RECEIVED
Jan 03 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 2104833
APPELLATE CASE NO. 2024-001766

Qushon Inman, Claimant..... Appellant/Respondent,

vs.

GE Healthcare, Inc., Employer,
and Riverstone Industrial Ins., Carrier ..... Respondents/Appellants.

FINAL BRIEF OF APPELLANT/RESPONDENT

STEPHEN J. WUKELA
Wukela Law Firm
PO Box 13057
Florence, SC 29504
(843) 669-5634
stephen@wukelalaw.com
Attorney for Appellant/Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

COURT RULES

STATEMENT OF ISSUES OF APPEAL

A. Did the Single Commissioner err in failing to find that the Claimant sustained compensable injury by accident to his back; which aggravated the pre-existing condition of his back?

B. Did the Single Commissioner properly rule that the November 3, 2022 report of Dr. Edwards and his April 20, 2023 deposition, should be admitted into evidence?

STATEMENT OF THE CASE

This is a workers' compensation claim, tried before the Single Commissioner on the Claimant's Form 50; alleging the Claimant suffered injury to his lumbar spine affecting his legs.

The Claimant noticed and took the deposition of Dr. William Edwards, the Claimant's treating orthopaedic surgeon, on September 23, 2021. Dr. Edwards testified that he could not state, to a reasonable degree of medical certainty, whether the accident had caused the condition of the Claimant's lumbar spine. (R. p. 98, lines 3 - 6).

After additional testing and treatment and worsening of the Claimant's symptoms, Dr. Edwards opined, by note of November 3, 2022, that the Claimant's lumbar condition was related to his industrial injury, as was his need for lumbar surgery. (R. pp. 597-598).

The Employer then noticed and took Dr. Edwards' deposition on April 20, 2023.

On that date, Dr. Edwards testified, to a reasonable degree of medical certainty, that the accident had resulted in an aggravation of the pre-existing condition of the Claimant's lumbar spine. (R. p. 178, line 3 – p. 179, line 20: R. p. 195, lines 10 – 17).

A hearing was held before the Single Commissioner on August 29, 2023.

The Defendants challenged the admissibility of Dr. Edwards' November 3, 2022, report, and of Dr. Edwards' April 20, 2023 deposition.

By Order dated February 16, 2024, the Single Commissioner found that the Claimant had not sustained a compensable injury by accident. (R. pp. 5 - 37).

The Single Commissioner did find that Dr. Edwards' note of November 3, 2022, and Dr. Edwards' April 20, 2023 deposition were properly admitted into evidence.

Both parties appealed to the Workers' Compensation Commission Appellate Panel, which affirmed. (R. pp. 5 - 37).

Cross appeals, here, followed.

EVIDENCE OF THE CASE

On March 19, 2021, as a part of his job duties on the loading dock at GE, the Claimant jumped from a flat-bed truck, across a 2-foot gap, onto the loading dock. In the process of landing on the loading dock, the Claimant injured his back, suffering an immediate onset of severe pain in his back and legs. [1]

The next morning, the Claimant's back pain was severe. He texted his supervisor, "Won't be able to make it today." (R. p. 641). The supervisor responded, "Do you think it was triggered by work?" and the Claimant responded, "Yes." (R. p. 641). The Claimant rested Saturday and Sunday.

The Claimant attempted to return to work on Monday. He experienced increasing pain in his low back. The Claimant reported to the plant nurse, Kelly. Nurse Kelly instructed the Claimant to take ibuprofen and used heating and cooling packets on his low back. The Claimant was sent home and instructed to report to work the next morning. (R. p. 230, line 2 – p. 236, line 25).

The Claimant presented to MUSC (Florence) emergency room on March 23, 2021. (R. p. 397). The Claimant reported, "lower back pain that started last Friday, states it shoots down both legs and up his back, pain started at work." The Claimant stated, "I might have jumped on a truck wrong." (R. p. 399). The

[1] At trial, the Employer admitted the "event" of the Claimant jumping off of the truck but denied that the event caused injury. (R. p. 235, line 4 – p. 236, line 25).

Claimant was referred to Orthopaedic Surgery. (R. p. 416). The Claimant was placed out of work through March 27, 2021. (R. p. 422).

The Claimant contacted Nurse Kelly who advised the Claimant that she would notify his supervisor that he would be out of work for three days. (R. p. 642; R. p. 237, line 3 – p. 238, line 2).

The following morning, March 24, 2021, the Claimant's condition worsened with increasing pain in his back and legs. The Claimant returned to the emergency room at MUSC, where they noted, "chief complaint of left lower lumbar pain that is radiating down his left leg to his calf but not past his calf. He states when he sits up he also has some pain in his inguinal regions." (R. p. 433). The Claimant received two injections. (R. p. 435). The Claimant was diagnosed with acute left radiculopathy and left hip pain. (R. p. 436). The Claimant was then placed out of work until April 2, 2021. (R. p. 459).

The Claimant texted Nurse Kelly the out of work slip. (R. p. 644). The emergency department scheduled an appointment for the Claimant to be examined by Christopher Huiet, PA-C at McLeod Orthopaedics (Florence) for April 1, 2021. (R. p. 509).

The Claimant was examined by PA-C Huiet, on April 1, 2021.

At that time, PA Huiet ordered an MRI of the Claimant's lumbar and thoracic spine. (R. p. 511). PA Huiet continued the Claimant out work. (R. p. 517).

The MRI of the Claimant's lumbar and thoracic spine was completed on April 16, 2021, which revealed:

> At L4-5, moderate disc bulge extends into the lateral recesses. Small left central disc extrusion borders the posterior aspect the L5 ventral body measuring approximately 0.6 cm transverse and traversing inferiorly just beyond the margin of the superior endplate of L5. Mild right neural foraminal narrowing. Central canal patent. Facet hypertrophy.
>
> At L5-S1, moderate circumferential disc bulge with superimposed left central disc protrusion. This narrows the central canal with mass effect on the traversing central left S1 nerve root. Mild bilateral neural foraminal narrowing. Facet hypertrophy with a small amount of fluid in both facet joints.

(R. p. 519).

The Claimant returned to PA Huiet on April 20, 2021 for review of the MRIs. (R. p. 520). PA Huiet placed the Claimant out of work, "Patient is out of work until released from my care." (R. p. 525).

PA Huiet referred the Claimant to Bruce Johnson, MD - McLeod Spine Center, for a steroid injection. (R. p. 553).

PA Huiet also referred the Claimant to orthopaedic surgeon, William Edwards, MD - McLeod Spine Center. (R. p. 558).

The Claimant was examined by Dr. Edwards on June 22, 2021. (R. p. 560). Dr. Edwards continued the Claimant's out-of-work status. (R. p. 563).

The Claimant took the deposition of Dr. William Edwards on September 23, 2021. (R. pp. 55 - 100).

Dr. Edwards testified that he could not state, to a reasonable degree of medical certainty, whether the Claimant's lumbar spine injury was caused by the accident. (R. p. 98, lines 2 - 6).

Subsequently, the Claimant continued to treat with Dr. Edwards and his condition continued to deteriorate, and Dr. Edwards performed additional testing.

The Claimant scheduled a second deposition of Dr. Edwards for August 25, 2022.

The Defendants objected to the second deposition of Dr. Edwards being taken nearly a year after the first deposition of September 23, 2021. The Defendants filed a Motion to Quash Second Deposition of Dr. Edwards on August 15, 2022. (R. pp. 663 - 667).

On August 18, 2022, the Claimant filed a Reply In Opposition to Defendants' Motion to Quash Second Deposition of William Edwards, MD. (R. pp. 669 - 677).

A telephone conference was held before Commissioner Cynthia Dooley on August 26, 2022. This resulted in a Motion Order of August 30, 2022, granting the Defendants' Motion to Quash; holding, "Defendants' Motion to Quash Second Deposition of Dr. William Edwards for causation issues is granted based on the

fact that Dr. Edwards was deposed on September 23, 2021, for causation purposes." (R. pp. 679 - 680). On September 12, 2022, the Claimant filed a Form 30 – Request for Commission Review of Commissioner Dooley's Motion Order. (R. pp. 682 - 687).

The Claimant's Request for Commission Review was dismissed as interlocutory on September 19, 2022. (R. pp. 701-703).

Claimant's counsel advised the Defendants that he would be proceeding with the deposition of Dr. Edwards as scheduled for October 27, 2022, in order to proffer the deposition.

The Defendants filed a Motion for Rule to Show Cause on September 12, 2022, for enforcement of Commissioner Dooley's Motion Order of August 30, 2022. (R. pp. 689 - 693).

On September 14, 2022, the Claimant filed his Response to Defendants' Motion for Rule to Show Cause. (R. pp. 695 - 699).

The matter was set for hearing before Commissioner Gene McCaskill on October 19, 2022.

After the hearing held on October 19, 2022, Commissioner McCaskill issued his Motion Order on October 27, 2022, granting the Defendants' Motion for Rule to Show Cause and directing Claimant's counsel not to take Dr. Edwards' repeat deposition, even as a proffer. (R. p. 705).

On November 4, 2022, the Claimant filed a Form 30 – Request for Review of the Motion Order of Commissioner McCaskill dated October 27, 2022. (R. pp. 707 - 711). The Claimant's Form 30 Request for Review was dismissed as interlocutory on November 21, 2022. (R. p. 713).

Subsequent to the first deposition of Dr. Edwards, taken on September 23, 2021, (R. pp. 55 - 100), the Claimant had been examined by Dr. Edwards' on February 17, 2022; March 10, 2022; March 22, 2022, and July 14, 2022. (R. pp. 544 – 598).

On July 14, 2022, Dr. Edwards noted:

> Patient does complain of some chronic urinary and now bowel dysfunction that conceivably may have a neurologic basis, but some symptoms were present even before his herniation and his lower extremity motor strength remains normal. He is advised to speak to his attorney regarding worker's compensation issues in order to proceed with this needed surgery. Long discussion was held with the patient and his wife and they understand that the longer the compressive pathology is present, the more likely the surgery will not help. Definitive procedure involves lumbar discectomy at L5-S1 on the left side.

(R. p. 594).

Dr. Edwards advised the Claimant's attorney on November 3, 2022:

> Dear Mr. Wukela:
>
> This letter is in follow-up to our meeting last Thursday regarding the above captioned patient.

To summarize, it is my opinion based on a reasonable degree of medical certainty that Mr. Inman is in need of surgical intervention for a disc herniation at L5/S1 and L4-5. He additionally has a disc protrusion at C5-6 that I have not currently recommended surgery for but it is conceivable that this may be required in the future. Mr. Inman admitted that he had some issues with his back that predated his work injury at GE but was doing fine at the time of the injury in March of last year, initial studies suggested only minimal disc pathology at L4-5 and L5/S1 but over the subsequent months worsening of his symptoms was noted in the back and legs and repeat MRI scan in January 7th of this year was preformed and demonstrated severe worsening of both L4-5 and L5/S1. **It is my opinion based on a reasonable degree of medical certainty that the current condition relates to his industrial injury and the need for surgery therefore is related also causally to this injury.** As you know, disc herniations are typically an evolution if an injury process that initially leads to an annular disruption but as time goes on the pressure builds up and the disc subsequently herniates. An MRI scan done March 12 of this year of the cervical spine showed no significant change in the original study of his neck, therefore, my opinion is that no surgical intervention is required at that level though it continues to be my opinion that this area if abnormality emanates from his industrial injury.

I was provided with a pre-employment questionnaire from GE that was reviewed from 12/30/2020 in which he indicated that he had not had any problems with back and this information does not change the opinions noted above.

(R. pp. 597 – 598).

The Claimant filed a Form 50 Request for Hearing on November 16, 2022. (R. p. 717).

The Employer filed Form 51 on December 16, 2022, denying the Claimant's claim in its entirety. (R. p. 719).

A hearing was set on Claimant's Form 50.

The Claimant filed and served a Notice of APA Submissions, (R. pp. 544 - 598), including, the November 3, 2022 note of Dr. Edwards. (R. pp. 597 – 598).

The Defendants moved to exclude the November 3, 2022 note of Dr. Edwards.

The Claimant opposed the Motion to Exclude.

By Order of May 18, 2023, Commissioner Beck denied the Motion to Exclude; finding, "said document dated 11/3/22, is an expert report as contemplated in R. 67-612. Subsequent to the issuance of said report, Employer conducted the deposition of Dr. Edwards." (R. p. 765).

The Employer, in the meantime, noticed and took Dr. Edwards' deposition on April 20, 2023, (R. pp. 128 – 218), and the note of November 3, 2022 was made an exhibit to that deposition by the Employer. (R. pp. 217-218).

A hearing on the merits was held before Commissioner Beck on August 29, 2023. Commissioner Beck issued an Order on February 16, 2024; denying the case. (R. pp. 5 - 37).

Cross appeals to the Commission Appellate Panel followed.

The Commission Appellate Panel affirmed. (R. pp. 38 - 54).

Cross appeals to this Court followed.

STANDARD OF REVIEW

The Commission is the ultimate factfinder in workers' compensation cases. See Shealy v. Aiken Cnty., 341 S.C. 448, 455 (2000).

The Appellate Courts must affirm the findings of fact made by the Commission if they are supported by substantial evidence. Pierre v. Seaside Farms, 386 S.C. 534, 540 (2010). "Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached." Lark v. Bi-Lo, 276 S.C. 130 (1981).

However, "[w]hile a finding of fact of the [C]omission will normally be upheld, such a finding may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." Edwards v. Pettit Constr. Co., Inc., 273 S.C. 576, 579 (1979); see also Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 309-310 (1995) (affirming reversal of Commission's decision, which was supported by no evidence in the record).

For example, "[a]lthough medical evidence 'is entitled to great respect,' the Commission is not bound by the by the opinions of medical experts and **may disregard medical evidence in favor of other competent evidence in the record.**" Burnette v. City of Greenville, 401 S.C. 417, 427-428 (Ct. App. 2012)(citing Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 23 (Ct. App.

2011)(**permitting the Commission to disregard medical evidence only when other competent evidence exists in the record**)).

Likewise, "where there are no disputed facts, the question of whether an accident is compensable is a question of law. Grant v. Grant Textiles, 372 S.C. 196 (2007)." Barnes v. Charter 1 Realty, 411 S.C. 391, 395 (2015). "Although the Commission is the fact-finding body, where the evidence gives rise to but one reasonable inference, the question becomes one of law for the Courts to decide." Kinsey v. Champion America Serv. Center, 268 S.C. 177 (1977)(quoting Privette v. S.C. State Forestry Comm., 265 S.C. 117 (1975)).

"[I]f the evidence is all one way, ...the issue becomes one of law for the Courts and not of fact for the Commission." Brooks v. Benore Logistics Sys., 442 S.C. 462 (2024)(quoting Hines v. Pacific Mills., 214 S.C. 125 (1949); and Kinsey v. Champion America Serv. Center, 268 S.C. 177 (1977)).

ARGUMENTS

A. THE COMMISSION ERRED IN FAILING TO FIND THAT THE CLAIMANT SUSTAINED COMPENSABLE INJURY BY ACCIDENT TO HIS BACK; WHICH AGGRAVATED THE PRE-EXISTING CONDITION OF HIS BACK.

It is well established in our law that the Commission is the ultimate factfinder in workers' compensation cases. See Shealy v. Aiken Cnty., 341 S.C. 448, 455 (2000).

The Appellate Courts must affirm the findings of fact made by the Commission if they are supported by substantial evidence. Pierre v. Seaside Farms, 386 S.C. 534, 540 (S.C. 2010). "Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached." Lark v. Bi-Lo, 276 S.C. 130 (1981).

In Burnette v. City of Greenville, 401 S.C. 417, 426 (Ct. App. 2012), the Court of Appeals considered the bounds of substantial evidence. The Court of Appeals, there, reversed a decision of the Commission; which found that a Claimant had not sustained a compensable back injury.

In Burnette, the Claimant offered the opinion of her treating physician; indicating that the Claimant had suffered an aggravation of a pre-existing condition of her spine and had significant restrictions as a result.

The Single Commissioner found that, "If [the Claimant] aggravated her low back condition in the accident in issue, the aggravation was temporary, and her

condition returned to baseline or is the result of an intervening accident." Burnette, 401 S.C. at 426.

The Commission Appellate Panel and the Circuit Court affirmed.

The Court of Appeals reversed. In doing so, the Court of Appeals acknowledged that the Commission is the ultimate factfinder in workers' compensation cases. See Burnette, 401 S.C. at 427.

The Court noted:

> Although medical evidence "is entitled to great respect," the Commission is not bound by the by the opinions of medical experts and may disregard medical evidence in favor of other competent evidence in the record. Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17,23,716 S.E.2d 123, 126 (Ct. App. 2011). However, "[w]hile a finding of fact of the [C]omission will normally be upheld, such a finding may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." Edwards v. Pettit Constr. Co., Inc., 273 S.C. 576, 579, 257 S.E.2d 754, 755 (1979); see also Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 309-10, 454 S.E.2d 320, 322 (1995) (affirming reversal of Commission's decision, which was supported by no evidence in the record).

Burnette, 401 S.C. at 427-428.

Specifically, the Court of Appeals explained:

> Moreover, **we find substantial evidence in the record does not support the Commission's finding that Burnette neither injured nor aggravated a preexisting injury to her lower**

> **back**, or that any such injury or aggravation either "returned to baseline" or resulted from an independent intervening accident. ***See*** **Potter, 395 S.C. at 23, 716 S.E.2d at 126 (permitting the Commission to disregard medical evidence only when other competent evidence exists in the record).**

Burnette, 401 S.C. at 428. (Emphasis added).

Critically, the Burnette Court held:

> **We find no evidence that challenges the conclusions of Burnette's doctors concerning her herniated disk at L5-S1, lower back pain, or development of radiculopathy. As a result, the record provides little or no support for the findings of the Commission holding that Burnette neither injured nor aggravated a prior injury to her lower back in the 2007 incident. Consequently, the circuit court erred in affirming the Commission's factual findings concerning the existence, exacerbation, and possible causes of Burnette's lower back injury.**

Burnette, 401 at 428-429. (Emphasis added).

As in Burnette, in the case at bar the Claimant's treating orthopaedic surgeon, Dr. Edwards, testified at deposition on April 20, 2023:

> Q. …do you have an opinion to a reasonable degree of medical certainty as to whether that accident indeed aggravated the preexisting condition of Mr. Inman's lumbar spine resulting in the necessity of surgery that ultimately presented itself?
>
> **A. It is my belief that it did exacerbate that condition.**

(R. p. 195, lines 10 – 17)(Emphasis added).

As in Burnette, the Employer, here, did not offer the testimony of any other physician or surgeon contradicting Dr. Edwards' conclusions.

As in Burnette, respectfully, the Commission here disregarded the opinion of Dr. Edwards in the absence of any conflicting opinion from any other physician offered by the Defense.

As in Burnette, the Commission, here, erred in so finding.

Likewise, Dr. Edwards' records restricted the Claimant from work (R. p. 596), without contraction in the record.

The Employer argues that the Claimant suffered from a pre-existing condition of his lumbar spine, and that such pre-existing condition was unaffected by the instant accident.

Dr. Edwards was questioned by the Defense counsel at length with regard to the Claimant's pre-existing condition. (See e.g., R. pp. 152 - 177).

After considering all of the evidence of pre-existing condition at the deposition, Dr. Edwards testified, to a reasonable degree of medical certainty, that the accident aggravated the pre-existing condition of the Claimant's lumbar spine. (R. p. 195, lines 10 – 17).

Defense counsel also questioned Dr. Edwards extensively about his earlier opinion that he could not state to a reasonable degree of medical certainty that the accident caused the Claimant's back injury.

Dr. Edwards on April 20, 2023, testified:

Q. Okay. So would you agree that when I took your deposition in September of 2021, your opinion under oath, to a reasonable degree of medical certainty that was - - that was that neither the lumbar spine not the neck were causally related to his alleged March - - March 19th injury; is that fair?

A. Well, I - - I would agree with the cervical. The lumbar, I think again, the - - the information that was provided during the course of my deposition on that date filled in a lot of the information that I didn't have regarding the - - the preexisting nature of some of his back and leg symptoms. **It continues to be my opinion that there was an aggravation of that condition in the lumbar spine.**

Q. At - - on March 19th?

A. Yes.

Q. **When did you give that opinion?**

A. **I'm giving it to you right now. I mean, you didn't ask me that on that deposition.**

Q. **Okay. I asked you if - -**

A. **Causation.**

Q. Yeah. It is possible for you to give a causation opinion relating to this to March 19th. And you said, I would agree with that. It's impossible for me to do that.

A. My - - my - -

Q. You didn't say it's - - it was an aggravation.

A. My - - my legal mind may - - it's certainly lacking. But if you ask me, is it possible or is it your opinion, Dr. Edwards, that this accident of the date that we're talking about could have or did exacerbate a preexisting condition in which, before today, Dr. Edwards, you didn't know about, what would your opinion be? **That question was not posed to me then.**

Q. It also wasn't - - but it wasn't posed to you by his lawyer either?

A. No. I'm not being critical in the fact that it wasn't asked...

(R. p. 178, line 3 – p. 179, line 20)(Emphasis added).

Also, at his second deposition, on April 20, 2023, Dr. Edwards testified about additional information he received since his initial deposition that affected his opinions.

Dr. Edwards testified that initial studies indicated only minimal disc pathology, but over the subsequent months worsening of the Claimant's symptoms was noted, and a repeat MRI was completed on January 7, 2022; which demonstrated severe worsening of the condition of his lumbar spine. (See R. p. 135, lines 7 – 17)(Discussion of November 3, 2022 Note - R. pp. 597 – 598).

Furthermore, on redirect by Claimant's counsel, Dr. Edwards compared a CT

scan of the Claimant's lumbar spine performed prior to the accident, to MRIs of the Claimant's lumbar spine completed after the accident.

Dr. Edwards testified:

> Q. Okay. So, if I understand - - in layman's terms, the - - the lumbar MRI after the accident showed a worse condition of the lumbar spine that the December 26th, '20 CT scan before the accident?
>
> A. Yes.
>
> Q. And then the January of '22 MRI after the deposition showed a - - a lumbar spine at L5-S1 that was worsened?
>
> A. It - - it was significantly worse, yes.

(R. p. 194, lines 8 – 18).

In sum, Dr. Edwards is the Claimant's treating orthopaedic surgeon, who treated the Claimant for more than two years.

Dr. Edwards was deposed, twice, and was provided extensive information with regard to the Claimant's medical treatment before the accident and after the accident, as well as a CT scan of his lumbar spine, pre-accident, and two MRIs scan of his lumbar spine, post-accident.

Dr. Edwards testified to his own evolving opinion about the condition of the Claimant's spine, over the course of his treatment, and with the benefit of additional information.

At the first deposition, on September 21, 2021, Dr. Edwards testified that it

was not possible for him to give an opinion with regard to the cause of the Claimant's lumbar spine condition. (R. p. 98, lines 3-6).

At his second deposition, on April 20, 2023, with the benefit of additional time, examination, testing, and treatment, Dr. Edwards testified that the Claimant has a pre-existing lumbar spine condition that had been aggravated by the instant accident; resulting in the necessity of surgery:

> Q. ...do you have an opinion to a reasonable degree of medical certainty as to whether **that accident indeed aggravated the preexisting condition of Mr. Inman's lumbar spine resulting in the necessity of surgery** that ultimately presented itself?
>
> A. **It is my belief that it did exacerbate that condition.**

(R. p. 195, 10-17)(Emphasis added).

Dr. Edwards explained that the question of whether the accident had aggravated the pre-existing condition had not been asked of him in his initial deposition by either party:

> Q. Okay. So would you agree that when I took your deposition in September of 2021, your opinion under oath, to a reasonable degree of medical certainty that was - - that was that neither the lumbar spine nor the neck were causally related to his alleged March - - March 19th injury, is that fair?
>
> A. Well, I - - I would agree with the cervical. The lumbar, I think again, the - - the information that was provided during the

course of my deposition on that date filled in a lot of information that I didn't have regarding the - - the preexisting nature of some of his back and leg symptoms. **It continues to be my opinion that there was an aggravation of that condition in the lumbar spine.**

Q. At - - on March 19th?

A. Yes.

Q. **When did you give that opinion?**

A. **I'm giving it to you right now. I mean, you didn't ask me that on that deposition.**

Q. **Okay. I asked you if - -**

A. **Causation.**

Q. Yeah. Is it possible for you to give a causation opinion relating this to March 19th. And you said, I would agree with that. It's impossible for me to do that.

A. My - - my - -

Q. You didn't say it's - - it was an aggravation.

A. My - - my legal mind may - - it's certainly lacking. But if you ask me, is it possible or is it your opinion, Dr. Edwards, that this accident of the date that we're talking about could have or did exacerbate a preexisting condition in which, before today, Dr. Edwards, you didn't know about, what would your opinion be? **That question was not posed to me then.**

Q. It also wasn't - - but it wasn't posed to you by his lawyer either?

A. No. I'm not being critical in the fact that it wasn't asked.

(R. p. 178, line 3 – p. 179, line 20).

In any event, the Employer did not offer the testimony of any physician or surgeon to contradict Dr. Edwards' testimony.

As the Court of Appeals has made explicit in Burnette; while the Commission is the ultimate factfinder, the Commission may disregard medical evidence only in favor of other competent evidence in the record. See Burnette, 401 S.C. at 427 (citing Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 23, (Ct. App. 2011)).

In the context of workers' compensation cases alleging aggravation of pre-existing conditions, competent evidence requires "medical evidence," i.e., "expert opinion or testimony stated to a reasonable degree of medical certainty..." S.C. Code §42-9-35.

Respectfully, the Commission erred in disregarding Dr. Edwards' opinion that the accident aggravated the pre-existing condition of the Claimant's lumbar spine; where the Defendants offered no contradictory opinion from any other physician or surgeon.

B. THE COMMISSION PROPERLY RULED THAT THE NOVEMBER 3, 2022 REPORT OF DR. EDWARDS AND HIS APRIL 20, 2023 DEPOSITION, SHOULD BE ADMITTED INTO EVIDENCE.

The Defendants moved to exclude R. pp. 597 – 598; which contains a note dated November 3, 2022 authored by the Claimant's treating orthopaedic surgeon, Dr. Bill Edwards.

The Defendants' entire Motion omits any reference to the applicable Commission regulation, R. 67-612, entitled, "Admission of Expert's Report as Evidence."

R. 67-612 governs the admission of expert reports via the APA submissions in every hearing before the Workers' Compensation Commission.

The Court of Appeals addressed Rule 67-612 in the case of Gadson v. Mikasa Corp., 368 S.C. 214 (2006). There, Chief Judge Anderson explained:

> The utilitarian efficacy of admissibility under Workers' Compensation regulations is salutary and salubrious. Historically, the regulations allow for written reports and documentation in lieu of live testimony, concomitantly saving time and expense in the presentation of testimony before the single commissioner.
>
> Gadson, at 226.

The Court went on to explain:

> Pursuant to Regulation 67-612, it is mandated that a moving party provide the report to the opposing party at least fifteen days before the scheduled hearing.
>
> 25A S.C. Code Ann. Regs. 67-612(B)(1)(Supp. 2005).

* * *

Regulation 67-612(D) notes:

> **"Any report submitted to the opposing party in accord with (B)(1) [of 67-612] ... shall be submitted as an APA exhibit at the hearing unless withdrawn with the consent of the other party."**
>
> 25A S.C. Code Ann. Regs. 67-612(D)(Supp. 2005). (Emphasis added).

The medical expert's report to which the Employer objects was served upon the Defendants, pursuant to the Rule 67-612, with the Claimant's APA exhibits on May 1, 2023, more than 15 days before the hearing scheduled for May 17, 2023. (R. pp. 745 – 757; pp. 319 – 730).

In addition, the Defendants were in possession of the note for many months before the hearing, and its admissibility was the subject of several conferences between Counsel for the parties and the Single Commissioner before the hearing.

In fact, in light of the Single Commissioner's pre-trial rulings regarding the admissibility of R. pp. 597 – 598, the Defendants took Dr. Edwards' deposition on April 20, 2023.

Furthermore, the report was made an exhibit to the deposition of Dr. Edwards taken on April 20, 2023, by the Defendants. (R. pp. 217 – 218).

Therefore, pursuant to the Administrative Procedures Act, the Claimant sought, and the Commission accepted, admission of Dr. Edwards' deposition of April 20, 2023, along with his November 3, 2022 report.

Finally, even were this not a case before the Commission, governed by R. 67-612, the hearsay rule applicable in Common Pleas Court, SCRE Rule 803, excludes from the definition of hearsay statements made for the purpose of medical diagnosis or treatment, See SCRE 803(4), as well as the records of regularly conducted business activity, including reports of medical diagnosis. See SCRE 803(6).

As to Dr. Edwards' deposition, the Workers' Compensation Act, S.C. Code §42-3-160 provides, "...depositions shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the courts of common pleas..."

Similarly, Rule 30(i) SCRCP, provides for the admissibility, in the courts of common pleas, of the depositions of physicians and surgeons. Thus, Dr. Edwards' April 20, 2023 deposition, taken by the Defendants, is admissible.

CONCLUSION

Respectfully, the Commission erred in failing to find, contrary to the substantial evidence, that the Claimant sustained compensable injury by accident to his back; which aggravated the pre-existing condition of his back.

Dr. Edwards testified that the Claimant has a pre-existing lumbar spine condition that had been aggravated by the instant accident; resulting in the necessity of surgery:

> Q. ...do you have an opinion to a reasonable degree of medical certainty as to whether **that accident indeed aggravated the preexisting condition of Mr. Inman's lumbar spine resulting in the necessity of surgery** that ultimately presented itself?
>
> A. **It is my belief that it did exacerbate that condition.**

(R. p. 195, lines 10-17)(Emphasis added).

As the Court of Appeals has made explicit in Burnette; while the Commission is the ultimate factfinder, the Commission may disregard medical evidence only when other competent evidence exists in the record. See Burnette, 401 S.C. at 428 (citing Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 23, (Ct. App. 2011)).

In the context of workers' compensation claims alleging aggravation of a pre-existing condition, competent evidence requires expert medical opinion stated to a reasonable degree of medical certainty. See S.C. Code §42-9-35.

Respectfully, pursuant to Burnette and §42-9-35, the Commission erred in disregarding Dr. Edwards' opinion that the accident aggravated the pre-existing condition of the Claimant's lumbar spine; where the Defendants offered no contradictory opinion from any other physician or surgeon.

The Commission properly ruled that the November 3, 2022 report of Dr. Edwards and his April 20, 2023 deposition, should be admitted into evidence.

The Defendants moved to exclude R. pp. 597 - 598; which contains a note dated November 3, 2022 authored by the Claimant's treating orthopaedic surgeon, Dr. William Edwards.

R. 67-612 governs the admission of expert reports via the APA submissions in every hearing before the Workers' Compensation Commission.

The medical expert's report to which the Employer object was served upon the Defendants, pursuant to the rule, with the Claimant's APA exhibits on May 1, 2023, more than 15 days before the hearing scheduled for May 17, 2023.

In fact, in light of the Single Commissioner's pre-trial rulings regarding the admissibility of R. pp. 597 - 598, the Defendants took Dr. Edwards' deposition on April 20, 2023.

Furthermore, the report was made an exhibit to the deposition of Dr. Edwards that was taken on April 20, 2023, by the Defendants. (R. pp. 217 – 218).

Pursuant to S.C. Code §42-3-160 and Rule 30(i) SCRCP, the depositions of physicians and surgeons are admissible before the Workers' Compensation Commission.

Respectfully submitted,

WUKELA LAW FIRM

BY: _____

STEPHEN J. WUKELA
S.C. Bar No. 68351
PO Box13057
Florence, SC 29504
(843) 669-5634
stephen@wukelalaw.com
ATTORNEY FOR APPELLANT

January 3rd, 2025

RECEIVED
Jan 03 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 2104833
APPELLATE CASE NO. 2024-001766

Qushon Inman, Employee, ...Appellant/Respondent,

vs.

GE Healthcare, Inc., Employer, and
Electric Insurance Company, Carrier, ...Respondents/Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Appellant/Respondent complies with Rule 211(b), SCACR.

WUKELA LAW FIRM

BY: _____
STEPHEN J. WUKELA
SC BAR NO. 68351
Attorney for Claimant/Appellant
PO Box 13057
Florence, SC 29504
(843) 669-5634
stephen@wukelalaw.com

January 3rd, 2025

RECEIVED
Jan 03 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 2104833
APPELLATE CASE NO. 2024-001766

Qushon Inman, Claimant .....Appellant/Respondent,

vs.

GE Healthcare, Inc., Employer,
and Riverstone Industrial Ins., Carrier .....Respondents/Appellants.

PROOF OF SERVICE

I certify that I have served the Final Brief of Appellant/Respondent on the Respondents/Appellants, by depositing a copy of the same in the United States Mail, postage prepaid, on January 30, 2025, addressed to their attorney of record, Nicolas Haigler, of Robinson Gray Stepp & Laffitte, LLC, P.O. Box 11449, Columbia, South Carolina, 29211.

WUKELA LAW FIRM

BY:_____
Stephen J. Wukela
P.O. Box 13057
Florence, SC 29504
(843) 669-5634
stephen@wukelalaw.com
Attorney for Appellant

WUKELA LAW FIRM

Steve Wukela, Jr.
Benjamin D. Moore
Christi B. McDaniel
Stephen J. Wukela
Patrick J. McLaughlin
Pheobe A. Clark
Frank C. Swaggard

403 Second Loop Road
P.O. Box 13057
Florence, SC 29504-3057

(843) 669-5634
FAX (843) 669-5150

January 3, 2025

via email: ctappfilings@sccourts.org and Hand-Delivery
Honorable Jenny Abbott Kitchings
Clerk of Court - South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Qushon Inman, Appellant/Respondent
v.
GE Healthcare, Inc., Employer, and Riverstone International Ins., Carrier, Respondents/Appellants

Appellate Case No.: 2024-001766

Dear Ms. Kitchings:

As your records reflect, I represent Appellant/Respondent in the above-captioned Appeal.

In that regard, please find enclosed for filing, one (1) bound, and one (1) unbound copy of the Final Brief of Appellant/Respondent.

Also enclosed is the Certificate of Counsel and Proof of Service confirming the same.

With kind regards, I am

Sincerely,

WUKELA LAW FIRM

STEPHEN J. WUKELA

SJW/tcc
Enclosures

cc: Nicolas Haigler, Esquire (via email: **nhaigler@robinsongray.com** and US Mail)