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Oct 22 2024

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

FULL COMMISSION

Monica Murphy.....Appellant,
Halocarbon Products Corporation and Commerce Industry Insurance Co. c/o AIG Claims,
Inc.,.....Respondents.

PETITION FOR REHEARING

Monica Murphy petitions the South Carolina Court of Appeals for Rehearing the Order filed and issued October 9, 2024. Appellant received written notice of the Order on October 9, 2024.

October 22, 2024

Other Counsel of Record:
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ISSUE FOR REHEARING

The Appellant raised a question of law that in a medically complex case, undisputed medical evidence controls the case regardless of subjective evidentiary findings. The Court of Appeals overlooked and made no finding concerning the undisputed QT interval suffered by the Appellant which is also agreed upon medical evidence of exposure to hydrofluoric acid (HF).

STATEMENT OF THE CASE

This is a medically complex workers' compensation case involving admitted exposure to a lethal chemical known as hydrofluoric acid (HF). The Single Commissioner heard the case on April 27, 2017 and entered an order denying compensability on March 12, 2018 finding that although there was an injury, it was not sufficient magnitude, duration or amount to have caused permanent heart or lung injuries. The Commissioner further found that the Employee's version of the facts was not credible, though the evidence is in conflict. The Employee/Appellant filed a Form 30 Request for Commission Review March 18, 2018 and amended same on April 11, 2018. The Appellate Panel of the Full S.C. Workers' Compensation Commission entered an Order affirming the Single Commissioner's findings July 23, 2018 and appeal was filed timely. This Court reversed the Full Commission in an Unpublished Opinion June 2, 2021 in *Murphy v. Halocarbon Products Corporation*, 2021 WL 229025, with instructions to admit the report of Philip Edelman, one of the Appellant's experts as rebuttal evidence. The Appellate Panel and Full Commission then entered its Decision and Order on October 18, 2022, again affirming the findings of the Single Commissioner. The Appellant timely filed Notice of Appeal with this Court October 26, 2022 and the Court of Appeals entered its Order Affirming the findings of the Single Commissioner. The Appellant here petitions this Court for rehearing on the issue of failure to consider uncontested medical evidence in a complex medical case.

STATEMENT OF THE FACTS

This case arose out of Monica Murphy's (the Appellant's) employment as a lab technician at Halocarbon Products, Corp. (Respondent), and undisputed inhalation of hydrofluoric acid (HF). This case was accepted as a medically complex case by the Commission. The Appellant suffered an abnormally prolonged QT interval at 0.496 milliseconds at ECG. Early Dep., APA p. 400, R. p. 751. An abnormal QT interval is evidence of HF exposure. *Id.*, Setaro Rep., APA p. 240; R. p. 714, MacKinnon Dep. pp. 41:22-25 to 43:1-21; R. pp. 432-434.

STANDARD OF REVIEW

Pursuant to Rule 221, SCACR, the Appellant in this case petitions the South Carolina Court of Appeals for rehearing on the issue of the abnormally prolonged QT interval as uncontested and objective and controlling medical evidence in this medically complex case which was overlooked in the Order issued by this Court on October 9, 2024.

ARGUMENT

In medically complex cases, objective medical and scientific evidence control as a matter of law over subjective credibility findings in the determination of a compensable injury. S.C. Code § 42-1-160. This Court misapprehended and/or overlooked the most critical, objective, and uncontested medical evidence in this case: the Appellant's abnormally prolonged QT interval. This Court did not address the fact that there was **no dispute** in the medical records of this case as to the Appellant's abnormally prolonged QT interval, which was controlling as to the issue of significant HF exposure.¹

¹ The Court, in its Order, did address the weight given to *conflicting* medical evidence writing that "[b]ecause there was a vast amount of medical testimony and medical records and because some of the medical testimony was conflicting, this case required the Commission to give greater weight to certain evidence." October 9, 2024 Opinion. The Court did not address uncontested, or non-conflicting controlling medical evidence in its Order. *Id.*

The Record reflects that the Appellant experienced a QT interval which is a scientific and objectively measurable event. “Of note, [the Appellant’s] QT interval was abnormally prolonged at 0.496 milliseconds.” Early Rep., APA p. 400, R. p. 751.² Experts for the Appellant and the Respondent **agree** that a prolonged QT interval is evidence of a significant concentrated exposure to hydrofluoric acid (HF). *Id.* The Respondent’s own HF expert, Dr. MacKinnon, agrees that it would take significant exposure to HF to precipitate a prolonged QT interval. MacKinnon Dep. pp. 41:22-25 to 43:1-21; R. pp. 432-434. Meaning, if the Appellant suffered a prolonged QT interval on ECG (an objective medical test) then it follows that the Appellant was in fact substantially exposed to HF. *Id.* No less than four (4) doctors (two on behalf of the Appellant *and* two on behalf of the Respondent) note the import and implication of an abnormally prolonged QT interval after the Appellant’s exposure to HF: Dr. Hobbs, Dr. Setaro, Dr. MacKinnon (Respondent’s HF expert), and Dr. Early (Respondent’s HF expert). It is simply indisputable that based upon the uncontested scientific, and objective medical evidence of an abnormally prolonged QT interval the Appellant had a significant exposure to HF.³

The issue presented to this Court was whether as a matter of law, the weight given to the undisputed objective evidence in a complex medical case is controlling. This question was not answered by the Court. Here, there is simply no conflict in the objective medical evidence that (1) the Appellant underwent an ECG, and the results indicated an abnormally prolonged QT interval and (2) both medical experts for the Appellant AND Respondent agree that a prolonged QT

² It is similarly not contested that an abnormally prolonged QT interval is objective medical evidence of a cardiac event, such as a heart block. MacKinnon Dep. p. 40:19-25; R. pp. 431-432 and pp. 36:17-21; 22-25 to 37:1-2; R. pp. 429-430. *See also*, Sentaro APA No. 24, APA pp. 239-242; R. pp. 713-716.

³ The Commission is required at law to weigh and measure each piece of evidence, including objective, uncontested medical testing. *Clark v. Philips Electronics/Shakespeare, et al*, 857 S.E.2d 378, 433 S.C. 186 (S.C. Ct. App. 2021). The Commission is not permitted at law to disregard or ignore substantial, objective evidence favorable to the Claimant/Appellant. *Burnette v. City of Greenville*, 401 S.C. 417, 737 S.E.2d 200 (S.C. Ct. App. 2012).

interval is evidence of significant HF exposure which can and did lead to heart block. This Court did not address the issue that in a case designated as medically complex, where there is an objective, scientific, medical test that is not in dispute, as a matter of law, the medical evidence must control. A careful review of the Record on Appeal made plain just such evidence: that the Appellant had an abnormally prolonged QT interval (objectively measurable, scientific data) and such medical data is undeniable and acknowledged evidence of HF exposure.

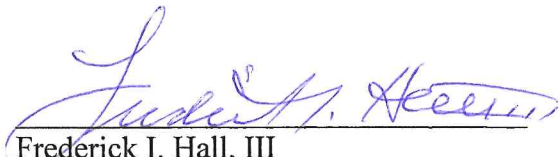
Despite the statement in this Court's Opinion that all evidence was considered, this is not correct. This Court did not discuss the clear evidence of the Appellant's abnormally prolonged QT interval and the fact that four (4) doctors for both Appellant and Respondent concur that a prolonged QT interval is evidence of significant HF exposure. There is no dispute in the record on appeal concerning these facts which should be addressed by this Court as a matter of law.

CONCLUSION

The Order issued by this Court did not address the issue regarding the Commission's failure to consider the undisputed medical evidence of the Appellant's prolonged QT interval in a medically complex case, which is controlling as a matter of law. While the Court did opine in its Order that it is appropriate to weigh factors of credibility and subjective testimony in instances where there is *conflicting* medical evidence, this Court did not address the issue on appeal that the objective, *undisputed* medical evidence is controlling as a matter of law. For the reasons set forth herein, the Appellant petitions this Court to rehear as a matter of law the failure of the Commission to consider medical evidence of the Appellant's prolonged QT interval as evidence of a significant HF exposure as grounds to either reverse the Commission findings as a matter of law or remand for consideration of the objective medical evidence in this case.

[Signature Block on Page 5]

BY:



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Inc.,.....Respondents.

PROOF OF SERVICE

I certified that I have served the Petition for Rehearing, by depositing a copy in the U.S. Mail, postage prepaid, on October 22, 2024, addressed to the attorney of record, James H. Lichty, Esquire and The South Carolina Workers' Compensation Commission at the addresses listed below:

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re: **Monica Murphy v. Halocarbon Products Corporation, Appellate Case No. 2022-001546**

To Whom It May Concern:

Please find enclosed the Appellant's Petition for Rehearing in the above-referenced matter which is being filed via email to ctappfilings@sccourts.org. A check made payable to the South Carolina Court of Appeals in the amount of \$50.00 is being sent via US Mail to the PO Box address as indicated above. Please advise if anything additional is required from my office.

Please contact me at my Lexington office with any questions.

Very Truly Yours,


Frederick I. Hall, III

Enclosures

cc: James H. Lichty, Esq. (via US Mail & Email at jlichty@mgclaw.com)