

RECORDED  
STATE OF SOUTH CAROLINA )  
2014 SEP 16 PM 1:21 )  
COUNTY OF SUMTER )  
JAMES C. CAMPBELL )  
CLERK OF COURT )  
Arrowpoint Capital Corporation, )  
SUMTER COUNTY, S.C. )

IN THE COURT OF COMMON PLEAS  
OF THE THIRD JUDICIAL CIRCUIT

C/A CASE NO.: 2013-CP-43-02286

Plaintiff/Appellant, )  
v. )  
South Carolina Second Injury )  
Fund, )  
Defendant, )  
[In Re: C.L. Williams, )  
Employee/Claimant, )  
v. )  
Yuasa Exide, Incorporated, )  
Employer.] )

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

**ORDER**

**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 claim, Carrier alleged that they incurred substantially greater liability for compensation and medical benefits when employee C.L. Williams' ("Claimant") preexisting hypertension, diabetes, chronic obstructive pulmonary disease, cardiomyopathy, pulmonary disease, cardiovascular disease, arterial sclerosis, and renal insufficiency were either aggravated by or combined with his February 1, 1999 work

related occupational exposure. Carrier further alleged that Claimant's preexisting conditions were permanent and serious enough to constitute a hindrance or obstacle to employment. The Fund asserted that Claimant did not have any of the alleged conditions prior to the heavy metal exposure and if these conditions preexisted, they were not 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 should be reversed. I disagree.

The statutory reimbursement scheme requires that Carrier establish several elements to receive reimbursement recovery. Section 42-9-400 requires that (1) Claimant have a permanent preexisting impairment (§42-9-400(a)); (2) that the permanent preexisting impairment create substantially greater liability for medical costs and permanent disability than that which would have resulted from the work injury alone (§42-9-400(a)); (3) that Carrier had knowledge of the permanent preexisting impairment (§42-9-400(c)); (4) that the permanent preexisting impairment was permanent and serious enough to constitute a hindrance or obstacle to employment or reemployment (§42-9-400(d)); and, (5) that Carrier provide the Fund with notice of a potential claim prior to the payment of seventy-eight (78) weeks of compensation (§42-9-400(f)). Furthermore, case law instructs that a Carrier's right to receive reimbursement from the South Carolina Second Injury Fund depends upon complete compliance with the requirements for recovery. South Carolina Second Injury Fund v. American Yard Products, 496 S.E.2d 862 (S.C. 1998).

The substantial evidence in the record supports the fact that Claimant did not have the alleged conditions prior to his occupational exposure. On December 12, 1983, Claimant's physical examination indicated that there were no findings of lead involvement and that he could continue working in his area. ROA p.97. On January 11, 1984, Claimant's physical examination revealed a past history of hypertension and mild cirrhosis. ROA p.98. In February, April and September 1984, Claimant's physical examinations revealed that he could function safely in his present job without complications. ROA p.100. Claimant's subsequent physical examinations from 1988 to

1997 revealed hypertension, and a history of elevated lead levels. ROA pp. 103-104, 106, 108, 110, 112, 114 and 116.

In January 1994, Claimant presented to the Davis Clinic for evaluation of fluid retention, congestive heart failure, fever and cough. ROA pp. 133-134. Claimant was diagnosed with bronchitis and his treatment plan included prescription medication for his bronchitis and congestive heart failure and a two (2) week follow up. ROA p.134. Claimant continued to follow up with the Davis Clinic for his hypertension, and congestive heart failure. ROA pp. 135-140.

Although there is evidence Claimant had a history of high blood pressure in 1982, the records indicate lead exposure dating back to 1976. There is no evidence that the high blood pressure preexisted the lead exposure. The evidence actually indicates that the lead exposure may have caused the elevated blood pressure. ROA pp. 129-132. Furthermore, Claimant did not develop any of the conditions alleged until after his occupational exposure. ROA pp. 141-145. The Commission's decision was supported by substantial evidence in the record.

Substantial evidence also supported the Commission's decision that Claimant's occupational exposure was not his first and subsequent injuries. The Commission determined that Claimant was exposed to lead over a twenty-five (25) year period of employment and that exposure constituted one (1) injury. That decision is supported by the plain meaning of the statute. Section 42-9-400(a) references "subsequent disability," "preexisting impairment," and "subsequent injury." Claimant's alleged preexisting conditions include hypertension, diabetes, chronic obstructive pulmonary disease,

cardiomyopathy, pulmonary disease, cardiovascular disease, arterial sclerosis, and renal insufficiency.

The plain meaning of the statute requires that these conditions predate the subsequent injury; which is the occupational exposure and is cumulative. In other words, the cumulative exposure is one (1) injury; it is not the first and subsequent injuries, nor is it the preexisting condition and the subsequent injury. Claimant sustained one (1) injury that culminated on February 1, 1999. The medical evidence and the statutory language support the Commission's determination that Claimant's conditions did not exist prior to his occupational exposure.

Carrier cited various cases to support its position that the Commission's decision was not supported by substantial evidence. In State Workers' Compensation Fund v. SC SIF, 313 S.C. 536, 443 S.E.2d 546 (1994), the South Carolina Supreme Court decided the issues partly based on a statute that applied specifically to law enforcement officers, including firefighters, which presumes that heart disease arises out of and in the course of a firefighter's employment. 313 S.C. 536 at 539; 443 S.E.2d at 548 (S.C. 1994). See, S.C. Code Ann. § 42-11-30. In that case, Claimant had a definitive diagnosis of coronary artery disease prior to a subsequent injury. In this case, Claimant did not have a diagnosis prior to the date of his alleged total disability.

In Springs Industries, Inc. v. S.C. Second Injury Fund, the issue was whether Claimant sustained a subsequent injury. 296 S.C. 359, 372 S.E.2d 915 (S.C.App. 1988). In Springs, Claimant worked in the cotton industry for thirty-one (31) years and then became totally disabled after working for another employer for nine (9) months. The Court determined that Claimant's thirty-one (31) years of prior cotton dust exposure was

the “but for” cause of the subsequent injury pursuant to S.C. Code Ann. § 42-9-400(g). This case did not involve the same issue or analysis. In both State Workers’ Compensation Fund and Springs, the underlying cases were actually adjudicated and Carriers actually paid the claimants’ compensation and medical benefits, unlike Carrier in this case.

The Commission’s decision is also supported 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). Here, like Carolinas Recycling, the hindrance element was not an issue. Also, while two (2) physicians supported reimbursement in this case, neither of those physicians provided treatment to Claimant. Consistent with Carolinas Recycling, the Commission refused to rely on physicians who did not provide any treatment to Claimant.

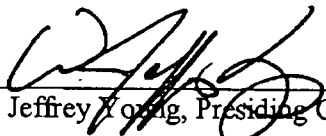
Carrier also cited Burnette v. City of Greenville to support its assertion that the Commission’s decision was not supported by substantial evidence in the record. 401 S.C. 417, 737 S.E.2d 200 (2012). I disagree. In Burnette, the South Carolina Court of Appeals reversed and remanded the case to the Commission with instructions to either reconsider or enter findings of fact concerning Claimant’s injuries because the Commission’s decision was based on the medical opinion of a single commissioner rather than a medical provider. Id. Burnette is clearly distinguished from this case because it was decided solely on medical issues that required an interpretation of diagnostic tests such as MRIs and CT scans. Here, the issues appear to be one of statutory interpretation.

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). 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 medical evidence. Ballenger v. Southern Worsted Corporation, 209 S.C. 463, 467, 40 S.E.2d 681, 682-83 (S.C. 1946).

**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