

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JAN 06 2025

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 2104833

APPELLATE CASE NO. 2024-001766

Qushon Inman, Employee,.....Appellant-Respondent.

v.

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

FINAL RESPONDENTS' BRIEF OF RESPONDENTS/APPELLANTS

Nicolas L. Haigler, Esquire
Meredith Ann Krzyston, Esquire
ROBINSON GRAY STEPP & LAFITTE, LLC
PO Box 11449
Columbia, SC 29211
(803) 929-1400

ATTORNEYS FOR RESPONDENT/APPELLANTS

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 2104833

APPELLATE CASE NO. 2024-001766

Qushon Inman, Employee,.....Appellant-Respondent.

v.

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

FINAL RESPONDENTS' BRIEF OF RESPONDENTS/APPELLANTS

Nicolas L. Haigler, Esquire
Meredith Ann Krzyston, Esquire
ROBINSON GRAY STEPP & LAFITTE, LLC
PO Box 11449
Columbia, SC 29211
(803) 929-1400

ATTORNEYS FOR RESPONDENT/APPELLANTS

TABLE OF CONTENTS

TABLE OF CONTENTS.....ii

TABLE OF AUTHORITIES.....iii

COUNTERSTATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF THE FACTS.....4

STANDARD OF REVIEW.....9

ARGUMENT.....10

 I. The Commission properly held that Inman did not sustain an aggravation of his pre-existing condition.....10

 a. Dr. Edwards’ testimony does not establish an aggravation of a pre-existing condition.....11

 b. Inman’s reliance on *Burnette* is misplaced.....13

 c. Dr. Edwards did not change his causation opinion because of new evidence provided to him in his second deposition.....14

CONCLUSION.....17

TABLE OF AUTHORITIES

CASES

Brown v. R.L. Jordan, 291 S.C. 272, 353 S.E.2d 280 (1987).....10

Burnette v. City of Greenville, 401 S.C. 417 (Ct. App. 2012).....11, 13

Dickinson-Tidewater, Inc. v. Supervisor of Assessments of Anne Arundel Cty., 273 Md. 245 (1974).....10

Edwards v. Pettit Constr. Co., Inc., 273 S.C. 576, 579, 257 S.E.2d 754, 755 (1979).....13

Hartzell v. Palmetto Collision, LLC, 415 S.C. 617, 785 S.E.2d 194 (2016).....9

Holmes v. Nat'l Serv. Indus., Inc., 395 S.C. 305, 717 S.E.2d 751 (2011).....10

Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).....10

Muir v. CR Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999).....9, 10

Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995).....11

Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 716 S.E.2d 123 (Ct. App. 2011).....13

STATUTES

S.C. Code Ann. § 42-1-160 (2015).....4

S.C. Code Ann. § 42-9-35 (2015).....4, 10, 17

COUNTERSTATEMENT OF ISSUE ON APPEAL

- I. The Commission properly found that Inman did not sustain an aggravation of his pre-existing condition.

STATEMENT OF THE CASE

This is a workers' compensation appeal filed by GE Healthcare, Inc. and Electric Insurance Company (GE) from the Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel (the Full Commission), filed on September 19, 2024, which unanimously upheld the Decision and Order of the Hearing Commissioner T. Scott Beck (Commissioner Beck).

On April 26, 2021, Appellant/Respondent ("Inman") filed a claim against Respondents/Appellants GE Healthcare, Inc. and Electric Insurance Company (collectively "GE"), alleging that on March 19, 2021, he sustained an injury by accident to his low back arising out of and in the course and scope of his employment with GE. GE denied the compensability of this claim.

Counsel for Inman deposed Dr. William Edwards on September 23, 2021, to address the cause of Inman's alleged injuries. Ultimately, Dr. Edwards testified that he could not provide a causation opinion for Inman based upon evidence presented to him at the deposition, most of which was presented by counsel for GE. **(R. 98 p. 44, ll. 3-9)**. Thereafter, GE filed a Form 19 with the South Carolina Workers' Compensation Commission (Commission) on October 5, 2021, to administratively close the file.

The claim remained closed with the Commission until July 27, 2022, when Inman's counsel sought to schedule a second deposition of Dr. Edwards to address causation. Over GE's objection Inman's counsel scheduled the deposition for August 25, 2022. GE then filed a Motion to Quash the second deposition of Dr. Edwards, which was granted by Commissioner Cindy Dooley on August 30, 2022. **(R. pp. 679-680)**. Inman's counsel subsequently notified GE's counsel that he intended to move forward with the deposition anyway. As a result, GE filed a

Motion for Rule to Show Cause to enforce the terms of Commissioner Dooley's Order. After a Hearing on the merits of GE's Motion for Rule to Show Cause, the Motion was granted by Commissioner McCaskill by Order dated October 27, 2022. **(R. p. 705)**.

Thereafter, and unbeknownst to GE, Inman's counsel met with Dr. Edwards on October 27, 2022, the date the second deposition was to take place, to secure a causation statement in lieu of the live deposition the Commission had specifically prohibited. **(R. pp. 597-598)**.

Upon learning of the hearsay statement GE notified Commissioner Beck of its intent to object to the statement. On February 21, 2023, Commissioner Beck requested an off the record conference with counsel for GE and Inman to address the hearsay statement. The conference was held on February 23, 2023. During that conference GE was given a choice by Commissioner Beck to either allow the statement into evidence without deposing Dr. Edwards or take his deposition to address the statement. Effectively, GE was forced to either allow the statement into evidence without challenge, or do the very thing they previously successfully defended, the second deposition of Dr. Edwards. Of course, it was during this deposition that Inman secured the testimony he now relies on to prove compensability. Neither the statement of Dr. Edwards nor the first deposition of Dr. Edwards is now relied on by Inman. This inequity is not only disappointing but frankly violative of any sense of fairness and due process. The second deposition of Dr. Edwards was conducted on April 20, 2023.

A hearing on the merits of this case was scheduled for May 17, 2023. This hearsay document was submitted by Inman's counsel as evidence, in lieu of the deposition, at the hearing on May 17, 2023. GE's Motion to Exclude the hearsay statement of Dr. Edwards was denied by Commissioner Beck on May 18, 2023. GE filed a Form 30 with the Commission to appeal

Commissioner Beck's Order denying their Motion to Exclude the statement. The appeal was dismissed as interlocutory on July 20, 2023.

The Hearing proceeded on the merits of the claim on August 29, 2023, during which time GE renewed its objection to the alleged hearsay document as well as the subsequent deposition of Dr. Edwards on April 20, 2023. Commissioner Beck overruled GE's objection and allowed the November 3, 2022, statement and subsequent April 20, 2023, deposition of Dr. Edwards into evidence. The Order of Commissioner Beck was issued on February 16, 2024. In the Order, Commissioner Beck held Inman failed to meet his burden of proving an injury by accident under Section 42-1-160 or an aggravation of a pre-existing condition under Section 42-9-35 and, therefore, denied his entitlement to benefits under the South Carolina Workers' Compensation Act ("the Act"). **(R p. 37).**

Both parties appealed the Decision and Order of Commissioner Beck to the Full Commission. Following a Hearing before the Appellate Panel on July 15, 2024, the Full Commission unanimously found Commissioner Beck's Decision and Order to be supported by the greater weight of the evidence and affirmed the Decision and Order in its entirety. **(R. p. 38).** This cross appeal by the parties followed.

STATEMENT OF THE FACTS

This cross appeal arises out of a denied claim filed by Qushon Inman, wherein he alleges injuries to his neck and lumbar spine on March 19, 2021, while under the employ of GE.

Inman began working at GE through a temp agency until he was hired directly by GE on January 13, 2021. On December 24, 2020, prior to the start of his employment, Inman completed a GE Healthcare Medical History form. On that form Inman denied currently having any back pain or trouble. **(R. p. 734).** He signed the document on December 24, 2020, indicating that he

understood “that any false answers or statements made by [him] on this form will be sufficient grounds for immediate discharge if [he was] employed, for refusal of employment if [he] has not yet started work . . .” (R. p. 735).

Inman presented to McLeod Regional Medical Center (“MRMC”) on December 26, 2020, two days after completing the questionnaire. (R. pp. 327-358). He reported lower back pain beginning one and a half months ago after exercising and complained of pain with bending and twisting. (R. p. 328) (emphasis added). Inman stated that, in addition to lower back pain, he experienced numbness and pain in the left leg. He described the pain as stabbing in the low back and left leg at a ten out of ten severity. (R. p. 377).

On March 22, 2021, Inman presented to the GE medical clinic and reported that he “hurt his back some months ago . . . he referenced December 2020. He did not know a specific event or what day he could have hurt his back.” (R. p. 379). Inman presented to MUSC Florence (“MUSC”) on March 23, 2021, with complaints of lower back pain shooting down both legs and up his back. It is noted that the onset was gradual, and that Inman stated he may have jumped off a truck wrong. He reported the pain started at work on March 19, 2021, but that he had “similar pain” in December 2020 which has been “on and off since.” (R. pp. 399-400 and 404). Inman returned to MUSC on March 29, 2021, with left lower back pain with radiation to the left lower leg for “several months.” (R. p. 469).

Inman then presented to McLeod Orthopedics-Florence on April 1, 2021, where he was evaluated by P.A. Huiet. During this appointment Inman reported that “on March 19, 2021, he jumped out of an 18-wheeler at work and noticed immediate onset of pain radiating from the upper back to lower back and throughout the lower extremities.” He reported a history of back spasms

beginning on December 23, 2020, but otherwise denied a history of “axial spine” injuries. He reported that his symptoms in December “100% resolved after a few days.” **(R. pp. 504 and 511).**

Dr. Edwards first evaluated Inman on June 22, 2021. Inman reported neck pain radiating to both shoulders which began on March 19, 2021, when he jumped from an 18-wheeler to a loading dock and felt a sharp pain in his neck. He denied any radicular discomfort. He denied any prior neck issues but did report “some previous back issues...” **(R. p. 558).** Dr. Edwards reviewed the cervical, thoracic, and lumbar MRIs. Ultimately, he opined: “Patient has perplexing symptoms that seem out of proportion to MRI findings.” Dr. Edwards referred him for a full neurologic evaluation. **(R. pp. 559-560).**

Inman returned Dr. Edwards’ office on October 26, 2021, and was referred to physical therapy. **(R pp. 569).** Dr. Edwards next evaluated Inman on February 17, 2022. He presented with “low back pain and non-dermatomal symptoms in both legs.” Inman elected to proceed with surgical intervention of the lumbar spine in the form of a lumbar discectomy at L5-S1 on the left and possibly L4-5. **(R. pp. 577-579).**

On September 23, 2021, Dr. Edwards was deposed by counsel for Inman in hopes of establishing causation. At the conclusion of direct examination, and without being shown the any of the aforementioned medical reports from December 2020 or March 2021, or the medical questionnaire Inman completed during the hiring process with GE, Dr. Edwards appeared to confirm causation as to the low back. **(R. p. 79, l. 20-p. 80, l. 16).**

However, under cross-examination by counsel for GE, Dr. Edwards was shown the report from March 29, 2021, where Inman noted his pain had been ongoing for “several months”, Dr. Edwards testified that report was inconsistent with an injury on March 19, 2021. **(R. p. 86, ll. 6-13)(R. p. 469).** He then testified that Inman’s report to Dr. Edwards’ P.A. on April 1, 2021, that

his “back spasms” in December 2020 resolved “100%” are inconsistent with the report from December 26, 2020, where Inman reported 10/10 pain running down his left leg. Dr. Edwards testified that would not be considered a back spasm. (R. p. 89, l. 6-p. 90, l. 13; R. 327-358). In fact, Dr. Edwards testified Inman’s problems on June 22, 2021, during his initial visit with Dr. Edwards, were identical to his presentation to the emergency room in December 2020. (R. p. 94, ll. 10-17). He testified having this information which was not disclosed by Inman’s counsel would have been important to have before rendering a causation opinion. (R. p. 95, ll. 4-7). Dr. Edwards then addressed the questionnaire completed by Inman just two days before his December 26, 2020, ER visit. He testified the questionnaire “was not accurately completed” by Inman. (R. p. 97, ll. 13-16). After reviewing all these documents not disclosed by Inman’s counsel, Dr. Edwards recanted his previous testimony and confirmed he could not provide a causation opinion for Inman. (R. p. 98, ll. 3-9). Counsel for Inman did not attempt to rehabilitate Dr. Edwards’ testimony.

Per the above-referenced procedural history, counsel for Inman attempted to re-depose Dr. Edwards as to causation in August 2022. However, by Orders of Commissioners Dooley and McCaskill he was expressly prohibited from doing so. Counsel for Inman nonetheless met alone with Dr. Edwards on October 27, 2022, to discuss causation. From that meeting was produced a letter dated November 3, 2022, wherein Dr. Edwards gave the opinion that the Inman’s L5-S1 disc herniation and need for surgery, as well as a C5-6 disc protrusion, were causally related to the Inman’s “industrial injury.” (R. pp. 597-598).

After GE’s failed objections and motions to exclude the letter from evidence as being a hearsay statement and violative of the Orders of Commissioners Dooley and McCaskill, GE was given the option of deposing Dr. Edwards prior to the merits Hearing or proceeding with the Hearing without doing so. Effectively, GE was forced to depose Dr. Edwards to address the

November 3, 2022, letter. Of course, this provided Inman's counsel with his ultimate objective, the opportunity to re-examine Dr. Edwards which again was prohibited by two Orders of the Commission. This deposition occurred on April 20, 2023. Importantly, Dr. Edwards confirmed that neither his prior deposition testimony nor the majority of evidence referenced by counsel for GE in the prior deposition was provided to or reviewed by him during the meeting on October 27, 2022. Dr. Edwards did testify that Inman's counsel showed him the December 2020, medical questionnaire completed by Inman for GE at hiring. (R. p. 136, ll. 7-18; p. 137, ll. 16-23; p. 139, l. 17-p. 140, l. 5; p. 149, ll. 11-23).

During the deposition, counsel for GE went through all the above-referenced testimony from the September 2021 deposition again with Dr. Edwards, and he re-confirmed all of his prior opinions. (R. p. 81, l. 6-p. 98, l. 11)(R. p. 151, l. 15-p. 156, l. 12; p. 21, ll. 12-18; p. 166, l. 23-p. 170, l. 22; p. 173, ll. 9-20; p. 176, l. 12-p. 177, l. 17). He then proceeded with the following testimony:

- Q: Is it likely the issues, the pathology in his spine that was causing - - when he presented to the emergency room with - - on December 26th, 2020, is exactly the same pathology that he - - that caused the problems he presented to you with - -
- A: That would be a fair assessment or a fair assumption to make.
- Q: Okay. There was not a miraculous change in the pathology? It was likely the exact same issue?
- A: Chances are, yes.

(R. p. 172, ll. 9-21).

Admittedly, Dr. Edwards then seemingly testified that Inman sustained an aggravation of a pre-existing condition but noted that he was not asked that question during the first deposition, nor in the November 3, 2022, letter. (R. p. 178, ll. 16-23). He then qualified his testimony as follows:

Q: The length of time that he had this issue is all different according to these reports; is that fair?

A: It is.

Q: How do we know this isn't just a continuation of is ongoing issues?

A: We really don't except for again, the patient tell me something and I have to rely on that. And - -

Q: But can you relay on the patient based on what I've shown you today?

A: It makes it more challenging to do that.

(R. p. 180, ll. 8-20) (*see also* p. 74, ll. 2-12). Dr. Edwards then confirmed Inman was not truthful about the nature and status of his pre-existing condition and treatment. (R. p. 181, l. 6-p. 182, l. 19). Dr. Edwards ultimately testified that "I don't think that the symptoms that you've had me review in these records that predated the injury were anything other than the same thing I've been treating him for." (R. p. 202, ll. 7-11).

STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act (APA) governs judicial review of decisions by the Commission." *Hartzell v. Palmetto Collision, LLC*, 415 S.C. 617, 622, 785 S.E.2d 194, 197 (2016). "An appellate court's review is limited to the determination of whether or not the Commission's decision is supported by substantial evidence or is controlled by an error of law." *Id.* "In workers' compensation cases, the Commission is the ultimate fact finder." *Id.*

"Although it is logical for the Full Commission, which did not have the benefit of observing the witnesses, to give weight to the Single Commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner." *Muir v. CR Bard, Inc.*, 336 S.C. 266, 282, 519 S.E.2d 583 (Ct. App. 1999). "The findings of the Commission are presumed correct and will

be set aside only if unsupported by substantial evidence.” *Id.* Appellate courts must affirm the Commission’s factual findings if they are supported by the evidence. *Holmes v. Nat’l Serv. Indus., Inc.*, 395 S.C. 305, 308, 717 S.E.2d 751, 752 (2011).

“A court may not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agency’s findings are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.” *Muir*, 336 S.C. at 282, 519 S.E.2d at 591. “Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached.” *Id.* “[T]he substantial evidence test ‘need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment’; and a judgment upon which reasonable men might differ will not be set aside.” *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981) (quoting *Dickinson-Tidewater, Inc. v. Supervisor of Assessments of Anne Arundel Cty.*, 273 Md. 245, 256, 329 A.2d 18, 25 (1974)).

ARGUMENT

I. The Commission properly held that Inman did not sustain an aggravation of his pre-existing condition.

An aggravation of a pre-existing condition is compensable in South Carolina if the employee can “establish by a preponderance of the evidence, including medical evidence, that the subsequent injury aggravated the pre-existing condition or permanent physical impairment.” S.C. Code Ann. § 42-9-35; *see also Brown v. R.L. Jordan*, 291 S.C. 272, 353 S.E.2d 280 (1987). “Medical evidence” is defined as “expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records or other materials that is offered by a licensed health care provider.” *Id.* Of course, the condition is not compensable if it is due solely to the natural

progression or continuation of the pre-existing condition. *Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995).

In the case at bar, Inman asserts Dr. Edwards testified during his second deposition on April 20, 2023, that Inman's injuries were the result of an aggravation of his pre-existing condition, caused by the work accident. Inman further asserts GE failed to offer any contradictory evidence and, therefore, the asserted testimony of Dr. Edwards should carry the day to compensability. *See Burnette v. City of Greenville*, 401 S.C. 417 (Ct. App. 2012).

To the contrary, GE asserts Inman has "cherry-picked" the testimony of Dr. Edwards that best suits his position while ignoring the testimony relied on by the Commission to support its decision in this matter. GE asserts the failure to address this testimony is not by mistake, as it is fatal to Inman's case. Moreover, GE submits the evidence now relied upon by Inman to establish causation was importantly not requested of Dr. Edwards in the initial deposition noticed by Inman in September 2021, or during the private meeting held with Dr. Edwards on October 27, 2022, which yielded the letter from Dr. Edwards regarding causation. This evidence only came about because of a second deposition of Dr. Edwards that GE was effectively forced to take to discredit the causation letter that was improperly obtained by Inman.

Regardless, when the entirety of the evidence is considered, the decision of Commissioner Beck that Inman did not meet his burden of proof regarding the alleged aggravation is supported by substantial evidence in the record and was properly affirmed by the Full Commission.

a. Dr. Edwards' testimony does not establish an aggravation of a pre-existing condition.

Inman is correct that Dr. Edwards testified that while he could not state to a reasonable degree of medical certainty that the accident *caused* Inman's injury, he did believe the accident may have *aggravated* his pre-existing back condition. (R. p. 195, ll. 10-17; p. 178, l. 3-p. 179, l.

20). However, this was not Dr. Edwards' final comment on the potential aggravation. In fact, GE again provided Dr. Edwards with the report from December 26, 2020, where Inman presented to the emergency department with 10/10 severe pain in his low back with radiating pain down his left leg. (R. p. 328). Dr. Edwards confirmed Inman was not honest with him about his pre-existing back problems. (R. p. 181, l. 6-p. 182, l. 19). In addition, Dr. Edwards testified that the Inman had in December 2020 was likely the same pathology he had when Dr. Edwards started treating him after the alleged. (R. p. 172, ll. 9-21).

Dr. Edwards was then asked how he can know Inman's current problems were more than just a continuation of his pre-existing problems, *i.e.*, an aggravation of a pre-existing condition. Dr. Edwards testified he had to rely on Inman's statements, which based on his inconsistent statements and failure to disclose his medical history "is more challenging to do." (R. p. 188, l. 21-p. 189, l. 7; R. p. 181, l. 6-p. 182, l. 19). Dr. Edward ultimately testified that "I don't think that the symptoms that you've had me review in these records that predated the injury were anything other than the same thing I've been treating him for [since the injury]." (R. p. 202, ll. 7-11).

Importantly, Inman completely disregards this testimony and instead mistakenly selects only parts of Dr. Edwards' testimony for consideration. A complete review of Dr. Edwards' testimony confirms that for Dr. Edwards to provide an opinion that Inman aggravated his pre-existing condition, Inman had to provide a consistent and honest medical history. Dr. Edwards testified on several occasions that Inman did not do so. In fact, even Inman admitted he lied about his medical history. (R. p. 277, l. 25-p. 278, l. 7; R. p. 279, ll. 21-22). Moreover, Dr. Edwards clearly testified that Inman's pre-existing condition was nothing more than the continuation of his

pre-existing condition. The continuation of a pre-existing condition is the opposite of an aggravation of a pre-existing condition.

b. Inman's reliance on *Burnette* is misplaced.

Inman asserts that because Dr. Edwards testified, in his second deposition, that Inman's injury was the aggravation of a pre-existing condition, the only appropriate finding is one for compensability because there exists no competing opinion from another physician. Inman relies solely on *Burnette* for this proposition, and that reliance is misplaced. In fact, and as noted by Inman, the Court in *Burnette* also noted that "[a]lthough medical evidence is entitled to great respect, the Commission is not bound by the opinions of medical experts and may disregard medical evidence in favor of other competent evidence in the record." *Burnette*, 401 S.C. 427 (citing *Potter v. Spartanburg Sch. Dist.* 7, 395 S.C. 17, 23, 716 S.E.2d 123, 126 (Ct. App. 2011) (emphasis added). Importantly, the Court did not require the "other competent evidence" to necessarily be medical evidence, as is indicated by Inman. The evidence just needs to be competent and provide a reasonable basis for the decision. See *Edwards v. Pettit Constr. Co., Inc.*, 273 S.C. 576, 579, 257 S.E.2d 754, 755 (1979). Inman also disregards the fact, as identified by the Commission, that the "competing" evidence is in part the testimony of Dr. Edwards.

Although Dr. Edwards testified as to his opinion regarding an aggravation of a pre-existing condition, he qualified that testimony by confirming it was predicated on his ability to believe the Inman's statements about his medical history. Of course, Inman admitted he lied about his medical history. However, Dr. Edwards confirmed in both depositions that the history provided by Inman was "inconsistent", that he did not "accurately complete" the medical questionnaire provided by GE, and that Inman was "not truthful" about his back problems between December 2020 and his

alleged accident in March 2021. (R. p. 86, ll. 6-13; R. p. 469; R. p. 89, l. 6-p. 90, l. 13; R. p. 97, ll. 13-16; R. p. 181, l. 6-p. 182, l. 19).

He then testified that because of these issues related to Inman's voracity, it is "more challenging" to provide a causation opinion. (R. p. 180, ll. 8-20) (see also R. p. 201, ll. 2-12).

Ultimately, Dr. Edwards testified as follows:

Q: Is [the non-disclosure of medical records/history] why when I asked you the question at the end of your first deposition, why it's impossible for you to give any causation opinion, because you didn't have all of these records, is that why you answered that way?

A: Yeah, I did. That's correct.

Q: Okay. Is that still your opinion?

A: Yes.

(R. p. 186, ll. 16-24).

In sum, the competing evidence of the initial causation opinions of Dr. Edwards was actually Dr. Edwards' own testimony combined with Inman's inconsistent and untruthful statements. Dr. Edwards could not provide an opinion on causation, whether it be for a direct injury or an aggravation of a pre-existing condition, because Inman was admittedly dishonest about his own medical history. The decision of the Commission denying the aggravation of the pre-existing condition is supported by substantial evidence.

c. Dr. Edwards did not change his causation opinion because of new evidence provided to him in his second deposition.

Inman asserts "at his second deposition, on April 20, 2023, Dr. Edwards testified about additional information he received since his initial deposition that affected his opinions." (Initial Brief of Appellant, p. 28). Inman contends this "additional information" serves as the basis and support for the aggravation of a pre-existing condition, rendering the claim now compensable. His

opinion on causation did not “evolve” over time because of new evidence, as Inman asserts. In fact, when asked about whether there was an aggravation, Dr. Edwards testified, prior to qualifying his answer with the issues related to Inman’s credibility, that “it continues to be my opinion that there was an aggravation of a pre-existing condition in the lumbar spine.” (R. p. 178, ll. 16-17). When asked why he did not testify as such in the first deposition, noticed by Inman, he testified “I mean, you didn’t ask me that question in the first deposition.” (R. p. 178, ll. 22-23). As an ancillary yet important note to this argument, it is worth considering that the only reason this deposition occurred is that opposing counsel secured a causation statement from Dr. Edwards in October 2022, which likewise did not address an aggravation of a pre-existing condition. It was only because of GE being forced to defend this causation statement in a second deposition of Dr. Edwards, when such a deposition was prohibited by the Commission, that this evidence even came to light. In essence, Inman benefitted from his own noncompliance with the prior Orders of the Commission.

Nonetheless, the assertions made by Inman as to Dr. Edwards’ testimony are simply incorrect. At no point did Dr. Edwards testify that the comparison of the CT scan prior to the accident and MRI from after the accident provide the basis for an aggravation. In fact, his testimony was to the contrary, as was noted by the Commission. Dr. Edwards testified as follows:

Q: Is it likely that the issues, the pathology in his spine that was causing - - when he presented to the emergency room with - - on December 26th, 2020, is the exactly the same pathology that he - - that caused the problems he presented to you with -

A: That would be a fair assessment, or a fair assumption, yes.

Q: Okay. There was not a miraculous change in the pathology? It was likely the same issue?

A: Chances are, yes.

Q: And then I asked you the question (in the first deposition) about whether the MRIs would have been similar if we would have done one back in '20 and you said, yeah, that's probably true. And that's fairly similar to your testimony today; is that fair?

A: I would say it's the same testimony.

(R. p. 172, ll. 9-21, p. 173, l. 21-p. 174, l. 2). Dr. Edwards then testified, as indicated by Inman, that there was a difference between the pre-accident CT scan and the post-accident MRIs. (R. p. 192, ll. 13-17). However, Dr. Edwards again qualified that testimony by confirming that "CT scans are less ideal in terms of looking at the disc material, herniations, that type of thing." (R. p. 196, ll. 19-21). He testified he would not order a CT scan to determine whether surgery was indicated. (R. p. 196, ll. 12-17). Ultimately, and what was Dr. Edwards' final comment on the difference between his back before the accident and after the accident, Dr. Edwards testified "I don't think that the symptoms that you've had me review in these records that predated the injury were anything other than the same thing I've been treating him for." (R. p. 202, ll. 7-11).

The Commission found that because there was a lack of "apples to apples" objective testing, i.e., a pre and post-accident MRI, based upon Dr. Edwards' testimony confirming the CT scan was not really the appropriate test to confirm his pre-injury status, and because Inman's statements to Dr. Edwards were unreliable, there was insufficient evidence to establish an aggravation of a pre-existing condition. None of the arguments provided by Inman raise questions as to these findings. As such, GE asserts the denial of compensability based upon an aggravation of a pre-existing condition is supported by substantial evidence and was properly affirmed by the Commission.

CONCLUSION

GE respectfully requests this Court find the substantial evidence supports the determination of the Commission that Inman did not meet his burden of proving an aggravation of a pre-existing

condition under Section 42-9-35 of the Act. GE requests the Decision and Order of the Commission be affirmed as to this issue.

Respectfully Submitted,



Nicolas L. Haigler, Esquire
Meredith Ann Krzyston, Esquire
ROBINSON GRAY STEPP & LAFITTE, LLC
PO Box 11449
Columbia, SC 29211
(803) 929-1400

ATTORNEYS FOR RESPONDENT/APPELLANTS

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 2104833

APPELLATE CASE NO. 2024-001766

RECEIVED
JAN 06 2025
SC Court of Appeals

Qushon Inman, Employee,.....Appellant-Respondent.

v.


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

CERTIFICATE OF COUNSEL

Counsel certifies that the Final Respondents' Brief of Respondents/Appellants complies with Rule 211(b), SCACR.

Respectfully submitted,

ROBINSON GRAY STEPP & LAFITTE, LLC



Nicolas L. Haigler, Esquire
Meredith Ann Krzyston, Esquire
ROBINSON GRAY STEPP & LAFITTE, LLC
PO Box 11449
Columbia, SC 29211
(803) 929-1400

ATTORNEYS FOR RESPONDENT/APPELLANTS