

STATE OF SOUTH CAROLINA  
COUNTY OF LAURENS  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. <sup>2013</sup> 2012 CP 30-00506

American Home Assurance Co. LYNN W. LANCASTER South Carolina Second Injury Fund

2014 JUN -9 P 3: 35

PLAINTIFF/APPELLANT

DEFENDANT/RESPONDENT

Submitted by: Defendant	LAURENS COUNTY COURT OF COMMON PLEAS	Attorney for : Plaintiff    X Defendant
		or <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

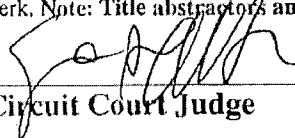
**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

  
Circuit Court Judge

2154  
Judge Code

6/4/2014  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Charles Rogers

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Latonya Edwards

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\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

Lynn Lancaster

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**



permanent and serious enough to constitute a hindrance or obstacle to employment and denied that this claim qualified for reimbursement as contemplated by S.C. Code Ann. § 42-9-400.

The Single Commissioner denied Carrier's reimbursement request pursuant to S.C. Code Ann. § 42-9-400. The Full Commission affirmed that denial and Carrier appealed to the Circuit Court. The Circuit Court remanded for reconsideration in light of the recently decided cases of Carolinas Recycling Group v. S.C. Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (Ct. App. 2012) and Burnette v. City of Greenville, 401 S.C. 417, 737 S.E.2d 2000 (Ct. App. 2012). The Full Commission affirmed on remand and Carrier appealed.

### **STANDARD OF REVIEW**

The standard of review for decisions of the Workers' Compensation Commission is established in the Administrative Procedures Act. South Carolina Second Injury Fund v. Liberty Mutual Insurance Co., 353 S.C. 117, 576 S.E.2d 199 (Ct. App. 2003). A reviewing court must not disturb the Workers' Compensation Commission's findings if those findings are supported by substantial evidence in the record. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). The fact that reasonable minds may differ or that there is the possibility of drawing inconsistent conclusions does not prevent an agency's findings from being supported by substantial evidence. Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E. 2d 388 (1995).

### **DISCUSSION**

After reviewing the evidence and hearing the arguments of the parties, I affirm the Decision of the South Carolina Workers' Compensation Commission. Appellant asserts that the Commission's Decision was not supported by substantial evidence in the record. I disagree.

Carrier asserts that Claimant had preexisting back pain and produced August 2005 prescriptions to support this assertion. APA pp.2-3. However, the 2005 prescriptions do not indicate the purpose for which they were written. APA pp.2-3. One prescription indicates that Claimant should take the medication “prn” or as needed. APA p.3. The remaining prescriptions in evidence reference back pain that Claimant sustained as a result of the work injury and they do not address preexisting back pain. APA pp.3-7.

Carrier also produced an addendum to the August 2005 prescriptions, which is dated March 1, 2011, approximately six (6) years after the initial prescriptions were written, indicating that the August 2005 prescriptions were prescribed for “chronic back pain.” APA p.2. None of the pre-injury prescriptions outline any diagnoses or treatment. APA pp.2-3. If Claimant had preexisting back pain, the evidence in the record indicates that it was not permanent and serious enough to constitute a hindrance or obstacle to his employment. At best, the pre-injury prescriptions indicate that Claimant had sporadic incidents of back pain prior to this work injury, which do not rise to the level of being permanent and serious enough to constitute a hindrance to his employment.

Claimant also indicated that he “pulled a muscle” in his low back approximately fifteen (15) years prior to the work injury, which was successfully treated chiropractically “with no significant sequelae.” APA p.63. The post injury medical narratives also note that Claimant “had a long history of back and lower extremity pain following an apparent work-related injury.” APA p.34. Thus, the medical evidence does not substantiate Carrier’s claim of preexisting chronic back pain but rather, the record reveals that Claimant’s chronic low back pain resulted from the work injury and did not preexist. Claimant’s prior back pain was not permanent and

serious enough to constitute a hindrance or obstacle to employment and the Commission's decision to deny this claim was appropriate.

Carrier also alleges that Claimant had preexisting hypertension. However, the medical records contradict this assertion. On April 15, 2008, Dr. David Rogers noted that Claimant "reports no prior history of hypertension before his work related injury" and that there were "no medical records to indicate pre-existing hypertension." APA p.65. While Carrier presented a questionnaire supporting reimbursement, the Commission is not required to give conclusive effect to a questionnaire to the exclusion of other more compelling medical evidence in the record. APA p.70; See, Ballenger v. Southern Worsted Corporation, 209 S.C. 463, 467, 40 S.E.2d 681, 682-83 (1946). In this case, Dr. Rogers completed a medical questionnaire approximately three (3) years after his last treatment of Claimant in 2008 and his questionnaire is not supported by his own medical records or any of the other medical records in evidence. APA pp.60-66 and 72. Thus, the Commission's finding that Claimant did not have preexisting hypertension was also supported by substantial evidence.

Carrier also asserted that Claimant had preexisting anxiety that was permanent and serious enough to constitute a hindrance or obstacle to employment. The evidence indicates the contrary. Claimant admitted to mild symptoms of stress, worry and anxiety, and denied psychological problems of significant intensity. APA p.57. An assessment of Claimant's mental status revealed mild anxiety that was "pretty well controlled," "does not appear to be influencing his perception of pain or treatment" and "no psychological contraindications" were observed. APA pp.58-59. The substantial evidence supported the Commission's determination that Claimant's anxiety, if it preexisted, was not permanent and serious enough to constitute a

hindrance or obstacle to employment because it was well controlled, had no impact on Claimant's pain and resulted in no contraindications.

Carrier also asserts that the Commission's decision is not consistent with more recent case law on the issue, namely Carolinas Recycling Group v. S.C. Second Injury Fund, 398 S.C. 480, 485, 730 S.E.2d 324, 327 (Ct. App. 2012) and Burnette v. City of Greenville, 401 S.C. 417, 737 S.E.2d 2000 (Ct. App. 2012). This case was initially remanded to the Commission to allow an opportunity to review this case in light of the Carolinas Recycling and Burnette decisions. The Commission affirmed the case after a thorough review of these cases and I also affirm.

In Carolinas Recycling Group v. S.C. Second Injury Fund, the Court of Appeals reversed the Commission's decision because it was based on an evaluation by a non-treating physician who only met with Claimant on one occasion. 398 S.C. at 485, 730 S.E.2d at 327 (Ct. App. 2012). In this case, the Commission's decision was based on the medical records of the treating physicians, which clearly established that Claimant did not have preexisting hypertension; that his prior back strain was successfully treated "with no significant sequelae"; that Claimant's anxiety was mild, well controlled, did not influence his pain or treatment and did not result in any psychological contraindications.

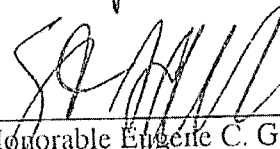
In Burnette v. City of Greenville, the South Carolina Court of Appeals reversed and remanded because the Commission's decision was based on a single commissioner's interpretation of medical data. 401 S.C. 417, 737 S.E.2d 2000 (Ct. App. 2012). Here, the Commission's decision is based on the treating physicians' own interpretations of the medical data, which clearly does not support reimbursement. Furthermore, while Carrier submitted medical questionnaires supporting reimbursement, case law instructs that the Commission may disregard medical evidence in favor of other competent evidence. Potter v. Spartanburg Sch.

Dist. 7, 395 S.C. 17, 23, 716 S.E.2d 123, 126 (Ct. App. 2011). Here, the Commission gave greater weight to the medical narratives and reports, which provided more detailed and competent medical evidence on the issues involved in this case rather than relying solely on medical questionnaires, which are not supported by the totality of the evidence.

**ORDER**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Order of the South Carolina Workers' Compensation Commission denying Carrier's claim for reimbursement from the South Carolina Second Injury Fund pursuant to S.C. Code Ann. § 42-9-400 was supported by substantial evidence and is AFFIRMED.

AND IT IS SO ORDERED this 4<sup>th</sup> day of June 2014.

  
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Honorable Eugene C. Griffith, Jr.,  
Presiding Circuit Court Judge