

STATE OF SOUTH CAROLINA )  
COUNTY OF SUMTER )  
Arrowpoint Capital Corporation, )  
Carrier/Appellant, )  
v. )  
South Carolina Second Injury )  
Fund, )  
Respondent, )  
[In Re: Joe Mathis, )  
Employee/Claimant, )  
v. )  
Yuasa Exide, Incorporated, )  
Employer.] )

RECORDED  
IN THE COURT OF COMMON PLEAS  
2014 SEP 16 11:11 AM  
JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.  
Civil Action No. 2013-CP-43-02283

CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
*[Signature]*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

ORDER

RECEIVED  
OCT 08 2014  
SC Court of Appeals

**STATEMENT OF THE CASE**

This is a claim for partial reimbursement from the South Carolina Second Injury Fund ("the Fund") by Yuasa Exide Incorporated, Employer, and Arrowpoint Capital Corporation, Carrier (collectively "Carrier"), pursuant to S.C. Code Ann. § 42-9-400. The underlying case was settled by Employer/Carrier and Claimant without a hearing. In this reimbursement case, Carrier alleged that it incurred substantially greater liability for compensation and medical benefits when employee, Joe Mathis' ("Claimant"), alleged preexisting heavy metal poisoning and brain damage were either aggravated by or combined with his November 30, 1998 work related injury to his brain, kidneys, liver, and to his musculoskeletal, cognitive, pulmonary, neuropathic and cardiovascular systems. Carrier further alleged that Claimant's preexisting conditions were a hindrance

or obstacle to employment. The Fund denied that Carrier met any of the requirements for reimbursement, specifically asserting that Claimant's heavy metal exposure and alleged brain damage were not preexisting conditions and further denied that the alleged preexisting conditions were permanent and serious enough to constitute a hindrance or obstacle to Claimant's employment as per S.C. Code Ann. § 42-9-400. The Fund also asserted that the claim was barred by S.C. Code Ann. § 42-7-320(B) and its subsections.

The Hearing Commissioner denied Carrier's reimbursement request pursuant to S.C. Code Ann. § 42-9-400 and the Full Commission, En Banc, affirmed.

#### **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 (S.C. 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 (S.C. 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 (S.C. 1995).

#### **DISCUSSION**

After reviewing the evidence and hearing the oral arguments of the parties, I affirm. Carrier argued that the decision below was not based on substantial evidence and should be reversed. I disagree.

The Commission's decision that Claimant did not have brain damage prior to his occupational exposure was supported by the substantial evidence in the record.

Claimant's Initial Occupational History form, which was completed in approximately 1984, indicated that he had been exposed to lead but had not sustained any work injuries. ROA pp. 121-122. Claimant's 1986 examination revealed he was healthy. ROA p.124. Claimant's physical examinations from 1986 through 1995 revealed elevated cholesterol but he was noted to be "otherwise healthy." ROA pp. 124-127 and 129-131. On August 12, 2009, Claimant testified via deposition. ROA pp. 143-192. However, Claimant testified in his deposition that he worked for Yuasa Exide for approximately twenty-three (23) years, from 1975 to 1998. ROA p. 154. He noted that his most recent physical examination was normal and that in the last twenty-five (25) years he had visited a doctor for a pinched nerve in his back, which required physical therapy. Claimant indicated that his pinched nerve issue arose after he stopped working for Yuasa Exide. ROA pp. 159-163.

The vocational assessment indicated that Claimant was functionally illiterate and other records indicated that Claimant was a high school graduate with no history of grade failure, had never been diagnosed with a learning disability and never was determined to be in need of specialized educational classes. ROA pp. 105-110.

The Commission's decision that Claimant's lead exposure was not his first and subsequent injuries is also supported by substantial evidence in the record. The Commission determined that Claimant's exposure to lead during his twenty-three (23) years of employment constitutes a single occupational exposure based on the plain meaning of the statute. The Commission based this interpretation on the plain meaning

of the statute and on the medical evidence in the record. Section 42-9-400(a) references “subsequent disability,” “preexisting impairment,” and “subsequent injury.” The injury for which reimbursement is sought is preexisting lead/heavy metal exposure, brain damage and cognitive dysfunction. The plain meaning of the statute requires that the preexisting condition predate the work injury, which in this case is the occupational exposure. The medical evidence, including a neuropsychological evaluation, indicated that Claimant’s cognitive deficits, lead/heavy metal poisoning and alleged brain damage were caused by the lead/heavy metal exposure and did not preexist. ROA pp. 109-115.

Carrier relies heavily on the Claimant’s blood levels and the OSHA regulations regarding permissible exposure to lead. However, the statutory reimbursement scheme does not require any deference to OSHA regulations. See S.C. Code Ann. § 42-9-400. Carrier indicated that it is entitled to a presumption that Claimant’s preexisting conditions were permanent and serious enough to constitute a hindrance to his employment. However, in order to implicate a presumption, the condition must be a preexisting one. S.C. Code Ann. §42-9-400(d). Here, Claimant did not have a preexisting condition before his occupational exposure; and, as such, a presumption does not apply.

The Commission’s decision was also supported by recent case law. In Carolinas Recycling, the South Carolina Court of Appeals reversed the decision of the Commission because the Appellate Panel “relied exclusively upon an evaluation by a non-treating physician who only met with the Claimant on one occasion.” 398 S.C. 480, 485, 730 S.E.2d 324, 327 (Ct.App. 2012). In this case, Carrier also relied on the medical opinions of two (2) non treating physicians. Consistent with Carolinas Recycling, the Commission refused to rely on physicians who did not provide any treatment to Claimant.

Furthermore, the Commission is not required to rely on a medical questionnaire. The Commission determines the weight of the evidence. In Anderson et al. v. Campbell Tile Co., the South Carolina Supreme Court held that opinions of medical experts may constitute substantial evidence sufficient to support a judgment. 202 S.C. 54, 24 S.E.2d 104 (1943). Anderson does not require that the opinions of medical experts are the only evidence that may constitute substantial evidence nor does it exclude other sufficiently compelling evidence that would support a judgment. Anderson also held that the Commission determines the weight given to the opinion of medical experts. Id. While Carrier submitted medical certificates supporting the elements of reimbursement, the Commission is not required to give medical questionnaires conclusive effect to the exclusion of other more compelling evidence. Ballenger v. Southern Worsted Corporation, 209 S.C. 463, 467, 40 S.E.2d 681, 682-83 (1946). The Commission's decision to place little weight on the medical questionnaires of non-treating physicians was well within its discretion.

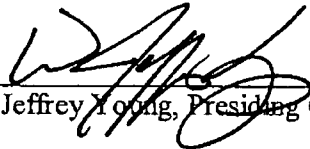
The Commission's decision is also consistent with Burnette v. City of Greenville, 401 S.C. 417, 737 S.E.2d 200 (2012). In Burnette v. City of Greenville, the South Carolina Court of Appeals reversed and remanded the case to the Commission because the Commission's decision was based on the medical opinion of a single commissioner rather than a medical provider. Id. In Burnette, the reimbursement elements at issue were solely medical issues that required an interpretation of diagnostic tests such as MRIs and CT scans. On the contrary, the reimbursement element in this case involves the statutory interpretation of whether Claimant's lead exposure was the preexisting condition and the subsequent injury. It is well settled that an agency's interpretation of

its own statutes will be given great deference unless compelling reasons require otherwise. CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (S.C. 2011). In the absence of compelling reasons requiring otherwise, this Court gives deference to the Commission's interpretation.

**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 5 day of Sept 2014.

  
\_\_\_\_\_  
W. Jeffrey Young, Presiding Circuit Court Judge

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

OCT 08 2014

APPEAL FROM SUMTER COUNTY  
COURT OF COMMON PLEAS

**SC Court of Appeals**

The Honorable

WCC File Number 9930459

Second Injury Fund..... Respondent,

v.

Yuasa Exide, Inc., ..... Employer,

and

Arrowpoint Capital Corp, ..... Appellants,

**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal on the attorney of record for the Second Injury Fund, by depositing a copy of it in the United States Mail, postage prepaid, on the 6th day of October, 2014 addressed to the Second Injury Fund and the Workers Compensation Commission.

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Honorable James C. Campbell, Jr.  
Clerk of Court for Sumter County  
Sumter County Clerk of Court  
141 North Main Street Rm 308  
Sumter, SC 29150-4965

Ms. Amy Bracy

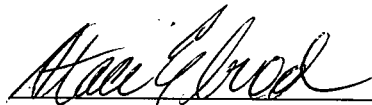
South Carolina Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202-1715

Latonya D. Edwards  
Dilligard Edwards, LLC  
3790 Fernandina Rd., Suite 103  
Columbia, South Carolina 29210

Timothy B. Killen, Esquire  
Willson, Jones, Carter & Baxley, P.A.  
4500 Fort Jackson Boulevard  
Columbia, South Carolina 29209

Malcolm M. Crosland, Jr.  
The Steinberg Law Firm, L.L.P.  
Post Office Box 9  
Charleston, South Carolina 29402-0009

October 6, 2014



---

Staci L. Elrod  
Paralegal for Vernon F. Dunbar  
McAngus, Goudelock & Courie LLC  
Post Office Box 2980  
55 East Camperdown Way, Suite 300 (29601)  
Greenville, South Carolina 29602  
(864) 239-4000

*Attorneys for Appellant*