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Mar 28 2023

SC Court of Appeals

**State of South Carolina
Workers' Compensation Commission**

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable T. Scott Beck; The Honorable Melody L. James; The Honorable Avery B. Wilkerson, Jr.

SCWCC File No.: 1823614

James Freshley,
Claimant,

v.

Conbraco Industries, Inc.,
Employer,

And

Great American Alliance Insurance Company,
Carrier,
Defendants.

AFFIRMED AND AMENDED

Hearing held in Richland, South Carolina,
on October 17, 2022

Per notice timely and properly served upon all Parties of Interest.

Appearances: Stephen J. Wukela, of Wukela Law Firm, appeared on behalf of Claimant/Appellant.

Jared M. Pretulak of Gallivan, White & Boyd, P.A., appeared on behalf of Defendants/Respondents.

Court Reporter: Amber Scarborough, Creel Court Reporting, 1230 Richland St., Columbia, SC 29201, 803-252-3445

Filed: January 31, 2023

I. STATEMENT OF THE CASE

This claim was heard by Commissioner Aisha Taylor on June 10, 2021 to determine those issues raised on the Form 50 and 51. Notices were timely and properly served and all parties of interest were present. By way of order filed July 19, 2022, Commissioner Taylor ruled, among other things, that the Claimant had failed to meet his burden of proving a compensable injury by accident or occupational injury to his lungs, skin, or resulting headaches.

Claimant appealed the aforementioned Order and the matter was scheduled for oral argument before the Appellate Panel on October 17, 2022. All testimony has been taken. Such, together with the documentary evidence, has delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.


By Appeal, the Claimant respectfully submitted the following:

1. The Single Commissioner erred, as a matter of fact and conclusion of law, in failing to find the Claimant sustained 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.

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. §42-17-50, review the award, weigh the evidence as presented at the initial hearing, and, if good ground be shown, therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Single Commissioner. After careful review of this case, the Panel Affirmed with Amendments the Decision and Order of the Single Commissioner.

EVIDENCE OF THE CASE

James Freshley testified that he was 55 years old and graduated from high school. He said that he came to Conway in 2007, because his parents were ill and started working for Conbraco in 2007. According to Claimant, he did not have any medical problems before going to work for Conbraco.



James Freshley stated that he went to work at Conbraco in the Shipping and Receiving Department working on the zinc line. James Freshley identified a photograph of the zinc line showing mist coming from the area where parts were dipped in zinc. James Freshley identified a paper mask that he wore occasionally and stated that he never did have a respirator. James Freshley testified his direct supervisor was Sara Huffman. He said that while cleaning out a storage room, he and co-worker, Jason, found respirators which they were told by Sara they could use. However, James Freshley testified that Karen Brooks, the Safety Manager, advised them that they were not authorized to use the respirators.

James Freshley testified that while working for Conbraco, he did have irregular heartbeats, but did not have shortness of breath. He did state that in 2018 he advised his supervisor, Sara Huffman, that his skin was irritated and he had headaches and his eyes were burning due to working in the zinc line area. James Freshley stated that he was never provided any personal protective equipment (PPEs) by Conbraco, other than a paper mask and gloves.

James Freshley testified that by May of 2019, he started having breathing problems and he told Sara Huffman that he believed his job on the zinc line was causing his breathing problems. James Freshley said that he was instructed to report problems to Renee Chaisson in Human Resources, which he said he did. James Freshley remembers that an air quality test was performed where monitors were given to employees to wear. James Freshley said that he did not wear a monitor because he was late to work that day.

James Freshley testified that he was treated by Dr. Guha for his heart problems and underwent a number of procedures. James Freshley said that Dr. Guha referred him to Dr. Jona for shortness of breath, noting that he works around chemicals at his job. James Freshley testified that Dr. Guha released him to return to work in late August of 2019. James Freshley said that he took the note and tried to return to work, but was told that he could not return to work because workers' comp was involved. James Freshley said that Dr. Jona referred him to Dr. Miller, a Pulmonologist at MUSC in Charleston, for evaluation and treatment. Dr. Jona released James Freshley to return to work and he returned to

work in December, but in a different department. James Freshley testified that he was assigned to assembly where parts were put together. James Freshley said that standing and bending caused him problems performing that job. James Freshley admitted that Conbraco provided him with accommodations, including a chair to use while performing that job. James Freshley admitted that he went out of work for hemorrhoid surgery on May 8, 2020, and while he was out, there was a layoff based on seniority and he was laid off.

Under cross-examination, James Freshley admitted that his date of alleged injury was November 28, 2018, when he was discussing with his supervisor, Sara Huffman, the skin lesions (spots) on his face and his itching and burning eyes. James Freshley testified that he also had problems with headaches, beginning in November of 2018. James Freshley acknowledged that in August of 2009 he was seen in the emergency room with a chief complaint being headache, and a week or two later, he was in the emergency room in Florence where he was again treated for headaches (APA #13, pp. 397 & 410). James Freshley also admitted that he was treated at Florence Medical Center for headaches in January of 2014, and according to the medical report, it states “past medical history positive for chronic headaches” (APA #13, p. 569).

James Freshley denied that he had been treated for dizziness and vertigo prior to 2018, despite being seen for dizziness and headaches in September of 2011 (APA #13, p. 427).

James Freshley acknowledged that he was diagnosed with chronic sleep apnea in 2015 and his first sleep study was performed in August of 2010 (APA #14, pp. 612-624).

James Freshley admitted that he had heart problems, beginning at least in 2015 and had been taking medication for high blood pressure for years prior to November of 2018.

James Freshley denied that he told Dr. Guha in August of 2015 that he had shortness of breath and palpitations for two years, contrary to APA #1, p. 14. He did admit that he told Dr. Guha in August of 2015 that he had “episodes of dizziness.”

James Freshley admitted that he had perfect attendance working at Conbraco in 2018 and did not miss any time from work for any alleged problems believed to have been caused by his employment. James Freshley admitted that he went out of work in August of 2019, because of heart problems requiring hospitalization. James Freshley testified he came back to work on October 9 and after working a few hours was sent home by Renee Chaisson in HR because workers' compensation was investigating his workers' compensation claim alleging injury due to exposure to chemicals. James Freshley admitted that when he came back to work in December, he was put in a different department. James Freshley admitted he was able to work the hours assigned in the assembly department and further admitted that when he went out of work in May it was to have hemorrhoid surgery.

While James Freshley admitted to seeing a doctor at Doctors Care on May 9, 2019, he alleged that he told the doctor about breathing problems, including being short of breath and fatigue. The narrative report from Doctors Care is devoid of any reference to any breathing, lung, shortness of breath, fatigue, or other pulmonary problem (APA #2, p. 141). While James Freshley testified under cross-examination he told the doctor about breathing problems on his second visit to Doctors Care, the narrative report is again devoid of any reference to any breathing problems (APA #2, p. 162).

James Freshley stated that the last day he worked was May 8, 2020. He testified that at that time he was able to perform his job with accommodations working eight hours a day. He stated he went out on medical leave for hemorrhoid surgery and then was laid off. James Freshley admitted to filing for short term disability on May 29, 2020, and when filling out the form, he checked the "no" box when asked if the condition was work related (Defendants Ex. 4, p. 8).

Renee Chaisson testified next. She admitted that sometime in May of 2019 she first learned that James Freshley was having problems breathing, allegedly due to the fumes from the zinc tank. She also admitted that she was aware that James Freshley was alleging his shortness of breath was due to working around certain chemicals. She also admitted that she was aware that James Freshley's supervisor

suggested that James Freshley have a ventilator. Renee Chaisson requested an air quality test be performed in the air where James Freshley was working.

Renee Chaisson also admitted that James Freshley was not allowed to work when he returned to work in October of 2019, having been out for heart problems, as the workers' compensation carrier wanted to investigate his claim for alleged chemical exposure. Renee Chaisson acknowledged that James Freshley was laid off while out on medical leave for hemorrhoid surgery and heart problems.

Under cross-examination, Renee Chaisson admitted that she had been the Human Resource Manager with Conbraco for four years of the twenty-six years she had worked for Conbraco. She also admitted that she was aware of James Freshley's heart problems years prior to November 28, 2018, the date of his alleged accident. Renee Chaisson testified that Conbraco kept detailed time records of its employees. She identified Defendants Exhibit 3 which was James Freshley's attendance history in 2020, which showed that James Freshley was working full time, eight hours a day for the days that he did work prior to going out on medical leave for hemorrhoid surgery. She also admitted that on May 29, 2020, James Freshley was laid off along with thirteen other employees.

Karen Brooks was called next to testify. She stated that she was the Environmental Health & Safety Manager at Conbraco. She stated that Conbraco had a new zinc line installed beginning in 2020. The new zinc line is designed to have an exhaust system which had not been installed yet. Karen Brooks stated that the changes to the zinc line did not have anything to do with James Freshley's complaints that he made to Renee Chaisson in May of 2019, but rather were due to qualification requirements for certain ISO certifications. Karen Brooks said the new zinc line operates more efficiently and quicker and results in a better ISO certification.

Karen Brooks also testified that personal protective equipment (PPEs) consisting of gloves, safety glasses, and ear protection were provided to James Freshley. Also, N95 masks were available if James Freshley requested.

II. DECISION AND ORDER OF THE SINGLE COMMISSIONER

FINDINGS OF FACT
(Single Commissioner)

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Conbraco Industries, Inc., as Employer, and Great American Alliance Insurance Company, Carrier.
2. The parties stipulated to a compensation rate of \$679.56.
3. Pursuant to Defendants' objections, Claimant's APA numbers 8, 9, and 10 were withdrawn from Claimant's APA Submissions.
4. James Freshley alleges an occupational asthma claim in which Claimant asserts he developed asthma as a result of his exposure to chemicals in the workplace.
5. Defendants have denied that Claimant sustained any compensable injury by accident and/or any compensable occupational disease arising out of the course and scope of Claimant's employment.
6. At the time of his alleged exposure, Claimant had been an employee of Defendants for over ten years, where he worked in the Shipping Department.
7. Claimant relies heavily on the MSDS sheets, which list all of the chemicals listed in the entire facility – not just the Shipping Department – as well as warnings of the potential side effects of exposure to those chemicals.
8. Claimant was treated for heart palpitations, which eventually turned into heart fibrillations, in 2015. In that medical report, Dr. Guha notes that Claimant had shortness of breath and heart palpitations for nearly two (2) years (which would have been as early as 2013) (APA # 1, p. 14). Claimant now correlates this to an MSDS sheet which lists irregular heartbeats as a potential side effect of exposure to the chemical Matron Martex, which was present in the employer's facility.

9. In November of 2018, Claimant began complaining to his employer about skin irritation and headaches as a result of working in the Zinc Phosphate process in the Shipping Department. He did not complain of any lung or heart conditions at this time.
10. From June of 2018 through August of 2019, Claimant continued to treat for heart palpitations and shortness of breath with Dr. Guha, who then referred him to a pulmonologist, Dr. Jona. None of the treatments for the heart and lungs had been causally related to work in any way at this point. Claimant was released to return to work from a cardiac standpoint at this time.
11. It was not until Dr. Jona's appointment on August 26, 2019, that a correlation was made between Claimant's shortness of breath and his exposure to chemicals at work. Dr. Jona asks Claimant a series of questions about his exposure to chemicals at work and then refers him to Dr. Miller at MUSC (Claimant's APA #4, p. 178).
12. Dr. Miller released Claimant to return to work without a diagnosis but sent Claimant for additional evaluations with other specialists to determine the origin of Claimant's complaints. Claimant returned to work in the Assembly Department, but medical records noted he continued to be weak and tired.
13. On June 3, 2020, Dr. Sturdivant noted, "Pulmonary work-up suggests mild physical restricted physiology, but degree of deficit is out of context with the patient's symptoms," leading pulmonary consultant to suggest again a relationship to the patient's underlying arrhythmia. (APA #7, p. 379).
14. Claimant underwent cardiopulmonary testing as well as a bronchodilator study and was formally diagnosed with "reactive airway disease" on June 11, 2020. Claimant went on to have a heart monitor placed to determine fibrillation, and although his cardiologist opined his heart condition, by itself, was not an indication of inability to be employed.

15. Claimant was ultimately laid off by the Employer along with 13 other employees during the COVID crisis, but he was already out of work due to a personal procedure for hemorrhoids on May 8, 2020, and then later, his heart procedure, which was unrelated to his diagnosis of “reactive airway disease.”
16. Dr. Sturdivant testified that Claimant continued to have atrial fibrillation which could cause symptoms of heart palpitations, exertional intolerance, fatigue, shortness of breath, dyspnea with exertion, or shortness of breath with exertion. Dr. Sturdivant went on to testify that he did not know what chemicals, agents, or compound solutions Claimant worked around and did not know what quantity or duration of exposure Claimant had to any chemicals he may have worked around (Depo. of Dr. Sturdivant, pp. 37-39).
17. Dr. Robert Miller, the pulmonologist, opined Claimant’s sleep apnea, cardiac disease, small airway disease, and weight contributed to his overall impairment. He also opined that “reactive airway disease” is “just another term for non-allergic asthma” (Depo. of Dr. Miller, pp. 20-21).
18. Dr. Miller also testified that Claimant had a normal CT scan and did not show any chemical pneumonitis, as alleged by Claimant. Dr. Miller was questioned regarding the Material Safety Data Sheets and opined that while he believed if Claimant was exposed to all of the chemicals listed in the sheets it could lead to reactive airway disease, he was not a toxicologist and did not have any information as to the amount or quantity of a particular chemical the Claimant was exposed to or alleged to have been exposed to. He further testified he had not reviewed any air sampling reports (Depo. of Dr. Miller, pp. 57-58).
19. Defendants retained Dr. Gregory Feldman, a Pulmonologist, to review Claimant’s medical treatment including testing studies and reports. Dr. Feldman opined Claimant’s diagnosis of reactive airway disease was not supported by the required criteria of exclusion of alternative explanations. Dr. Feldman went on to state Claimant’s symptoms were due to his co-

morbidities of obesity and known progressive dilated cardiomyopathy, pointing to Claimant's elevated BMI, abnormal cardiopulmonary exercise test indicating cardiovascular impairment, numerous negative pulmonary function tests, and a negative chest CT (APA #22, p. 915 et seq.).

20. Claimant testified he worked in the Shipping Department on the Zinc Line and that he would have to clean, dip, and coat parts with the zinc phosphate for up to 10 hours a day – 5-6 days a week. Claimant further testified he had never seen the Material Safety Data Sheets before. He admitted that he only complained of his skin, eyes, and headaches to his employer and had never made any complaints regarding his breathing (Hr. Tr. p. 35-37).
21. On cross-examination, Claimant denied having pre-existing headaches, dizziness, and vertigo despite medical records to the contrary. Claimant also disputed the length of his pre-existing conditions. Additionally, Claimant was impeached with his attendance records regarding the number of hours actually worked per week (Hr. Tr. p.59-61, 68, et seq.).
22. The Employer witnesses, Ms. Renee' Chaisson and Ms. Karen Brooks, also testified at the hearing. Both agreed that by May of 2019, Claimant was complaining of shortness of breath and that was a symptom noted on the MSDS sheets. Ms. Brooks testified she only provided the air quality expert with the MSDS sheet for Claimant's specific line and no other areas in close proximity. She also testified the Employer is currently undergoing improvements and renovations to the zinc line where Claimant worked, but they are not complete.
23. Based on the greater weight of evidence in the record, I find Claimant failed to meet his burden of proving a compensable injury by accident or occupational illness to his lungs, skin, or resulting headaches within the course and scope of his employment. This finding is based primarily on the medical evidence as this is a medically complex claim and the preponderance of the medical evidence does not support a causal connection between Claimant's medical conditions and any alleged exposure at work.

24. 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 because none of the physicians had specific details regarding the specific department in which Claimant worked or any specific chemicals to which Claimant was directly exposed and for what amounts of time, if any.
25. Additionally, none of the physicians could exclude Claimant's serious pre-existing co-morbidities as the basis or at the very least a contributing factor to Claimant's medical condition. As such, the undersigned could not exclude those factors as well. Claimant's testimony that he was "playing softball and basketball" prior to his employment with the Defendant is not enough to overcome the lack of the direct medical causation in this instance.
26. All claims for benefits under the Workers' Compensation Act are denied.
27. No hearing costs are assessed.

CONCLUSIONS OF LAW
(Single Commissioner)

Accordingly, as provided in § 42-17-40, it is the determination of this Commissioner:

1. Under § 42-1-160, Claimant did not sustain any compensable injury by accident to his lungs and skin arising out of the course and scope of his employment with Conbraco Industries, Inc.
2. Under § 42-11-10, Claimant did not sustain any compensable occupational disease arising out of the course and scope of his employment with Conbraco Industries, Inc.
3. Based upon the foregoing, Claimant is not entitled to any benefits under the Workers' Compensation Act for either an injury by accident or occupational disease.

ORDER
(Single Commissioner)

IT IS ORDERED that the claim for workers' compensation benefits by Claimant due to an injury by accident and/or occupational disease arising out of the course and scope of his employment with Conbraco Industries, Inc., is denied.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

III. ISSUES ON APPEAL

Whether the Single Commissioner erred, as a matter of fact and conclusion of law, in failing to find 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.

IV. DECISION OF THE APPELLATE PANEL

Based on a review of the record, including evidence received and produced at the hearing, applicable laws and regulations, and oral arguments of the parties, the Appellate Panel hereby affirms and amends the Single Commissioner's Decision & Order and finds the following facts based on the preponderance of the evidence:

FINDINGS OF FACT

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Conbraco Industries, Inc., as Employer, and Great American Alliance Insurance Company, Carrier.
2. The parties stipulated to a compensation rate of \$679.56.
3. Pursuant to Defendants' objections, Claimant's APA numbers 8, 9, and 10 were withdrawn from Claimant's APA Submissions.
4. James Freshley alleges an occupational asthma claim in which Claimant asserts he developed asthma as a result of his exposure to chemicals in the workplace.

5. Defendants have denied that Claimant sustained any compensable injury by accident and/or any compensable occupational disease arising out of the course and scope of Claimant's employment.
6. At the time of his alleged exposure, Claimant had been an employee of Defendants for over ten years, where he worked in the Shipping Department.
7. Claimant was treated for heart palpitations, which eventually turned into heart fibrillations, in 2015. In that medical report, Dr. Guha notes that Claimant had shortness of breath and heart palpitations for nearly two (2) years (which would have been as early as 2013) (APA # 1, p. 14). Claimant now correlates this to an MSDS sheet which lists irregular heartbeats as a potential side effect of exposure to the chemical Matron Martex, which was present in the employer's facility.
8. In November of 2018, Claimant began complaining to his employer about skin irritation and headaches as a result of working in the Zinc Phosphate process in the Shipping Department. He did not complain of any lung or heart conditions at this time.
9. From June of 2018 through August of 2019, Claimant continued to treat for heart palpitations and shortness of breath with Dr. Guha, who then referred him to a pulmonologist, Dr. Jona. None of the treatments for the heart and lungs had been causally related to work in any way at this point. Claimant was released to return to work from a cardiac standpoint at this time.
10. It was not until Dr. Jona's appointment on August 26, 2019, that a correlation was made between Claimant's shortness of breath and his exposure to chemicals at work. Dr. Jona asks Claimant a series of questions about his exposure to chemicals at work and then refers him to Dr. Miller at MUSC (Claimant's APA #4, p. 178).
11. Dr. Miller released Claimant to return to work without a diagnosis but sent Claimant for additional evaluations with other specialists to determine the origin of Claimant's complaints.

Claimant returned to work in the Assembly Department, but medical records noted he continued to be weak and tired.

12. On June 3, 2020, Dr. Sturdivant noted, "Pulmonary work-up suggests mild physical restricted physiology, but degree of deficit is out of context with the patient's symptoms," leading pulmonary consultant to suggest again a relationship to the patient's underlying arrhythmia. (APA #7, p. 379).
13. Claimant underwent cardiopulmonary testing as well as a bronchodilator study and was formally diagnosed with "reactive airway disease" on June 11, 2020. Claimant went on to have a heart monitor placed to determine fibrillation, and although his cardiologist opined his heart condition, by itself, was not an indication of inability to be employed.
14. Claimant was ultimately laid off by the Employer along with 13 other employees during the COVID crisis, but he was already out of work due to a personal procedure for hemorrhoids on May 8, 2020, and then later, his heart procedure, which was unrelated to his diagnosis of "reactive airway disease."
15. Dr. Sturdivant testified that Claimant continued to have atrial fibrillation which could cause symptoms of heart palpitations, exertional intolerance, fatigue, shortness of breath, dyspnea with exertion, or shortness of breath with exertion. Dr. Sturdivant went on to testify that he did not know what chemicals, agents, or compound solutions Claimant worked around and did not know what quantity or duration of exposure Claimant had to any chemicals he may have worked around (Depo. of Dr. Sturdivant, pp. 37-39).
16. Dr. Robert Miller, the pulmonologist, opined Claimant's sleep apnea, cardiac disease, small airway disease, and weight contributed to his overall impairment. He also opined that "reactive airway disease" is "just another term for non-allergic asthma" (Depo. of Dr. Miller, pp. 20-21).

17. Dr. Miller also testified that Claimant had a normal CT scan and did not show any chemical pneumonitis, as alleged by Claimant. Dr. Miller was questioned regarding the Material Safety Data Sheets and opined that while he believed if Claimant was exposed to all of the chemicals listed in the sheets it could lead to reactive airway disease, he was not a toxicologist and did not have any information as to the amount or quantity of a particular chemical the Claimant was exposed to or alleged to have been exposed to. He further testified he had not reviewed any air sampling reports (Depo. of Dr. Miller, pp. 57-58).
18. Defendants retained Dr. Gregory Feldman, a Pulmonologist, to review Claimant's medical treatment including testing studies and reports. Dr. Feldman opined Claimant's diagnosis of reactive airway disease was not supported by the required criteria of exclusion of alternative explanations. Dr. Feldman went on to state Claimant's symptoms were due to his comorbidities of obesity and known progressive dilated cardiomyopathy, pointing to Claimant's elevated BMI, abnormal cardiopulmonary exercise test indicating cardiovascular impairment, numerous negative pulmonary function tests, and a negative chest CT (APA #22, p. 915 et seq.).
19. Claimant testified he worked in the Shipping Department on the Zinc Line and that he would have to clean, dip, and coat parts with the zinc phosphate for up 10 hours a day – 5-6 days a week. Claimant further testified he had never seen the Material Safety Data Sheets before. He admitted that he only complained of his skin, eyes, and headaches to his employer and had never made any complaints regarding his breathing (Hr. Tr. p. 35-37).
20. On cross-examination, Claimant denied having pre-existing headaches, dizziness, and vertigo despite medical records to the contrary. Claimant also disputed the length of his pre-existing conditions. Additionally, Claimant was impeached with his attendance records regarding the number of hours actually worked per week (Hr. Tr. p.59-61, 68, et seq.).

21. The Employer witnesses, Ms. Renee' Chaisson and Ms. Karen Brooks, also testified at the hearing. Both agreed that by May of 2019, Claimant was complaining of shortness of breath and that was a symptom noted on the MSDS sheets. Ms. Brooks testified she only provided the air quality expert with the MSDS sheet for Claimant's specific line and no other areas in close proximity. She also testified the Employer is currently undergoing improvements and renovations to the zinc line where Claimant worked, but they are not complete.
22. Based on the greater weight of evidence in the record, we find Claimant failed to meet his burden of proving a compensable injury by accident or occupational illness to his lungs, skin, or resulting headaches within the course and scope of his employment. This finding is based primarily on the medical evidence as this is a medically complex claim and the preponderance of the medical evidence does not support a causal connection between Claimant's medical conditions and any alleged exposure at work.
23. It is noteworthy that none of the treating or evaluating physicians had specific details regarding the specific department in which Claimant worked or any specific chemicals to which Claimant was directly exposed and for what amounts of time, if any.
24. Additionally, none of the physicians could exclude Claimant's serious pre-existing co-morbidities as the basis or at the very least a contributing factor to Claimant's medical condition. As such, the undersigned could not exclude those factors as well. Claimant's testimony that he was "playing softball and basketball" prior to his employment with the Defendant is not enough to overcome the lack of the direct medical causation in this instance.
25. In reaching our conclusion that the Claimant has failed to meet his burden of proof, specifically, we give great weight to the opinions and testimony of Dr. Feldman, a board-certified physician in the areas of pulmonary medicine, internal medicine and critical medicine. Dr. Feldman was uniquely positioned to comprehensively review all of the relevant medical evidence, including Dr. Miller's testimony, and after doing so, was unable

to draw a causal relationship between the Claimant's employment and his symptoms, but instead concluded that the presence of the Claimant's multiple comorbidities more adequately explained the Claimant's symptoms. He further found that the diagnosis of RADS was neither supported by the required criteria for exclusion of alternative explanations nor was it supported by any reliable medical evidence.

26. In fact, in analyzing the evidence and reaching his conclusions, Dr. Feldman noted, among other things, that it was no longer appropriate for any physician to make a RADS diagnosis without a clear understanding of the chemical involved and the extent of exposure. No one has been able to identify with any specificity the chemicals to which the Claimant was supposedly exposed and even Dr. Miller acknowledged during his deposition that he could not say exactly to what chemical the Claimant was exposed. For this, among other reasons, we find that Dr. Feldman's conclusions are not based on conjecture or speculation but are well supported by reliable and probative evidence contained in the record. Accordingly, we give greater weight to his opinions and conclusions than to any other treating or evaluating specialist.

27. All claims for benefits under the Workers' Compensation Act are denied.

28. No hearing costs are assessed.

CONCLUSIONS OF LAW

In view of the findings of fact, we conclude:

1. Under § 42-1-160, Claimant did not sustain any compensable injury by accident to his lungs and skin arising out of the course and scope of his employment with Conbraco Industries, Inc.
2. Under § 42-11-10, Claimant did not sustain any compensable occupational disease arising out of the course and scope of his employment with Conbraco Industries, Inc.

3. Based upon the foregoing, Claimant is not entitled to any benefits under the Workers' Compensation Act for either an injury by accident or occupational disease.

ORDER

Pursuant to S.C. Code Ann. §42-17-50, we, the Appellate Panel, have reviewed the Decision and Order of the Single Commissioner and weighed the evidence as presented at the initial hearing and considered all issues raised in the briefs of the Parties and those issues raised during the Full Commission Review hearing.

After careful review, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, Affirms with Amendments the Single Commissioner's Order consistent with our Findings of Fact and Conclusions of Law as above.

It is therefore ordered that the Findings of Fact and Conclusions of Law of the Single Commissioner are incorporated herein as if set forth verbatim unless specifically reversed or amended in the Order of the Full Commission. Accordingly, the Claimant's request for benefits and compensation under the Act is hereby denied.

AND IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION



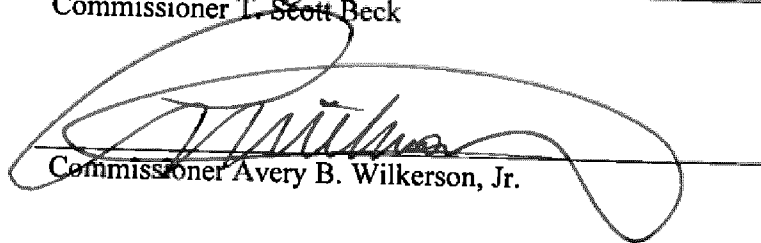
Commissioner Melody L. James

FULL AFFIRMATION

CONCURRING:



Commissioner T. Scott Beck



Commissioner Avery B. Wilkerson, Jr.

January ____, 2023

Order Served via email:

Jared M. Pretulak Gallivan White & Boyd Jpretulak@gwblawfirm.com Michael A. Farry Horton Law Firm mfarry@hortonlawfirm.net	Stephen J. Wukela Steve Wukela Wukela Law Firm stephen@wukelalaw.com steve@wukelalaw.com
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CERTIFICATE OF SERVICE

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

By Eugenia Hollmon on January 31, 2023