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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION APPELLATE PANEL
Aisha Taylor, Commissioner

Appellate Case No. 2021-001065
W.C.C. 1507304

Kenneth L. Barr, Employee,.....Petitioner,

v.

Darlington County School District, Employer, and
SC School Boards Insurance Trust, Carrier,.....Respondents.

**RETURN TO PETITION
FOR WRIT OF CERTIORARI**

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Table of Contents

Table of Authorities.....i

Counter-Statement of the Questions Presented for Review..... 1

Counter-Statement of the Case..... 1

Arguments.....3

 I. The Workers’ Compensation Commission’s findings and
 conclusions are the law of the case, rendering the Petition for
 Writ of Certiorari moot.....3

 A. S.C. Code Ann. § 42-1-160.....4

 B. S.C. Code Ann. § 42-11-110.....5

 C. S.C. Code Ann. § 42-1-172.....6

 II. The Workers’ Compensation Commission’s unanimous finding
 and conclusion that Barr’s headaches were not caused by his
 employment is supported by substantial evidence and the applicable
 law and was properly affirmed by the Court of Appeals.....7

 III. Barr’s allegations regarding the admissibility of documentary evidence
 are without merit.....13

 A. Dr. Eagerton’s Report was Properly Admitted into Evidence.....13

 B. Barr’s right to Due Process was not violated.....15

 IV. Barr’s allegations regarding the propriety of Dr. Pritchard’s neurological
 evaluation are untimely, moot, and otherwise without merit.....16

V. Both the Hearing Commissioner and the Commission’s Appellate
Panel made detailed findings of fact and conclusions of law.....23

Conclusion.....25

Table of Authorities

Cases

<u>Aristizabal V. I.J. Woodside,</u> 268 S.C. 366, 234 S.E.2d 21 (1977).....	24
<u>Ballenger v. Southern Worsted Corporation,</u> 209 S.C. 463, 40 S.E.2d 681 (1946).....	12
<u>Bass v. Isochem,</u> 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005).....	5
<u>Bryson v. Bryson,</u> 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008).....	6
<u>Buckner v. Preferred Mut. Ins. Co.,</u> 255 S.C. 159,161, 177 S.E.2d 544, 544 (1970).....	5, 6, 7, 9
<u>Cantrell v. Carruth,</u> 250 S.C. 415, 158 S.E.2d 208 (1967).....	18
<u>City of Spartanburg v. Parris,</u> 251 S.C. 187, 161 S.E.2d 228 (1968).....	15
<u>Creech v. South Carolina Wildlife and Marine Resources Dep't,</u> 328 S.C. 24, 491 S.E.2d 571 (1997).....	19
<u>Gadson v. Mikasa Corp.,</u> 368 S.C. 214, 628 S.E.2d 262 (Ct. App. 2006).....	14, 16
<u>Geddings v. Geddings,</u> 319 S.C. 213, 460 S.E.2d. 367 (1995).....	18
<u>Glover v. Columbia Hospital,</u> 236 S.C. 410, 114 S.E.2d 565 (1960).....	10
<u>Hall v. Desert Aire, Inc.,</u> 376 S.C. 338, 348, 656 S.E.2d 753, 758 (Ct. App. 2007).....	14

<u>Herndon v. Morgan Mills,</u> 246 S.C. 201, 143 S.E.2d 376 (1965).....	9
<u>Hill v. Jones,</u> 255 S.C. 219, 178 S.E.2d 142 (1970).....	24
<u>Hines v. Pacific Mills,</u> 214 S.C. 125, 51 S.E.2d 383 (1949).....	10
<u>Hofer v. St. Clair,</u> 298 S.C. 503, 381 S.E.2d 736 (1989).....	18, 23
<u>Kennedy v. Williamsburg Co.,</u> 242 S.C. 477, 131 S.E.2d 512 (1963).....	23
<u>Lark v. Bi-Lo, Inc.,</u> 375 S.C. 130, 276 S.E.2d 304 (1981).....	9, 23
<u>Lindsey v. City of Greenville,</u> 247 S.C. 232, 146 S.E.2d 863 (1966).....	20
<u>Minton v. Pickens,</u> 24 S.C. 592 (1886).....	18
<u>ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche,</u> 327 S.C. 238, 489 S.E.2d 470 (1997).....	5, 6, 9
<u>Moore v. City of Easley,</u> 322 S.C. 455, 472 S.E.2d 626 (1996).....	12
<u>Nettles v. Spartanburg School Dist. #7,</u> 341 S.C. 580, 535 S.E.2d 146 (Ct. App. 2000).....	22
<u>Parr v. Gaines,</u> 309 S.C. 477, 424 S.E.2d 515 (Ct. App. 1992).....	18, 20
<u>Poston v. Southeastern Const. Co.,</u> 208 S.C. 35, 36 S.E.2d 858 (1946).....	12
<u>Richardson v. Perales,</u> 402 U.S. 389, 91 S.Ct. 1420 (1971).....	16

<u>Rodney v. Michelin Tire Corp.,</u> 320 S.C. 515, 466 S.E.2d 357 (1996).....	12
<u>Smith v. Phillips,</u> 318 S.C. 453, 458 S.E.2d 427 (1995).....	21
<u>Smith v. Southern Builders,</u> 202 S.C 88, 24 S.E.2d 109 (1943).....	10
<u>Southern Region Industrial Realty, Inc. v. Timmerman,</u> 285 S.C. 142, 328 S.E.2d 128 (Ct. App. 1985).....	19
<u>State v. Floyd,</u> 295 S.C. 518, 369 S.E.2d 842 (1988).....	19
<u>State v. Green,</u> 423 S.C. 263, 814 S.E.2d 496 (2018).....	14
<u>State v. Simpson,</u> 325 S.C. 37, 479 S.E.2d 57 (1996), <i>cert. denied</i> , 117 S.Ct. 2460, 138 L.Ed. 2d 217 (1997).....	19
<u>State v. Torrence,</u> 305 S.C. 45, 406 S.E.2d 315 (1991).....	19
<u>Walsh v. U.S. Rubber Co.,</u> 238 S.C. 411, 120 S.E.2d 685 (1961).....	10
<u>Wayne Smith Const. Co., Inc. v. Wolman, Duberstein, & Thompson,</u> 294 S.C. 140, 363 S.E.2d 115 (Ct. App. 1987).....	18
<u>Wilder Corp. v. Wilke,</u> 330 S.C. 71, 497 S.E.2d 731 (1998).....	21, 22
<u>Wessinger v. Duncan,</u> 113 S.C. 205, 102 S.E. 6 (1920).....	18

White v. Wilbanks,

297 S.C. 225, 379 S.E.2d 298 (Ct. App. 1989), *rev'd on other grounds*,
301 S.C. 560, 393 S.E.2d 182 (1990).....19

Wright v. Craft,

372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006).....5, 6

Statutes

S.C. Code Ann. § 1-23-330.....15, 18
S.C. Code Ann. § 42-1-160.....1, 4, 5, 6, 7, 12, 25
S.C. Code Ann. § 42-1-172.....1, 4, 6, 7, 12, 25
S.C. Code Ann. § 42-3-150.....15, 16
S.C. Code Ann. § 42-3-160.....15
S.C. Code Ann. § 42-11-10.....1, 5, 6, 7, 12, 25
S.C. Code Ann. § 42-15-80.....20
S.C. Code Ann. § 42-15-95.....20, 21, 22

Regulations

S.C. Code Reg. 67-212.....20
S.C. Code Reg. 67-214.....15, 16
S.C. Code Reg. 67-215.....22
S.C. Code Reg. 67-611.....15, 16
S.C. Code Reg. 67-612.....14, 15, 16, 17, 18, 20, 23 25
S.C. Code Reg. 67-613.....20

Court Rules

Canon 3, C.J.C., Rule 50, S.C.A.C.R.....23, 24

Other Authorities

75 AM. JUR.2d Trial § 426 at 613 (1991).....19

Toal, *et al.*, APPELLATE PRACTICE IN SOUTH CAROLINA (2nd Ed. 2002).....21

Counter-Statement of the Questions Presented for Review

- I. Are the Workers' Compensation Commission's findings and conclusions that Barr's claim does not meet the requirements of S.C. Code Ann. §§ 42-1-160, 42-11-10, or 42-1-172 the law of the case, thus rendering the Petition for Writ of Certiorari moot?
- II. Did the Court of Appeals properly affirm the Workers' Compensation Commission's unanimous finding and conclusion that Barr's headaches were not caused by his employment based on substantial evidence in the record and the applicable law?
- III. Did the Court of Appeals properly conclude that Barr's allegations regarding the admissibility of documentary evidence are without merit?
- IV. Did the Court of Appeals properly conclude that Barr's allegations regarding the propriety of Dr. Pritchard's neurological evaluation were not preserved for appeal?
- V. Did the Court of Appeals properly conclude that the Workers' Compensation Commission made detailed findings of fact and conclusions of law?

Counter-Statement of the Case

The Petitioner, Kenneth Barr, alleges that he sustained undefined injuries on May 21, 2015, involving his "Head/Brain," including "Encephalopathy, Brain (headaches, memory, fatigue, confusion), neurological/central nervous system." (R. p.91). The Respondents, the Darlington Count School District and the South Carolina School Boards Insurance Trust, deny Barr sustained any injury by accident, repetitive trauma, or occupational disease arising out of or in the course of his employment. (R. p.96).

A hearing was noticed for February 24, 2016, before Commissioner T. Scott Beck. (R. p.11). Prior to the hearing, the Respondents scheduled Barr for an evaluation by neurologist Dr.

Paul Pritchard, which Barr refused. (R. pp.213—214).¹ After a motion to compel was filed, Barr submitted to the evaluation on February 2, 2016. (R. pp.208—210; p.403). At a pre-hearing conference with Commissioner Beck on February 24, 2016, Barr requested that he be allowed to depose Dr. Pritchard. Commissioner Beck granted this request and rescheduled the hearing for April 20, 2016. Dr. Pritchard was deposed on March 3, 2016. (R. p.218; pp.1073—1178). Barr then withdrew his Form 50 (hearing request), and Commissioner Beck cancelled the hearing.²

After a new hearing request was filed by Barr, a merits hearing was scheduled for August 31, 2016, before Commissioner R. Michael Campbell, II, who received 498 pages of documentary evidence, as well as the deposition testimony of Dr. Paul Pritchard, Dr. Roland

¹ The Respondents also scheduled a neuropsychological evaluation for Barr with Dr. Mark Wagner, the director of Neuropsychological Services and Professor of Neurology at the Medical University of South Carolina, after Barr's personal physician recommended the same. (R. p.111). Barr again refused and the Respondents filed a Motion to Compel on November 5, 2016. (R. p.141; pp.97—100). This Motion was granted by Commissioner Beck by Order dated November 23, 2015. (R. p.5). Immediately after Commissioner Beck ordered Barr to submit to the neuropsychological evaluation at MUSC, Barr filed a Motion and Complaint for Writ of Mandamus and Writ of Prohibition in the Darlington County Court of Common Pleas. (R. pp.1476—1477; pp.113—131). Without any notice to the Respondents, Judge Paul Burch issued a Temporary Restraining Order on December 11, 2015, prohibiting the evaluation by Dr. Wagner. The Commission then engaged an attorney to negotiate directly with Barr's attorneys and, as a result, Commissioner Beck issued an Order dated December 23, 2015, vacating his previous Order to Compel, and Barr withdrew his Mandamus Petition. (R. p.1480, pp.10—11; p.12).

² During this time, the Respondents learned that Barr – *who went so far as to obtain a TRO in an effort to avoid submitting to neuropsychological testing at the Respondents' expense* – had actually undergone neuropsychological testing at his own expense --- and the Respondents endeavored to obtain these records; however, both Barr and his neuropsychologist (Dr. Rainwater) refused to provide them. The Respondents were forced to file a third Motion to Compel, this time for the release of Dr. Rainwater's records, which was granted by Commissioner Avery B. Wilkerson on May 2, 2016. (R. pp.262—265).

Skinner, Dr. Nicholas Lind, Dr. Marty White, and Dr Joseph Healy³ (R. pp.1252—1399), in addition to live testimony from Barr and a former pharmacist hired by Barr (Robert Bennett). After weighing all of the evidence in the record, Commissioner Campbell issued his Decision and Order in September 2017, denying Barr’s claims in their entirety. (R. pp.13—60).

Barr sought review of Commissioner Campbell’s Decision and Order by Form 30 dated October 2, 2017, alleging 29 exceptions. (R. pp.789--799). However, those exceptions were largely abandoned by Barr in his brief to the Commission’s Appellate Panel, including his claims for encephalopathy, brain damage, memory loss, fatigue, confusion, his claim for injuries to the “neurological/central nervous system,” his claims of an occupational disease, and his claims for medical and compensation benefits. (R. pp.800—849). In his revised arguments to the Appellate Panel, Barr alleged only that he is entitled to a finding that his headaches were caused by his employment. (R. p.811, ll.16—19). After recognizing Barr’s abandonment of the majority of his claims, including his claim for physical brain damage, and occupational disease claims, as well as his claim for medical and compensation benefits, the Appellate Panel entered the Commission’s Final Decision and Order on June 5, 2018, with its own findings of fact and conclusions of law denying the claim, including the headache allegations, in their entirety. (R. pp.61—90). The Court of Appeals affirmed by unpublished decision on August 25, 2021.

Arguments

I. The Workers’ Compensation Commission’s findings and conclusions are the law of the case, rendering the Petition for Writ of Certiorari moot.

A. S.C. Code Ann. § 42-1-160

³ The record was left open for the deposition of Dr. Joseph Healy, whom Barr had seen on the eve of the hearing, and this deposition was taken on September 27, 2016, and thereafter submitted into evidence. (R. pp.1400—1447).

Barr's Forms 50 alleges that he was injured as the result of an "accident" on May 21, 2015. (R. p.94, p.266). However, the Hearing Commissioner found that "the only significance of the May 21, 2015, date is that Dr. White evaluated [Barr] and issued a work excuse on this date." (R. p.51; p.79). The Hearing Commissioner further concluded that Barr's claim did not meet the statutory requirements of proving an injury by "accident" under S.C. Code Ann. § 42-1-160 because (1) Barr failed to prove that there was any event or condition on May 21, 2015, that caused his alleged injuries and (2)

"[m]ore importantly, [Barr] alleges that his condition was gradual in onset and due to repeated alleged exposures over time; therefore, his alleged injuries cannot be considered injuries by 'accident' pursuant to the plain terms of S.C. Code Ann. § 42-1-160(F)." ⁴ (R. p.45; p.86).

Barr did not raise any exception to this finding of fact or to this conclusion of law in his brief to the Commission's Appellate Panel (which affirmed) or in his brief to the Court of Appeals. In fact, neither brief even mentions the operative statute, S.C. Code Ann. § 42-1-160. Therefore, the Commission's unanimous conclusion that Barr's claim, specifically including "his complaints of headaches," does not meet the requirements of S.C. Code Ann. § 42-1-160 is the law of the case and cannot be disturbed on appeal.⁵ Regardless of any procedural or evidentiary

⁴ According to S.C. Code Ann. § 42-1-160(F), the "word 'accident' as used in this title must not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously, or at frequent intervals in the course of such employment, over extended periods of time. Any injury or disease attributable to such causes must be compensable only if culminating in a compensable repetitive trauma injury pursuant to Section 42-1-172 or an occupational disease pursuant to the provisions of Chapter 11 of this title."

⁵ Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006); ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 489 S.E.2d 470 (1997); Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970).

argument Barr now makes, the fact remains that his headaches are not compensable under S.C. Code Ann. § 42-1-160 as a matter of law.

A. S.C. Code Ann. § 42-11-10

Barr's Forms 50 raise an alternative claim that his alleged injuries were caused by an "occupational disease" under S.C. Code Ann. § 42-11-10; however, he failed to specify any "disease" from which he claims to suffer. (R. p.94, p.266). As a result of this failure, and further based upon the records and opinions of Dr. Healy, Dr. Lind, Dr. Waid, Dr. Pritchard, and Dr. Wagner, the Hearing Commissioner found that "the greater weight of the evidence...indicates that [Barr] does not suffer from any disease." (R. p.46). Barr did not appeal this finding to the Appellate Panel, nor did he mention the Appellate Panel's final finding in this regard in his Brief to the Court of Appeals. (R. p.87).

The occupational disease statute, in addition to requiring proof of an actual disease, specifically requires that such disease "result directly and naturally from exposure...to hazards peculiar to the particular employment." Here, the Hearing Commissioner specifically found and concluded that "the conditions for which [Barr] seeks benefits do not 'result directly and naturally from exposure... to the hazards peculiar to the employment'" and are not compensable under S.C. Code Ann. § 42-11-10. (R. p.46). Like the concomitant finding, Barr did not appeal this legal conclusion to the Appellate Panel, nor did he mention the Appellate Panel's final conclusion in this regard in his brief to the Court of Appeals. In fact, his brief to the Court of Appeals makes no mention of S.C. Code Ann. § 42-11-10 whatsoever.

Because neither Barr's brief to the Appellate Panel, nor his brief to the Court of Appeals, makes any argument with respect to any occupational disease statute, or the Commission's findings of fact or rulings of law denying his claim pursuant to S.C. Code Ann. § 42-11-10, the

Commission's findings and conclusions regarding Barr's failure of proof under that statute is the law of the case.⁶ The Commission specifically determined that "his alleged headaches...do not qualify as an 'occupational disease.'" Therefore, regardless of any procedural or evidentiary argument Barr now raises on appeal, his headaches are not compensable under S.C. Code Ann. § 42-11-10 as a matter of law, as it is well-settled that "[a]n issue is deemed abandoned and will not be considered on appeal" even "if the argument is raised in a brief but not supported by authority." Bryson v. Bryson, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008).

B. S.C. Code Ann. § 42-1-172

There are only 3 ways for an alleged injury to be compensable under the South Carolina Workers' Compensation Act: (1) proof of an injury by accident under S.C. Code Ann. § 42-1-160, (2) proof of an occupational disease under S.C. Code Ann. § 42-11-10, or (3) proof of a repetitive trauma injury under S.C. Code Ann. § 42-1-172. Barr failed to prove that any of his alleged injuries, including his claims of headaches, were caused by an "accident" under S.C. Code Ann. § 42-1-160 or "occupational disease" under S.C. Code Ann. § 42-11-10 and his failure of proof under these statutes is the law of the case. Therefore, the only way Barr could conceivably be entitled to benefits under the Workers' Compensation Act is to prove the requirements of § 42-1-172, which include not only proof of "repetitive traumatic events," but also proof of a "direct causal relationship between the conditions under which the work is performed and the injury."

Here, the Hearing Commissioner found and concluded that Barr failed to meet these requirements of S.C. Code Ann. § 42-1-172 because he had (1) failed to present "credible

⁶ See Wright v. Craft, ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, and Buckner v. Preferred Mut. Ins. Co., *supra* footnote 5.

evidence of a ‘direct causal relationship’ between [his] work condition and his alleged injuries” and (2) his “alleged workplace exposures were neither repetitive, nor traumatic.” (R. p.58). On appeal to the Appellate Panel, Barr made no argument that this finding or conclusion were in error, and the Hearing Commissioner was affirmed. Similarly, Barr’s brief to the Court of Appeals did not even mention S.C. Code Ann. § 42-1-172. As a result, the Commission’s unanimous determination that Barr’s headaches do not qualify as a compensable repetitive trauma injury under S.C. Code Ann. § 42-1-172 is the law of the case.

Therefore, the Commission’s findings and conclusions denying the Barr’s accident, occupational disease, and repetitive trauma claims cannot be disturbed on appeal.⁷ While Barr maintains a vague argument that his headaches are related to his employment, it matters not if he has not and cannot satisfy his statutory burdens under S.C. Code Ann. §§ 42-1-160, 42-11-10, or 42-1-172 as a matter of law. Therefore, his Petition for Writ of Certiorari is moot.

II. The Workers’ Compensation Commission’s unanimous finding and conclusion that Barr’s headaches were not caused by his employment is supported by substantial evidence and the applicable law and was properly affirmed by the Court of Appeals.

Barr’s personal neurologist, Dr. Roland Skinner, first evaluated Barr for complaints of headaches in September 2010. Dr. Skinner testified to a reasonable degree of medical certainty that Barr’s headaches are tension-type headaches complicated by analgesic rebound and anxiety, which he did not believe were related in any way to any alleged workplace exposure. (R. pp.1003—1004).⁸ In addition, Dr. Skinner testified that at no time during his treatment did Barr

⁷ Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159,161, 177 S.E.2d 544, 544 (1970) (an unchallenged ruling, "right or wrong, is the law of this case and requires affirmance.").

⁸ Barr’s Petition asserts that “[t]here is not one medical opinion contained in the Record as to the cause of his chronic headache condition other than the opinions of Dr. White and Dr. Healy.”

ever complain of his work environment impacting his headaches. (R. p. 1009). Dr. Skinner's opinions constitute substantial evidence in support of the Commission's unanimous findings and conclusions that Barr's headaches were not caused by an accident, repetitive trauma, or occupational disease arising out of or in the course of his employment.

Similarly, neurologist Dr. Paul Pritchard of MUSC evaluated Barr on February 2, 2016, and testified, to a reasonable degree of medical certainty, that Barr's complaints of headaches have no causal relationship to his employment at the School District. (R. pp.1175--1176). According to Dr. Pritchard, Barr has simple chronic daily headaches, which could be migraines, muscle tension headaches, or rebound headaches caused by Barr's admitted abuse of caffeine and over-the-counter analgesics (Goody's Powders), all of which could be complicated by Barr's cigarette smoking. (R. p). In addition, Dr. Pritchard determined that Barr's neurological exam was entirely "normal" and explained that the "#1" reason for doctor visits in the United States is a headache. (R. pp.697, 1096, 1175, 1153). Dr. Pritchard's opinions also constitute substantial evidence in support of the Commission's unanimous findings and conclusions that Barr's headaches were not caused by an accident, repetitive trauma, or occupational disease arising out of or in the course of his employment.⁹

Barr relies, primarily, on the specious and controverted opinion of Dr. Marty White. White opined that Barr's "migraines" were due to exposures to Volatile Organic Compounds ("VOCs") at the School District. However, the Workers' Compensation Commission unanimously determined that White's opinion is "speculative, based on disproved hypotheticals,

(p.22) (emphasis original). However, the Record is clear that both Dr. Skinner and Dr. Prichard offered such opinions and Barr's allegation to the contrary is without merit. (R. p.1003—1004; p.1009; p.1175—1176; pp.1085—1089).

⁹ Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).

uncorroborated, and otherwise without objective basis” and; therefore, entitled to “little weight.” (R. p.52, p.81). Barr did not appeal this finding and it is the law of the case.¹⁰

Furthermore, the Commission, as the finder of fact, is the sole arbiter of the weight to be accorded White’s opinions.¹¹ Here, the Commission’s diminution of White’s opinion was well-founded, as White was forced to admit that, despite his opinions about the toxicity of VOC exposure, he has no expertise in toxicology and no direct knowledge of any alleged VOC exposure by Barr. Instead, White based his opinions on a mere *assumption* that there had been such a toxic exposure. (R. p.930, ll.19—25). White was also forced to admit that he didn’t even know how frequently Barr was experiencing headaches, White couldn’t describe Barr’s headaches, and White “didn’t document” any of the symptoms Barr associated with his headaches. (R. p.918). Of course, an award of workers’ compensation benefits “must not be based upon surmise, conjecture, or speculation.”¹²

In addition, White testified that he rejected all other possible causes of headaches because White *assumed* that Barr’s headaches were accompanied by objective memory loss and *speculated* that neuropsychological testing would “validate” this assumption. (R. p.952, ll.16—19). However, the actual neuropsychological test results showed no evidence of any memory loss, no evidence of dementia, and no evidence of cognitive impairment. (R. p.1214, ll.7—12). In fact, neuropsychological testing proved that Barr’s memory was normal. Therefore, the Commission properly rejected White’s opinions as to the cause of Barr’s headaches because they are based upon a disproven hypothetical and directly contrary to objective test results according

¹⁰ ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 489 S.E.2d 470 (1997); Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159,161, 177 S.E.2d 544, 544 (1970).

¹¹ Bass v. Isochem, 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005).

¹² See Herndon v. Morgan Mills, 246 S.C. 201, 143 S.E.2d 376 (1965).

to three neuropsychologists (Dr. Lind, Dr. Waid, and Dr. Wagner) and more recent neurological examinations by two neurologists (Dr. Pritchard and Dr. Healy).¹³ The existence of specious opinions from Marty White simply do not constitute reversible error.¹⁴

Furthermore, while Dr. R. Joseph Healy endorsed an opinion on a questionnaire proffered by Barr's attorney that Barr's chronic daily headaches were causally related to his alleged exposure to VOCs between 2009 and 2015, Dr. Healy retreated from this opinion in his deposition testimony. Therefore, the Commission properly gave greater weight to the actual testimony of Dr. Healy, than to the questionnaire he had previously endorsed, in finding that Barr's headaches were not caused by alleged VOC exposure at work.¹⁵ (R. p.85).

According to Dr. Healy's deposition testimony, he believed that any alleged VOC exposure was merely "contributory" and he admitted that he could not state with any degree of medical certainty what was causing Barr's headaches. (R. p.1429; p.1437, ll.17—25). In fact, Dr. Healy testified that he could not even find any neurological cause for Barr's symptoms. (R. p.1441, ll.4—20). Instead, Dr. Healy believed Barr to have pulmonary problems for which he referred him to a Pulmonologist, cardiac problems for which he referred him to a Cardiologist, and severe vision problems for which he referred him to an Ophthalmologist, in addition to the severe sleep

¹³ See Smith v. Southern Builders, 202 S.C 88, 24 S.E.2d 109 (1943) (holding that "that the probative value of expert testimony based upon hypothetical facts stands or falls with the existence of the facts upon which it is predicated"); Hines v. Pacific Mills, 214 S.C. 125, 51 S.E.2d 383 (1949) (holding that "medical evidence based on hypothetical questions has no value beyond the extent it is predicated upon facts actually proven in the record.").

¹⁴ See Walsh v. U.S. Rubber Co., 238 S.C. 411, 120 S.E.2d 685 (1961) (holding that where there is "any competent evidence" to support the Commission's findings, the appellate courts are "without power to pass upon the force and effect" of contrary evidence.)

¹⁵ Glover v. Columbia Hospital, 236 S.C. 410, 114 S.E.2d 565 (1960) (holding that "where there is a conflict in the evidence, either by different witnesses or in the testimony of the same witness, the findings of fact of the Commission are conclusive.").

disorders (Obstructive Sleep Apnea and Periodic Limb Movement Syndrome) and abnormal arterial blood gas for which he required treatment and further evaluation. Dr. Healy admitted that Barr's severe sleep disorders alone, especially in combination with Barr's abuse of cigarettes, could be causing Barr's headaches. (R. pp.1407—1408; p.1417; p.1419).¹⁶

Dr. Healy further explained that:

“...the whole time I'm thinking, you know, this fellow's breathing is bad. He's got a lot of reasons to be relatively hypoxic, which leads to stress, fatigue and that might be what causes his headache.” (R. p.1414, ll.20—24).

Dr. Healy further admitted that Barr's lung disease and abnormal arterial blood gas was “definitely” playing a role in his headaches and fatigue, and he was concerned about a cardiac problem causing these symptoms. (R. p.1419, ll.11—16; p.1421, ll.10—16). Of course, headaches caused by sleep disorders, cigarette smoking, pulmonary, or cardiac problems are not the responsibility of the Respondents and Barr never filed any claim alleging a lung or heart injury.

Therefore, the opinions of Dr. Healy, as properly weighed by the Commission, support the conclusion that Barr's headaches are not compensable under the Act, as Dr. Healy opined that there were multiple, objectively-documented causes for the Barr's headaches unrelated to his employment and only with speculation could Barr's employment be considered such a cause.¹⁷ Accordingly, the Respondents respectfully contend that Court of Appeals properly concluded

¹⁶ When asked by Barr's attorney whether he had treated painters in the past with chronic headaches, Dr. Healy responded, “you don't see it a lot.” (R. p.1442, l.4).

¹⁷ See S.C. Code Ann. § 42-1-172(D) (“repetitive trauma injury” is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.)

that substantial evidence supports the Workers' Compensation Commission's unanimous finding that Barr's headaches did not arise out of his employment with the School District.

Clearly, an appellate court may not substitute its judgment for that of the Commission as to the weight of the evidence and, here, the Commission's findings are consistent with the reliable, probative, and substantial evidence on the record.¹⁸ In addition, the Commission committed no legal error by denying benefits despite Barr's argument that he may have made a *prima facie* claim for benefits with the opinions of Dr. White, as White's opinions were properly discounted and, indeed, overwhelmed, by the expert opinions to the contrary.¹⁹ Furthermore, Barr's failure to appeal the Commission's legal conclusions regarding his failure of proof under S.C. Code Ann. §§ 42-1-160, 42-1-172, and 42-11-10 are the law of the case and cannot be disturbed on appeal. As such, the Respondents respectfully request that the Petition for Writ of Certiorari be denied.

III. Barr's allegations regarding the admissibility of documentary evidence are without merit.

Barr argues that the documentary evidence submitted by the Respondents pursuant to the Administrative Procedures Act and the Workers' Compensation Regulations should have been excluded; however, his various complaints are without merit and the Commission committed no

¹⁸ Rodney v. Michelin Tire Corp., 320 S.C. 515, 466 S.E.2d 357 (1996).

¹⁹ It is unquestionably the law, as stated in Poston v. Southeastern Const. Co., 208 S.C. 35, 36 S.E.2d 858, and Ballenger v. Southern Worsted Corporation, 209 S.C. 463, 40 S.E.2d 681, that expert testimony is not binding upon the fact-finding body if there be competent substantial evidence to the contrary. Here, there is abundant, competent, substantial evidence contrary to the unfounded opinions of Dr. White, which constitutes substantial evidence under the law. Moore v. City of Easley, 322 S.C. 455, 472 S.E.2d 626 (1996). Clearly, Barr's arguments that the Commission somehow misapprehended Barr's burden of proof are without merit.

legal error in admitting and weighing the opinions of Dr. Eagerton, Dr. Waid, Dr. Wagner, and Dr. Pritchard, as concluded by the Court of Appeals.

A. Dr. Eagerton's Report was properly admitted into evidence.

Barr argues that the Commission's unanimous decision should be reversed because the report of Dr. David H. Eagerton, Ph.D., is contained in the record and was cited by the Commission as cumulative evidence that Barr's "symptoms were not likely caused by any alleged exposure to VOCs at work" because "any VOC exposure would have been limited due to the low vapor pressure of the substances most commonly used by [Barr] and due to his use of a respirator." (R. p.84, pp.738--739). According to Barr, Dr. Eagerton's report is inadmissible because he is not a "medical" doctor and Barr otherwise believes him to be unqualified.

The Record reveals that the Commission correctly assessed Dr. Eagerton's qualifications as "Assistant Professor of Pharmacology at Presbyterian College and former Chief Toxicologist for the South Carolina Law Enforcement Division." (R. p.43, p. 742). The Commission did not labor under any mistaken belief that Dr. Eagerton was a physician, but properly weighed and considered his opinions as to the Appellant's alleged VOC exposure, including his opinions regarding to the science of pharmacology, a branch of *medicine*. Of course, the South Carolina Supreme Court has previously recognized Dr. Eagerton as a medical expert. State v. Green, 423 S.C. 263, 814 S.E.2d 496 (2018) (finding Dr. Eagerton's opinions regarding the effects of MS Contin on breast milk, which were stated "to a reasonable degree of scientific and medical certainty," competent and persuasive in a homicide conviction).²⁰

²⁰ In addition, the Record reveals that the Commission also considered the opinions of Dr. Robert Bennett, a former pharmacist with no professional licenses *who testified on behalf of the Petitioner* regarding his alleged exposure to VOCs. (R. p.41). If Barr sincerely believed that only physicians could offer expert opinions in a workers' compensation claim, then it certainly

Importantly, though Barr now argues that Dr. Eagerton's opinions should have been excluded from evidence based upon his qualifications, Barr made no such objection at the evidentiary hearing on August 31, 2016. (R. p.1258). Because no specific, contemporaneous objection was raised to, or ruled upon by, the Commission, this issue is not preserved for appeal.²¹

Additionally, S.C. Code Reg. 67-612 does not in any way limit the introduction of documentary evidence to "medical physicians," but instead speaks only to "expert's reports" generally. The Respondents respectfully contend that Dr. Eagerton is such an expert whose reports are admissible under Regulation 67-612 because "[a]n expert is not limited to any class of persons acting professionally."²² Lastly, because the "final determination of witness credibility and the weight assigned to the evidence is reserved to the Appellate Panel," the appellate courts lack the authority to review the weight and credibility accorded Dr. Eagerton's opinions by the Commission on any basis.²³

A. Barr's right to Due Process was not violated.

Barr argues that his right to "due process" was violated by the admission of the written expert reports of Dr. Waid (R. pp.734—736), Dr. Wagner (R. pp.699—710), and Dr. Eagerton (R. pp.737-739) that were properly submitted into evidence in accordance with S.C. Code Reg. 67-611 and 67-612, when in actuality he chose not to exercise his rights in this regard.²⁴ Barr was

begs the question why he hired Dr. Bennett to attend the hearing and testify regarding alleged exposures and alleged injuries.

²¹ Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998).

²² Gadson v. Mikasa Corp., 368 S.C. 214, 628 S.E.2d 262 (Ct. App. 2006) (finding report of a vocational consultant admissible).

²³ Hall v. Desert Aire, Inc., 376 S.C. 338, 348, 656 S.E.2d 753, 758 (Ct. App. 2007).

²⁴ Barr relies, primarily, on City of Spartanburg v. Parris, 251 S.C. 187, 161 S.E.2d 228 (1968), which reaffirmed the general rule that a party's substantial rights "include a reasonable opportunity to cross examine the important witnesses against a party when their credibility is challenged." Here, Barr had multiple, reasonable opportunities to cross-examine defense

afforded the right to cross-examine Dr. Waid, Dr. Wagner, and Dr. Eagerton (all of whom work in South Carolina) by S.C. Code Ann. § 1-23-330(d), which states that “[a]ny party may conduct cross-examination,” as well as S.C. Code Reg. 67-612, which guarantees that the procedure for admission of written expert reports shall not be “construed to limit a party’s right to call a witness (lay or expert) or present evidence (lay or expert) in the form of a deposition.”²⁵ The Commission did not abridge Barr’s rights under the Administrative Procedures Act, or the Workers’ Compensation Regulations, the South Carolina Constitution, or the Constitution of the United States —the Commission didn’t prohibit Barr from cross-examining anyone at any time.

Instead, Barr never issued any subpoena to any expert to testify at a deposition or hearing, as was his right²⁶ under S.C. Code Ann. 42-3-150 and S.C. Code Reg. 67-214.²⁷ Even Barr acknowledges that due process affords him only the “opportunity” to confront adverse witnesses and having declined the opportunity to cross-examine Dr. Waid, Dr. Wagner, and Dr. Eagerton

witnesses by way of S.C. Code Ann. § 42-3-150, S.C. Code Ann. § 42-3-160, S.C. Code Reg. 67-214, and S.C. Code Reg. 67-612(J) – he simple chose not to avail himself of these opportunities.

²⁵ To the extent Barr argues that S.C. Code Ann. § 1-23-330 requires his consent to the admission of written expert reports where their admission would cause “substantial prejudice,” Barr has failed to elucidate any such “substantial prejudice.” Certainly, the cost of cross-examining expert witnesses fell equally upon the School District, as Barr submitted the written reports of Dr. White, Dr. Lind, Dr. Skinner, and Dr. Healy and the Respondents cross-examined each one by issuing Form 27 subpoenas, conducting depositions across the state, and paying for the same according to the Commission’s Fee Schedule. In fact, the Respondents even assumed the cost of Dr. Pritchard’s deposition at Barr’s request in an effort to placate him.

²⁶ Barr disingenuously argues that cross-examination of the Respondent’s expert witnesses required that the Commission issue subpoenas to these witnesses. This is false. As Barr’s attorney is well-aware, S.C. Code Reg. 67-214A clearly and unequivocally allows that “[a] party may subpoena a person or document(s), by completing and serving a Form 27.”

²⁷ See Gadson v. Mikasa Corp., 628 S.E.2d 262 (Ct. App. 2006) (upholding the admissibility of documentary evidence under S.C. Code Reg. 67-611 and 67-612 where the party failed to exercise his right of cross-examination).

at either a deposition or at the hearing, Barr failed to exercise his due process rights cannot now be heard to complain of some constitutional deprivation.²⁸

Furthermore, as our courts have explained:

“The utilitarian efficacy of admissibility under Workers’ Compensation regulations is salutary and salubrious. Historically, the regulations allow for written reports and documentation in lieu of live testimony, concomitantly saving time and expense in the presentation of testimony before the single commissioner.” Gadson v. Mikasa Corp., 628 S.E.2d 262 (Ct. App. 2006).

Respectfully, not only are Barr’s arguments regarding the admissibility of the expert reports submitted by the Respondents without merit, but his arguments regarding the admissibility of documentary evidence serve to undermine the utility of our Workers’ Compensation system.

IV. Barr’s allegations regarding the propriety of Dr. Pritchard’s neurological evaluation are untimely, moot, and otherwise without merit.

The Record is clear that the Respondents and the Workers’ Compensation Commission complied with the governing law, including S.C. Code Reg. 67-612 and S.C. Code Ann. § 1-23-330, in admitting the written opinions and testimony of Dr Pritchard into evidence. Regardless,

²⁸ See Richardson v. Perales, 402 U.S. 389, 91 S.Ct. 1420 (1971) (holding “that a written report by a licensed physician who has examined the claimant and who sets forth in his report his medical findings in his area of competence may be received as evidence in a disability hearing and, despite its hearsay character and an absence of cross-examination, and despite the presence of opposing direct medical testimony and testimony by the claimant himself, may constitute substantial evidence supportive of a finding by the hearing examiner adverse to the claimant, when the claimant has not exercised his right to subpoena the reporting physician and thereby provide himself with the opportunity for cross-examination of the physician.”)

because there was no contemporaneous objection, Barr cannot be heard to challenge the admission of Dr. Prichard's opinions on appeal under any legal theory.

Prior to the hearing before Hearing Commissioner Campbell on August 31, 2016, the Respondents notified Barr of their intention to submit both the written report and deposition testimony of Dr. Pritchard into evidence in accordance with S.C. Code Reg. 67-612 (providing that a non-moving party must provide the moving party any experts' reports at least ten days before the hearing) (R. pp.534—535). At the call of the hearing on August 31, 2016, Commissioner Campbell specifically asked,

“[a]re there any objections to A.P.A.s ... or any other items?

...
Mr. McDaniel, any objections?” (R. p.1255, l.16 – p.1257, l.24).

In response, counsel raised no objection²⁹ whatsoever to the admission of Dr. Pritchard's written report or deposition testimony. Instead, according to his attorney's own statement to the Hearing Commissioner, Barr

“objected to the submission of the reports from Dr. Wade [sic] ... and Dr. Wagner ... and also Dr. Eagerton ... they have never seen or evaluated nor are they here personally to testify **outside of that, we don't have any objection to the A.P.A. submissions.**” (R. p.1258) (emphasis added).

²⁹ In his Petition, Barr argues that the Court should “look at Petitioner's Counsel's entire statement” (R. pp.1258—1269) in an effort to find some objection to Dr. Pritchard's report and testimony. However, no such objection can be found. Instead, counsel made two references to Dr. Pritchard at the hearing, calling him a “noted neurologist” and arguing that, somehow, Dr. Prichard's opinions favored his arguments. (R. p.1262, l.22—p.1263, l.4; p.1269, ll.8—10). Barr also claims that “an extensive objection” could be found in the transcript of Dr. Pritchard's deposition, but review of the same reveals that his objection was “[n]ot to the report itself but just the submission of it versus your testimony.” (R. p.1077, p.1177)

Therefore, the opinions of Dr. Pritchard were properly admitted into evidence --without objection -- by Hearing Commissioner Campbell.³⁰

Our courts have consistently held since time immemorial that evidence admitted without objection becomes competent and must be considered by the finder of fact.³¹ This is true even where there may have been a statutory basis upon which to object to said evidence.³² It is equally well-settled that the failure to object to evidence at the time it is offered constitutes a waiver of the right to have the issue considered on appeal.³³ Here, Barr did not object to Dr. Pritchard's opinions at the time they were admitted into evidence by Hearing Commissioner Campbell, despite "ample opportunity to object."³⁴ (R. p.1255, l.16 – p.1257, l.24; p.1258).

³⁰ See S.C. Code Reg. 67-612(D) (providing that any experts' reports provided by the non-moving party at least ten days prior to the hearing "shall be submitted" into evidence and that if the parties consent to the admission of an expert's report the Hearing Commissioner "shall receive such report") and S.C. Code Ann. § 1-23-330 (codifying that "any part of the evidence may be received in written form" at an administrative hearing).

³¹ See Wayne Smith Const. Co., Inc. v. Wolman, Duberstein, & Thompson, 294 S.C. 140, 363 S.E.2d 115 (Ct. App. 1987) (refusing to address arguments concerning evidence admitted without objection); Cantrell v. Carruth, 250 S.C. 415, 158 S.E.2d 208 (1967) (holding that testimony received without objection "becomes competent and cannot be disregarded" by the court); Wessinger v. Duncan, 113 S.C. 205, 102 S.E. 6 (1920) (explaining that where testimony was not objected to, it "must be considered by the jury"); Minton v. Pickens, 24 S.C. 592 (1886) (holding that "[t]estimony not objected to at the time is competent"); see also Hofer v. St. Clair, 298 S.C. 503, 381 S.E.2d 736 (1989) (holding that "the admission of evidence is a matter addressed to the sound discretion of the trial judge and absent clear abuse of discretion amounting to an error of law, the lower court's ruling will not be disturbed on appeal").

³² See Geddings v. Geddings, 319 S.C. 213, 460 S.E.2d. 367 (1995).

³³ Parr v. Gaines, 309 S.C. 477, 424 S.E.2d 515 (Ct. App. 1992).

³⁴ Barr's Form 58 dated August 16, 2016, does state that he "*may* object to any report from Dr. Pritchard," however, he did not actually make any such objection at the hearing on August 31, 2016, and he never even threatened to object to Dr. Pritchard's testimony taken by deposition on March 3, 2016. (R. pp.268—275, p.1258) (emphasis added). Cf. State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996), *cert. denied*, 117 S.Ct. 2460, 138 L.Ed. 2d 217 (1997) (explaining that even when a motion *in limine* is made and ruled upon, a contemporaneous objection must be made again when the evidence is presented at trial to preserve the issue for appeal); State v.

Therefore, Barr clearly waived his right to have any question regarding the admissibility of Dr. Pritchard's opinions considered on appeal because he made no contemporaneous objection to Dr. Pritchard's opinions when they were admitted into evidence at the hearing.³⁵

Not only did Barr consent to the admission of Dr. Pritchard's opinions, but Barr also made no reference to S.C. Code Ann. § 42-15-95 (with respect to Dr. Pritchard's opinions or otherwise) at the evidentiary hearing before Commissioner Campbell. On August 31, 2016, Barr presented no arguments and no evidence regarding the application of § 42-15-95. Therefore, no issue regarding § 42-15-95 (or the admissibility of Dr. Pritchard's opinions generally) was properly raised to, or ruled upon by, the Hearing Commissioner and no such issues are preserved for appellate review.³⁶

In addition, when Dr. Pritchard's opinions were admitted into evidence, Barr made no claim of prejudice under S.C. Code Ann. § 1-23-330 with respect to the admission of Dr. Pritchard's reports; made no complaint pursuant to S.C. Code § 42-15-80 about the timing or location of Dr.

Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988) (holding that a motion *in limine*, even if granted, does not remove the need for a contemporaneous objection at trial); White v. Wilbanks, 298 S.C. 225, 379 S.E.2d 298 (Ct. App. 1989), *rev'd on other grounds*, 301 S.C. 560, 393 S.E.2d 182 (1990) (holding that if a motion *in limine* to exclude evidence is denied, a party must renew its objection when the evidence is presented during trial). *See also* 75 AM. JUR.2d Trial § 426 at 613 (1991); *id.* § 429 at 615.

³⁵ *See* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) (explaining that a “contemporaneous objection requirement enables trial judges to make reasoned decisions by appropriately developing issues by way of argument, both for or against any particular legal proposition. This, in turn, allows potential errors to be prevented or cured.”).

³⁶ Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997) (holding that “[i]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review”); Southern Region Industrial Realty, Inc. v. Timmerman, 285 S.C. 142, 328 S.E.2d 128 (Ct. App. 1985) (holding that where appellant failed to raise the applicability of a statute at the trial level, the statute's applicability may not be considered on appeal).

Pritchard's evaluation³⁷; made no claim that Dr. Pritchard's opinions were not timely submitted under S.C. Code Reg. 67-612; and raised no argument about the conduct of the hearing under S.C. Code Reg. 67-613. (R. p.1258). Following the admission of Dr. Pritchard's opinions into evidence, Barr made no motion to strike Dr. Pritchard's report or testimony from the record. (R. pp.1252—1398). Of course, "in absence of a contemporaneous objection, a motion to strike may be denied" and Barr "could not cure [his] failure to object contemporaneously by moving to exclude the evidence at the end of [his] case."³⁸ Nevertheless, Barr did not even attempt to cure his failure to contemporaneously object by asking Hearing Commissioner Campbell to strike Dr. Pritchard's opinions for any reason.

Indeed, Barr never raised any issue with respect to the admissibility of Dr. Pritchard's opinions or the applicability of S.C. Code Ann. § 42-15-95 at any time during the August 31, 2016, evidentiary hearing. Of course,

“[t]he first step in preserving an issue for appellate review is to actually raise it to the lower court ... The idea is to give the lower court a chance to resolve the issue before it is presented to the appellate court. Thus, the lower court must also rule upon the issue for it to be preserved for review.”³⁹

Because Barr failed to object to Dr. Pritchard's opinions when they were admitted into evidence and failed to raise any argument with respect to S.C. Code Ann. § 42-15-95 at the hearing,

³⁷ The Respondents deny that the neurological exam in Charleston was an improper place for Barr to be evaluated. More importantly, S.C. Code Ann. § 42-15-80 does not in any way circumscribe the admission of documentary evidence.

³⁸ Parr, 309 S.C. 477, 424 S.E.2d 515 (citing Lindsey v. City of Greenville, 247 S.C. 232, 146 S.E.2d 863 (1966)).

³⁹ Toal, et al., APPELLATE PRACTICE IN SOUTH CAROLINA (2nd Ed. 2002) at p.66 (citing Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998); Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995)).

Commissioner Campbell had no reason to address these (non)issues in his September 20, 2017, Decision and Order. (R. pp.13—60). As a result, the Hearing Commissioner’s Decision and Order does not contain any findings of fact or rulings of law with respect to the admissibility of Dr. Pritchard’s opinions or the applicability of S.C. Code Ann. § 42-15-95 and; therefore, these issues are not preserved for appellate review.⁴⁰

Not only did Barr fail to make any contemporaneous objection, not only did Barr fail to make any motion to strike during the evidentiary hearing, not only did the Hearing Commissioner not rule upon these issues in his Decision and Order, but Barr did not ask the Hearing Commissioner to address the admissibility of Dr. Pritchard’s opinions or the applicability of S.C. Code Ann. § 42-15-95 *after* the hearing.⁴¹ Therefore, no argument with regard to the admissibility of Dr. Pritchard’s opinions or the applicability of S.C. Code Ann. § 42-15-95 was preserved for appellate review.

Even after the Commission’s Appellate Panel issued its final Order on June 5, 2018 -- without making any findings of fact or conclusions of law regarding the admission of Dr. Pritchard’s opinions or the application of S.C. Code Ann. § 42-15-95 -- Barr did not file a Motion for Reconsideration in an attempt to preserve these issues for appellate review, as was his

⁴⁰ See Toal, *et al.*, APPELLATE PRACTICE IN SOUTH CAROLINA, *supra* footnote 36.

⁴¹ Prior to the issuance of Hearing Commissioner Campbell’s Decision and Order, Barr did file a “Request for Reconsideration” by letter dated January 19, 2017 (R. pp.1495—1499; p.1511), in which he (improperly) attempted to relitigate the merits of his claim. However, Barr’s January 19, 2017, letter does not raise any argument regarding the admissibility of Dr. Pritchard’s opinions or the applicability of S.C. Code Ann. § 42-15-95, though it does complain about the weight accorded Dr. Pritchard’s opinions. (R. p.1497).

right pursuant to S.C. Code Reg. 67-215(B).⁴² Therefore, Barr failed to preserve these issues for appellate review and they should not be addressed by way of a Petition for Writ of Certiorari.⁴³

Furthermore, there is no evidence to support Barr's allegations regarding the admissibility of Dr. Pritchard's opinions or the applicability of S.C. Code Ann. § 42-15-95, as the Record contains no evidence or documentation of any allegedly improper communications with any health care provider, nor any evidence that any medical reports or opinions were the result of any allegedly improper communication, and the Respondents deny any improper communication. Of course, the trier of fact – the Workers' Compensation Commission – made no finding or conclusion regarding the elements or application of S.C. Code § 42-15-95 and certainly made no finding that the Dr. Pritchard's were obtained in violation of that statute. Instead, Barr relies on nothing more than his own self-serving declarations in this regard.⁴⁴ However, the substantial evidence rule prohibits reliance on a "mere scintilla of evidence" or "evidence viewed blindly

⁴² Barr did "strongly object" to the Order ultimately endorsed by the Appellate Panel but made no request that the Panel make findings or conclusions regarding the admissibility of Dr. Pritchard's opinions or the applicability of S.C. Code Ann. § 42-15-95 in its Order. (R. pp.1516—1517).

⁴³ See Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998) (stating that "[p]ost-trial motions are ... used to preserve those [issues] that have been raised to the trial court but not yet ruled upon by it") (internal citations omitted); Cf. Nettles v. Spartanburg School Dist. #7, 341 S.C. 580, 535 S.E.2d 146 (Ct. App. 2000) (holding that a trial court's failure to rule on an issue is a "fatal" error preservation problem where the right to file a motion to reconsider exists); S.C.S.R. 42-2 Doc. No. 4735, effective February 23, 2018 (promulgating the right to file a motion to reconsider an order of the Workers' Compensation Commission by amending S.C. Code Reg. 67-215(B)).

⁴⁴ Barr's Petition (at pp.18-19) makes repeated reference to records and letters for which there is no citation to the Record because no such "evidence" is actually contained in the Record, only self-serving innuendo.

from one side of the case.”⁴⁵ A factual claim simply cannot be based on surmise, conjecture or speculation as Barr argues.⁴⁶

Indeed, our appellate courts have consistently held that “the admission of evidence is a matter addressed to the sound discretion of the trial judge and absent clear abuse of discretion amounting to an error of law, the lower court’s ruling will not be disturbed on appeal.”⁴⁷ Can it reasonably be argued that Hearing Commissioner Campbell committed a “clear abuse of discretion” by admitting evidence when no objection was raised to its admission? The Respondents respectfully contend that no reasonable person could accept such an argument, as to conclude otherwise would require Workers’ Compensation Commissioners to exclude evidence *sua sponte*, in violation of S.C. Code Reg. 67-612(D) (providing that timely experts’ reports “shall be submitted” into evidence) and Canon 3 of the Code of Judicial Conduct, which forbids such clearly biased conduct.

V. Both the Hearing Commissioner and the Commission’s Appellate Panel made detailed findings of fact and conclusions of law.

Barr inexplicably argues that the Hearing Commissioner’s 48-page Decision and Order and the 29-page Final Decision and Order issued by the Appellate Panel were somehow not sufficiently detailed with respect to Barr’s headache allegations. Barr further argues that the Orders bearing the signatures of Commissioners Campbell, Taylor, Barden, and McCaskill do not represent the actual decisions of these Commissioners. However, both Orders are replete with detailed and specific findings of fact regarding the weight of the evidence on the headache issue and legal rulings applying the law to those findings. (R. pp.51—55; pp.57—58; pp.79—85;

⁴⁵ Lark v. Bi-Lo, Inc., 375 S.C. 130, 276 S.E.2d 304 (1981).

⁴⁶ See Kennedy v. Williamsburg Co., 242 S.C. 477, 131 S.E.2d 512 (1963).

⁴⁷ Hofer v. St. Clair, 298 S.C. 503, 381 S.E.2d 736 (1989).

pp.86—87). Furthermore, there is absolutely no evidence that these Orders bearing Commissioners' signatures do not constitute their actual decisions. Barr cites no authority for his argument⁴⁸ that the appellate courts should look beyond the 4 corners of the Commission's Orders to determine their meaning or intent.

Indeed, the official commentary to the Code of Judicial Conduct, Canon 3, specifically recognizes that a

“judge may request a party to submit proposed findings of fact and conclusions of law so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.”

Here, the Record makes clear that when Hearing Commissioner Campbell requested that the Respondents submit a proposed order (R. p.1491), he simultaneously apprised Barr of the request (R. p.1490). Of course, Barr was also given an opportunity to respond to the proposed findings and conclusions and did so by correspondence dated January 19, 2017 (R. pp.1495--1499), September 18, 2017 (R. pp. 1500—1506), and September 19, 2017 (R. pp.1508—1510). Likewise, the Appellate Panel apprised Barr of its request for a proposed order and Barr also responded to that proposed order. (R. pp.1516—1518). Therefore, Barr's arguments with regard to the sufficiency and propriety of the Workers' Compensation Commission's Orders are without merit.

⁴⁸ Barr cites Hill v. Jones, 255 S.C. 219, 178 S.E.2d 142 (1970), and Aristizabal V. I.J. Woodside, 268 S.C. 366, 234 S.E.2d 21 (1977), suggesting these cases support his argument that it is reversible error for a Commissioner to adopt and endorse by signature a proposed order prepared by a party at the Commission's request. These cases suggest no such thing and there is simply no legal authority for such an argument.

Conclusion

Based upon the foregoing arguments, the Respondents respectfully request that the Petition for Writ of Certiorari be denied, as Barr has raised no novel question of law, nor elucidated any conflict between the decision of the Court of Appeals and any prior decision of the Supreme Court. Instead, the Court of Appeals properly affirmed the unanimous Decision and Order of the South Carolina Workers' Compensation Commission in accordance with substantial evidence in the record and the applicable law, which supports the Commission's finding that Barr's headaches did not arise out of his employment with the Darlington County School District. The Respondents further respectfully contend that the Petition should be denied because the Workers' Compensation Commission's findings and conclusions regarding Barr's failure to satisfy the mandatory requirements of S.C. Code Ann. §§ 42-1-160, 42-1-172, and 42-11-10 are the law of the case and binding on appeal (given Barr's failure to appeal these conclusions or even cite these statutes in his Brief to the Court of Appeals), rendering any alleged procedural or evidentiary error moot.

Respectfully submitted,

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