APPELLATE PANEL

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1023410

Michael W. Dority,	CLAIMANT APPELLANT,
vs.	
CTR of the Carolinas, Inc., et al.,	EMPLOYER,
AND	
Twin City Fire Insurance Company,	CARRIER, DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina, on December 16, 2013, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed _____, 2014

APPEARANCES:

Appellant Michael W. Dority, Claimant of Fort Lawn, South Carolina represented by Jeffrey T. Eddy, Esquire, of Charleston, South Carolina.

Defendants/Respondents represented by Jason A. Griggs, Esquire of Willson Jones Carter & Baxley, P.A. of Greenville, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner Avery B. Wilkerson, Jr., on March 26, 2013 and April 23, 2013, in Rock Hill, South Carolina. On August 19, 2013, Commissioner Wilkerson issued his Decision and Order, which included the following Findings of Fact, Conclusions of Law, and Order:

Single Commissioner's Findings of Fact

It is found as 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 Michael W. Dority as Employee-Claimant and CTR of the Carolinas as Employer and Twin City Fire Insurance Company as Carrier, Defendants.

2. That Claimant alleges he sustained a compensable occupational disease to his lungs (severe end stage lung disease) as the result of exposure to inorganic particles, including a variety of dusts and fumes, while working for CTR. This is a denied claim.

3. That Claimant's average weekly wage was $668.81, and his compensation rate was $445.90. This finding is based on the stipulation of the parties.

4. That Claimant is fifty-six years old (DOB: 10/10/1956). This finding is based on Claimant's testimony.

5. That Claimant completed the ninth grade, and he subsequently obtained a GED. This finding is based on Claimant's testimony.

6. That Claimant was a heavy smoker, and he smoked two packs of cigarettes per day for thirty years (equating to a sixty pack-year smoking history). It was not until Dr. Sharp, his primary care physician, referred him to Dr. Doty for a pulmonary consultation in July of 2010 that Claimant decided to quit smoking cigarettes. This finding is supported by the evidence in the

record as a whole, including but not limited to, Claimant's testimony, the medical reports, and the deposition testimony of Dr. Doty.

7. That prior to his employment with CTR, Claimant worked for Springs Industries for approximately thirty years at the Grace Bleachery, a plant that finished raw cotton materials. Claimant was initially hired by Springs Industries to be an operator, but after a short period of time, he was moved into plant's maintenance department, where he worked as a maintenance mechanic. His job duties as a maintenance mechanic required him to maintain and repair machinery throughout the plant. He also performed some firefighting during his employment with Springs Industries. Claimant's last date of employment with Springs Industries was in June of 2007. This finding is based on Claimant's testimony.

8. That while working for Springs Industries at the Grace Bleachery, Claimant was exposed to a number of different bleaches, dyes, and dust. Additionally, he was also exposed to fumes from burning chemicals. This finding is supported by Claimant's testimony.

9. That Claimant's work history also includes working as a mechanic at the Georgia Pacific plant in Catawba, South Carolina for approximately four years. While working as a mechanic at Georgia-Pacific, Claimant was exposed to various resins that were used in the manufacturing of the plasterboard. This finding is based on Claimant's testimony.

10. That Claimant started working for CTR at its plant in Rock Hill, South Carolina on July 9, 2007. During the first fifteen to eighteen months of his employment with CTR, Claimant worked in Final Line, where he manufactured parts and components that were used to reduce gas pressure and to deliver gas from the tanks. In late 2009, Claimant was transferred to the Electrical Department, where he manufactured electrical components for tanks. Claimant worked in the Electrical Department until his employment with CTR ended on September 19, 2010. This finding is based on the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

11. That CTR manufactures and restores tanks and equipment that are used by hospitals and other companies to hold oxygen and other types of gases.

12. That CTR's Rock Hill plant is a large, single building facility that is approximately 50,000 square feet in size, and the plant's ceiling is about forty feet high at the apex in the center of the plant and about twenty-five feet high on the sides of the plant, which is the lowest point. This finding is supported by the testimony of Mr. Hornback and Mr. Threatt.

13. That there are a number of departments inside CTR's Rock Hill plant, including Bulk Tank, Tanker Restoration, Final Line, the Electrical Department, the O2 cleaning room, the paint booth, the welding area, and the sandblasting area. Bulk Tank, Tanker Restoration, Final Line, the welding area, and the sandblasting area were divided by floor-to-ceiling walls in some places and large partial walls in other places. The Electrical Department, the O2 cleaning room, and the pain booth were completely sealed off from the other areas of the plant. This finding is supported by the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

14. That Claimant's normal workday at CTR was eight hours long, and he had three breaks during the day: two fifteen minute breaks and a thirty minute unpaid lunch break. This finding is based on Claimant's testimony.

15. That Claimant's job in Final Line required him to perform a number of different tasks throughout the day. These tasks included soldering parts together, cutting tubing and other materials that he needed to build the parts for the tanks, bending tubing, walking to other areas of the plant to get parts, taking parts to the sandblasting area to be blasted, taking parts to the O2 room for cleaning, assembling parts by hand, applying labels and stickers to parts he manufactured, securing the final components to the tanks, and waiting on Quality Control employees to pressure test the parts he manufactured. This finding is based on the testimony of Claimant, Mr. Hornback and Mr. Threatt.

16. That the soldering process required Claimant to clean the two metals he wanted to solder together, apply flux, heat the metals with a torch, and then fill in the joint with solder wire. This finding is based on the testimony of Claimant, Mr. Hornback and Mr. Threatt.

17. That Claimant also had to perform some sandblasting when the employees in the sandblasting department were backed up with work. This finding is supported by the testimony of Claimant and Mr. Hornback.

18. That Defendants' witnesses, Michael Hornback and Jason Threatt, were credible. This finding is based on the evidence in the record as a whole, including my observations of the witnesses' demeanor and delivery of their testimony at the hearing. This finding is further supported by the general consistency of their testimonies.

19. That Claimant's testimony regarding the atmosphere inside CTR's Rock Hill plant, his job duties, the plant's ventilation, and his alleged "exposure" was exaggerated and inconsistent, and therefore, was neither probative nor reliable. The following list of examples is not exhaustive, but merely illustrative:

- Claimant alleged that he performed soldering for four hours a day on average while working in Final Line, and he testified that when he referred to soldering, he was referring to actually having the torch lit and using the silver solder wire. However, Mr. Hornback (Claimant's supervisor in Final Line) testified that Claimant would only spend approximately thirty minutes per day on average with the torch lit and actually soldering metals. Additionally, Mr. Threatt testified that his position in Final Line was similar to Claimant's and that on average, he would spend approximately one hour per day actually soldering parts.

- Even though Claimant testified that he soldered an average of four hours per day and that he performed a variety of other tasks during the day, Claimant maintained that Dr. Kradin's report, which stated "he soldered 8 hours a day, 5 days a week," was correct.

- While Claimant testified that he never went an entire day without soldering during his time in Final Line, Mr. Threatt testified that there were times when he would go a day or more without performing any soldering.

- Claimant alleged that when he heated the solder wire, it created smoke that he

could see rise up to the top of the ceiling. However, Mr. Hornback testified that when an employee is engaged in the soldering of metals, there is only a "little puff of smoke" that dissipated quickly. Mr. Hornback specifically testified that the smoke does not hang in the air and that there is not a visible cloud of smoke in the plant.

- Claimant was inconsistent when testifying about the ventilation in the plant, and his testimony that there was a visible cloud of smoke and dust throughout the plant is clearly exaggerated and purely self-serving. (See *infra* Finding of Fact #21).

- During Direct examination, Claimant initially testified that while working in Final Line, he would get "choked up" and lose his breath once or twice per week as a result of inhaling the smoke from the solder; however, he later testified that he did not notice any respiratory problems while working in Final Line. Notably, Mr. Threatt, who worked next to Claimant in Final Line, never saw Claimant experience a coughing fit or spitting up things.

- Claimant alleged that when he performed sandblasting, which was done in an enclosed cabinet that had a vacuum system, he would be exposed to a lot of dust because it would just come out of the cabinet when he opened the door to remove the part. However, Mr. Hornback testified that he has performed the same type of sandblasting in the past and that there is not exposure to dust or particles.

This finding is based on the evidence in the record as a whole, including my observations of the witnesses' demeanor and delivery of their testimony at the hearing.

20. That I give little weight to Eddie Glenn's deposition testimony. Mr. Glenn's testimony, like Claimant's testimony, is exaggerated. Additionally, Mr. Glenn's testimony is inconsistent with the credible testimony of Mr. Hornback and Mr. Threatt. This finding is based on the evidence in the record as a whole.

21. That despite Claimant's self-serving testimony to the contrary, CTR's plant had more than adequate ventilation consisting of fourteen large, garage type roll-up doors that were wide and tall enough to drive a tractor-trailor through, four wall fans, two ceiling suction fans, and several industrial sized floor fans. Specifically, with regards to the Final Line area of the plant where Claimant worked, there was at least one large roll-up door, one wall fan that ventilated the air out of the plant, and multiple large industrial floor fans. I give great weight to the credible and

consistent testimony of Mr. Hornback and Mr. Threatt regarding the ventilation in the plant. While Claimant alleged that there were only five to six large roll-up doors in the plant, both Mr. Hornback and Mr. Threatt testified that there were actually fourteen large roll-up doors in the plant. Claimant admitted that the doors were opened throughout the spring, summer, and fall months and that the air in the facility was clear when the doors were open and the wind was blowing. Additionally, during direct examination, Claimant alleged that the atmosphere in Final Line during the winter months was "horrible" and that there was no ventilation in the plant during the winter months because CTR kept the plant doors closed and because there were no fans to ventilate the smoke and dust out of the plant. However, on cross-examination, Claimant admitted that even during the winter months, the large roll-up doors in the plant were opened and closed throughout the day. Notably, both Mr. Hornback and Mr. Threatt testified that during the winter months the large roll-up doors are constantly opened and closed in order to bring materials in and take materials out of the plant. In fact, Mr. Threatt specifically testified that the doors are never closed for more than an hour or two during the winter months. Finally, even though Claimant testified that CTR did not have any fans to ventilate the air out of the plant during the winter months, the testimony of Mr. Hornback and Mr. Threatt clearly establishes that the wall fan in the Final line area ran constantly throughout the year and was operable when Claimant was working there. This finding is based on the evidence in the record as a whole, including but not limited to the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

22. That Mr. Hornback previously worked in Final Line for five years performing the same job Claimant had in Final Line, he never experienced any coughing fits during that time. Mr. Hornback also testified that neither Claimant nor any other employee has ever complained to him about the air quality in Final Line or in the plant in general. This finding is based on Mr. Hornback's testimony.

23. That Mr. Threatt has worked in Final Line since August of 2007, approximately six years, and has never experienced a coughing fit or had any complaints about the air quality in the plant. He also testified that he has never talked to anyone that had complaints about the air quality in the plant. This finding is based on Mr. Threatt's testimony.

24. That Claimant worked in Final Line for fifteen to eighteen months before being transferred to the Electrical Department, where he manufactured electrical components. Once transferred to the Electrical Department, Claimant spent five to six hours of each working day inside the enclosed Electrical Department, and he spent two to three hours in the main area of the plant attaching the electrical components to the tanks. This finding is based on the testimony of Claimant, Mr. Hornback.

25. That Claimant testified that he believed the silver solder, the flux, and the other particles he inhaled while working at CTR were the cause of his current respiratory problems. This finding is based on Claimant's testimony.

26. That the CT of his abdomen, dated June 29, 2010, showed "Extensive bibasilar interstitial thickening or infiltrates, minimal bilateral posterior lateral pleural thickening, and tiny right pleural effusion." (*See* Claimant's APA #6)

27. That the CT of Claimant's chest, dated July 6, 2010, revealed "pathologic intrathoracic lymphadenopathy and bilateral subcentimeter noncalcified pulmonary nodules," as well as "extensive coronary artery calcifications." (*See* Claimant's APA #7)

28. That Dr. Doty initially examined Claimant on July 22, 2010, and in his report, Dr. Doty noted that Claimant was essentially asymptomatic from a pulmonary standpoint, that claimant denied having any dyspena with his usual activities of daily living or with his occupation, and that Claimant also denied any wheezing. (*See* Claimant's APA #8)

29. That on September 14, 2010, Dr. Mark K. Reames of Sanger Heart & Vascular

Institute noted that Claimant had recently undergone a bronchoscopy, which was negative, and he recommended a thoracoscopic lung biopsy in an attempt to determine a definitive diagnosis. (*See* Claimant's APAs #8 & #11)

30. That Claimant was admitted to Carolinas Medical Center and underwent a right-sided video-assisted thoracoscopic surgery with wedge biopsies of the upper, middle, and lower lobes, as well as an intercostal nerve block on September 23, 2010. His discharge note from the hospital, dated October 4, 2010, states that Claimant was diagnosed with interstitial lung disease of unknown etiology, dyslipidemia, questionable obstructive sleep apnea, obesity, COPD, and diverticular disease. (*See* Claimant's APA #12)

31. That on October 4, 2010, Dr. Kiran Adlakha of Carolinas Laboratory Network issued a surgical pathology report from Claimant's lung biopsy and noted that the biopsy revealed showed [sic] emphysema with diffuse septal thickening, patchy aggregates of pigmented anthracotic macrophages with rare silicate particles, bronchiolar mediplasia with some honeycomb features, patchy chronic inflammation with lymphoid aggregate, and pulmonary hypertension. Dr. Adlaka opined that "Overall features are those of chronic fibrosing interstitial pneumonia in the back ground of emphysema and is likely going to behave as UIP." (*See* Claimant's APA #13)

32. That Claimant's breathing problems worsened following his lung biopsy, and he has been on home oxygen ever since his lung biopsy. This finding is based on the evidence in the record as a whole.

33. That following his lung biopsy on September 23, 2010, Dr. Doty has provided the majority of Claimant's treatment. This finding is based on the evidence in the record as a whole.

34. That five physicians have issued causation opinions in this matter. Claimant relied on the opinions of his retained experts, Dr. Richard Kradin and Dr. Jerrold Abraham, and he also contended that his claim was supported by Dr. John Doty, his treating physician. Defendants relied

on the opinions of their retained experts, Dr. Victor Roggli and Dr. Gregory Feldman. Defendants also asserted that Dr. Doty's opinion was not sufficient to satisfy Claimant's burden of proof.

35. That the Dr. Doty's medical opinion is not sufficient to support causation in this matter. First, at his deposition, Dr. Doty admitted that he did not have expertise in occupational lung disease. Additionally, when asked what his current diagnosis of Claimant's condition was, Dr. Doty testified that he would code him as having Interstitional Lung Disease. However, he testified that there are several different types of Interstitional Lung Disease (including IPF, non-specific interstitial pneumonitis, sarcoidosis, and hypersensitivity pneumonitis) and that he cannot determine what type Claimant has at this time. Dr. Doty specifically testified that to a reasonable degree of medical certainty he cannot rule out IPF as Claimant's diagnosis, and Dr. Doty would only go so far as to testify that the claimant's job with CTR, Inc. could have contributed to the lung disease. When viewed in its entirety, Dr. Doty's 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. Doty.

36. That Dr. Richard Kradin (Claimant's expert) performed a records review, and on July 27, 2012, he opined that "Mr. Doty's occupational exposures to heavy metals, including the components of silver brazing allow [sic], must be considered to a reasonable degree of medical probability causes of his chronic lung disease." (*See*.Claimant's APA #4)

37. That I give little weight to the causation opinion of Dr. Kradin since his opinion is clearly based on inaccurate information. First, Dr. Kradin noted that Claimant worked as a Maintenance Mechanic for Springs Industries from 1978 to 1996 and that Claimant's job duties at Springs Industries included "extensive welding with rods containing nickel, stainless, steel, aluminum, galvanized steel, lead, and cadmium." Claimant specifically testified at the hearing that Dr. Kradin's report was inaccurate because he did not perform any welding while working at

Springs Industries. Additionally, while Dr. Kradin also noted in his report that Claimant "participated in firefighting at the [Spring's Industries] plant which occurred on a regular basis releasing fumes from the burning chemicals," Claimant testified that Dr. Kradin's report was incorrect because he did not participate in firefighting on a "regular basis." Most importantly, with regards to Claimant's employment at CTR, Dr. Kradin's report states, "He soldered 8 hours a day 5 days a week" and that "There was minimal venting in the shop; instead fumes and dust were moved around the plant by fans." However, these statements on which Dr. Kradin's opinion is based are clearly inaccurate. Claimant admitted at the hearing that he did not solder "8 hours a day 5 days a week," and the testimony of Mr. Hornback and Mr. Threatt establishes that Claimant only soldered thirty minutes to an hour per day. Additionally, as outlined above in Finding of Fact #21, the ventilation in CTR's plant was substantially more than "minimal." This finding is based on the evidence in the record as a whole.

38. That Dr. Jerrold L. Abraham (Claimant's expert) performed a records review and analyzed tissue samples from Claimant's September 23, 2010 lung biopsy, and he opined that "Mr. Dority's lung disease is not idiopathic and that his exposures to a multitude of different toxic dust particulates over his working career and including his exposures at CTR contributed to the development of his lung disease (pulmonary fibrosis)." (*See* Claimant's APA #1)

39. That Dr. Gregory J. Feldman (Defendants' expert) examined Claimant on September 20, 2012, and noted that Claimant complained of significant breathlessness, that he reported his shortness of breath had dramatically worsened since his lung biopsy in 2010, and that during the past several months, Claimant had required supplemental oxygen. Dr. Feldman noted that Claimant was a very heavy smoker with a documented sixty pack-year history of cigarette smoking. After examining Claimant and reviewing his prior medical records, Dr. Feldman diagnosed Claimant with Idiopathic Pulmonary Fibrosis ("IPF") and COPD, and he opined to a

reasonable degree of medical certainty that "Mr. Dority's clinical course in consistent with IPF and is, in fact, classic for IPF with pathological findings of UIP confirming diagnosis." He also opined that Claimant "exhibits all of the cardinal features of IPF." In conclusion, Dr. Feldman stated that "It is impossible to opine whether any of the numerous environmental exposures that Mr. Dority experienced over more than 30 years played a role, if any, in addition to smoking cigarettes in a genetic predisposition." (Defendants' APA #39)

40. That Claimant's attorney deposed Dr. Feldman on October 4, 2012. At his deposition, Dr. Feldman maintained his opinion that Claimant suffered from IPF. Dr. Feldman testified that patients with IPF usually have a "falling off the cliff" event and their lungs never recover. He also testified that after a "falling off the cliff" event, patients can stabilize for a period of time before falling again. With regards to Claimant, Dr. Feldman testified that based on the history Claimant provided, his "falling off the cliff" event was his lung biopsy in 2010. He further testified that Claimant's clinical course since his biopsy has been consistent with IPF, that he most likely not going to improve, and that he has hit flat-lined until has his next "fall." This finding is based on Dr. Feldman's deposition testimony.

41. That Dr. Victor Roggli (Defendants' expert) performed a records review and analyzed tissue samples from Claimant's lung biopsy. On February 1, 2013, Dr. Roggli opined that based on his review of the records and his testing of Claimant's tissue samples, "the most appropriate diagnosis is usual interstitial pneumonia (idiopathic pulmonary fibrosis) with some discordant features." On February 27, 2013, Dr. Roggli noted that he reviewed Dr. Abraham;s report, dated January 15, 2013, and he opined that there is no convincing evidence that any of the metal particles described by Dr. Abraham cause a usual interstitial pneumonia pattern." He further opined that "it is unlikely that exposure to the types of particulates Dr. Abraham found, including any that may have derived from his time at CTR, would have caused or contributed to the observed

pattern of interstitial lung disease [in Claimant]," and that Dr. Abraham's opinion that Claimant's lung disease was due to "exposure to a multitude of different toxic dust particulates over his working career and including his exposures at CTR" was sheer speculation and not supported by scientific evidence. (Defendants' APA #37)

42. That I give greater weight to the causation opinions of Defendants' experts (Dr. Feldman and Dr. Roggli) than to the causation opinions of Claimant's experts (Dr. Kradin and Dr. Abraham). This finding is based on the preponderance of the evidence in the record as a whole.

43. That there is insufficient evidence to establish that Claimant's lung disease was caused or aggravated by the work environment at CTR. This finding is based on the evidence in the record as a whole.

44. That there is insufficient evidence to establish that Claimant was exposed to any hazard in excess of those ordinarily incident to employment. This finding is based on the evidence in the record as a whole.

45. That Claimant's assertion that his lung disease is causally related to the silver solder, the flux, and the other particles he worked with at CTR is purely speculative. This finding is based on the evidence in the record as a whole.

46. That Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that his alleged lung disease was directly caused by, aggravated by, or arose out of his employment with CTR. This finding is based on the evidence in the record as a whole.

47. That based upon the preponderance of the credible, reliable, and probative evidence, Claimant failed to carry his burden of proving a compensable occupational disease as contemplated in S.C. Code Ann. § 42-11-10; therefore, Claimant's request for benefits is denied.

Single Commissioner's Conclusions of Law

Accordingly, as provided in S.C. Code Ann § 42-17-40 (1976), as amended, it is the

determination of this Commission that:

1. Under § 420-1-130, 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 § 42-11-10, Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that the sustained a compensable occupational disease resulting directly and naturally from exposure to hazards peculiar to his particular employment with CTR.

3. Under § 42-11-10, Claimant failed to prove a compensable occupational disease resulting directly from abnormal external gaseous pressure exerted upon the body or the natural entrance into the body through the skin or natural orifices thereof of foreign organic or inorganic matter under circumstances peculiar to the employment and the processes utilized therein.

Single Commissioner's Order

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

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

On August 23, 2013, within the statutory period, counsel for Claimant filed an application for review in the case setting forth his grounds for review, copies of which were furnished to all interested parties, prior to oral argument presented to the Appellate Panel on December 16, 2013. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration. By appeal, Claimant submitted the following grounds for review:

1. Is finding of fact number 35 (treating pulmonologist's medical opinion is not sufficient to support causation) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: (a) the hearing commissioner excluded Dr. Doty's opinion supporting the claim (APA No. 9, p. 67.1) and (b) Dr. Doty testified Claimant's

lung disease was caused by his occupational exposures including those at CTR (dep. Dr. John Doty dated 10/03/12, pp.9-10, 18-19, 21-32, 45, 50, 55-56, 60-61, 79, 81-82 & 88)?

2. Is finding of fact number 38 (regarding Dr. Jerrold Abraham) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann § 1-23-380(g) (1986) in that: it completely ignores the fact that Dr. Abraham (APA No. 1, pp. 1-2) analyzed claimant's actual lung tissue using electron microscopy (SEM) and x-ray spectroscopy (EDS) and found particulate matter comprised of metals to which claimant was exposed at CTR and Springs?

3. Are findings of fact numbers 39 and 40 (regarding the opinions of Dr. Gregory J. Feldman) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: they completely omit Dr. Feldman's opinion that many metals cause lung disease and a pathological finding of particulate matter in the tissue would definitively prove claimant's lung disease was due to his occupational inhalation of dust and fumes (Dr. Feldman dep. dated 10/04/12, pp. 6, 17-18, 20-21, 27-28, 38-39, & 61-62)?

4. Is finding of fact number 34 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: claimant also relies on the opinions of the defendants' retained expert, Dr. Gregory Feldman.

5. Are finding of facts numbers 41 and 42 (regarding Dr. Victor L. Roggli) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: (a) Dr. Roggli did not "analyze" tissue samples from claimant's lung biopsy but merely reviewed existing slides under a light microscope; (b) Dr. Roggli first opined claimant does not have asbestosis when he thought this was an asbestos case; (APA No. 37, pp. 459-464) and (c) Dr. Roggli has authored medical articles stating SEM and EDS are important tools in detecting the types of disease-producing metals found in claimant's lung tissue, and he cites Dr. Jerrold Abraham in support of these statements (APA Nos. 29, 30 & 31, pp. 324-348)?

6. Is finding of fact number 37 (regarding the opinion of Dr. Richard Kradin) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: Dr. Kradin's opinion (APA No. 4, pp. 26-28) is based on his review of the pathology materials (lung tissue biopsy) and any confusion regarding the respective exposures at Springs or CTR does not detract from his opinion that claimant's lung

disease was due to his occupations exposures generally?

7. Is finding of fact number 6 (regarding smoking) affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the medical evidence (dep. Dr. John Doty dated 10/03/12 at pp. 32-34, 50, 75, 77, & 83) established claimant's occupationally-related pulmonary fibrosis, not smoking, is the cause of his disability?

8. Is finding of fact number 2 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: claimant alleged an accidental injury and/or occupational lung disease as a result of over 30 years exposure/employment and not just exposure "while working for CTR." (See Forms 50, 58, Claimant's Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?

9. Is finding of fact number 46 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the question is not whether claimant's lung disease was caused by his employment with CTR but whether it was caused by claimant's occupational inhalations over 30 plus years and, if so, whether CTR is liable for the payments of benefits. (See Forms 50, 58, Claimant's Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?

10. Is finding of fact number 43 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986) in that: the question is not whether claimant's lung disease was caused by the work environment at CTR but whether it was caused by claimant's occupational inhalations over 30 plus years and, if so, whether CTR is liable for the payments of benefits. (See Forms 50, 58, Claimant's Pre-Hearing Brief and transcript of hearing dated 03/26/13, p. 14)?

11. Is finding of fact number 18 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

12. Is finding of fact number 19 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

13. Is finding of fact number 20 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or

characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)/

14. Is finding of fact number 21 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

15. Is finding of fact number 44 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

16. Is finding of fact number 45 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

17. Is finding of fact number 47 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

18. Is conclusion of law number 2 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

19. Is conclusion of law number 3 affected by error of law, clearly erroneous in view of the reliable and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion under S.C. Code Ann. § 1-23-380(g) (1986)?

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with, or inconsistent with, those of the Single Commissioner. After careful review in the instant case, the Appellate Panel, by unanimous vote, has determined that all of the Single Commissioner's Findings of Facts and Conclusions of Law are correct as stated. As such, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, fully affirms the Single Commissioner's Order, and issues the following Findings of Fact and

Conclusions of Law, which shall become, and hereby are, the law of the case.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS 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 Michael W. Dority as Employee-Claimant and CTR of the Carolinas as Employer and Twin City Fire Insurance Company as Carrier, Defendants.

2. That Claimant alleges he sustained a compensable occupational disease to his lungs (severe end stage lung disease) as the result of exposure to inorganic particles, including a variety of dusts and fumes, while working for CTR. This is a denied claim.

3. That Claimant's average weekly wage was $668.81, and his compensation rate was $445.90. This finding is based on the stipulation of the parties.

4. That at the time of the hearing, Claimant was fifty-six years old (DOB: 10/10/1956). This finding is based on Claimant's testimony.

5. That Claimant completed the ninth grade, and he subsequently obtained a GED. This finding is based on Claimant's testimony.

6. That Claimant was a heavy smoker, and he smoked two packs of cigarettes per day for thirty years (equating to a sixty pack-year smoking history). It was not until Dr. Sharp, his primary care physician, referred him to Dr. Doty for a pulmonary consultation in July of 2010 that Claimant decided to quit smoking cigarettes. This finding is supported by the evidence in the record as a whole, including but not limited to, Claimant's testimony, the medical reports, and the deposition testimony of Dr. Doty.

7. That prior to his employment with CTR, Claimant worked for Springs Industries for approximately thirty years at the Grace Bleachery, a plant that finished raw cotton materials. Claimant was initially hired by Springs Industries to be an operator, but after a short period of time, he was moved into plant's maintenance department, where he worked as a maintenance mechanic. His job duties as a maintenance mechanic required him to maintain and repair machinery throughout the plant. He also performed some firefighting during his employment with Springs Industries. Claimant's last date of employment with Springs Industries was in June of 2007. This finding is based on Claimant's testimony.

8. That while working for Springs Industries at the Grace Bleachery, Claimant was exposed to a number of different bleaches, dyes, and dust. Additionally, he was also exposed to fumes from burning chemicals. This finding is supported by Claimant's testimony.

9. That Claimant's work history also includes working as a mechanic at the Georgia Pacific plant in Catawba, South Carolina for approximately four years. While working as a mechanic at Georgia-Pacific, Claimant was exposed to various resins that were used in the manufacturing of the plasterboard. This finding is based on Claimant's testimony.

10. That Claimant started working for CTR at its plant in Rock Hill, South Carolina on July 9, 2007. During the first fifteen to eighteen months of his employment with CTR, Claimant worked in Final Line, where he manufactured parts and components that were used to reduce gas pressure and to deliver gas from the tanks. In late 2009, Claimant was transferred to the Electrical Department, where he manufactured electrical components for tanks. Claimant worked in the Electrical Department until his employment with CTR ended on September 19, 2010. This finding is based on the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

11. That CTR manufactures and restores tanks and equipment that are used by hospitals and other companies to hold oxygen and other types of gases.

12. That CTR's Rock Hill plant is a large, single building facility that is approximately 50,000 square feet in size, and the plant's ceiling is about forty feet high at the apex in the center of the plant and about twenty-five feet high on the sides of the plant, which is the lowest point. This finding is supported by the testimony of Mr. Hornback and Mr. Threatt.

13. That there are a number of departments inside CTR's Rock Hill plant, including Bulk Tank, Tanker Restoration, Final Line, the Electrical Department, the O2 cleaning room, the paint booth, the welding area, and the sandblasting area. Bulk Tank, Tanker Restoration, Final Line, the welding area, and the sandblasting area were divided by floor-to-ceiling walls in some places and large partial walls in other places. The Electrical Department, the O2 cleaning room, and the pain booth were completely sealed off from the other areas of the plant. This finding is supported by the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

14. That Claimant's normal workday at CTR was eight hours long, and he had three breaks during the day: two fifteen minute breaks and a thirty minute unpaid lunch break. This finding is based on Claimant's testimony.

15. That Claimant's job in Final Line required him to perform a number of different tasks throughout the day. These tasks included soldering parts together, cutting tubing and other materials that he needed to build the parts for the tanks, bending tubing, walking to other areas of the plant to get parts, taking parts to the sandblasting area to be blasted, taking parts to the O2 room for cleaning, assembling parts by hand, applying labels and stickers to parts he manufactured, securing the final components to the tanks, and waiting on Quality Control employees to pressure test the parts he manufactured. This finding is based on the testimony of Claimant, Mr. Hornback and Mr. Threatt.

16. That the soldering process required Claimant to clean the two metals he wanted to solder together, apply flux, heat the metals with a torch, and then fill in the joint with solder wire.

This finding is based on the testimony of Claimant, Mr. Hornback and Mr. Threatt.

17. That Claimant also had to perform some sandblasting when the employees in the sandblasting department were backed up with work. This finding is supported by the testimony of Claimant and Mr. Hornback.

18. That Defendants' witnesses, Michael Hornback and Jason Threatt, were credible. This finding is based on the evidence in the record as a whole, including the Single Commissioner's observations of the witnesses' demeanor and delivery of their testimony at the hearing. This finding is further supported by the general consistency of their testimonies.

19. That Claimant's testimony regarding the atmosphere inside CTR's Rock Hill plant, his job duties, the plant's ventilation, and his alleged "exposure" was exaggerated and inconsistent, and therefore, was neither probative nor reliable. The following list of examples is not exhaustive, but merely illustrative:

a. Claimant alleged that he performed soldering for four hours a day on average while working in Final Line, and he testified that when he referred to soldering, he was referring to actually having the torch lit and using the silver solder wire. However, Mr. Hornback (Claimant's supervisor in Final Line) testified that Claimant would only spend approximately thirty minutes per day on average with the torch lit and actually soldering metals. Additionally, Mr. Threatt testified that his position in Final Line was similar to Claimant's and that on average, he would spend approximately one hour per day actually soldering parts.

b. Even though Claimant testified that he soldered an average of four hours per day and that he performed a variety of other tasks during the day, Claimant maintained that Dr. Kradin's report, which stated "he soldered 8 hours a day, 5 days a week," was correct.

c. While Claimant testified that he never went an entire day without soldering during his time in Final Line, Mr. Threatt testified that there were times when he would go a day or more without performing any soldering.

d. Claimant alleged that when he heated the solder wire, it created smoke that he could see rise up to the top of the ceiling. However, Mr. Hornback testified that when an employee is engaged in the soldering of metals, there is only a "little puff of smoke" that dissipated quickly. Mr. Hornback specifically testified that the smoke does not hang in the air and that there is not a visible cloud of smoke

in the plant.

e. Claimant was inconsistent when testifying about the ventilation in the plant, and his testimony that there was a visible cloud of smoke and dust throughout the plant is clearly exaggerated and purely self-serving. (See *infra* Finding of Fact #21).

f. During Direct examination, Claimant initially testified that while working in Final Line, he would get "choked up" and lose his breath once or twice per week as a result of inhaling the smoke from the solder; however, he later testified that he did not notice any respiratory problems while working in Final Line. Notably, Mr. Threatt, who worked next to Claimant in Final Line, never saw Claimant experience a coughing fit or spitting up things.

g. Claimant alleged that when he performed sandblasting, which was done in an enclosed cabinet that had a vacuum system, he would be exposed to a lot of dust because it would just come out of the cabinet when he opened the door to remove the part. However, Mr. Hornback testified that he has performed the same type of sandblasting in the past and that there is not exposure to dust or particles.

This finding is based on the evidence in the record as a whole, including the Single Commissioner's observations of the witnesses' demeanor and delivery of their testimony at the hearing.

20. That we give little weight to Eddie Glenn's deposition testimony. Mr. Glenn's testimony, like Claimant's testimony, is exaggerated. Additionally, Mr. Glenn's testimony is inconsistent with the credible testimony of Mr. Hornback and Mr. Threatt. This finding is based on the evidence in the record as a whole.

21. That despite Claimant's self-serving testimony to the contrary, CTR's plant had more than adequate ventilation consisting of fourteen large, garage type roll-up doors that were wide and tall enough to drive a tractor-trailor through, four wall fans, two ceiling suction fans, and several industrial sized floor fans. Specifically, with regards to the Final Line area of the plant where Claimant worked, there was at least one large roll-up door, one wall fan that ventilated the air out of the plant, and multiple large industrial floor fans. We give great weight to the credible and consistent testimony of Mr. Hornback and Mr. Threatt regarding the ventilation in the plant.

While Claimant alleged that there were only five to six large roll-up doors in the plant, both Mr. Hornback and Mr. Threatt testified that there were actually fourteen large roll-up doors in the plant. Claimant admitted that the doors were opened throughout the spring, summer, and fall months and that the air in the facility was clear when the doors were open and the wind was blowing. Additionally, during direct examination, Claimant alleged that the atmosphere in Final Line during the winter months was "horrible" and that there was no ventilation in the plant during the winter months because CTR kept the plant doors closed and because there were no fans to ventilate the smoke and dust out of the plant. However, on cross-examination, Claimant admitted that even during the winter months, the large roll-up doors in the plant were opened and closed throughout the day. Notably, both Mr. Hornback and Mr. Threatt testified that during the winter months the large roll-up doors are constantly opened and closed in order to bring materials in and take materials out of the plant. In fact, Mr. Threatt specifically testified that the doors are never closed for more than an hour or two during the winter months. Finally, even though Claimant testified that CTR did not have any fans to ventilate the air out of the plant during the winter months, the testimony of Mr. Hornback and Mr. Threatt clearly establishes that the wall fan in the Final line area ran constantly throughout the year and was operable when Claimant was working there. This finding is based on the evidence in the record as a whole, including but not limited to the testimony of Claimant, Mr. Hornback, and Mr. Threatt.

22. That Mr. Hornback previously worked in Final Line for five years performing the same job Claimant had in Final Line, he never experienced any coughing fits during that time. Mr. Hornback also testified that neither Claimant nor any other employee has ever complained to him about the air quality in Final Line or in the plant in general. This finding is based on Mr. Hornback's testimony.

23. That Mr. Threatt has worked in Final Line since August of 2007, approximately six

years, and has never experienced a coughing fit or had any complaints about the air quality in the plant. He also testified that he has never talked to anyone that had complaints about the air quality in the plant. This finding is based on Mr. Threatt's testimony.

24. That Claimant worked in Final Line for fifteen to eighteen months before being transferred to the Electrical Department, where he manufactured electrical components. Once transferred to the Electrical Department, Claimant spent five to six hours of each working day inside the enclosed Electrical Department, and he spent two to three hours in the main area of the plant attaching the electrical components to the tanks. This finding is based on the testimony of Claimant and Mr. Hornback.

25. That Claimant testified that he believed the silver solder, the flux, and the other particles he inhaled while working at CTR were the cause of his current respiratory problems. This finding is based on Claimant's testimony.

26. That the CT of his abdomen, dated June 29, 2010, showed "Extensive bibasilar interstitial thickening or infiltrates, minimal bilateral posterior lateral pleural thickening, and tiny right pleural effusion." (*See* Claimant's APA #6)

27. That the CT of Claimant's chest, dated July 6, 2010, revealed "pathologic intrathoracic lymphadenopathy and bilateral subcentimeter noncalcified pulmonary nodules," as well as "extensive coronary artery calcifications." (*See* Claimant's APA #7)

28. That Dr. Doty initially examined Claimant on July 22, 2010, and in his report, Dr. Doty noted that Claimant was essentially asymptomatic from a pulmonary standpoint, that claimant denied having any dyspena with his usual activities of daily living or with his occupation, and that Claimant also denied any wheezing. (*See* Claimant's APA #8)

29. That on September 14, 2010, Dr. Mark K. Reames of Sanger Heart & Vascular Institute noted that Claimant had recently undergone a bronchoscopy, which was negative, and he

recommended a thoracoscopic lung biopsy in an attempt to determine a definitive diagnosis. (*See* Claimant's APAs #8 & #11)

30. That Claimant was admitted to Carolinas Medical Center and underwent a right-sided video-assisted thoracoscopic surgery with wedge biopsies of the upper, middle, and lower lobes, as well as an intercostal nerve block on September 23, 2010. His discharge note from the hospital, dated October 4, 2010, states that Claimant was diagnosed with interstitial lung disease of unknown etiology, dyslipidemia, questionable obstructive sleep apnea, obesity, COPD, and diverticular disease. (*See* Claimant's APA #12)

31. That on October 4, 2010, Dr. Kiran Adlakha of Carolinas Laboratory Network issued a surgical pathology report from Claimant's lung biopsy and noted that the biopsy revealed showed [sic] emphysema with diffuse septal thickening, patchy aggregates of pigmented anthracotic macrophages with rare silicate particles, bronchiolar mediplasia with some honeycomb features, patchy chronic inflammation with lymphoid aggregate, and pulmonary hypertension. Dr. Adlaka opined that "Overall features are those of chronic fibrosing interstitial pneumonia in the back ground of emphysema and is likely going to behave as UIP." (*See* Claimant's APA #13)

32. That Claimant's breathing problems worsened following his lung biopsy, and he has been on home oxygen ever since his lung biopsy. This finding is based on the evidence in the record as a whole.

33. That following his lung biopsy on September 23, 2010, Dr. Doty has provided the majority of Claimant's treatment. This finding is based on the evidence in the record as a whole.

34. That five physicians have issued causation opinions in this matter. Claimant relied on the opinions of his retained experts, Dr. Richard Kradin and Dr. Jerrold Abraham, and he also contended that his claim was supported by Dr. John Doty, his treating physician. Defendants relied on the opinions of their retained experts, Dr. Victor Roggli and Dr. Gregory Feldman. Defendants

also asserted that Dr. Doty's opinion was not sufficient to satisfy Claimant's burden of proof.

35. That the Dr. Doty's medical opinion is not sufficient to support causation in this matter. First, at his deposition, Dr. Doty admitted that he did not have expertise in occupational lung disease. Additionally, when asked what his current diagnosis of Claimant's condition was, Dr. Doty testified that he would code him as having Interstitional Lung Disease. However, he testified that there are several different types of Interstitional Lung Disease (including IPF, non-specific interstitial pneumonitis, sarcoidosis, and hypersensitivity pneumonitis) and that he cannot determine what type Claimant has at this time. Dr. Doty specifically testified that to a reasonable degree of medical certainty he cannot rule out IPF as Claimant's diagnosis, and Dr. Doty would only go so far as to testify that the claimant's job with CTR, Inc. could have contributed to the lung disease. When viewed in its entirety, Dr. Doty's 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. Doty.

36. That Dr. Richard Kradin (Claimant's expert) performed a records review, and on July 27, 2012, he opined that "Mr. Doty's occupational exposures to heavy metals, including the components of silver brazing alloy, must be considered to a reasonable degree of medical probability causes of his chronic lung disease." (*See* Claimant's APA #4)

37. That we give little weight to the causation opinion of Dr. Kradin since his opinion is clearly based on inaccurate information. First, Dr. Kradin noted that Claimant worked as a Maintenance Mechanic for Springs Industries from 1978 to 1996 and that Claimant's job duties at Springs Industries included "extensive welding with rods containing nickel, stainless, steel, aluminum, galvanized steel, lead, and cadmium." Claimant specifically testified at the hearing that Dr. Kradin's report was inaccurate because he did not perform any welding while working at Springs Industries. Additionally, while Dr. Kradin also noted in his report that Claimant

"participated in firefighting at the [Spring's Industries] plant which occurred on a regular basis releasing fumes from the burning chemicals," Claimant testified that Dr. Kradin's report was incorrect because he did not participate in firefighting on a "regular basis." Most importantly, with regards to Claimant's employment at CTR, Dr. Kradin's report states, "He soldered 8 hours a day 5 days a week" and that "There was minimal venting in the shop; instead fumes and dust were moved around the plant by fans." However, these statements on which Dr. Kradin's opinion is based are clearly inaccurate. Claimant admitted at the hearing that he did not solder "8 hours a day 5 days a week," and the testimony of Mr. Hornback and Mr. Threatt establishes that Claimant only soldered thirty minutes to an hour per day. Additionally, as outlined above in Finding of Fact #21, the ventilation in CTR's plant was substantially more than "minimal." This finding is based on the evidence in the record as a whole.

38. That Dr. Jerrold L. Abraham (Claimant's expert) performed a records review and analyzed tissue samples from Claimant's September 23, 2010 lung biopsy, and he opined that "Mr. Dority's lung disease is not idiopathic and that his exposures to a multitude of different toxic dust particulates over his working career and including his exposures at CTR contributed to the development of his lung disease (pulmonary fibrosis)." (*See* Claimant's APA #1)

39. That Dr. Gregory J. Feldman (Defendants' expert) examined Claimant on September 20, 2012, and noted that Claimant complained of significant breathlessness, that he reported his shortness of breath had dramatically worsened since his lung biopsy in 2010, and that during the past several months, Claimant had required supplemental oxygen. Dr. Feldman noted that Claimant was a very heavy smoker with a documented sixty pack-year history of cigarette smoking. After examining Claimant and reviewing his prior medical records, Dr. Feldman diagnosed Claimant with Idiopathic Pulmonary Fibrosis ("IPF") and COPD, and he opined to a reasonable degree of medical certainty that "Mr. Dority's clinical course in consistent with IPF and

is, in fact, classic for IPF with pathological findings of UIP confirming diagnosis." He also opined that Claimant "exhibits all of the cardinal features of IPF." In conclusion, Dr. Feldman stated that "It is impossible to opine whether any of the numerous environmental exposures that Mr. Dority experienced over more than 30 years played a role, if any, in addition to smoking cigarettes in a genetic predisposition." (Defendants' APA #39)

40. That Claimant's attorney deposed Dr. Feldman on October 4, 2012. At his deposition, Dr. Feldman maintained his opinion that Claimant suffered from IPF. Dr. Feldman testified that patients with IPF usually have a "falling off the cliff" event and their lungs never recover. He also testified that after a "falling off the cliff" event, patients can stabilize for a period of time before falling again. With regards to Claimant, Dr. Feldman testified that based on the history Claimant provided, his "falling off the cliff" event was his lung biopsy in 2010. He further testified that Claimant's clinical course since his biopsy has been consistent with IPF, that he most likely not going to improve, and that he has hit flat-lined until has his next "fall." This finding is based on Dr. Feldman's deposition testimony.

41. That Dr. Victor Roggli (Defendants' expert) performed a records review and analyzed tissue samples from Claimant's lung biopsy. On February 1, 2013, Dr. Roggli opined that based on his review of the records and his testing of Claimant's tissue samples, "the most appropriate diagnosis is usual interstitial pneumonia (idiopathic pulmonary fibrosis) with some discordant features." On February 27, 2013, Dr. Roggli noted that he reviewed Dr. Abraham;s report, dated January 15, 2013, and he opined that there is no convincing evidence that any of the metal particles described by Dr. Abraham cause a usual interstitial pneumonia pattern." He further opined that "it is unlikely that exposure to the types of particulates Dr. Abraham found, including any that may have derived from his time at CTR, would have caused or contributed to the observed pattern of interstitial lung disease [in Claimant]," and that Dr. Abraham's opinion that Claimant's

lung disease was due to "exposure to a multitude of different toxic dust particulates over his working career and including his exposures at CTR" was sheer speculation and not supported by scientific evidence. (Defendants' APA #37)

42. That we give greater weight to the causation opinions of Defendants' experts (Dr. Feldman and Dr. Roggli) than to the causation opinions of Claimant's experts (Dr. Kradin and Dr. Abraham). This finding is based on the preponderance of the evidence in the record as a whole.

43. That there is insufficient evidence to establish that Claimant's lung disease was caused or aggravated by the work environment at CTR. This finding is based on the evidence in the record as a whole.

44. That there is insufficient evidence to establish that Claimant was exposed to any hazard in excess of those ordinarily incident to employment. This finding is based on the evidence in the record as a whole.

45. That Claimant's assertion that his lung disease is causally related to the silver solder, the flux, and the other particles he worked with at CTR is purely speculative. This finding is based on the evidence in the record as a whole.

46. That Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that his alleged lung disease was directly caused by, aggravated by, or arose out of his employment with CTR. This finding is based on the evidence in the record as a whole.

47. That based upon the preponderance of the credible, reliable, and probative evidence, Claimant failed to carry his burden of proving a compensable occupational disease as contemplated in S.C. Code Ann. § 42-11-10; therefore, Claimant's request for benefits is denied.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under § 420-1-130, 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 § 42-11-10, Claimant failed to prove by a preponderance of the credible, reliable, and probative evidence that the sustained a compensable occupational disease resulting directly and naturally from exposure to hazards peculiar to his particular employment with CTR.

3. Under § 42-11-10, Claimant failed to prove a compensable occupational disease resulting directly from abnormal external gaseous pressure exerted upon the body or the natural entrance into the body through the skin or natural orifices thereof of foreign organic or inorganic matter under circumstances peculiar to the employment and the processes utilized therein.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner filed in the above-captioned matter on August 19, 2013, is hereby affirmed by the Appellate Panel, and the above Findings of Fact and Conclusions of Law shall constitute the Decision and Order of the Appellate Panel.

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

No hearing costs are assessed in this instance.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Susan S. Barden, Commissioner

Aisha Taylor, Commissioner

T. Scott Beck, Commissioner

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 January 30, 2014