

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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FEB 06 2023

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SC Court of Appeals

WCC File No.1823614

James Freshley, Claimant, Appellant,

vs.

Conbraco Industries, Employer, and Great American
Insurance Company, Carrier, Respondents.

NOTICE OF APPEAL

Appellant, James Freshley, appeals the Order of the Appellate Panel of the South Carolina Workers' Compensation Commission dated January 31, 2023, on the following grounds:

1. THE COMMISSION APPELLATE PANEL ERRED, AS A MATTER OF FACT AND CONCLUSION OF LAW, IN FAILING TO FIND THAT THE CLAIMANT SUSTAINED A COMPENSABLE OCCUPATIONAL DISEASE AND/OR INJURY BY ACCIDENT AS A RESULT OF HIS EXPOSURE TO CERTAIN CHEMICALS ON THE JOB, AND THAT, AS A RESULT THE CLAIMANT IS ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS.
2. THAT THE COMMISSION APPELLATE PANEL ERRED, AS A MATTER OF FACT AND LAW IN THE FOLLOWING PARTICULAR: THE SINGLE COMMISSIONER ERRONEOUSLY FOUND THAT THE EMPLOYER'S MATERIAL SAFETY DATA SHEETS, UPON WHICH THE CLAIMANT RELIED "LIST ALL OF THE CHEMICALS LISTED IN THE ENTIRE FACILITY-NOT JUST THE SHIPPING DEPARTMENT [WHERE THE CLAIMANT WORKED]-AS WELL AS WARNINGS OF THE POTENTIAL SIDE EFFECTS

OF EXPOSURE TO THOSE CHEMICALS.” (SINGLE COMM. ORDER 7/19/2022, p. 11, PARA. 7).

BASED, IN LARGE PART, UPON THAT ERRONEOUS FACTUAL FINDING, THE SINGLE COMMISSIONER REACHED THE LEGAL CONCLUSION THAT THE CASE WAS NOT COMPENSABLE.

AFTER THE CLAIMANT’S APPEAL ARGUED THAT THE FACTUAL FINDING WAS ERRONEOUS, THE COMMISSION APPELLATE PANEL DELETED THE SINGLE COMMISSIONER’S ERRONEOUS FINDING NO. 7 FROM THE APPELLATE PANEL ORDER; WHILE STILL AFFIRMING THE SINGLE COMMISSIONER’S CONCLUSIONS BASED UPON THAT ERRONEOUS FINDING.

3. THAT THE COMMISSION APPELLATE PANEL ERRED, AS A MATTER OF FACT AND LAW IN THE FOLLOWING PARTICULAR: THE SINGLE COMMISSIONER ERRONEOUSLY FOUND THAT “NONE OF THE TREATING OR EVALUATING SPECIALISTS OPINED REGARDING A CAUSAL CONNECTION BETWEEN CLAIMANT’S MEDICAL CONDITIONS AND THE CHEMICALS OR POSSIBLE SYMPTOMS IDENTIFIED ON THE MATERIAL SAFETY DATA SHEETS...”(SINGLE COMM. ORDER 7/19/2022, p. 15-16, PARA. 24).

BASED, IN LARGE PART, UPON THAT ERRONEOUS FACTUAL FINDING, THE SINGLE COMMISSIONER REACHED THE LEGAL CONCLUSION THAT THE CASE WAS NOT COMPENSABLE.

AFTER THE CLAIMANT’S APPEAL ARGUED THAT THE FACTUAL FINDING WAS ERRONEOUS, THE COMMISSION APPELLATE PANEL DELETED THAT PORTION OF THE SINGLE COMMISSIONER’S ERRONEOUS FINDING NO. 24 FROM THE APPELLATE PANEL ORDER; WHILE STILL AFFIRMING THE SINGLE COMMISSIONER’S CONCLUSIONS BASED UPON THAT ERRONEOUS FINDING.

4. THE COMMISSION APPELLATE PANEL ERRED AS A MATTER OF LAW IN REQUIRING THAT THE CLAIMANT SHOW THAT A PARTICULAR QUANTITY OF A PARTICULAR CHEMICAL TO WHICH THE CLAIMANT WAS DIRECTLY EXPOSED FOR A PARTICULAR AMOUNT OF TIME ON PARTICULAR DATES WAS THE CAUSE OF HIS

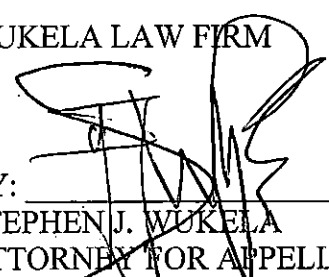
REACTIVE AIRWAYS DISEASE IN ORDER FOR THE CLAIMANT TO BE ENTITLED TO COMPENSATION IN HIS OCCUPATIONAL DISEASE CLAIM ARISING FROM THAT DISEASE.

5. THE COMMISSION APPELLATE PANEL ERRED AS A MATTER OF LAW IN REQUIRING THE CLAIMANT TO EXCLUDE CO-MORBIDITIES "AS THE BASIS OR AT THE VERY LEAST A CONTRIBUTING FACTOR TO CLAIMANT'S MEDICAL CONDITION." (APP. PANEL ORDER, 1/31/2023, P. 16, PARA. 24).
6. THE COMMISSION APPELLATE PANEL ERRED AS A MATTER OF FACT AND CONCLUSION OF LAW IN FINDING "NONE OF THE PHYSICIANS COULD EXCLUDE CLAIMANT'S SERIOUS PRE-EXISTING CO-MORBILITIES AS THE BASIS OR AT THE VERY LEAST A CONTRIBUTING FACTOR TO CLAIMANT'S MEDICAL CONDITION." (APP. PANEL ORDER, 01/31/2023, p. 16, (PARA. 24).

Appellant was served with written notice of entry of Order of the Appellate Panel of the South Carolina Workers' Compensation on January 31, 2023.

Dated: February 2nd, 2023

WUKELA LAW FIRM

BY: 
STEPHEN J. WUKELA
ATTORNEY FOR APPELLANT
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FLORENCE SC 29504
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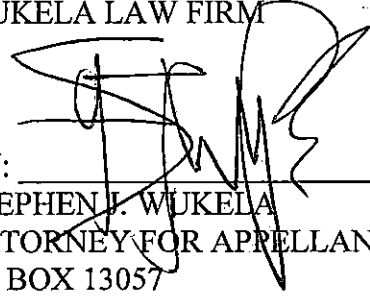
vs.

Conbraco Industries, Employer, and Great American
Insurance Company, Carrier, Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondents, by depositing a copy of it in the United States Mail, postage prepaid, on February 2, 2023, addressed to their attorney of record, Jared M. Pretulak, at his office at Gallivan, White & Boyd, P.A., PO Box 10589, Greenville, SC 29603.

WUKELA LAW FIRM



BY: _____
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February 2, 2023

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Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

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SC Court of Appeals

Re: James Freshley v. Conbraco Industries
Workers' Compensation File No.: 1823614

Dear Ms. Kitchings:

Enclosed for filing please find the Notice of Appeal in the above case. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondents and on the SC Workers' Compensation Commission;
2. A copy of the Order which is to be challenged on appeal;
3. A filing fee of One Hundred Fifty and 00/100 (\$150.00) Dollars.

By copy of this letter, I am serving the South Carolina Workers' Compensation Commission with a copy of the Appeal.

With kind regards, I am

Yours truly,

WUKELA LAW FIRM


STEPHEN J. WUKELA

SJW:mmm

Enclosures

cc: Honorable Amy Bracy
SC Workers' Compensation Commission
PO Box 1715
Columbia SC 29202

Mr. Jared M. Pretulak, Esquire

WUKELA LAW FIRM

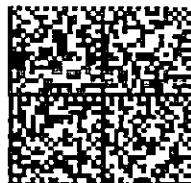
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