STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE	)	FOR THE EIGHTH JUDICIAL CIRCUIT
PHTS Risk Management Services, Carrier,	)	TRUE COPY BY ABBEVILLE COUNTY CLERK OF COURT
And	)	**ORDER REVERSING DECISION OF THE APPELLATE PANEL OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**
Abbeville County Memorial Hospital, Employer,	)	
vs.	)	W.C.C. FILE NO. 0511737
South Carolina Second Injury Fund, Defendant.	)	C.A. No.: 2012-CP-01-195
(In Re: Billie New v. Abbeville County Memorial Hospital)	)	STATE OF SOUTH CAROLINA COUNTY OF ABBEVILLE Filed MAY 14 A.D. 2013 at 8:44 o'clock A.M. Clerk of Court

ORDER

This matter is before the Court on the motion of Abbeville County Memorial Hospital (Employer) and PHTS Risk Management Services (Carrier), collectively Plaintiffs/Appellants, wherein they appeal from the decision of the Appellate Panel of the South Carolina Workers' Compensation Commission (hereinafter "Appellate Panel") denying them full Second Injury Fund reimbursement for benefits paid or to be paid to the injured employee, Billie New (hereinafter "Ms. New"), on the underlying workers' compensation claim stemming from Ms. New's July 12, 2005 work accident.

The parties submitted briefs to the Court and appeared for oral arguments on February 1, 2013. After hearing the arguments of counsel, reviewing the memoranda and other documents submitted to the Court and the applicable authority, the Court hereby reverses the decision of the Appellate Panel insofar as it denies Plaintiffs/Appellants full Second Injury Fund reimbursement pursuant to S.C. Code Ann. § 42-9-400.

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FACTS OF THE CLAIM

Ms. New injured her neck on July 12, 2005 when she attempted to catch a falling patient while she was employed at Abbeville County Memorial Hospital. PHTS Risk Management Services admitted the claim and authorized appropriate medical treatment. Prior to this incident, Ms. New had complained of and sought treatment for pain affecting her neck and had experienced radicular symptoms affecting her left extremity. Additionally, Ms. New was diagnosed with anxiety and depression in 2002 and received treatment in relation to those conditions prior to her work accident in July 2005.

Plaintiffs/Appellants sought Second Injury Fund reimbursement pursuant to S.C. Code Ann. § 42-9-400 under multiple theories, including preexisting arthritis (neck condition, cervical stenosis and cervical osteophytes), anxiety and/or depression, contending that: (1) these pre-existing impairments were permanent and serious enough so as to constitute a hindrance or obstacle to Ms. New's employment; (2) they were entitled to a presumption of hindrance for Ms. New's preexisting cervical arthritis under S.C. Code Ann. § 42-9-400(d)(4) and for all of Ms. New's preexisting impairments both individually and collectively under S.C. Code Ann. § 42-9-400(d)(34)(b); (3)that Abbeville County Memorial Hospital had knowledge of Ms. New's preexisting neck condition, but that Ms. New concealed her other impairments; and (4) they incurred substantially greater liability for medical costs, disability, and compensation based upon Ms. New's preexisting conditions combining with or being aggravated by her July 12, 2005 work accident. In so contending, Plaintiffs/Appellants relied upon medical evidence and medical questionnaires completed by physicians, including Ms. New's authorized treating physician, establishing the elements of reimbursement under S.C. Code Ann. § 42-9-400.

PROCEDURAL HISTORY

Commissioner Avery B. Wilkerson, Jr. held a hearing on September 7, 2011 in Laurens, South Carolina. The Commissioner's Decision and Order, filed October 28, 2011, denied Plaintiffs/Appellants reimbursement pursuant to S.C. Code Ann. § 42-9-400. On November 11, 2011, Plaintiffs/Appellants filed an Application for Full Commission Review of the Hearing Commissioner's Decision and Order. The parties submitted briefs in support of their respective positions and appeared before the Appellate Panel on March 19, 2012 for oral argument. On May 22, 2012, the Appellate Panel issued its Decision and Order denying Plaintiffs/Appellants full reimbursement from the Second Injury Fund and affirming the Decision and Order of the Hearing Commissioner.

Plaintiffs/Appellants submitted a Notice of Appeal and Petition for Judicial Review by the Court on June 21, 2012, listing fifty-four (54) Grounds for Review and Exceptions to the Decision and Order of the Appellate Panel. The parties submitted briefs and appeared for oral arguments before the Court on February 1, 2013.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (hereinafter "APA") establishes the standard for judicial review of decisions by the Appellate Panel of the Workers' Compensation Commission. Fredrick v. Wellman, Inc., 385 S.C. 8, 15–16, 682 S.E.2d 516, 519 (Ct. App. 2009); *see* Lark v. Bi-Lo, Inc., 276 S.C. 130, 134–35, 276 S.E.2d 304, 306 (1981). Under the scope of review established by the APA, the Court may not substitute its judgment for that of the Appellate Panel as to the weight of the evidence on questions of fact, but may reverse or modify the Appellate Panel's decision if the appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable,

probative and substantial evidence on the whole record. Carolinas Recycling Group v. South Carolina Second Injury Fund, 398 S.C. 480, 483, 730 S.E.2d 324, 326 (Ct.App. 2012); *see* S.C. Code Ann. § 1-23-380. Substantial evidence is defined as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion as the Appellate Panel. Carolinas Recycling Group, 398 S.C. at 483, 730 S.E.2d at 326 (citing Lark, 276 S.C. at 135, 276 S.E.2d at 306). More specifically, substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion that the Appellate Panel reached. Bazen v. Badger R. Bazen Co., Inc., 388 S.C. 58, 62, 693 S.E.2d 436, 438 (Ct.App. 2010) (citing Shealy v. Aiken County, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000)).

ANALYSIS

Plaintiffs/Appellants submitted expert medical testimony in the form of opinions from Dr. Kilburn, Ms. New's treating physician, and Dr. Lind, a psychologist who treated Ms. New for anxiety and depression (Exhibit E, p. 47; Exhibit F, pp. 48–49). These uncontroverted medical opinions establish: (1) that Ms. New's impairments of arthritis (neck condition, cervical stenosis and cervical osteophytes), anxiety and depression preexisted her July 12, 2005 work injury; (2) these preexisting impairments were permanent and of such seriousness so as to constitute a hindrance or obstacle to her employment or re-employment; and (3) the preexisting impairments combined with or were aggravated by Ms. New's work injury to substantially increase Plaintiffs/Appellants' overall liability and medical expenses.

In addition to submission of the aforementioned medical questionnaires, Plaintiffs/Appellants submitted medical records that corroborate the medical opinions outlined in said questionnaires. Specifically, medical records from shortly after Ms. New's work accident

note diagnoses of spondylosis, cervical stenosis, disc degeneration and osteophytes, all of which are degenerative conditions, indicating they predated the work accident (APA No. 1, p. 1–2, 19; APA No.2, p. 6). Medical records from Ms. New's family physician likewise confirm diagnoses of depression and anxiety predating her work accident and note treatment for both conditions at that time (APA No. 1, p. 3). Medical records from Dr. Lind indicate that Ms. New's preexisting anxiety and depression were aggravated by her work injury and required psychiatric treatment related thereto, thus supporting substantially increased liability for Plaintiffs/Appellants (APA No. 6, p. 27–31). Other medical records reference continuing numbness, pain and weakness in Ms. New's neck and upper extremities following her work accident, resulting in additional medical treatment; thus, supporting an aggravation of her preexisting impairments (APA No. 3, p. 9; APA No. 5, pp. 20–21, 25). When this evidence is viewed in conjunction with expert medical evidence submitted by Plaintiffs/Appellants, the only reasonable conclusion that can be drawn is that the substantial evidence in the record supports Second Injury Fund reimbursement.

Plaintiffs/Appellants also are entitled to a presumption of permanency and hindrance for Ms. New's preexisting cervical arthritis under S.C. Code Ann. § 42-9-400(d)(4) and for all of Ms. New's preexisting impairments both individually and collectively under S.C. Code Ann. § 42-9-400(d)(34)(b). Under S.C. Code Ann. § 42-9-400(c), Plaintiffs/Appellants have satisfied the employer knowledge requirement by submitting a statement from Ms. New's supervisor specifying that Ms. New often complained of pain in all parts of her body, including her neck, and missed work on several occasions on account of such pain (Exhibit C, p. 42). Regarding Ms. New's preexisting anxiety and depression, S.C. Code Ann. § 42-9-400(c) was satisfied because the evidence indicates Ms. New had previously been diagnosed with the conditions and received

treatment related thereto, but concealed such information on her employee health questionnaire (Exhibit D, p. 43–46).

In sum, Plaintiffs/Appellants satisfied each and every requirement for Second Injury Fund reimbursement pursuant to S.C. Code Ann. § 42-9-400 via expert medical opinions, supporting medical records, evidence in the record and/or presumptions as provided for in S.C. Code Ann. § 42-9-400. The South Carolina Second Injury Fund/Respondent did not submit any medical opinions or evidence contradicting that submitted by Plaintiffs/Appellants.

In Carolinas Recycling Group, 398 S.C. 480, 730 S.E.2d 324 (Ct. App. 2012), the South Carolina Court of Appeals elaborated on what constitutes substantial evidence, and particularly, what type of evidence the Appellate Panel may rely upon to support its decision. In that case, the South Carolina Court of Appeals found that the record was "replete with expert medical testimony" supporting reimbursement and "the Fund failed to present any expert medical testimony . . . to discredit the overwhelming medical testimony and evidence [the carrier] presented to the Appellate Panel." Carolinas Recyling Group, 398 S.C. at 485, 730 S.E.2d at 327. As such, the court found that the decision of the Appellate Panel denying reimbursement was not supported by substantial evidence; correspondingly, the court reversed the Order of the circuit court affirming the Decision and Order of the Appellate Panel. *See Id.* at 486, 730 S.E.2d at 328.

Under the authority of Carolinas Recycling Group, once Plaintiffs/Appellants submitted expert medical opinions and supporting medical evidence establishing each element of reimbursement under S.C. Code Ann. § 42-9-400, the South Carolina Second Injury Fund/Respondent was required to submit some form of reliable, probative and substantial evidence of its own contradicting that submitted by Plaintiffs/Appellants. In this instance, the

South Carolina Second Injury Fund/Respondent did not submit any such evidence. As such, the Decision and Order of the Appellate Panel was not supported by substantial evidence in the record and should be reversed to the extent that it denies Plaintiffs/Appellants reimbursement.

CONCLUSION

The Decision and Order of the Appellate Panel, wherein it denied Plaintiffs/Appellants Second Injury Fund reimbursement, is not supported by substantial evidence in the record. For the reasons discussed herein this Order, the decision of the Appellate Panel is reversed insofar as it denies Plaintiffs/Appellants full Second Injury Fund reimbursement. The South Carolina Second Injury Fund shall immediately and fully reimburse Plaintiffs/Appellants as provided for under S.C. Code Ann. § 42-9-400 and as specified in the Entry of Judgment to be entered by the Abbeville Clerk of Court contemporaneously with this Order.

Eugene C. Griffith, Jr.
Presiding Judge

Newberry, South Carolina
April 29th, 2013