states that her neck and low back pain has completely resolved." She was reported as being asymptomatic and back to her baseline. The medical examination revealed that she was totally pain-free with full range of motion. She was released to return to work full duty without restriction with a complete resolution of her low back pain and neck pain. (APA 1, pp. 19-23). Dr. Weissglass completed a Form 14B dated December 11, 2017, which indicated that the Claimant did not have any permanent physical impairment as a result of the work injury, that she did not have any permanent physical restrictions as a result of the injury, and that she did not need any further or future medical treatment as a result of the work injury. (APA 3, p. 51). Additionally, the discharge summary from ATI Physical Therapy dated October 20, 2017, indicates that the Claimant was feeling good, that she was ready to go back to regular duty, and that she was requesting a discharge from care. (APA 4, p. 52). The submitted medical records clearly indicate that the Claimant had returned to her normal baseline by October 23, 2017. Despite a debate over some semantics during the hearing, it is clear that Claimant either told or indicated to the doctor that her symptoms had resolved and that she was back to her normal baseline by October 23, 2017. Further, the greater weight of the evidence indicates that Claimant had returned to her normal baseline by October 23, 2017, following this minor work-related accident.

Claimant admitted that she did not seek any further medical treatment for her back until February 20, 2018, when she saw Dr. Forrest. The intake sheet dated February 13, 2018, indicates that Claimant's symptoms increased about two weeks ago with no new incident or injury. (APA 7, p. 90). She further admitted that that appointment with Dr. Forrest was not an appointment to get medical treatment but was instead an independent medical evaluation that was set up by her attorney. (Hrg. Tr. p. 44, lines 5-20). For over four months after reporting to Dr. Weissglass that she was back to her baseline, Claimant worked full duty with no work restrictions and stated she was able to complete all the aspects of her job. (Hrg. Tr. p. 44,

line 25; p. 45, lines 1-21). Claimant testified that she sought treatment at HealthFirst when her flare-up started again, but there was no testimony as to when that treatment occurred, nor were any medical records submitted from that facility. (Hrg. Tr. p 48). Claimant admitted that she did not take any medication for her back during that period of time, nor did she seek any medical treatment. (Hrg. Tr. p. 45, lines 22-25). Claimant stated she was able to perform all of her job functions while working full duty with no restrictions for the City of North Charleston from October 2017 through March 2018. (Hrg. Tr. p. 73, lines 23-25; p. 74, lines 1-21).

During his deposition testimony, Dr. Forrest agreed that by the end of October 2017, within 6 to 7 weeks of the accident, that Claimant had a complete resolution of her pain and symptoms and went back to work. Dr. Forrest went on to testify that Claimant had an aggravation in September 2017 with the work accident, and that temporary aggravation ended in late October when she returned back to her normal baseline.

Dr. Weissglass detailed his medical treatment of Claimant following the minor car accident on September 7, 2017. He testified that on October 23, 2017, which was 6 to 7 weeks after the motor vehicle accident, that her neck and low back pain had completely resolved, and that her temporary aggravation from the car accident had resolved. Dr. Weissglass testified that he released her to go back to work full duty without restrictions and did not give any impairment rating because she had returned back to her normal baseline that she had prior to the injury. Dr. Weissglass testified that Claimant would have certainly had some degree of impairment from her previous surgery in 2012, but that he did not give any impairment rating for the flare-up in September 2017 because she had returned back to her normal baseline and normal level of functioning.

Every doctor on this claim agreed that the work accident on September 7, 2017, involved a very minor impact with minimal damage. Both Dr. Forrest and Dr. Weissglass agree that the Claimant sustained a temporary aggravation/flare-up which had completely resolved by October 23, 2017. The vast majority of the evidence in the record supports that conclusion. Therefore, the evidence supports that Claimant sustained a compensable work accident on September 7, 2017, that resulted in a temporary aggravation of

her pre-existing low back condition, and that the temporary aggravation had completely resolved by October 23, 2017.

II. We find that the Hearing Commissioner properly found that Claimant's flare-ups after October 23, 2017, were not related to her work accident.

On March 8, 2018, Claimant returned to Dr. Weissglass for a flare-up of her low back pain. She testified that she did not do anything to cause the flare-up and she could not point to anything specific that caused it to happen. (Hrg. Tr. pp. 51-52). The medical records reveal that Claimant was complaining about a flare-up of her low back with pain radiating into the right buttocks, right thigh, and right lower leg; however, Claimant testified that she recalled it being her left leg but admitted that she had no recollection as to which leg it actually was. (Hrg. Tr. p. 51, lines 6-25).

Dr. Weissglass further testified that when Claimant came back to him in March 2018, she was reporting a spontaneous flare-up with no cause. Dr. Weissglass testified that he did not believe that her flare-ups in 2018 were causally related to her work accident in September 2017, but were instead related to her long-standing chronic back problems and were a continuation of her previous flare-ups.

According to Dr. Forrest, in December 2017 Claimant had a flare-up for which she did not seek any medical treatment. Dr. Forrest agreed that the Claimant could not describe an incident or injury and that it just happened. Dr. Forrest explained that she then had another flare-up in February 2018 and a third flare-up in March 2018. Dr. Forrest agreed that there was no discernible difference between the 2012 MRI scan and the 2018 MRI scan after her work injury. He testified that there was no major worsening based upon the MRI scan. He testified that her flare-up in December was mild and resolved fairly quickly. The next flare-up in February 2018 was moderate with no new incident or injury. Finally, the March 2018 flare-up was prominent and required treatment for several weeks. With regard to all of these flare-ups, Dr. Forrest admitted that there were no objective signs of any worsening, and his opinions about flare-ups were based upon her subjective complaints of pain.

Based upon the testimony of the Claimant, the fact that she returned to baseline in October 2017, her ability to return to work full duty and full function for over four months, the submitted medical records, and the deposition testimony of Dr. Weissglass, the Hearing Commissioner properly found that Claimant's

flare-up in March 2018 is not causally related to her work accident of September 7, 2017. It is very clear that claimant has been experiencing intermittent pain, intermittent symptoms, aggravations, and flareups of her low back pain with radiculopathy since her back surgery in 2012 and that some of those symptoms and flareups are due to activities of daily life or happen spontaneously.

The Hearing Commissioner personally reviewed the medical records and the deposition testimony of both Dr. Forrest and Dr. Weissglass. Regarding causation of the Claimant's flare-up in March 2018, he gave greater weight to the testimony of the treating doctor, Dr. Weissglass, as opposed to the one-time IME doctor. As of March 2018, Dr. Weissglass had seen the Claimant for several visits from September 2017 through March 2018, had seen the resolution of her symptoms, and had seen her in follow-up. At that point, Dr. Forrest had only seen her for a one time IME.

When Claimant reported a flare-up in March 2018 and sought medical treatment, she had been back to her pre-injury baseline for over four months, had had a complete resolution of her symptoms for over four months, had returned to full duty activities as a police officer and outside of work, and told every doctor that she saw that she could not explain how the flare-up occurred. After full review of the evidence in this matter, the Appellate Panel gives more weight to the opinion of the treating physician on this issue as well.

All of these factors support that the flare-up in March 2018 is not causally related to her work accident of September 7, 2017, which had completely resolved over four months prior to this subsequent flare-up.

III. The Hearing Commissioner properly found that Claimant was not entitled to temporary compensation.

Claimant sought treatment on her own for a condition that was not work-related with Dr. Forrest in April 2018, received two injections, and was released from care on May 16, 2018. (Hrg. Tr. p. 52, line 20 – p. 53, line 3). During that period of time, Claimant testified that she continued working until April 3, 2018, took annual leave from April 4, 2018, through April 23, 2018, used sick leave on April 24, 2018, through April 25, 2018, and took leave without pay from April 26, 2018 through her last day of employment which was May 17, 2018. Claimant resigned from the City of North Charleston Police Department on May 17, 2018. (Hrg. Tr. p. 53, line 4 – p. 54, line 11). Claimant stated that she was not allowed to return to work by

the City since she was on light duty work restrictions and the City had deemed this flare-up as not being work-related.

Claimant went to work shortly thereafter as a police officer for the Summerville Police Department. (Hrg. Tr. p. 37, lines 9-12; p. 38, lines 13-15). She is working there full duty without restrictions. (Hrg. Tr. p. 38, lines 16-25; p. 39, lines 1-6). Claimant admitted that she was released to return to work full duty on May 16, 2018, which coincidentally happened to be the exact time period where she was quitting her job with the City of North Charleston and going to work for the Town of Summerville. (Hrg. Tr. pp. 57-58).

Regarding her time out of work, Claimant testified that she never wanted to be put on light duty by Dr. Weissglass in March 2018 and that Dr. Weissglass did this so that she could have an MRI completed. Of course, at that point, Claimant had already had an MRI on her own through Dr. Forrest. However, she claims that Dr. Weissglass would not listen to her and put her on light duty work even though she wanted to be working full duty. Claimant admitted under oath that had Dr. Weissglass kept her on full duty work, she would have continued working her normal job as a police officer during that period of time. (Hrg. Tr., pp. 55-57).

Because she was out of work for a condition that was not work-related, because she was out of work under questionable pretenses, and because Claimant admitted that she could have been working full duty that entire time period, Claimant is not entitled to temporary total disability compensation under 42-9-10.

IV. The Hearing Commissioner properly found that Claimant was not entitled to permanent disability.

Neither the medical evidence nor the lay testimony establishes that Claimant sustained any permanent disability as a result of her minor work accident. On October 23, 2017, the medical report indicates that Claimant "states that her neck and low back pain has completely resolved." She was reported as being asymptomatic and back to her baseline. The medical examination revealed that she was totally pain-free with full range of motion. She was released to return to work full duty without restriction with a complete resolution of her low back pain and neck pain. (APA 1, pp. 19-23). Dr. Weissglass of CCOH completed a Form 14B dated December 11, 2017, which indicated that the Claimant did not have any

permanent physical impairment as a result of the work injury, that she did not have any permanent physical restrictions as a result of the injury, and that she did not need any further or future medical treatment as a result of the work injury. (APA 3, p. 51). The deposition testimony of both Dr. Weissglass and Dr. Forrest indicate that claimant's problems had resolved and she had returned to her baseline by October 2017.

Claimant testified that by October 23, 2017, she felt like she could go back to work at full duty and she felt like she was back to her baseline to the point where she could go back to work. (Hrg. Tr. p. 43, line 7 – p. 44, line 4). Claimant admitted that all of her neck pain had resolved by October 23, 2017, but stated that she was still having pain in her back with certain activities. Claimant admitted that even before the work-related car accident on September 7, 2017, she was occasionally having back pain depending upon activities. (Hrg. Tr. p. 47, line 14 – p. 48, line 2).

Based upon the submitted medical evidence, the deposition testimony of Dr. Weissglass and Dr. Forrest, and the testimony of the claimant, her work accident in September 2017 had resolved by October 23, 2017, she had returned to her baseline, and she did not sustain any permanent disability.

Even after the flare-up that was not work-related in March 2018, Claimant was seen for the last time by Dr. Forrest on May 16, 2018. That report indicates that she had had good response to the injections, that her symptoms and pain were 0-3/10. The report indicates that she had returned to the same level of residual symptoms that she had prior to the work-related motor vehicle accident. Dr. Forrest indicated that she had reached maximum medical improvement, that she could return to regular duties, and that no further medical treatment was necessary at that time. He did indicate that she may need further treatment intermittently in the future. (APA 2, pp. 47-48).

Dr. Forrest testified that by May 16, 2018, her symptoms had returned back down to her normal baseline. He agreed that she remained at maximum medical improvement as of that date. Despite finding that Claimant had returned to her baseline in October 2017 and again in May 2016, he testified that Claimant had an additional 6% whole person impairment rating which would equate to an 8% regional lumbar rating. Dr. Forrest testified that one could argue that she was back to baseline and she didn't have any change in her symptoms/condition so she gets no impairment, but he did not believe that way and he did not believe that

was correct. With regard to his impairment rating, he assigned one due to the fact that it was his opinion that Claimant was going to have more frequent flare-ups and that when she had those flare-ups she would need treatment to get her back down to baseline. He admitted under oath that the impairment rating assigned on this claim was based solely upon the fact that it was his opinion that Claimant would have more frequent flare-ups with radicular symptoms that would require medical treatment in the future. Dr. Forrest also testified upon questioning from defense counsel that he performed approximately 215 independent medical evaluations over the past two years and about 80 attorney conferences, and he testified that 100% of those would have been for attorneys representing injured workers.

Dr. Weissglass had a chance to review the medical records from Dr. Forrest and he noted that Dr. Forrest agreed that Claimant had returned to her baseline and was at maximum medical improvement. Dr. Weissglass testified that he is familiar with the AMA Guides and that there is no basis for awarding any degree of permanent impairment for someone who has a temporary aggravation or temporary flare-up and then returns back to their normal baseline. Further, Dr. Weissglass testified that he is not aware of any literature or scientific research that would support a theory that Claimant will have more frequent flare-ups in the future or require more frequent medical treatment just because of her flare-up from the car accident in September 2017. Dr. Weissglass testified that once Claimant had surgery in 2012, her spine was compromised and it would be perfectly normal to continue to have intermittent flare-ups and aggravations in the future regardless of whether or not the work accident had ever occurred. On cross-examination, Dr. Weissglass explained that flare-ups of a pre-existing condition that return to baseline do not warrant any additional impairment; however, if Claimant had not returned to her baseline or she had significant changes on scans or objective evidence, an additional impairment rating would be warranted.

Additionally, the Hearing Commissioner looked to the Fifth Edition AMA Guides, a well-respected learned treatise, which is well within his purview to do to examine the testimony of the experts. The Commissioner determined that according to the Fifth Edition AMA Guides, impairment is assigned by a physician for loss, or loss of use, of a body part. There is no basis in the Guide or in any other medical literature for giving a permanent impairment due to a need for medical treatment. In fact, under our workers'

compensation laws, the ideas of impairment/disability and medical treatment are completely separate. Further, Category 2 of the Guide does not support a rating in this case; Category 2 supports a rating of 5% to 8% for findings compatible with a specific injury (muscle spasm, loss of range of motion, or radiculopathy at the time) or radiculopathy due to herniated disk; there is no indication that the Claimant has any such findings as a result of the work accident on September 7, 2017. If such symptoms exist at this time, they are the same symptoms that existed prior to the work accident according to both Dr. Weissglass and Dr. Forrest, hence the reason both doctors have said Claimant returned to baseline. The Commissioner properly found that there is no evidence which would support that the work accident has caused any further findings or symptoms. For these reasons, he gave the opinion of Dr. Forrest regarding impairment very little weight, and gave greater weight to the testimony of Dr. Weissglass which indicates that there is no additional impairment as a result of the September 7, 2017 car accident which had resolved by October 23, 2017. Upon full review of the evidence and the AMA Guide in this matter, the Appellate Panel also gives greater weight to the testimony of Dr. Weissglass regarding permanent impairment.

The overwhelming majority of the evidence indicates that this aggravation had completely resolved by October 23, 2017, and that Claimant's symptoms have resolved, she was fully functioning as a police officer, and fully functioning with activities of daily living. She had clearly returned to her baseline of symptoms and function that she has experienced since her back surgery in 2012 and before her work accident. Claimant testified that she has been working full duty as a police officer since May 2018, and that she is able to complete all of those work activities. There is simply no evidence to support that the claimant has sustained any permanent disability from her work accident in September 2017 or from her subsequent non-work flare-up in March 2018 because in both instances she returned to her baseline and full function at work.

V. The Hearing Commissioner properly allowed submission of the deposition transcript of Dr. Weissglass.

In response to testimony from Dr. Forrest at his deposition on August 6, 2018, the defendants scheduled the deposition of Dr. Weissglass. The deposition of Dr. Weissglass was noticed on his August 9, 2018, scheduled for August 22, 2018. Claimant's counsel notified the Defendants that he had a conflict with

that time and date. Therefore, to accommodate the scheduling conflict of Claimant's counsel, Defendants moved the deposition to August 23, 2018, at 8:00 AM. The hearing was held in the afternoon on August 23, 2018. Both parties referenced the testimony of Dr. Weissglass. The actual transcript was mailed to the Hearing Commissioner directly by the court reporter on Friday, August 24, 2018, and the administrative assistant for the Hearing Commissioner confirmed receipt of the transcript on Monday, August 27, 2018. The intent of Defendants to submit the deposition of Dr. Weissglass was properly noted on the Form 58 filed by Defendants on August 10, 2018. Had the deposition moved forward as originally scheduled, the transcript would have been submitted at the scheduled hearing. The only reason the transcript was not ready on the date of the hearing is due to the rescheduling of the deposition to accommodate the scheduling conflict of Claimant's counsel. Claimant's counsel was timely and properly notified of the intent of Defendants to submit the deposition, the deposition was properly noticed, and the transcript was properly submitted and considered by the Commissioner.

VI. The Hearing Commissioner properly allowed submission of the newspaper article/picture of Claimant.

At the hearing, Claimant testified about her ongoing back problems. Claimant stated that simple tasks like doing laundry has become more difficult. (Hrg. Tr. p. 37, lines 17-21). She explained how her front loader washing machine requires her to "bend down and go at an angle" to get the laundry out of the washer and put it into the dryer. (Hrg. Tr. p. 37, lines 20-24). She stated it is easier and more comfortable to sit on the floor to pull the laundry out of the washer. (Hrg. Tr. p. 37, lines 24-25; p. 38, line 1). Additionally, Claimant testified that she cannot mow her lawn any longer (Hrg. Tr. p. 60, line 1), because using a push mower to mow her lawn rendered her unable to move for three (3) days. (Hrg. Tr. p. 38, lines 2-3). She said her biggest ordeal is picking up her young child from her crib. (Hrg. Tr. p. 38, lines 3-5). Claimant said she cannot pick her child up out of her crib unless her daughter stands up because Claimant is unable to bend over and physically pick her up if she's laying down in the crib. (Hrg. Tr. p. 38, lines 3-9). Claimant admitted that doing these activities outside of work can cause flare-ups or increase her pain. She further testified that she still has occasional flare-ups that happens with no explanation, sort of like the ones she had in March 2018. She further testified that she cannot do activities like weed eating, edging, or picking up

things, and that she can only utilize shovels, rakes, or similar tools if she has to. (Hrg. Tr. p. 61, lines 10-16).

In response to that testimony, the defendants showed Claimant a newspaper article from the Post and Courier, dated August 7, 2018, which had a picture of Claimant in her Town of Summerville uniform cleaning out ditches and drains with a rake during recent flooding, and the article details her efforts to clean debris from storm drains with a rake to help with the recent flooding. Claimant was asked several questions about the picture and her activities, which she answered.

This piece of evidence was properly admitted by the Hearing Commissioner. This type of evidence is not properly submitted under the Administrative Procedures Act. Further, as there was no way for Defendants to know what Claimant would say during his testimony, the evidence could not have been submitted prior to the hearing. Further, this impeachment evidence is not properly submitted under the APA in any circumstance.

Contrary to the argument made by Claimant, Rule 608 of the Rules of Evidence is not applicable. That section deals with instances of conduct/bad acts used to attack or support a witness' general character for truthfulness or untruthfulness, normally misconduct or criminal acts that did not result in a conviction. This section does not deal with cross-examination of a witness as to specific physical tasks which she claims she cannot do, or can do only with great difficulty. The newspaper article in this case was specific cross-examination of a witness as to her previous testimony, not an attack on her general truthfulness or untruthfulness. The Claimant has also mistakenly argued that the extrinsic evidence rule prohibits the introduction of this article. It does not. Under the extrinsic evidence rule, a cross-examiner may questioning a witness about a collateral matter, but cross-examiner is bound by the witness's answer to matters solely affecting credibility. The cross examiner cannot call another witness to refute answers that the witness gave during cross-examination. In this case, the extrinsic evidence rule means that only the Claimant can be questioned about the article, and it would have been improper for Defendants to call another witness and ask about the article. For these reasons, we find that the Hearing Commissioner properly admitted the article as impeachment evidence.

The issue as to the Motion to Quash was not argued before the Appellate Panel. However, upon full

review of the Order, we find no error in Quashing the Claimant's Subpoena (in response to a Motion filed by CCOH) based upon the fact Claimant was attempting discovery after the close of the record with no motion to leave the record open or submit additional evidence. Further, CCOH did not have information responsive to Claimant's subpoena, and we agree with CCOH that Claimant's subpoena was not timely or proper.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Angela Elmer as Employee/Claimant and City Of North Charleston as Employer and PAI as Carrier, Defendants.
2. That the average weekly wage of Employee at the time of the above-described accident was $1,044.31, and his compensation rate was $696.24.
3. Claimant was working as a Master Patrol Officer for the City of North Charleston. On September 7, 2017, she was stopped in her vehicle at a red traffic light when she was rear-ended. The accident involved a fairly minor impact with minimal damage to both cars. Claimant injured her low back and neck.
4. Claimant indicated that her back problems originally started in 2006. She ended up having low back surgery at one of the laser surgery places in Florida in 2012. The surgery was at L4-L5. Since that time, she has had intermittent pain and flare-ups. She has also seen a chiropractor regularly for adjustments since that surgery for monthly maintenance.
5. Claimant admitted that in 2015 she had a significant flare-up for which she treated with Dr. Shailesh Patel, who ordered an MRI scan, performed injections on her low back, gave her medications, and indicated she would require ongoing pain management parentheses including ongoing pain management, diagnostic films, EMG studies, injections, and medications) to manage her chronic back symptoms.

6. Even after the treatment that she received following the significant flare-up in 2015, she continued receiving chiropractic adjustments every other month and continued having intermittent pain in her back. Claimant admitted that she had intermittent back pain with certain activities even before the work accident.

7. Defendants provided medical treatment to Claimant for her nack and back following her work accident on September 7, 2017. She was treated conservatively by CCOH and that she was released to return to full duty work in October 2017. Claimant was released from care and to return to full duty work with no restrictions on October 23, 2017.

8. Claimant testified at the hearing that she never told Dr. Weissglass that she was back to baseline; she simply told Dr. Weissglass that she was feeling better and that she wanted to go back to full duty work. However, she admitted that she told Dr. Weissglass that she had returned to baseline in her deposition. When confronted with her deposition testimony which was inconsistent with her hearing testimony, Claimant testified that she did not remember using baseline as a word but she did tell Dr. Weissglass that she was feeling better and could go back to work. She further testified that she stated during her previous deposition that she felt like she could go back to work at full duty and she felt like she was back to her baseline to the point where she could go back to work.

9. The submitted medical records clearly indicate that the Claimant had returned to her normal baseline by October 23, 2017. Despite a debate over some semantics during the hearing, it is clear that Claimant either told or indicated to the doctor that her symptoms had resolved and that she was back to her normal baseline by October 23, 2017. Further, the greater weight of the evidence indicates that Claimant had returned to her normal baseline by October 23, 2017, following this minor work-related accident.

10. Claimant admitted that all of her neck pain had resolved by October 23, 2017.

11. Claimant testified that medical treatment was provided to her through the City of North Charleston from the date of her accident through October 23, 2017. She further admitted that all of those medical bills have been paid and that she had not missed any time from work from the date of the accident

through October 23, 2017.

12. Claimant did not seek any further medical treatment for her back until February 20, 2018, when she saw Dr. Forrest for an independent medical evaluation. There were no medical records submitted that indicate that Claimant sought medical treatment between October 23, 2017, and February 20, 2018.

13. From October 23, 2017, through February 20, 2018, which is a period of over four months, Claimant worked full duty with no work restrictions and she was able to complete all the aspects of her job. Claimant admitted that she did not take any medication for her back during that period of time, nor did she seek any medical treatment.

14. Every doctor on this claim agreed that the work accident on September 7, 2017, involved a very minor impact with minimal damage. Both Dr. Forrest and Dr. Weissglass agree that the Claimant sustained a temporary aggravation/flare-up which had completely resolved by October 23, 2017. The vast majority of the evidence in the record supports that conclusion. We find that the Claimant sustained a compensable work accident on September 7, 2017, that resulted in a temporary aggravation of her pre-existing low back condition, and that the temporary aggravation had completely resolved by October 23, 2017.

15. On March 8, 2018, Claimant returned to Dr. Weissglass for a flare-up of her low back pain. She testified that she did not do anything to cause the flare-up and she could not point to anything specific that caused it to happen. We give greater weight to the testimony of Dr. Weissglass on the issue of causal relationship of the March 2018 flare-up to the work accident in September 2017. Dr. Weissglass has had an opportunity to treat the Claimant since her work accident and see her several times in follow-up, and we give greater weight to his opinion than the independent medical evaluation and opinions of Dr. Forrest.

16. Based upon the testimony of the Claimant, the fact that she returned to baseline in October 2017, her ability to return to work full duty and full function for over four months, the submitted medical records, and the deposition of Dr. Weissglass, we find that the Claimant's flare-up in March 2018 is

not causally related to her work accident of September 7, 2017.

17. We have personally reviewed the medical records and the deposition testimony of both Dr. Forrest and Dr. Weissglass. Regarding causation of the Claimant' s flare-up in March 2018, we give greater weight to the testimony of Dr. Weissglass. As of March 2018, Dr. Weissglass had seen the Claimant for several visits from September 2017 through March 2018, had seen the resolution of her symptoms, and had seen her in follow-up. Dr. Weissglass had the benefit and the perspective of a treating physician. At that point, Dr. Forrest had only seen her for a one time IME.

18. When Claimant reported a flare-up in March 2018 and sought medical treatment, she had been back to her pre-injury baseline for over four months, had had a complete resolution of her symptoms for over four months, had returned to full duty activities as a police officer and outside of work, and told every doctor that she saw that she could not explain how the flare-up occurred. All of these factors support that the flare-up in March 2018 is not causally related to her work accident of September 7, 2017, which had completely resolved over four months prior to this subsequent flare-up.

19. Claimant sought treatment on her own through Dr. Forrest after the March 2018 flare-up had been denied as being compensable by the City. Based upon our determination that the March 2018 flare-up is not causally related to the original work injury on September 7, 2017, Defendants are not responsible for any medical treatment that the Claimant sought on her own for those issues, including treatment with Dr. Leonard Forrest, the 2018 MRI scan, her chiropractic treatment, and her visit with HealthFirst.

20. Claimant testified that she continued working until April 3, 2018, took annual leave from April 4, 2018, through April 23, 2018, used sick leave on April 24, 2018, through April 25, 2018, and took leave without pay from April 26, 2018, through her last day of employment which was May 17, 2018. Claimant resigned from the City of North Charleston Police Department on May 17, 2018.

21. Claimant went to work shortly thereafter as a police officer for the Summerville Police Department. She has been working there full duty without restrictions ever since.

22. Claimant requested payment of temporary total disability compensation from April 26, 2018, through

May 17, 2018. We find the Claimant is not entitled to temporary total disability compensation for several reasons. First, we find that the unexplained flare-up in March 2018 was not causally related to the work accident in September 2017 as fully detailed above. Second, Claimant testified under oath that she could have been working during that period of time. Third, it would be disingenuous of the Claimant to suggest that she was unable to work light duty for North Charleston from April 26, 2018, through May 17, 2018, but was then able to turn around at work full duty for Summerville immediately thereafter. Finally, we do not believe that Claimant met the burden of proving that she was entitled to temporary total disability compensation even if she had been able to prove that her flare-up March 2018 was causally related.

23. Claimant testified at length describing how the work accident and back problems have affected her life. Claimant stated that simple tasks like doing laundry, bending over, cutting grass, and lifting her baby from a crib are all uncomfortable and cause increases in her pain and temporary flare-ups. She said her biggest ordeal is picking up her young child from her crib. Claimant admitted that doing these activities outside of work can cause flare-ups or increase her pain. She further testified that she still has occasional flare-ups that happens with no explanation, sort of like the ones she had in March 2018.

24. Despite the several difficulties Claimant testified to regarding yard work and manual labor, Claimant was pictured in the Post and Courier on August 7, 2018, clearing out storm drains with a rake. These activities and her ability to work full duty as a police officer are somewhat inconsistent with her testimony regarding difficulty with certain activities.

25. Claimant testified that she has been working full duty as a police officer since May 2018, and that she is able to complete all of those work activities.

26. Based upon the greater weight of the medical evidence and the deposition testimony of Dr. Forrest and Dr. Weissglass, there is no major difference or significant worsening in any of the MRI scans from 2012 to 2015 to 2018.

27. Based upon the preponderance of the evidence submitted in this case, including the medical records,

the testimony of the Claimant, and the testimony of the two doctors, it is clear that Claimant has experienced intermittent pain, intermittent symptoms, aggravations, and flare-ups of her low back pain with radiculopathy since her back surgery in 2012. It is unclear as to exactly what causes the flare-ups. According to the evidence, some of the symptoms and flare-ups are due to activities of daily life, happen spontaneously, or are work-related.

28. Dr. Weissglass indicated on the Form 14B that the Claimant did not have any permanent impairment as a result of this temporary work-related aggravation. He further indicated in his deposition testimony that the Claimant clearly had impairment to her back as a result of her of her surgery in 2012, but that she had returned to her baseline of symptoms and function as of October 23, 2017, from the temporary aggravation following the work accident on September 7, 2017. As a result, he indicated that she had sustained no additional or new permanent impairment as a result of the temporary work-related aggravation.

29. Dr. Forrest agreed that Claimant had returned to her baseline in October 2017, but indicated that Claimant had an additional impairment of 6% whole person or 8% regional lumbar spine because he thought she would have more frequent flare-ups in the future. Dr. Forrest agreed that Claimant had returned to her baseline in October 2017 and again on May 16, 2018, and that her symptoms and functions at this time are exactly the same as her previous baseline before the work-related aggravation on September 7, 2017.

30. With regard to the testimony concerning impairment related to the accident on September 7, 2017, again we give greater weight to the testimony of Dr. Weissglass. First, Dr. Weissglass has much more experience seeing the Claimant over a period of time. Second, his testimony makes more logical sense. Dr. Forrest has testified that the Claimant is entitled to permanent impairment because she might need medical treatment in the future. This is not a legitimate basis upon which to base permanent impairment. According to the Fifth Edition AMA Guides, impairment is assigned by a physician for loss, or loss of use, of a body part. There is no basis in the Guide or in any other medical literature for giving a permanent impairment due to a need for medical treatment. In fact, under our

workers' compensation laws, the ideas of impairment/disability and medical treatment are completely separate. Further, Category 2 of the Guide does not support a rating in this case; Category 2 supports a rating of 5% to 8% for findings compatible with a specific injury (muscle spasm, loss of range of motion, or radiculopathy at the time) or radiculopathy due to herniated disk; there is no indication that the Claimant has any such findings as a result of the work accident on September 7, 2017. If such symptoms exist at this time, they are the same symptoms that existed prior to the work accident according to both Dr. Weissglass and Dr. Forrest, hence the reason both doctors have said Claimant returned to baseline. There is no evidence which would support that the work accident has caused any further findings or symptoms. For these reasons, we give the opinion of Dr. Forrest regarding impairment very little weight. I give greater weight to the testimony of Dr. Weissglass which indicates that there is no additional impairment as a result of the September 7, 2017 car accident which had resolved by October 23, 2017. The testimony of Dr. Weissglass is relied upon in making this finding.

31. After consideration of the Claimant' s testimony, the medical records, and the testimony of Dr. Forrest and Dr. Weissglass, we find that Claimant has sustained no permanent disability as a result of her work accident on September 7, 2017, which caused a temporary aggravation of her pre-existing back condition. The overwhelming majority of the evidence indicates that this aggravation had completely resolved by October 23, 2017, and that Claimant' s symptoms have resolved, she was fully functioning as a police officer, and fully functioning with activities of daily living. She had clearly returned to her baseline of symptoms and function that she has experienced since her back surgery in 2012 and before her work accident. As a result, we find that she has sustained no permanent disability as a result of her work accident on September 7, 2017.

32. Based upon the preponderance of evidence submitted in this matter, we find that Claimant's non-work activities contribute to a greater degree to ongoing flare-ups than any of her work activities. Based upon consideration of all the evidence in the record, we do not believe that Claimant has proven that her flare-ups after October 23, 2017, are related to the temporary aggravation of her pre-existing

condition that occurred due to work accident on September 7, 2017, which had completely resolved within 6 to 7 weeks.

33. Regarding future or ongoing medical treatment, we do not find the Claimant entitled to any medical treatment after October 23, 2017. Again, we give greater weight to the testimony of Dr. Weissglass regarding the lack of any scientific or medical research which would support the theory of Dr. Forrest that the Claimant will require more frequent medical treatment in the future due to the one temporary work aggravation as opposed to all of her other previous or subsequent aggravations. The report of Dr. Forrest dated May 16, 2018, specifically states that no further treatment is needed at this time and no follow-up needs to be scheduled at this time and that Claimant may need further treatment intermittently as a result of the work injury. That report is inconsistent with the later deposition of Dr. Forrest; for those reasons, we give his testimony very little weight on this specific issue. Further, the medical reports submitted failed to prove that any of her aggravations after October 23, 2017, are causally related to the work accident, and she has further failed to prove that she is entitled to any additional or ongoing medical treatment after October 23, 2017, which is the date upon which her symptoms resolved and she returned back to her normal baseline after the temporary work aggravation.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant sustained a temporary aggravation of her pre-existing back and neck condition on September 7, 2017.

3. Under § 42-15-60, Claimant was entitled to medical treatment for the temporary aggravation of her pre-existing back and neck condition that was sustained on September 7, 2017, until she reached

maximum medical improvement. I find that Claimant reached maximum medical improvement when she returned to her baseline with a resolution of her symptoms on October 23, 2017. Defendants are not responsible for any medical treatment after October 23, 2017.

4. Under § 42-9-10, Claimant is not entitled to temporary total disability compensation from April 26, 2018, through May 17, 2018. She missed this time from work as a result of an unexplained flare-up in March 2018. I find that the unexplained flare-up in March 2018 is not causally related to her work accident in September 2017 that had completely resolved with a return to baseline by the Claimant on October 23, 2017. Further, the facts would not support that Claimant was entitled to temporary total disability compensation during this period of time as specifically set forth in the Findings above.

5. Under § 42-9-30, Claimant has not sustained any additional permanent disability as a result of her temporary aggravation due to her work accident on September 7, 2017, which resolved in October 23, 2017.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that Claimant sustained a compensable neck injury and aggravation of her pre-existing back condition in a work-related motor vehicle accident on September 7, 2017. Defendants provided medical treatment to the Claimant for that accident, and Claimant did not miss any compensable time from work as a result of that accident. Claimant had a resolution of her symptoms and returned her normal, free injury baseline as of October 23, 2017.

IT IS FURTHER ORDERED that Claimant is not entitled to any temporary total disability compensation as a result of her work related accident on September 7, 2017. Claimant is not entitled to any medical treatment from her work-related accident after October 23, 2017. Claimant has sustained no permanent disability as a result of her work-related accident on September 7, 2017. Claimant is not entitled to any other benefits under the South Carolina Workers' Compensation Act

No hearing costs are assessed in this instance.

AND IT IS SO ORDERED.

AFFIRMED

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

R. Michael Campbell, II, Commissioner

Gene McCaskill, Commissioner

T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Valerie Deller on April 12, 2019