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**Mar 28 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal from the South Carolina  
Workers Compensation Commission  
Trial Court Case No. 1423028

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Cassandra D. Stallings, Employee, Respondent,

vs.

Hubbell Power Systems, Employer and Liberty Mutual Insurance Co., Carrier, Appellants.

Appellate Case No. 2021-000965

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INITIAL REPLY BRIEF OF APPELLANTS

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## REPLY ARGUMENT

I. THE COMMISSION PANEL ERRED IN FINDING AS A FACT AND IN CONCLUDING AS A MATTER OF LAW THAT THE RESPONDENT SUSTAINED INJURIES BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT WITH THE EMPLOYER.

In her Respondent's Brief for this matter Ms. Stallings contends that the issue before this Court is whether or not there is substantial evidence to support the Commission Panel's decision in this case. She does not address the legal issue presented by the Appellants and their contention that the Panel failed to address the statutory requirements which are applicable to this matter under S.C. Code Ann. § 42-1-172 (1976).

Since the Initial Appellant's Brief was filed in this matter the S.C. Court of Appeals issued its decision in the matter of Brooks v. Benore Logistic Systems, Inc., et al., Op. No. 5891 (S.C. Ct. App. filed January 19, 2022). In that case the Court of Appeals reaffirmed the requirement that in repetitive trauma workers' compensation cases in this State the Commission must abide by § 42-1-172. *See also Michau v. Georgetown County, et al.*, 396 S.C. 589, 723 S.E. 2d 805 (2012). The Commission Panel simply did not do so in this case.

As set forth the Appellants' Brief, the reason the Commission Panel was unable to comply with the requirements of § 42-1-172 is it could not do so given the evidence presented in this case. As argued in that Brief there is no medical evidence which satisfies the mandates of the statute, and if there was such evidence, Ms. Stalling's testimony directly conflicts with that evidence.

The Respondent further suggests that because the Appellants paid Dr. Youmans to perform certain diagnostic evaluations for her it necessarily follows that the Appellants have agreed that she sustained compensable repetitive trauma injuries while working for the Employer.

First, Ms. Stallings never presented such an argument to the Single Commissioner in this case, nor the Commission Panel. In addition, such diagnostic medical evaluations do not constitute acceptance of an injury under the South Workers' Compensation Law. Until an employer and carrier have agreed to pay compensation in a workers' compensation case, or the Commission has ordered such compensation to be paid, the issue of compensability of an injury remains unresolved. *See* S.C. Code Ann. §§ 42-9-230 and 42-9-240 (1976). And finally, Dr. Youman's records and the Forms 14B he prepared in this case do not meet the statutory requirements of § 42-1-172.

### CONCLUSION

For the reasons stated above the Appellants respectfully submit that the Commissioner Panel Order for this matter should be reversed and this matter should be dismissed as set forth in the Single Commissioner's Decision and Order.

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PROOF OF SERVICE

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I certify that I have served a copy of the Appellants' Initial Reply Brief on counsel for the Respondent, Everett K. Chandler, Esquire and Andrea C. Roche, Esquire, by depositing a copy of it in the United States Mail, postage prepaid and / or electronic transmission on March 28, 2022 addressed to 103 Waterloo St., W., Aiken, S.C. 29801 and Post Office Box 5639, Columbia, S.C. 29250, respectively.

March 28, 2022

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