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SC Court of Appeals

State of South Carolina
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable Aisha Taylor; The Honorable Cynthia C. Dooley; and The Honorable Gene McCaskill.

SCWCC File No.: 9733695

Lisa Collins,

Claimant,

v.

Sunstate Maintenance,

Employer,

and

Liberty Mutual Insurance Co.,

Carrier,

Defendants.

AFFIRMED

Hearing held in Richland County, South Carolina,
on December 16, 2024
Per notice timely and properly served upon all Parties of Interest.

Appearances:	Warren P. Johnson, Esq., of The Law Office of Darrell T. Johnson, LLC, appeared on behalf of Claimant/Appellant.
	Zachary M. Smith, Esq., of Wilson Jones Carter & Baxley, P.A., appeared on behalf of Defendants/Respondents.
Court Reporter:	Nadine Garrett, 1230 Richland St, Columbia, SC 29201, 803-252-3445, contact@creelreporting.com.

Filed: February 11, 2025

I. STATEMENT OF THE CASE

Single Commissioner Review

On November 12, 2021, a hearing was held before a Single Commissioner to determine the issues set forth on the parties' Forms 50 and 51. Claimant asserted she sustained injuries by accident or occupational disease through radiation exposure in 1996/1997 to her thyroid (Papillary Thyroid Carcinoma), throat, lung, jaw, kidney and depression arising out of and in the course of her employment with Employer.[1] Claimant further asserted she was not at maximum medical improvement (MMI) for her injuries. Claimant sought a finding of compensability and causally related medical treatment for the same. Claimant further sought Temporary Total Disability (TTD) benefits from October 28, 2019, the date of her cancer diagnosis. In the alternative, Claimant sought a permanent total disability determination.

At the hearing, Claimant asserted she sustained a causally related ionizing radiation injury in October of 1996, while working for Employer. Claimant further asserted her average weekly wage (AWW) should be calculated based on her "actual time worked in earnings" for Employer, resulting in an AWW of $320.00.

Defendants denied Claimant's claim. Defendants contended Claimant could not meet her burden that her alleged radiation exposure was causally related to her work duties. Defendants sought a finding that Claimant's claim was not compensable and she was, therefore, not entitled to benefits under the Act.

At the hearing, Defendants contended Claimant's compensation rate should be based on her earnings during the four quarters that preceded the date of diagnosis, resulting in an AWW of -0-

[1] Claimant's Form 50 also named ABM Janitorial Services and GCA Services Group, Inc., along with their respective carriers, as defendants to the claim. However, prior to the hearing before the Single Commissioner, the parties entered a Consent Order dismissing ABM Janitorial Services and GCA Services Group, Inc., and their respective carriers, from the claim. (*See* Consent Order of Dismissal Without Prejudice, dated November 8, 2021).

dollars. In the alternative, Defendants contended Claimant's AWW should be calculated based on combining her 1996 and 1997 wages, $18,088.95, divided by [104] weeks, resulting in an AWW of $173.93.

The Single Commissioner determined, *inter alia*:

> [C]laimant failed to prove by a preponderance of the evidence that she sustained a compensable occupational disease resulting directly and naturally from exposure to hazards peculiar to her particular employment with Sunstate Maintenance.
>
> (Single Commissioner's Decision and Order filed on August 13, 2024, p. 29.)
>
> [C]laimant failed to prove by a preponderance of the credible, reliable, and probative evidence that she sustained a compensable ionizing radiation injury, or ionizing radiation disability, arising out of and in the course of her employment with Sunstate Maintenance.
>
> [C]laimant's claim for benefits under the South Carolina Workers' Compensation Act be, and hereby is, denied.
>
> (Single Commissioner's Decision and Order filed on August 13, 2024, p. 30.)

Appellate Panel Review

This matter is now before the South Carolina Workers' Compensation Commission's Appellate Panel pursuant to issues raised on appeal by Claimant. Within the statutory period, Claimant filed a Form 30, Request for Commission Review. Accordingly, the parties presented before the Appellate Panel on December 16, 2024.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Lisa Collins as Employee-Claimant and Sunstate Maintenance as Employer and Liberty Insurance Corporation as Carrier, Defendants.

2. That Claimant seeks a finding that she sustained an injury by accident and/or ionizing radiation injury arising out of and in the course of her employment with Sunstate Maintenance in October of 1996. Claimant specifically alleges that her papillary thyroid cancer is causally related to a radiation exposure at work that occurred one evidence in October of 1996.

3. That Claimant was hired by Sunstate Maintenance in September of 1996, and she was employed for a period of at least five to six months in 1996 and 1997. This finding is based on the evidence in the record as a whole, including but not limited to Claimant's testimony and the Catawba Nuclear Background Screen *(See* Exhibit #5, page 1112).

4. That Sunstate Maintenance was a janitorial company that contracted services for cleaning at the Catawba Nuclear Plant/Duke Power Company. This finding is based on the evidence in the record, including the testimony of Doris Neal and Claimant.

5. That the protected – or secured – of the Catawba Nuclear Plant contained a "hot side" and a "cold side." The "hot side" was the radiological area, and only people with proper training could go in the "hot side." This finding is supported by the testimony of Doris Neal.

6. That throughout her employment with Sunstate Maintenance, Claimant was part of the services that cleaned on the "cold" side of the Catawba Nuclear Plant. She also cleaned in areas outside of the protected area. Claimant did not perform any services on the "hot side" of the plant. This finding is based on the testimony of Doris Neal and Claimant.

7. That one evening in October of 1996, Claimant was in training and working with her coworker, Doris Neal, on the "cold side" of the plant, when their supervisor instructed them to vacuum the Admin Building, which was located outside of the protected area. Since there was not a vacuum in the Admin Building, Claimant and Ms. Neal retrieved the vacuum cleaner from a supply

closet in the "cold side" of the protected area. Claimant took the vacuum out of the storage closet, and she and Ms. Neal proceeded to walk toward the Admin Building. This finding is based on the preponderance of the evidence in the record, including the written statement and testimony of Doris Neal.

8. That as Claimant and Ms. Neal exited the protected area on the way to the Admin Building, they each had to walk through a radiation detection monitor that took a full body count to screen for radiation. When Claimant stepped through the monitor with the vacuum, an alarm sounded. Claimant stepped out of the monitor. Claimant then walked back through the monitor with the vacuum, and the alarm sounded again. This finding is based on Doris Neal's written statement and testimony, as well as Claimant's testimony.

9. That following the second alarm, the plant's Radiation Protection department was contacted, and a man in Radiation Protection ("the RP") responded. The RP then frisked the vacuum with a hand-held radiation monitor, and the hand-held monitor went off indicating the vacuum was contaminated. The RP then confiscated the vacuum. This finding is based on the preponderance of the evidence in the record, including the written statement and testimony of Doris Neal.

10. That Claimant testified she did not remember anything after the RP was called except that she went back to doing her normal work schedule after the RP confiscated the vacuum. Claimant confirmed she did not dispute Ms. Neal's written statement regarding the events. This finding is based on Claimant's testimony *(See* Tr. 55 & 79).

11. That after the RP confiscated the vacuum, Claimant stepped back into the radiation detection monitor, without the vacuum, and the alarm did not sound. At that point, the RP informed Claimant and Ms. Neal that they were cleared to go. This finding is based on the preponderance of the evidence in the record, including the written statement and testimony of Doris Neal.

12. That Ms. Neal recalled the RP saying the vacuum had some low particles in it after he frisked the vacuum with the hand-held monitor. There is no other evidence in the record regarding the amount or type of radiation the vacuum cleaner contained. This finding is based on the evidence in the record as a whole, including but not limited to the testimony of Doris Neal.

13. That on the evening of the incident, Claimant was in possession of the vacuum for ten minutes or less, and she did not change or touch the bag on the vacuum during that time. This finding is based on the preponderance of the evidence in the record, including but not limited to the testimony of Doris Neal.

14. That the RP did not open the vacuum in the presence of Claimant or Ms. Neal. This finding is based on the preponderance of the evidence in the record, including the testimony of Doris Neal.

15. That the above-described incident with the vacuum cleaner in October of 1996 was the only time during Claimant's employment with Sunstate Maintenance that the alarm sounded when she walked through the radiation detection monitors. This finding is based on the testimony of Claimant and Doris Neal.

16. That after leaving her employment with Sunstate Maintenance in 1997, Claimant went to work for Filtration Group, and she worked for Filtration Group until 2013. This finding is based on Claimant's testimony and her Itemized Statement of Earnings from the Social Security Administration *(See* Defendants' Supplemental Exhibit A, pp. 1363-1365).

17. That in early 2013, Claimant developed respiratory problems that led to her primary care physician, Dr. Thomas, taking her out of work. Dr. Thomas opined on multiple occasions from 2013 through 2017 that Claimant was unable to work due to chronic lung issues. This finding is based on Claimant's testimony and the medical records of Dr. Thomas *(See* Claimant's APA #2 &

Defendants' APA #8).

18. That Claimant filed a workers' compensation claim in 2013 alleging she sustained an injury and/or occupational illness to her "chest, lungs, and others to be determined" arising out of and in the course of her employment with Filtration Group on May 10, 2013, when she "was exposed to asbestos/other chemicals for a prolonged period of time while she was working." This finding is based on Claimant's testimony and the prior SCWCC claim records submitted by Defendants. *(See* Defendants' Exhibit B).

19. That Claimant has not worked since 2013. This finding is based on the preponderance of the evidence in the record, including Claimant's testimony and the Itemized Statement of Earnings from the Social Security Administration. *(See* Defendants' Supplemental Exhibit A).

20. That the parties disagree as to Claimant's average weekly wage and compensation rate. Claimant did not work 52 weeks with Sunstate Maintenance, and while the Itemized Statement of Earnings from the Social Security Administration provides the gross amount of Claimant's reported earnings with Sunstate Maintenance, an accurate divisor cannot be found, as the exact number of weeks she worked for the Sunstate Maintenance is not determinable from the record. This finding is based on the evidence in the record as a whole.

21. Claimant contended her average weekly wage should be based on earnings of $8.00 per hour for 40 hours. However, Claimant's testimony that she earned $8.00 per hour while working for Sunstate Maintenance is not reliable, as it is based on uncorroborated conversations with former co-workers. Claimant did not have an independent recollection of earning wages of $8.00 per hour. This finding is based on Claimant's testimony.

22. That Defendants contended Claimant's average weekly wage should be based on her

earnings during the four quarters that preceded the date of diagnosis, which would result in a zero dollar average weekly wage and compensation rate, but I find that argument is not persuasive. Alternatively, Defendants contended that the average weekly wage should be calculated by taking Claimant's combined earnings from 1996 and 1997 and then dividing those earnings by 104 weeks (i.e., 2 years). However, a comparison of the calculation produced by Defendants to the remainder of Claimant's wage records in subsequent years does not appear to accurately reflect Claimant's earning capacity for a full year. In comparison to the amounts earned in other years, both 1996 and 1997 appear that they may be years in which Claimant may not have been employed for the entire year. Again, the weekly divisors would be unknown and undeterminable. This finding is based on the evidence in the record as a whole, including the Itemized Statement of Earnings from the Social Security Administration *(See* Defendants' Supplemental Exhibit A).

23. That due to the exceptional reasons, the fairest method to both of the parties is to calculate Claimant's average weekly wage by using Claimant's wages from the nearest timeframe that appears to have produced a stable and sufficient set of wages that a divisor of 52 weeks could be used. Based on the Itemized Statement of Earnings from the Social Security Administration, the wage records from the years 2000 to 2003 appear to be the closest period in time that might contain full years' salary information. As such, Claimant's average weekly wage was $268.30, which yields a corresponding compensation rate of $178.88. [Total Earnings from 2000 to 2003 = $55,807.32/ 208 weeks = $268.30 AWW x .6667 = $178.88 CR ($268.30 AWW/ 40 hours = $6.71/hour)]. This finding is based on the evidence in the record as a whole, including the Itemized Statement of Earnings from the Social Security Administration *(See* Defendants' Supplemental Exhibit A, pp. 1359-1365).

24. That on November 30, 2018, a CT angiography of Claimant's chest was performed

due to her complaints of chest pain and revealed an incidental finding of thyroid nodules. A subsequent ultrasound of her neck was completed and showed a 2.8 cm complex right neck mass and smaller right thyroid calcified nodules. This finding is based on the medical records from Piedmont Medical Center.

(See Claimant's APA #l, pp. 64-105).

25. That on May 13, 2019, Claimant presented to Dr. Timothy Kelly of Charlotte ENT for an evaluation of her thyroid nodule, and at that visit, Dr. Kelly noted Claimant had a family history of thyroid cancer. This finding is based on the medical records from Charlotte ENT *(See* Claimant's APA #4, pp. 625-630).

26. That on June 17, 2019, Dr. Kelly diagnosed Claimant with papillary thyroid carcinoma and recommended a total thyroidectomy, which was performed on July 11, 2019. The surgery included the removal of her thyroid and a number of lymph nodes. This finding is based on the evidence in the record, including the medical records from Charlotte ENT and Piedmont Medical Center *(See* Claimant's APA #4, pp. 678-684; Claimant's APA #1, pp. 126-127).

27. That Claimant has also received treatment for her papillary thyroid cancer from Dr. Robert Wozniak of Lancaster Endocrinology. During her initial visit with Dr. Wozniak on October 22, 2019, Claimant reported a family history of thyroid disease, and it was specifically noted that her mother had a history of "disorder of thyroid gland." Dr. Wozniak noted Claimant denied excessive exposure to ionizing radiation other than medical imaging, but Claimant reported she used to work in a nuclear plant. At her next visit on October 28, 2019, Claimant reported she recalled an accidental exposure to ionizing radiation in 1996-1997 while working at the nuclear plant. This finding is based on the medical records from Lancaster Endocrinology *(See* Claimant's APA #5, pp. 737-744).

28. That three physicians have issued opinions regarding causation of Claimant's thyroid cancer. Claimant identified in her Pre-Hearing Brief and opening statements reliance on the opinions of Dr. Michael Wozniak, an endocrinologist, and Dr. Dean Moesch, a radiologist. Defendants identified in their Pre-Hearing Brief and opening statement reliance on the opinion of Dr. Tondre Buck, an oncologist.

29. That Dr. Wozniak's medical opinion is not sufficient to support causation in this matter. Dr. Wozniak of Lancaster Endocrinology has been one of Claimant's medical providers during her continued treatment following surgery. Dr. Wozniak signed a Medical Questionnaire prepared by Claimant's attorney, and in the undated questionnaire, Dr. Wozniak deferred causation opinions to Dr. Moesch. Dr. Wozniak also crossed out "work-related" in the questionnaire and replaced those words with "papillary thyroid" when describing her cancer. This finding is based on the evidence in the record as a whole, including but not limited to Dr. Wozniak's medical records and Medical Questionnaire *(See* Claimant's APA #5 & Claimant's Exhibit #8, p. 1133).

30. That Dr. Moesch's opinion is also insufficient to support a finding of causation in this matter. Dr. Moesch, a board-certified radiologist, provided a causation opinion by way of affidavit and deposition. *(See* Claimant's Exhibit #4 & Defendants' Exhibit E). I give little weight to Dr. Moesch's causation opinion since it is based on foundational errors and speculation:

- Dr. Moesch indicated in his affidavit that Claimant was exposed for years to radiation and was vacuuming loose particles of radiation. However, Claimant did not work for years with Sunstate Maintenance, and she does not allege years of exposure. Claimant alleges one-time exposure event in October of 1996, while she was carrying a vacuum.
- Dr. Moesch indicated that Claimant was not properly monitored; however, Dr. Moesch is not an expert in nuclear facilities. The record also indicates Claimant worked on the "cold side" of the nuclear plant.

- Dr. Moesch assumed "there were high levels of radiation within a vacuum cleaner that she was using." Dr. Moesch had no firsthand knowledge of Claimant's alleged exposure. The only evidence of the exposure is by Ms. Neal, who testified the RP who removed the vacuum said the vacuum "had some low particles in it." *(See* Moesch Deposition, pp. 26- 27; Neal Deposition, 42).
- While Dr. Moesch assumed her exposure was significant since it was enough for alarms to go off, he was not aware of the threshold of radiation required for the alarms.
- Dr. Moesch testified that Claimant "could" have been exposed when vacuuming; however, Ms. Neal indicated Claimant was not vacuuming. Ms. Neal's testimony was that they retrieved the vacuum from a storage closet and were taking it to another area to vacuum.
- Dr. Moesch indicated that he would think that it was high energy radiation at Claimant's work; however, during cross-examination, he agreed that he was speculating that there was high energy radiation. The only evidence in the record about the radiation is "low particles."
- Dr. Moesch did not have experience in nuclear facilities. Ms. Neal testified that when Claimant stepped back in the monitor after the RP confiscated the vacuum, the monitor "did a full body count" and that no alarm sounded.
- Dr. Moesch provides in his affidavit that Claimant was exposed to other toxins. He testified he was thinking in terms of different types of radiation.
- Dr. Moesch testified that genetics and family history can certainly play a role in a person developing thyroid cancer. He indicated he reviewed Claimant's medical records, and he stated he did not see documentation of a family history of thyroid cancer or thyroid disease. However, Dr. Wozniak's records indicate a family history of thyroid disease, and Claimant testified her cousin had thyroid disease. While Dr. Kelly noted Claimant had a family history of thyroid cancer, Claimant testified at the hearing that Dr. Kelly's record was not accurate.
- Dr. Moesch admitted that under the linear no threshold theory any x-ray, CT scan, or mammogram would have potential to cause cancer. He testified that any x-ray,

CT scan, or mammogram that Claimant had in the past could have damaged a cell, resulting in a DNA mutation to cause her thyroid cancer. The record shows Claimant underwent multiple x-rays, CT scans, and mammograms prior to being diagnosed with thyroid cancer.

- Dr. Moesch did not know the type of thyroid cancer Claimant had. While testified that he believed Claimant had medullary thyroid cancer, Claimant was actually diagnosed with papillary thyroid cancer.

When viewed in its entirety, Dr. Moesch's opinion and testimony is not sufficient to satisfy Claimant's burden in this matter. This finding is based on the evidence in the record as a whole, including the deposition testimony of Dr. Moesch.

31. That Defendants submitted an opinion letter from Dr. Tondre Buck at the Gibbs Cancer Center, dated September 8, 2021. Dr. Buck was aware of Claimant's actual cancer Claimant had (papillary thyroid cancer). Dr. Buck noted that papillary thyroid carcinoma is the most commonly diagnosed thyroid cancer, but also indicated that thyroid cancer is rare. He noted major risk factors include childhood radiation exposure and family history. Dr. Buck opined that per his review of the records, even if Claimant was exposed at work as alleged, it was only one event and would not likely have contributed to her thyroid cancer diagnosis. Dr. Buck's opinion is based on the correct facts that there was a one-time event that occurred when Claimant was moving a vacuum from a storage closet to an area to be cleaned. Dr. Buck ultimately opined that in his opinion, to a reasonable degree of medical certainty, Claimant's potential one-time exposure at work did not contribute to her diagnosis of papillary thyroid cancer. (Defendants' APA #12, p. 1305).

32. That I give greater weight to the causation opinion of Dr. Buck than to the causation opinions of Dr. Moesch and Dr. Wozniak, who deferred to Dr. Moesch. This finding is based on the

preponderance of the evidence in the record as a whole.

33. That Claimant has the burden of proving she sustained a compensable *injury* under the Act, and there is insufficient evidence to establish that her papillary thyroid cancer was caused by her alleged one-time exposure to ionizing radiation in October 1996 while employed by Sunstate Maintenance. This finding is based on the evidence in the record as a whole.

34. That Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that her papillary thyroid cancer was directly caused by, aggravated by, or arose out of her employment with Sunstate Maintenance. This finding is based on the evidence in the record as a whole.

35. That Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that her papillary thyroid cancer was caused by an exposure to ionizing radiation while employed by Sunstate Maintenance. This finding is based on the evidence in the record as a whole.

36. That based upon the preponderance of the credible, reliable, and probative evidence, Claimant failed to cany her burden of proving a compensable *injury* by accident under § 42-1-160, occupational disease under § 42-11-10, or ionizing radiation injury under §42-13-10, *et al.;* therefore, Claimant's request for benefits is denied.

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-40, Claimant's average weekly wage was $268.30, which yields a

corresponding compensation rate of $178.88.

3. Under the Act, Claimant has the burden of proving facts that will bring the *injury* within the workers' compensation law, and such award must not be based on surmise, conjecture, or speculation. *See* Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998); Jennings v. Chambers Development Co., 335 S.C. 77, 515 S.E.2d 453 (Ct. App. 1999).

4. Under § 42-1-160, Claimant failed to prove by a preponderance of the evidence that she sustained a compensable *injury* by accident arising out of and in the course of her employment with Sunstate Maintenance.

5. Under § 42-11-10, Claimant failed to prove by a preponderance of the evidence that she sustained a compensable occupational disease resulting directly and naturally from exposure to hazards peculiar to her particular employment with Sunstate Maintenance.

6. Under § 42-13-10(2), "ionizing radiation *injury*" means any harmful change in the human organism arising out of an in the course of employment and caused by exposure to ionizing radiation, and under § 42-13-10(3), "ionizing radiation disability" means any temporary or permanent, partial or total impairment of natural capability or a decrease in wage-earning capacity arising out of and in the course of employment and caused by exposure to ionizing radiation.

7. Under § 42-13-10, *et al.*, Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that she sustained a compensable ionizing radiation injury, or ionizing radiation disability, arising out of and in the course of her employment with Sunstate Maintenance.

III. ISSUES ON APPEAL

1. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 2, by finding that Claimant specifically alleges that her papillary thyroid cancer is casually related to a radiation exposure that occurred only one time in October during her employment? Said

finding of fact, also fails to state that Claimant also requested lifetime medicals as well the as the finding of total permanent disability.

2. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 5 in finding that only people with proper training could go to the "hotside?"
3. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 11 by finding that the alarm did not sound when Claimant passed back through the monitor?
4. Whether the Single Commissioner erred as a matter of Law and Fact in Finding of Fact 12 by relying on Ms. Neal's hearsay statement of the RP saying that the vacuum had some low particles in it after he frisked the vacuum with the hand monitor, as the statement is hearsay containing the purported expert opinion of an unidentified person who not only lacks a name but also any qualifications to provide such an opinion?
5. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 15 by finding that the October 1996 incident was the only time during Claimant's employment that an alarm sounded when Claimant walked through, as the finding is based on the testimony of lay workers on what they heard, but the record is devoid of the actual radiation records required to be maintained by the employer demonstrating compliance and the proper functioning of monitoring equipment?
6. Whether the Single Commissioner erred as a matter of law and fact in finding Claimant's average weekly wage in Finding of Facts 20, 21, 22, and 23 by relying on unauthenticated documentation and ignoring the testimony of Claimant who would best know her income?
7. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 25 by holding Claimant has a history of family thyroid cancer?
8. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 27 in determining there was a family connection to thyroid disease?
9. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 28 in determining that three physicians opined regarding Claimant's thyroid cancer, as there is no evidence in the record as to Dr. Buck's qualifications to opine on any subject, particularly radiation?
10. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 29 in holding Dr. Wozniak's opinion is insufficient to show causation in that he deferred to Dr. Moesch who opined that the workplace exposure to radiation caused Claimant's thyroid cancer?
11. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 30 by ignoring the opinion of one of the only two credentialed experts opining on the case and by finding that the expert's testimony was entitled to little weight because, among other things, it conflicted with the hearsay statement of a janitor of what an unidentified person told her about the levels of radiation?

12. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 31 in holding Dr. Buck's report accurate and by relying on the report of Dr. Buck when the evidence in the record does not contain any CV or evidence of expertise and no indication of what, if any, medical records that Dr. Buck reviewed? Further, there was evidence that Dr. Buck relied on the hearsay evidence of exposure in his report and thus, his opinion should have not been admitted in the case let alone relied upon.
13. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 32 in finding Dr. Buck's report accurate and ignoring two other doctors with qualifications presented in the evidence. The Employer's counsel did not offer any evidence of Dr. Buck's expertise. The record is void as to Dr. Buck's education, training, type of practice, Board Certifications, and/or type of medicine Dr. Buck practices?
14. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 33 in stating Claimant did not support her burden of proof in establishing a work-related cancer?
15. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 34 in stating Claimant failed to support her burden of proof that the cancer was work-related? Said finding was against the greater weight of the evidence and controlled by error of law.
16. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 35 in stating that Claimant failed to prove that the exposure to ionizing radiation while employed by Sunstate Maintenance caused her cancer as the finding was against the greater weight of the evidence and controlled by error of law?
17. Whether the Single Commissioner erred as a matter of law and fact in Finding of Fact 36 that Claimant failed to carry her burden in proving a compensable injury by accident under the SC Code? Said finding was against the greater weight of the evidence and controlled by error of law.
18. Whether the Single Commissioner erred in permitting the Employer's expert when the record examined as a whole contained no record of the doctors' credentials or even what type of medicine the purported expert practiced?
19. Whether the Single Commissioner erred as a matter of law and fact by ignoring the burden of proof that is applied in cases such as the one before her regarding ionized radiation wherein the employer is mandated to demonstrate that the worker in a radiation facility was not exposed to a harmful amount of radiation, and in so doing, the Commissioner rewarded the employer for failing to carry out their duty? Said finding was against the greater weight of the evidence and controlled by error of law.
20. Whether the Single Commissioner erred as a matter of law and fact by failing to resolve questions of compensability in favor of Claimant?

IV. DECISION OF THE APPELLATE PANEL

In an application for review pursuant to S.C. Code Ann. § 42-17-50, the Appellate Panel shall review the Award, and, if good grounds be shown therefore, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award by making its own Findings of Fact and its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

After careful review of the Requests for Review in the instant case, including review of the entire record and upon consideration of the memoranda and arguments of the parties, the Appellate Panel does hereby fully **AFFIRM** the Decision and Order of the Single Commissioner filed on August 13, 2024.

Below are set out the Findings of Fact and Conclusions of Law of the Appellate Panel as to this claim.

FINDINGS OF FACT

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Lisa Collins as Employee-Claimant and Sunstate Maintenance as Employer and Liberty Insurance Corporation as Carrier, Defendants.

2. That Claimant seeks a finding that she sustained an injury by accident and/or ionizing radiation injury arising out of and in the course of her employment with Sunstate Maintenance in October of 1996. Claimant specifically alleges that her papillary thyroid cancer is causally related to a radiation exposure at work that occurred one evidence in October of 1996.

3. That Claimant was hired by Sunstate Maintenance in September of 1996, and she was employed for a period of at least five to six months in 1996 and 1997. This finding is based on

the evidence in the record as a whole, including but not limited to Claimant's testimony and the Catawba Nuclear Background Screen *(See* Exhibit #5, page 1112).

4. That Sunstate Maintenance was a janitorial company that contracted services for cleaning at the Catawba Nuclear Plant/Duke Power Company. This finding is based on the evidence in the record, including the testimony of Doris Neal and Claimant.

5. That the protected – or secured – area of the Catawba Nuclear Plant contained a "hot side" and a "cold side." The "hot side" was the radiological area, and only people with proper training could go in the "hot side." This finding is supported by the testimony of Doris Neal.

6. That throughout her employment with Sunstate Maintenance, Claimant was part of the services that cleaned on the "cold" side of the Catawba Nuclear Plant. She also cleaned in areas outside of the protected area. Claimant did not perform any services on the "hot side" of the plant. This finding is based on the testimony of Doris Neal and Claimant.

7. That one evening in October of 1996, Claimant was in training and working with her coworker, Doris Neal, on the "cold side" of the plant, when their supervisor instructed them to vacuum the Admin Building, which was located outside of the protected area. Since there was not a vacuum in the Admin Building, Claimant and Ms. Neal retrieved the vacuum cleaner from a supply closet in the "cold side" of the protected area. Claimant took the vacuum out of the storage closet, and she and Ms. Neal proceeded to walk toward the Admin Building. This finding is based on the preponderance of the evidence in the record, including the written statement and testimony of Doris Neal.

8. That as Claimant and Ms. Neal exited the protected area on the way to the Admin Building, they each had to walk through a radiation detection monitor that took a full body count to screen for radiation. When Claimant stepped through the monitor with the vacuum, an alarm

sounded. Claimant stepped out of the monitor. Claimant then walked back through the monitor with the vacuum, and the alarm sounded again. This finding is based on Doris Neal's written statement and testimony, as well as Claimant's testimony.

9. That following the second alarm, the plant's Radiation Protection department was contacted, and a man in Radiation Protection ("the RP") responded. The RP then frisked the vacuum with a hand-held radiation monitor, and the hand-held monitor went off indicating the vacuum was contaminated. The RP then confiscated the vacuum. This finding is based on the preponderance of the evidence in the record, including the written statement and testimony of Doris Neal.

10. That Claimant testified she did not remember anything after the RP was called except that she went back to doing her normal work schedule after the RP confiscated the vacuum. Claimant confirmed she did not dispute Ms. Neal's written statement regarding the events. This finding is based on Claimant's testimony *(See* Tr. 55 & 79).

11. That after the RP confiscated the vacuum, Claimant stepped back into the radiation detection monitor, without the vacuum, and the alarm did not sound. At that point, the RP informed Claimant and Ms. Neal that they were cleared to go. This finding is based on the preponderance of the evidence in the record, including the written statement and testimony of Doris Neal.

12. That Ms. Neal recalled the RP saying the vacuum had some low particles in it after he frisked the vacuum with the hand-held monitor. There is no other evidence in the record regarding the amount or type of radiation the vacuum cleaner contained. This finding is based on the evidence in the record as a whole, including but not limited to the testimony of Doris Neal.

13. That on the evening of the incident, Claimant was in possession of the vacuum for ten minutes or less, and she did not change or touch the bag on the vacuum during that time. This finding is based on the preponderance of the evidence in the record, including but not limited to the

testimony of Doris Neal.

14. That the RP did not open the vacuum in the presence of Claimant or Ms. Neal. This finding is based on the preponderance of the evidence in the record, including the testimony of Doris Neal.

15. That the above-described incident with the vacuum cleaner in October of 1996 was the only time during Claimant's employment with Sunstate Maintenance that the alarm sounded when she walked through the radiation detection monitors. This finding is based on the testimony of Claimant and Doris Neal.

16. That after leaving her employment with Sunstate Maintenance in 1997, Claimant went to work for Filtration Group, and she worked for Filtration Group until 2013. This finding is based on Claimant's testimony and her Itemized Statement of Earnings from the Social Security Administration *(See* Defendants' Supplemental Exhibit A, pp. 1363-1365).

17. That in early 2013, Claimant developed respiratory problems that led to her primary care physician, Dr. Thomas, taking her out of work. Dr. Thomas opined on multiple occasions from 2013 through 2017 that Claimant was unable to work due to chronic lung issues. This finding is based on Claimant's testimony and the medical records of Dr. Thomas *(See* Claimant's APA #2 & Defendants' APA #8).

18. That Claimant filed a workers' compensation claim in 2013 alleging she sustained an injury and/or occupational illness to her "chest, lungs, and others to be determined" arising out of and in the course of her employment with Filtration Group on May 10, 2013, when she "was exposed to asbestos/other chemicals for a prolonged period of time while she was working." This finding is based on Claimant's testimony and the prior SCWCC claim records submitted by Defendants. *(See* Defendants' Exhibit B).

19. That Claimant has not worked since 2013. This finding is based on the preponderance of the evidence in the record, including Claimant's testimony and the Itemized Statement of Earnings from the Social Security Administration. *(See* Defendants' Supplemental Exhibit A).

20. That the parties disagree as to Claimant's average weekly wage and compensation rate. Claimant did not work 52 weeks with Sunstate Maintenance, and while the Itemized Statement of Earnings from the Social Security Administration provides the gross amount of Claimant's reported earnings with Sunstate Maintenance, an accurate divisor cannot be found, as the exact number of weeks she worked for the Sunstate Maintenance is not determinable from the record. This finding is based on the evidence in the record as a whole.

21. Claimant contended her average weekly wage should be based on earnings of $8.00 per hour for 40 hours. However, Claimant's testimony that she earned $8.00 per hour while working for Sunstate Maintenance is not reliable, as it is based on uncorroborated conversations with former co-workers. Claimant did not have an independent recollection of earning wages of $8.00 per hour. This finding is based on Claimant's testimony.

22. That Defendants contended Claimant's average weekly wage should be based on her earnings during the four quarters that preceded the date of diagnosis, which would result in a zero dollar average weekly wage and compensation rate, but we find that argument is not persuasive. Alternatively, Defendants contended that the average weekly wage should be calculated by taking Claimant's combined earnings from 1996 and 1997 and then dividing those earnings by 104 weeks (i.e., 2 years). However, a comparison of the calculation produced by Defendants to the remainder of Claimant's wage records in subsequent years does not appear to accurately reflect Claimant's earning capacity for a full year. In comparison to the amounts earned in other years, both 1996 and

1997 appear that they may be years in which Claimant may not have been employed for the entire year. Again, the weekly divisors would be unknown and undeterminable. This finding is based on the evidence in the record as a whole, including the Itemized Statement of Earnings from the Social Security Administration *(See* Defendants' Supplemental Exhibit A).

23. That due to the exceptional reasons, the fairest method to both of the parties is to calculate Claimant's average weekly wage by using Claimant's wages from the nearest timeframe that appears to have produced a stable and sufficient set of wages that a divisor of 52 weeks could be used. Based on the Itemized Statement of Earnings from the Social Security Administration, the wage records from the years 2000 to 2003 appear to be the closest period in time that might contain full years' salary information. As such, Claimant's average weekly wage was $268.30, which yields a corresponding compensation rate of $178.88. [Total Earnings from 2000 to 2003 = $55,807.32/ 208 weeks = $268.30 AWW x .6667 = $178.88 CR ($268.30 AWW/ 40 hours = $6.71/hour)]. This finding is based on the evidence in the record as a whole, including the Itemized Statement of Earnings from the Social Security Administration *(See* Defendants' Supplemental Exhibit A, pp. 1359-1365).

24. That on November 30, 2018, a CT angiography of Claimant's chest was performed due to her complaints of chest pain and revealed an incidental finding of thyroid nodules. A subsequent ultrasound of her neck was completed and showed a 2.8 cm complex right neck mass and smaller right thyroid calcified nodules. This finding is based on the medical records from Piedmont Medical Center.

(See Claimant's APA #l, pp. 64-105).

25. That on May 13, 2019, Claimant presented to Dr. Timothy Kelly of Charlotte ENT for an evaluation of her thyroid nodule, and at that visit, Dr. Kelly noted Claimant had a family

history of thyroid cancer. This finding is based on the medical records from Charlotte ENT *(See* Claimant's APA #4, pp. 625-630).

26. That on June 17, 2019, Dr. Kelly diagnosed Claimant with papillary thyroid carcinoma and recommended a total thyroidectomy, which was performed on July 11, 2019. The surgery included the removal of her thyroid and a number of lymph nodes. This finding is based on the evidence in the record, including the medical records from Charlotte ENT and Piedmont Medical Center *(See* Claimant's APA #4, pp. 678-684; Claimant's APA #1, pp. 126-127).

27. That Claimant has also received treatment for her papillary thyroid cancer from Dr. Robert Wozniak of Lancaster Endocrinology. During her initial visit with Dr. Wozniak on October 22, 2019, Claimant reported a family history of thyroid disease, and it was specifically noted that her mother had a history of "disorder of thyroid gland." Dr. Wozniak noted Claimant denied excessive exposure to ionizing radiation other than medical imaging, but Claimant reported she used to work in a nuclear plant. At her next visit on October 28, 2019, Claimant reported she recalled an accidental exposure to ionizing radiation in 1996-1997 while working at the nuclear plant. This finding is based on the medical records from Lancaster Endocrinology *(See* Claimant's APA #5, pp. 737-744).

28. That three physicians have issued opinions regarding causation of Claimant's thyroid cancer. Claimant identified in her Pre-Hearing Brief and opening statements reliance on the opinions of Dr. Michael Wozniak, an endocrinologist, and Dr. Dean Moesch, a radiologist. Defendants identified in their Pre-Hearing Brief and opening statement reliance on the opinion of Dr. Tondre Buck, an oncologist.

29. That Dr. Wozniak's medical opinion is not sufficient to support causation in this matter. Dr. Wozniak of Lancaster Endocrinology has been one of Claimant's medical providers

during her continued treatment following surgery. Dr. Wozniak signed a Medical Questionnaire prepared by Claimant's attorney, and in the undated questionnaire, Dr. Wozniak deferred causation opinions to Dr. Moesch. Dr. Wozniak also crossed out "work-related" in the questionnaire and replaced those words with "papillary thyroid" when describing her cancer. This finding is based on the evidence in the record as a whole, including but not limited to Dr. Wozniak's medical records and Medical Questionnaire *(See* Claimant's APA #5 & Claimant's Exhibit #8, p. 1133).

30. That Dr. Moesch's opinion is also insufficient to support a finding of causation in this matter. Dr. Moesch, a board-certified radiologist, provided a causation opinion by way of affidavit and deposition. *(See* Claimant's Exhibit #4 & Defendants' Exhibit E). We give little weight to Dr. Moesch's causation opinion since it is based on foundational errors and speculation:

- Dr. Moesch indicated in his affidavit that Claimant was exposed for years to radiation and was vacuuming loose particles of radiation. However, Claimant did not work for years with Sunstate Maintenance, and she does not allege years of exposure. Claimant alleges one-time exposure event in October of 1996, while she was carrying a vacuum.
- Dr. Moesch indicated that Claimant was not properly monitored; however, Dr. Moesch is not an expert in nuclear facilities. The record also indicates Claimant worked on the "cold side" of the nuclear plant.
- Dr. Moesch assumed "there were high levels of radiation within a vacuum cleaner that she was using." Dr. Moesch had no firsthand knowledge of Claimant's alleged exposure. The only evidence of the exposure is by Ms. Neal, who testified the RP who removed the vacuum said the vacuum "had some low particles in it." *(See* Moesch Deposition, pp. 26- 27; Neal Deposition, 42).
- While Dr. Moesch assumed her exposure was significant since it was enough for alarms to go off, he was not aware of the threshold of radiation required for the alarms.
- Dr. Moesch testified that Claimant "could" have been exposed when vacuuming;

however, Ms. Neal indicated Claimant was not vacuuming. Ms. Neal's testimony was that they retrieved the vacuum from a storage closet and were taking it to another area to vacuum.

- Dr. Moesch indicated that he would think that it was high energy radiation at Claimant's work; however, during cross-examination, he agreed that he was speculating that there was high energy radiation. The only evidence in the record about the radiation is "low particles."
- Dr. Moesch did not have experience in nuclear facilities. Ms. Neal testified that when Claimant stepped back in the monitor after the RP confiscated the vacuum, the monitor "did a full body count" and that no alarm sounded.
- Dr. Moesch provides in his affidavit that Claimant was exposed to other toxins. He testified he was thinking in terms of different types of radiation.
- Dr. Moesch testified that genetics and family history can certainly play a role in a person developing thyroid cancer. He indicated he reviewed Claimant's medical records, and he stated he did not see documentation of a family history of thyroid cancer or thyroid disease. However, Dr. Wozniak's records indicate a family history of thyroid disease, and Claimant testified her cousin had thyroid disease. While Dr. Kelly noted Claimant had a family history of thyroid cancer, Claimant testified at the hearing that Dr. Kelly's record was not accurate.
- Dr. Moesch admitted that under the linear no threshold theory any x-ray, CT scan, or mammogram would have potential to cause cancer. He testified that any x-ray, CT scan, or mammogram that Claimant had in the past could have damaged a cell, resulting in a DNA mutation to cause her thyroid cancer. The record shows Claimant underwent multiple x-rays, CT scans, and mammograms prior to being diagnosed with thyroid cancer.
- Dr. Moesch did not know the type of thyroid cancer Claimant had. While testified that he believed Claimant had medullary thyroid cancer, Claimant was actually diagnosed with papillary thyroid cancer.

When viewed in its entirety, Dr. Moesch's opinion and testimony is not sufficient to satisfy Claimant's burden in this matter. This finding is based on the evidence in the record as a whole,

including the deposition testimony of Dr. Moesch.

31. That Defendants submitted an opinion letter from Dr. Tondre Buck at the Gibbs Cancer Center, dated September 8, 2021. Dr. Buck was aware of Claimant's actual cancer Claimant had (papillary thyroid cancer). Dr. Buck noted that papillary thyroid carcinoma is the most commonly diagnosed thyroid cancer, but also indicated that thyroid cancer is rare. He noted major risk factors include childhood radiation exposure and family history. Dr. Buck opined that per his review of the records, even if Claimant was exposed at work as alleged, it was only one event and would not likely have contributed to her thyroid cancer diagnosis. Dr. Buck's opinion is based on the correct facts that there was a one-time event that occurred when Claimant was moving a vacuum from a storage closet to an area to be cleaned. Dr. Buck ultimately opined that in his opinion, to a reasonable degree of medical certainty, Claimant's potential one-time exposure at work did not contribute to her diagnosis of papillary thyroid cancer. (Defendants' APA #12, p. 1305).

32. That we give greater weight to the causation opinion of Dr. Buck than to the causation opinions of Dr. Moesch and Dr. Wozniak, who deferred to Dr. Moesch. This finding is based on the preponderance of the evidence in the record as a whole.

33. That Claimant has the burden of proving she sustained a compensable *injury* under the Act, and there is insufficient evidence to establish that her papillary thyroid cancer was caused by her alleged one-time exposure to ionizing radiation in October 1996 while employed by Sunstate Maintenance. This finding is based on the evidence in the record as a whole.

34. That Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that her papillary thyroid cancer was directly caused by, aggravated by, or arose out of her employment with Sunstate Maintenance. This finding is based on the evidence in the

record as a whole.

35. That Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that her papillary thyroid cancer was caused by an exposure to ionizing radiation while employed by Sunstate Maintenance. This finding is based on the evidence in the record as a whole.

36. That based upon the preponderance of the credible, reliable, and probative evidence, Claimant failed to cany her burden of proving a compensable *injury* by accident under § 42-1-160, occupational disease under § 42-11-10, or ionizing radiation injury under §42-13-10, *et al.;* therefore, Claimant's request for benefits is denied.

CONCLUSIONS OF LAW

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-40, Claimant's average weekly wage was $268.30, which yields a corresponding compensation rate of $178.88.

3. Under the Act, Claimant has the burden of proving facts that will bring the *injury* within the workers' compensation law, and such award must not be based on surmise, conjecture, or speculation. *See* Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998); Jennings v. Chambers Development Co., 335 S.C. 77, 515 S.E.2d 453 (Ct. App. 1999).

4. Under § 42-1-160, Claimant failed to prove by a preponderance of the evidence that she sustained a compensable *injury* by accident arising out of and in the course of her employment with Sunstate Maintenance.

5. Under § 42-11-10, Claimant failed to prove by a preponderance of the evidence that she sustained a compensable occupational disease resulting directly and naturally from exposure to

hazards peculiar to her particular employment with Sunstate Maintenance.

6. Under § 42-13-10(2), "ionizing radiation *injury*" means any harmful change in the human organism arising out of an in the course of employment and caused by exposure to ionizing radiation, and under § 42-13-10(3), "ionizing radiation disability" means any temporary or permanent, partial or total impairment of natural capability or a decrease in wage-earning capacity arising out of and in the course of employment and caused by exposure to ionizing radiation.

7. Under § 42-13-10, *et al.*, Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that she sustained a compensable ionizing radiation injury, or ionizing radiation disability, arising out of and in the course of her employment with Sunstate Maintenance.

ORDER

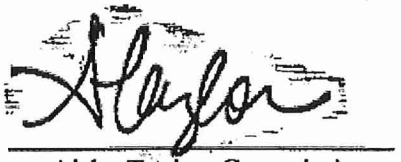
IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner filed on August 13, 2024, is fully **AFFIRMED**.

Accordingly:

IT IS FURTHER ORDERED that Claimant's claim for benefits under the South Carolina Workers' Compensation Act be, and is hereby denied.

AND SO IT IS ORDERED.

_____**(date)**
Columbia, SC



Aisha Taylor, Commissioner

Cynthia C. Dooley, Commissioner

Gene McCaskill, Commissioner

Order Served via email:

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CERTIFICATE OF SERVICE

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

By Eugenia Hollmon on February 11, 2025