THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2007-CP-14-00150

Diane C. Dingle, Claimant, ... Appellant,

v.

Federal Mogul Corporation, Employer, and
Travelers Property Casualty Company of America, Carrier, ... Respondents.

FINAL REPLY BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This Workers' Compensation action commenced on December 19, 2000, upon the filing of Diane C. Dingle's ("Appellant") Workers Compensation Commission Form 50 requesting a hearing on her claim seeking compensation for injuries under the South Carolina Workers' Compensation Act, S.C. Code Ann. § 42-3-10, et seq. (1976), as amended (hereinafter the "Act"). The first hearing on Appellant's claim was commenced on April 16, 2004, before the

Honorable J. Michelle Childs, Single Commissioner. On March 24, 2005, Commissioner Childs filed her Order awarding benefits to the Appellant. On April 7, 2005, Federal Mogul Corporation, Employer, and Travelers Property Casualty Company of America, Carrier, ("Respondents") filed Form 30, Request for Commission Review of the Single Commissioner's Order and Award. The Appellate Panel review was held on September 26, 2005. On October 18, 2005, the Appellate Panel issued its Order affirming the Order of the Single Commissioner, as amended by the Panel. On November 17, 2005, Respondents appealed the Appellate Panel's Decision and Order to the Court of Common Pleas. On September 25, 2006, Circuit Court Judge Thomas W. Cooper, Jr., filed his Order deciding the appeal. Judge Cooper remanded the case to the Commission to make specific findings of fact and conclusions of law. On October 23, 2006, Respondents filed a Motion for New Hearing and Memorandum requesting that the case be set for a hearing to take additional evidence and testimony. On November 22, 2006, the Full Commission issued its order remanding the case to the Appellate Panel. On January 23, 2007, the matter came before the Appellate Panel for review on remand. On February 26, 2007, the Appellate Panel issued its Order affirming the Order of the Single commissioner dated March 24, 2005, as amended by the Panel. By letter dated February 28, 2007, Respondents requested the Commission to reconsider the Order of February 26, 2007, and include for consideration the Respondents' Motion (Petition) for a New Hearing. By Order dated March 29, 2007, the Full Commission denied Respondents' Motion for a New Hearing. By notice dated March 28, 2007, Respondents gave Notice of Intent To Appeal to the Court of Common Pleas from the Orders of the Single Commissioner filed March 24, 2005, and of the Appellant Panel filed October 18, 2005. On June 13, 2007, Respondents' appeal to the Court of Common Pleas was heard by Circuit Court Judge George C. James, Jr. On June 18, 2007, Judge James' Order was filed, which Order incorporated the September 18, 2006, Order of Circuit Court Judge Thomas W. Cooper, Jr. Judge James remanded the case to the Commission to make specific findings of fact

and conclusions of law, if any exists, to support its Decision and Order. Judge James also ordered that the Commission may take additional evidence and testimony as it sees fit in order to arrive at a determination of such findings of fact and conclusions of law. On January 28, 2008, the matter came before the Full Commission on remand. On January 31, 2008, the Commission issued its Order 1) denying Respondents' Motion requesting a hearing to be heard in conjunction with the remand; and 2) remanding the case to the Appellate Panel to take such action and enter an Order consistent with the Court's directive. On March 11, 2008, the Appellate Panel issued its Order vacating in its entirety the Order of the Single Commissioner and Ordering that the case be set for a hearing before the Jurisdictional Commissioner for a hearing *de novo.* On May 22, 2008, the hearing *de novo* was held before Commissioner David W. Huffstetler and the record was closed May 22, 2008. On July 15, 2008, Commissioner Huffstetler filed his Order denying Appellant's claim for benefits. On July 25, 2008, Appellant filed Form 30, Request for Commission Review. The hearing was held before the Appellate Panel on November 19, 2008. On December 17, 2008, the Panel issued its Order affirming the Single Commissioner's Order of July 15, 2008, and denying Appellant Benefits. On January 15, 2009, Appellant filed Notice of Appeal, including grounds, in the South Carolina Court of Appeals appealing the Decision And Order of the Panel filed December 17, 2008. On March 4, 2009, the Court of Appeals issued its Order transferring the appeal to the circuit court pursuant to Pee Dee Regional Transportation v. S.C. Second Injury Fund, 375 S.C. 60, 650 S.E.2d 464 (2007), and Rule 204, SCACR. On November 22, 2010, the case came on for hearing before Circuit Court Judge R. Ferrell Cothran, Jr. On August 3, 2011, Judge Cothran filed his Order in which he affirmed the Decision and Order of the Commission dated December 17, 2008.

On August 15, 2011, Appellant filed a Motion to Alter or Amend Judgment on the grounds that the Findings of Fact and Conclusions of Law in Judge Cothran's Order filed August 3, 2011, either misconstrued or disregarded substantial evidence in the record with regard to

several crucial factors supporting Appellant's entitlement to benefits under the Act. On December 12, 2011, Judge Cothran denied Appellant's Motion to Alter or Amend Judgment. On February 8, 2012, Appellant filed Notice of Appeal and asserted timeliness for filing pursuant to Rule 203(b)(1).

STANDARD OF REVIEW

S. C. Code Ann. § 1-23-380 (Supp. 2011), the Administrative Procedures Act ("APA"), establishes the standard of review for decisions by the South Carolina Workers compensation Commission.

> (5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S. C. Code Ann. § 1-23-380(5)(a)(b)(c)(d)(e)(f), (Supp. 2011).

"The substantial evidence rule of the APA governs the standard of review in a Workers Compensation decision. … This Court's review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law." (Internal cites omitted) Hargrove v. Titan Textile Co., 360 S.C. 276, 289, 599 S.E.2d 604, 610 (Ct. App. 2004). "But whether the facts of a case were correctly applied to a statute is a question of fact, subject to the substantial evidence standard" Murphy v. Owens Corning, 393 S.C. 77, 710 S.E.2d 454 (Ct. App. 2011). "An appellate court may reverse or modify a decision if the

findings or conclusions of the commission are "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Adkins v. Georgia-Pacific Corp., 350 S.C. 34, 37, 564 S.E.2d 339, 340 (Ct. App. 2002), Reh'g Denied June 20, 2001, (internal cites omitted).

ARGUMENT

1. WHETHER OR NOT THE CIRCUIT COURT ERRED IN FINDING THAT THE APPELLANT FAILED TO MEET HER BURDEN OF PROVING THAT SHE SUSTAINED COMPENSABLE INJURIES BY ACCIDENT AND, FURTHER, THAT SHE SUSTAINED COMPENSABLE INJURIES AS A RESULT OF AN OCCUPATIONAL DISEASE.

Respondents complain that the Appellant returns time and again to bits and pieces of hearing transcripts of the numerous circuit court decisions beginning with the first in 2006, but prior to the *de novo* hearing in 2008. Respondents assert that these rulings have little relevance to this appeal because the hearing of May 22, 2008, was *de novo,* and that Appellant never objected to nor appealed the Commission's ruling vacating the 2006 decision. Respondents take the position that the Commission's ruling in March 2008 vacating the Full Commission and Single Commissioner's decision of 2006 and 2007 obviates the requirement for this Court to thoroughly review these prior decisions.

Appellant incorporates herein by reference and reiterates the arguments in her Initial Brief concerning Argument 1 as fully as if restated verbatim.

Furthermore, Appellant vigorously contests Respondents' contentions with regard to Argument 1. Appellant respectfully asserts that it is absolutely essential that this Court take a fresh look at the entire case record, specifically including each Decision and Order of the Commission and each Circuit Court Order, to follow the unique character of the errors of law and fact inherent in the evolution of this controversy during the twelve-year period that it has been entangled in the judicial system of our state.

On March 11, 2008, the Appellate Panel issued its Order vacating in its entirety the Order of the Single Commissioner and Ordering that the case be set for a hearing before the Jurisdictional Commissioner for a hearing *de novo.* An *appeal de novo* or *de novo review* is an appeal in which the appellate court uses the trial court's record but reviews the evidence and law without deference to the trial court's rulings. Black's Law Dictionary, 7th ed. (1999).

Appellant would respectfully show, first, that in order for this Court to recognize the factual inaccuracies that caused the focus and determination of this case to shift, a full and thorough review of the entire record, including each of the Orders and Decisions issued in this case, is absolutely essential. This fact is unambiguously reflected in the comments made by Judge Cooper at the June 14, 2006, hearing when he stated: "As I heard counsel for both sides set out your specific positions here today, I was frankly add(sic) odds to understand whether the Commissioner or the Commission heard the same case that I was hearing today." (Emphasis supplied) (R. p. 563, line 7 – p. 567, line 4, Tr. 6/14/2006, p. 43, line 7 - p. 47, line 4).

Circuit Court Judge George C. James, in his Order filed June 18, 2007, referenced Circuit Court Judge Thomas W. Cooper, Jr.,'s Order filed September 25, 2006, as well as the Decisions and Orders of the Appellate Panel dated February 26, 2007, and March 29, 2007 (R. pp. 57 – 59, James Order, 6/18/07, p. 1)

At the hearing on May 22, 2008, Commissioner David W. Huffstetler referenced in the following manner the raising of the occupational disease claim by the Circuit Court, in commenting upon Mohasco Corp., Dixiana Mill Div. V. Rising, 289 S.C. 130, 345 S.E.2D 249 (Ct. App. 1986), Order Reversed By Mohasco Corp. V. Dixiana Mill Div. V. Rising, 292 S.C. 489, 357 S.E.2D 456 (1987):

COMMISSIONER HUFFSTETLER: . . . I also note some medical records that Claimant's counsel has brought to my attention prior to going on the record and these in particular deal with the elements of the Mohasco case and I mention Mohasco because the court mentioned Mohasco. (Emphasis supplied.) (R. p. 614, lines 14-20, Tr. 5/22/08, p. 46, lines 14-20)

COMMISSIONER HUFFSTETLER: I don't know what was said or not said. The case is over seven (7) years old. It has been no secret that the court has raised the Mohasco issue more than once on several occasions; that is not a new issue ... (Emphasis supplied.) (R. p. 620, lines 1 – 6; Tr. 5/22/08, p. 52, line 1-6)

On July 15, 2008, Commissioner Huffstetler filed his Decision and Order. His Statement of the Case included the following:

> This was a de novo hearing but the record does not disappear. In particular the undersigned commissioner must be mindful of the instructions from Judge Cooper. In the order he raises the question of how the Commission found that the claim was timely filed when the date of accident was stipulated as June 7, 1998 and the order found the form 50 was filed on February 12, 2002, clearly more than two years later. In the transcript of the hearing before Judge Cooper he says the case would need to be found to be an occupational disease in order for it to meet the statute of limitations under 42-15-40. As a de novo hearing, this commissioner looks at the file afresh and finds that the form 50 was actually filed on December 18, 2000. Considering Judge Cooper's comments in the transcript, which he uses to issue a verbal order, and the actual date the form 50 was filed it appears the case could be considered from an occupational disease standpoint or as a repetitive trauma injury or as an aggravation of an underlying condition. This bears in mind that Judge Cooper did not make a finding of an occupational disease. He said, based on the representation that the form 50 was filed on February 12, 2002, the only way to meet 42-15-40 was as an occupational disease. And, clearly, that date is incorrect. ... (R. pp. 39 – 40, Huffstetler Decision and Order, 7/15/2008, p. 4-5)

Contrary to the assertions of the Respondents, a consideration of the record of this case mandates the inclusion of all Decisions and Orders of the Commission and of the Circuit Court in that the Appellant contends that the substantial, reliable and probative evidence in the record reflects that she has met the burden of proving her entitlement to the benefits claimed under the criteria for an occupational disease, a repetitive trauma injury or as aggravation of an underlying condition under the law of the case established in the Decision and Order of Commissioner Hufftstetler.

With regard to Respondents' argument that Appellant never objected to nor appealed the Commission's ruling vacating the 2006 decision and, therefore, the Commissioner's decisions of 2006 and 2007 obviates the requirement for this Court to thoroughly review these prior decisions, Respondent's argument is without merit. It is well settled under South Carolina law

that the interlocutory decision is not appealable. (Rule 72, South Carolina Rules of Civil Procedure)

2. WHETHER OR NOT THE CIRCUIT COURT ERRED IN FINDING THAT THE APPELLANT FAILED TO PROVE THE NECESSARY SIX ELEMENTS SET FORTH IN THE CASE OF MOHASCO CORP., DIXIANA MILL DIV. V. RISING, 289 S.C. 130, 345 S.E.2D 249 (CT. APP. 1986), ORDER REVERSED BY MOHASCO CORP. V. DIXIANA MILL DIV. V. RISING, 292 S.C. 489, 357 S.E.2D 456 (1987)

Insofar as Argument 2 is concerned, Appellate incorporates herein by reference and reiterates the positions asserted in her Initial Brief as fully as if recited verbatim.

Additionally, she responds to Respondents' claims regarding the merits of the air quality study conducted by Mr. Richard Bennett, MSPH, CIH, in the following five particulars: First, Appellant would respectfully point out that the Report of Industrial Hygiene Survey Conducted at Federal Mogul, Summerton, South Carolina, by Risk Tech, LLC, by Shawn Stewart and reviewed by Richard Bennett, was conducted February 23, 2004, and the Report is dated March 4, 2004 - approximately six (6) years after the Appellant began treatment for her injuries and almost four (4) years after the Appellant left the plant environment. Therefore, remoteness in time renders the survey unreliable. Second, the Appellant was not among the personnel used in the survey as described in the Methods section; fourth, there is no indication in the record that the personnel who participated in the test had underlying medical conditions similar to Appellant's underlying sinus condition; and fifth, the fallibility and inapplicability of the air quality test results to this case as set forth in the Introduction.

> ... The purpose of this survey was to determine the potential formaldehyde exposure to mold press operators using the Mold Release Thixon 759 product.
>
> ... The results presented in this report are indicative of conditions only during the time of the sampling period. This study does not purport to include every potential health hazard at this location and only those areas and exposures specifically mentioned were evaluated.

R. p. 668, Report of Industrial Hygiene Survey, INTRODUCTION, METHODS, p. 2

Accordingly, Appellant incorporates herein by reference the evidence and arguments in her Initial Brief that she has proven the six elements required by Mohasco establishing by substantial, reliable and probative evidence in the record that her disability qualifies as injury sustained as the result of an occupational disease.

3. WHETHER OR NOT THE CIRCUIT COURT ERRED IN FINDING THAT THERE IS NO MEDICAL OPINION AS EVIDENCE THAT THE APPELLANT HAD AN UNDERLYING CONDITION OR WAS PARTICULARLY SUSCEPTIBLE TO ANY CONDITIONS THAT EXISTED IN HER WORK.

Appellant incorporates herein and reiterates the arguments in her Initial Brief concerning Argument 3 as fully as if restated verbatim herein.

However, Appellant further refutes Respondents' argument on whether or not the Circuit Court erred in finding that there is no medical opinion as evidence that the Appellant had an underlying condition or was particularly susceptible to any conditions that existed in her work. Appellant would respectfully show that the § 42-1-172 "medical opinion as evidence," standard became effective on July 1, 2007, and is not applicable to her injury that occurred in 1998.

4. WHETHER OR NOT THE CIRCUIT COURT ERRED IN FINDING THAT THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT A FINDING OF A REPETITIVE TRAUMA.

Appellant incorporates herein by reference and reiterates the arguments in her Initial Brief concerning Argument 4 as fully as if restated verbatim.

5. WHETHER OR NOT THE CIRCUIT COURT ERRED IN FINDING THAT THERE IS NO EVIDENCE THAT THE APPELLANT SUSTAINED AN AGGRAVATION OF AN UNDERLYING CONDITION.

Respondents claim the Appellant has abandoned her contention as to whether or not the Circuit Court erred in finding that there is no evidence that the Appellant sustained an aggravation of an underlying condition.

Appellant incorporates herein by reference and reiterates the arguments in her Initial Brief concerning Argument 5 as fully as if restated verbatim herein and specifically refers to the following argument therein:

a. Excerpts from Appellant's testimony at the SC Workers' Commission Hearing on May 22, 2008 concerning her medical condition when she started work at Federal Mogul;

(App. Initial Brief, p. 35, R. p. 575, lines 9-23, Tr. 5/22/08 p. 7, lines 9-23, App. Initial Brief, p. 36, R. p. 577, line 16 – p. 578, line 22, Tr. 5/22/08, p. 9, line 16 - p. 10, line 22, App. Initial Brief, p. 37, R. p. 580, lines 15 - 25, Tr. 5/22/08, p. 12, lines 15 - 25, R. p. 581, lines 6 – 21, Tr. 5/22/08, p. 13, lines 6 - 21, R. p. 582, lines 6-18, Tr. 5/22/08, p. 14, lines 6 - 18, App. Initial Brief, pp. 37-39, R. p. 585, line 4 – p 588, line 23, Tr. 5/22/08, p. 17, line 4 - p. 20, line 23, R. p. 589, line 19 – p 590, line Tr. 5/22/08, p. 21, line 19 - p, 22, line 21, App. Initial Brief, pp. 40-42

b. The treatment notes of Dr. Rocco Cassone from 1998 to 2000 (App. Initial Brief, p. 36, R. pp. 212 – 214, Exh. A, Appell APA Submis., Ex. A, pp. 87-89)

c. The report of Dr. James A. Atkison dated June 13, 2000, concerning his diagnosis and prognosis (App. Initial Brief, p. 36, R. pp. 220-221, Exh. A, Appell. APA Submis., Ex. A, p. 93-94)

Appellant argues that, contrary to abandoning her position on this issue, her Initial Brief sets forth argument showing substantial, reliable and probative evidence that she sustained an aggravation of an underlying condition.

6. WHETHER OR NOT THE CIRCUIT COURT ERRED IN FINDING THAT THE APPELLANT HAS PROVIDED NO MEDICAL EVIDENCE TO SHOW THAT EXPOSURE IN THE WORK EITHER CAUSED, AGGRAVATED OR EXACERBATED THE APPELLANT'S CONDITION.

Respondents point out, first, that the lines and pages of Dr. Alleyne's deposition that Appellant notes in her Brief for this argument do not reflect the lines quoted. Second, Respondents argue as follows: "Each lower court rightly found in its capacity as a finder of fact and/or a reviewing body that there was not adequate evidence to attribute the Claimant's symptoms to her workplace."

Appellant incorporates herein by reference and reiterates the arguments in her Initial Brief concerning Argument 6 as fully as if restated verbatim herein.

Further responding, Appellant first addresses Respondents' assertion of error in the lines quoted from the deposition of Dr. Alleyne. The Deposition of William Alleyne, II, M.D., taken September 24, 2004, page 8, line 21, (R. p. 361, line 21) begins as follows: "Q. Now, in your report you listed several chemicals that she was exposed to. ... " The excerpt from the same deposition ends on page 14, line 5 (R. p. 367, line 5): "A. In my opinion, no." Page 16, line 13 (R. p. 369, line 13): "Q. Now, as far as your workup on Ms. Dingle, can you tell us exactly what you did?" .....Page 18, line 3 (R. p. 371, line 3): "A. Yes, sir." Page 20, line 19 (R. p. 373, line 19) "Q. The question was asked about those household spores." ... Page 21, line 2 (R. 374, line 2): "A. No, sir." In reviewing the quotations, Appellant is unable to detect the error of which the Respondents complain.

With regard to Respondents' reference to the right finding of each lower court, Appellant respectfully argues that the Circuit Court Judge R. Ferrell Cothran, Jr., erroneously applied the 2007 standard of "medical opinion as evidence" to this cause of action that arose prior to 2007 and found that there was no medical opinion as evidence that the Appellant has an underlying condition or was particularly susceptible to any conditions that existed in her work. (Cothran Order, filed 8/3/2011, Findings And Conclusions #3 (R. p. 25).

Appellant contends on reply that the record establishes by substantial, reliable and probative evidence that her exposure to the chemical elements, smoke, fumes, and dust in her workplace either caused, aggravated or exacerbated her underlying medical condition.

7. WHETHER OR NOT THE CIRCUIT COURT ERRED IN CONCLUDING, AS A MATTER OF LAW, THAT THE APPELLANT FAILED TO ESTABLISH THAT THE DECISION AND ORDER OF THE WORKERS' COMPENSATION COMMISSION DATED DECEMBER 17, 2008, IS UNSUPPORTED BY THE SUBSTANTIAL, RELIABLE AND PROBATIVE EVIDENCE IN THE RECORD.

Respondents argue that the Circuit Court did not err in concluding that, as a matter of law, the Appellant failed to establish an injury by accident and the decision and the Order of the Commission of December 17, 2008, is supported by the proper standard.

Appellant incorporates herein by reference and reiterates the arguments in her Initial Brief concerning Argument 7 as well as the preceding arguments and evidence relevant to this issue as fully as if restated verbatim herein.

Appellant respectfully argues that the Orders of the Circuit Court were based upon errors and fact and law and the ensuing December 17, 2008, Decision and Order of the Commissioner were based upon the said errors of fact and law.

8. WHETHER OR NOT THE CIRCUIT COURT ERRED IN CONCLUDING, AS A MATTER OF LAW, THAT THE APPELLANT FAILED TO PROVE SHE SUSTAINED A COMPENSABLE CLAIM UNDER EITHER § 42-1-160 OR § 42-11-10, ET SEQ.

Respondents cite Owings v. Anderson County Sheriff's Dept., 315 S.C. 297, 433 S.E.2d 869 (1993), Reh'g denied Aug. 1993), and their prior arguments on this issue.

Appellant incorporates herein by reference and reiterates the arguments in her Initial Brief concerning Argument 8 as well as the preceding arguments and evidence relevant to this issue as fully as if restated verbatim herein.

Additionally, Appellant distinguishes Owings, supra, from Pee v. AVM, Inc., 352 S.C. 167, 171, 573 S.E.2d 785, 787 (2002) cited in her Initial Brief. Owings is the appeal of a Sheriff's Department employee who sought workers' compensation benefits for a heart condition that became apparent while running as part of physical training at the law enforcement academy. The Supreme Court affirmed the Circuit Court's ruling that the employee was not involved in any unusual or extraordinary activity and that current cardiac problems were not causally related to the activity. The Supreme Court held that the cardiologist's testimony that running did not

cause or aggravate the employee's preexisting cardiac problem supported the finding that heart problems did not arise out of employment.

Appellant refers to the construction and definition of injury by accident and occupational disease set forth in Pee, supra, where the South Carolina Supreme Court considered the appeal of an employee who worked for her employer in various capacities beginning in 1987. Each of her jobs involved the repetitive use of her hands, and symptoms manifested themselves in 1995. In this context, the Supreme Court addressed the issue of repetitive trauma injury by accident arising out of and in the course of employment and, likewise, commented upon South Carolina's construction of the definition of an occupational disease.

Appellant argues that she has met her burden of proving that she is entitled to compensation under either § 42-1-160 or § 42-11-10 by substantial, reliable and probative evidence under the state of South Carolina law as it existed at the time of her injury.

9. WHETHER OR NOT THE CIRCUIT COURT ERRED IN CONCLUDING, AS A MATTER OF LAW, THAT THE APPELLANT FAILED TO ESTABLISH THAT SHE IS ENTITLED TO BENEFITS UNDER §§ 42-15-60, 42-9-10, 42-9-20 OR 42-9-30 FOR MEDICAL CARE/TREATMENT, TEMPORARY TOTAL/PARTIAL DISABILITY BENEFITS AND/OR PERMANENT PARTIAL DISABILITY BENEFITS.

The Respondents contend that neither the Single Commissioner, the Full Commission nor the Circuit Court found evidence to support conferring benefits upon the Appellant, and concludes that she is not entitled to benefits under the above statutes.

Appellant incorporates herein by reference and reiterates the arguments in her Initial Brief concerning Argument 9 as well as the preceding arguments and evidence relevant to this issue as fully as if restated verbatim herein.

Appellant respectfully argues that the particular findings of the Single Commissioner, the Full Commission and the Circuit Court denying benefits to the Appellant disregarded the substantial, reliable and probative evidence in the record proving Appellant's entitlement to medical care/treatment under § 42-15-60, compensation for temporary partial disability benefits

under § 42-9-20, and compensation for specific permanent partial disability under § 42-9-30. Further, such Decisions and Order were based upon errors fact misapplied to the law and resulted in errors of fact and law. Consequently, Appellant was wrongfully denied benefits under the Act.

Addressing consideration of entitlement to benefits under the Act, the South Carolina Court of Appeals opined as follows: "The general policy in South Carolina is to construe the Workers' Compensation Act in favor of coverage, and any reasonable doubts as to construction of the Act should be resolved in favor of the claimant." Hall v. Desert Aire, Inc., 376 S.C. 338, 350, 656 S.E.2d 753, 759 (Ct. App. 2007), Reh'g denied Feb. 14, 2008.

CONCLUSION

For the foregoing reasons, Appellant respectfully submits that the substantial, probative and reliable evidence in the record, the law of the case, and the statutory and case law of this State require that the orders denying her benefits be vacated and the initial order of Commissioner Childs awarding her benefits and the subsequent affirmance of the Single Commissioner's order by the Panel and the Full Commission be reinstated.

Respectfully submitted,

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April 4, 2013

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

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April 4, 2013

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PROOF OF SERVICE

I certify that I have served the documents named below upon the Respondents by depositing a copy of the same in the United States mail, postage prepaid, on April 8, 2013, addressed to their attorney of record as follows:

DOCUMENTS SERVED: Final Brief of Appellant
Final Reply Brief of Appellant

SERVED UPON: Candace G. Hindersman, Esquire
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April 8, 2013

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