THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
State of South Carolina Workers' Compensation Commission
Decision of the Appellant Panel

WCC 1107022

Sandy Chamblee..... Appellant

v.

Anderson County Fire Department..... Employer,
And State Accident Fund, Carrier..... Respondents

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. **DID THE COMMISSION ERR AND HOLD THAT THE CLAIMANT FAILED TO MEET HER BURDEN OF PROOF TO ESTABLISH A COMPENSABLE INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT OCCURRING ON MAY 26, 2011, SINCE THE EVIDENCE OF RECORD CLEARLY ESTABLISHED THAT THE CLAIMANT'S LUNG INJURY WAS CAUSED BY EXPOSURE OF SMOKE ON THAT DATE?**

2. **DID THE COMMISSION ERR AND HOLD THAT THE CLAIMANT FAILED TO MEET HER BURDEN OF PROOF THAT SHE SUSTAINED AN AGGRAVATION OF HER PRE-EXISTING ASTHMA CONDITION RISING OUT AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT DUE TO HER EXPOSURE TO SMOKE ON MAY 16, 2011 SINCE THE CLAIMANT'S TESTIMONY ALONE IS SUFFICIENT ALONE TO CARRY THE BURDEN OF PROOF IN A WORKER'S COMPENSATION CASE IN SOUTH CAROLINA?**

3. **DID THE COMMISSION ERR IN ALLOWING AND CONSIDERING TESTIMONY ON THE ISSUE OF THE TIME WHEN THE EMPLOYER WAS NOTIFIED OF CLAIMANT'S ALLEGED INJURY BECAUSE THE EMPLOYEE'S FIRST REPORT OF INJURY FORM 12-A INDICATES THAT THE EMPLOYER WAS NOTIFIED ON MAY 26, 2011?**

STATEMENT OF THE CASE

The Claimant timely filed a Form 50 with the South Carolina Workers' Compensation Commission on July 25, 2013 alleging an injury at work on May 25, 2011 caused by the inhalation of smoke. The claimant was denied by the Employer's filing of a Form 51 on December 20, 2013. An amended Form 50 and an amended Form 51 were later filed.

The case was heard by a single hearing commissioner on November 6, 2014 in Anderson, South Carolina. A decision adhered to the claimant was filed on March 2, 2015.

The claimant filed a request for review by an appellant panel of the South Carolina Workers' Compensation Commission which heard the matter and issued a decision adhere to claimant to the claimant on August 5, 2015. The decision was the Final decision of the South Carolina Workers' Compensation Commission.

A timely filed Notice of Appeal was filed with the South Carolina Court of Appeals on or about September 1, 2015.

ARGUMENTS

I. THE COMMISSION ERRED IN HOLDING THAT THE CLAIMANT FAILED TO MEET HER BURDEN OF PROOF TO ESTABLISH A COMPENSABLE INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT OCCURING ON MAY 26, 2011, SINCE THE EVIDENCE OF RECORD CLEARLY ESTABLISHED THAT THE CLAIMANT'S LUNG INJURY WAS CAUSED BY EXPOSURE OF SMOKE ON THAT DATE.

Sandy Chamblee was a 26 year employee of the Anderson County Fire Department serving as a Fire Marshal. (transcript page 9). (see deposition of Sandy Chamblee page 23 lines 21 through 25). Her birth date was 12-27-1962. (transcript page 28). She had a life-long history of asthma. (transcript pages 10). On May 26, 2011, Sandy, with a co-worker, Larry Greer went to install a smoke detector at a house in Anderson County. Sandy suffered from a cold that day. (transcript pages 11 through 12)). (It is noteworthy that the Defendant's expert Dr. Feltman testified by deposition that people with asthma get colds on a frequent basis and frequently attempt to work through their asthma.) (Deposition of Dr Feltman, page 30 line 5 through page 30 line 13. See also page 32 line 1 though page 32 line 20). Sandy's job duties had not included active fire fighting, for several years. (transcript page 28).

Enroute to install the smoke detector, Sandy Chamblee and Larry Greer came upon a grass fire in progress. (transcript pages. 11-12). Larry Greer stopped to see if he could assist in fighting the fire and Sandy Chamblee remained in the truck. Then the wind changed and the smoke from the fire drifted toward the truck. (transcript page 13). Sandy testified that she had been exposed to smoke on other occasions in her job with the Anderson County Fire Department, but this was the first occasion where she had ever been in a position where she could not escape from the presence of smoke. (transcript pages 12, 24, 27 and 61).

Sandy testified that she left the air conditioner running in the truck (transcript pg. 59) and she remained in the truck about 45 minutes in the smoke. (transcript page 14). She complained that the smoke caused a bad headache, wheezing, coughing, and a sick feeling. (transcript pages 14 through 15).

After Larry Greer returned to the truck, the two drove to a residence to install a smoke detector. (transcript page 15). After the installation, they returned to headquarters late in the day. (transcript page 15). Sandy testified that she told the Administrative Assistant, Patty Ellison that she had been in smoke that afternoon. (transcript pages 15-16). Sandy testified that she reported the accident that same afternoon (transcript pages 16). Upon arrival at home, Sandy told her family about her smoke inhalation while at work. (see transcript page 21).

Sandy went to work the next day, although she was feeling bad. (transcript page 16). The next day being a Saturday there was no work at the Anderson County Fire Department. (transcript page 17). The next work day would have been a Monday which was Memorial Day (transcript page 17) and Sandy Chamblee worked the following day which was Tuesday. (transcript 67).

Following the exposure to smoke and before an already scheduled visit the following week with Dr. Poon, the claimant took breathing treatments with her nebulizer and also took some Prednisone which she had on hand at home. (transcript pages 27-28).

Sandy testified that on June 1, she attended her doctor's appointment in Elberton, Georgia with Dr. Poon. (transcript page 17). This was a follow-up appointment to discuss the results of her physical which was conducted by Dr. Poon on May 11, 2011. When Dr. Poon saw Sandy in his office, she was immediately admitted to the Elbert County Hospital due to her low oxygen level. (transcript page 18). Sandy testified that she had never before missed appreciable time at her job due to asthma (transcript page. 19) and that when Dr. Poon put her in the Elbert County Hospital, she remained there for approximately 10 days. (transcript page 19). She further testified that upon admission, no detailed history was taken from her at that time. (transcript page 19). Several days after she was discharged from the Elbert County Hospital, she was readmitted to the Anderson Area Medical Center on June 15. (transcript page 20). She testified she had trouble

breathing upon admission to AnMed and that no detailed history was taken from her at that time either. (transcript pages 20-21). Sandy testified that she had been on nasal oxygen since being discharged from Elbert County Hospital (transcript page 22) and that she had good days and bad days. (transcript page 23). She was also required to use a rescue inhaler. (transcript page 23).

Sandy was never able to return to work. (transcript page 24).

Sandy testified that when she experienced the smoke exposure, she immediately knew that "something had happened" that had never happened before. (transcript pages. 23-24). She also testified that she had not felt well enough to be employed since the time of her hospitalizations. (transcript page 24).

When the issue was raised as to why did not get out of the truck during this event, she testified that there was more smoke outside than inside the truck (transcript page 26) and also she was not sure where she would have gone if she had left the truck. (transcript page 27). She testified that she did not see a doctor immediately after the incident because of her upcoming appointment with Dr. Poon. (transcript page 27).

Sandy related how she had been treated at Duke University Hospital as a child for asthma. (transcript page 30). She had also been treated for a lap band surgery in 2008. (transcript page 47). In 2009, she had eight doctor visits because of asthma related incidents (transcript page 49) and also had seen a pulmonologist in 2010. (transcript page 50). On August 25, 2010, an AnMed Health medical summary indicated that her asthma had been well controlled until approximately 2 years earlier and she used a nebulizer approximately 3-4 times a day. (transcript pages 51). She acknowledged she had testified in her deposition that her asthma was well controlled prior to the incident. (transcript page 52). "It was controlled, I never lost much work, I felt just fine." (transcript page 52). She testified on cross-examination that colds have caused her problems with asthma before. (transcript page 55). Further in the hearing, Sandy advised that she was embarrassed that she could not get out and help Larry Greer during the fighting of the fire. People were calling to her and she had the vehicle parked where nobody could see her. (transcript page 62).

Sandy testified that she was having symptoms when Larry Greer got back and she told him about it, but she did not call an ambulance because "I'm a firefighter." (transcript page 63).

Sandy testified at length about her prior medical history. (transcript pages 30-52). No other events up through the time of the smoke exposure had kept her out of work or had put her on oxygen. (transcript page 91). She testified at the hearing how Dr. Poon had talked to her and her husband and informed them that she would not be able to return to work as a firefighter. (transcript page 95).

Maureen Chamblee, the claimant's mother testified that on the day of the incident Sandy came home and said "I have been in smoke today and I am in a mess." (transcript page 97). She said that Sandy had told her exactly what had happened and that it was normal for Sandy to go to work when she did not feel like working. (transcript page 98). She remembered Sandy and her husband telling her about the conversation with Dr. Poon about Sandy's inability for further employment as a firefighter. (transcript pages 101 through 102).

Larry Greer, who was an employee of the Anderson County Fire Department up till a short time before the hearing, testified that he knew Sandy had asthma and he had seen inhalers "all over her desk." (transcript page 105). He corroborated that he went to the fire with Sandy (transcript page 105 through page 106) and that there was a "light haze" of smoke present. (transcript page 108). He estimated that Sandy was in the truck approximately 40 minutes (transcript page 109) and that on the way back she said she "wasn't feeling good." (transcript page 111). Further Larry Greer testified that Sandy was already feeling bad, but that she had said again "I don't feel good." (transcript page 113).

Larry Greer said he knew Sandy to be a truthful person and also knew her mother to be a truthful person. (transcript page 114).

Timothy Dickson, an employee of the Anderson County Fire Department testified that he knew Sandy Chamblee had a history of asthma (transcript page 116) and that he had never known her

to have any physical difficulties on the job. (transcript page 117). He said that on June 20, 2011, Sandy called and texted him and that was his first knowledge of the smoke inhalation incident. (transcript pages 118 through 119). He further testified that Sandy Chamblee was a good employee. (transcript page 120).

Jimmy Ray Sutherland testified that he was the Anderson County Fire Department Fire Chief and described in some detail how an Employee's First Report of Injury was filled out in his office. (transcript page 124). (The significance of filing out an Employee's First Report of Injury is an allegation of error in this case which will be argued later.) Mr. Sutherland admitted that the Employee First Report of Injury stated that the employer was first notified on May 26, 2011. (transcript page 126). He also testified that he knew Sandy Chamblee had a problem with asthma (transcript page 127) and that she was always able to fight through it and come back to work. (transcript page 127). He testified that this was the first time Sandy Chamblee had missed a long period of time away from work and that he believed her to be a truthful person. (transcript page 127).

Dr. Poon, the physician who performed Sandy Chamblee's physical examination on May 11, before the incident and put her in the hospital after the incident gave a statement indicating that he knew Sandy Chamblee had a long history of asthma; however it was well controlled to the extent that she was able to be employed. He also indicated in his statement that her condition was much worse after the event which caused her hospitalization. Finally he stated that her prior asthma was aggravated to the extent that she was not able to work full-time after the incident. (see claimant APA Exhibit #1).

Dr. Michael Spandorfer, the Plaintiff's expert, testified by deposition. He testified that he had reviewed the records from Elbert Hospital and believed that they were incomplete as a full history was not taken on the claimant. (see deposition of Dr. Spandorfer, page 23 line 21 through page24 line 7.

Dr. Spandorfer testified that he believed that Sandy Chamblee's asthma had worsened after the alleged incident because before the incident she was able to be employed and since the smoke

exposure, she required oxygen and was not able to be employed. (see deposition of Dr. Spandorfer page 27 line 25 through 28 line 10, page 32 line 9 through 33 line 6, page 34 line 1 through 34 line 17). Dr. Spandorfer indicated that this was because her lungs had become sensitized. (see deposition of Dr. Spandorfer, page 28 line 16 through 29 line 3).

Furthermore, Dr. Spandorfer testified that even though Sandy Chamblee's spirometry had remained constant both and after the incident, but since she now required oxygen therapy, she had either developed a hole in her heart or the loss of lung function. (see deposition of Dr. Spandorfer page 33 lines 15 through 25). In other words, according to him, the claimant suffered either a cardiac event or a loss of lung function. (There is no evidence of a cardiac event in the record).

Dr. Spandorfer further testified that Sandy Chamblee's condition was now inconsistent with employment. (see deposition of Dr. Spandorfer page 45 line 23 through 46 line 5. See also page 51 lines 21 through 24.) He also assigned her a 55 percent impairment rating to the lungs. (see Dr. Spandorfer deposition page 35 lines 1 through 15).

Dr. Spandorfer further explained when an individual had impaired lungs, it did not take much change in lung function to make a lung condition much worse. (see deposition of Dr. Spandorfer page 47 line 22 through 48 line 13).

Furthermore, Dr. Spandorfer testified with exposure to smoke, a very short time as short as 30 seconds to sometimes minutes were sufficient to change lung function. (see deposition of Dr. Spandorfer deposition page 49 line 6 through 50 line 15).

Dr. Spandorfer testified that he did believe to a reasonable degree of medical certainty that the claimant's exposure to smoke as described to him did aggravate her prior existing asthmatic condition as stated (see deposition of Dr. Spandorfer, page 50 line 20 through 51 line 17.)

Also Dr. Spandorfer noted that when Sandy Chamblee visited Dr. Poon the day of her hospitalization in Elberton, that she was diagnosed with status asthmaticus, which is a medical

emergency. (see deposition of Dr. Spandorfer, pg. 42, line 22 through pg. 44, line 25). He also indicated there is no record of her ever having had this condition before. (see deposition of Dr. Spandorfer, page 44 line 25.)

The Defendant's expert, Dr. Feltman testified by deposition and made several points which the undersigned believes are significantly helpful in the claimant's claim.

First, he testified that Sandy Chamblee's asthma was poorly controlled even before her exposure to smoke on May 26. (see deposition of Dr. Feltman page 22 line 11 through page 22 line 14).

Furthermore, he testified that some people can get an exacerbation of asthma by smelling burning leaves. (see deposition of Dr. Feltman, page 26 line 4 through page 26 line 6).

Dr. Feltman further testified that some people with an exacerbation of asthma wait longer to go to the hospital than do others. (see deposition of Dr. Feltman, page 29 line 13 through page 29 line 16). When asked was it an everyday thing for an asthmatic to get a cold or viral infection, Dr. Feltman stated,

> Q. So, that's an everyday thing for an asthmatic is to get a cold or a viral Infection?
> A. It's not an everyday thing, but it can happen, yes.
> Q. Well, anybody can get one, asthmatic or not?
> A. Yes.

See Dr. Feltman's deposition page 30 lines 5 through 9.

Dr. Feltman testified that people do "stupid stuff like working through asthma." (see deposition of Dr. Feltman, page 32 line 19 through page 32 line 20). Dr. Feltman also confirmed that there is not a lot of difference in Sandy Chamblee's spirometry reading between 2005 and the one taken after the alleged incident and that they were bad both times. (see deposition of Dr. Feltman, page 33 line 12 through page 33 line 17).

Dr. Feltman again repeated that breathing in smoke can make a person have an exacerbation of asthma. (see deposition of Dr. Feltman, page 33, line 18 through page 33 line 20).

Dr. Feltman testified that the claimant Sandy Chamblee was already in exacerbation due to the cold before she was exposed to smoke. At that point, he was asked "but would you at least give me the point it would have made her exacerbation worse?" Dr. Feltman replied, "I gave you that point." (see deposition of Dr. Feltman, page 33 line 25 through page 34 line 4).

Dr. Feltman further testified that he has known people to have exacerbation of asthma, then get slightly improved, then exacerbate again due to a late response. He further stated it is very common for asthmatics to fluctuate from day to day. (see deposition of Dr. Feltman, page 46 line 10 through page 46 line 16).

Some of the most interesting comments by Dr. Feltman, which were never specifically addressed by the Hearing Commissioner in his decision, are as follows:

A. Many asthmatic people work when they shouldn't.

Q. Well, let me ask you this. Have you ever had a case where a person had a cold or upper respiratory infection and was exposed to smoke at the same time; have you ever had a case like that in your practice?

A. It's possible, but I can't remember offhand. If you're telling me is smoking good for you, I already told you it is not.

Dr. Feldman's Deposition (employer expert)
Page 50 Lines 22 through 25 Page 51 lines 1 through line 5

Q. Have you ever had a person who had a cold and then was unfortunately involved in a house fire? Perhaps not as a firefighter, but perhaps as a citizen.

A. I've admitted many patients with industrial exposures to the hospital, absolutely, with asthma preexisting and without.

Dr. Feldman's Deposition (employer expert)
Page 51 Line 24 through Page 52 line 4

Q. All right, have you ever had a case with an industrial exposure where on top of that the person in question had exposure to smoke?

A. Yes of course. I mean, I've done many industrial exposures to smoking, absolutely. If it was a massive use—massive smoke inhalation and usually people can get—get very sick. It's not like burning leaves.

Q. Okay. All right, would you agree that if a person has a cold and has an industrial exposure to smoke, the smoke would cause their asthma to get worse?

A. Yes, it's different circumstances. It's a overwhelming exposures we're talking about industrial exposure. It's not like a trivial smoking exposure that Ms. Chamblee has described or burning leaves. These people get--these people can get real sick.

Dr. Feltman's Deposition
Page 52 lines 16 through Page 53 line 7

Q. Where do you draw the line between a trivial exposure to smoke and an overwhelming exposure to smoke?

A. People get sick very, very, very, quickly, almost instantaneously because it was not trivial exposure. With a trivial exposure, they don't know.

Q. If they get sick due to a significant exposure to smoke, do they know it almost instantly?

A. Yes.

Dr. Feldman's Deposition
Page 55 lines 14 through 22

The above is submitted as a summary of the testimony presented in this case.

The following facts in this case are beyond serious dispute. On May 26, 2011, the claimant was an employee of the employer and was traveling in an employer's vehicle to install a smoke detector within the course and scope of her employment. The employee had a prior history of asthma since childhood. (Testimony from at two co-workers was given that she had asthma inhalers lying all over her desk, but that she had never missed any appreciable time from work.) The claimant testified that she always attempted to work through her asthma and while working for the employer, she had never been in a position where she was exposed to smoke and could not escape to a safe place. The claimant testified also that the exposure to smoke caused her to feel sick, a fact which she mentioned to a co-worker, clerical personnel at the Fire Department, and to her family when she got home.

The claimant further testified that she had reported for a physical examination on May 11, 2011 several weeks before the alleged incident. On June 1, 2011 within a few days after the alleged when she reported for her follow-up visit and her same physician was concerned enough about her condition to be hospitalize her immediately for ten days. It was undisputed in the testimony that the employee had been employed by the employer for 26 years and was viewed as being a very good employee. Furthermore, at least two of the employer's witness testified that the employee, Sandy Chamblee was a truthful individual. One of them also testified as to the truthfulness of her mother.

Under workmen's compensation law, the Supreme Court sits for review of errors of law only, and in performing such function the Supreme Court must review the record of evidence, bearing in mind that scope of inquiry is limited to ascertaining whether there is any competent testimony reasonable tending to support Industrial Commission's findings of fact, which must be based on

evidence and cannot rest on surmise, conjecture or speculation. Code 1942, Section 7035-64. See Sligh v. Newberry Electric Cooperative, 58S.E. 2d 675.

The Workmen's Compensation Act will be liberally construed to include injured workmen within its protection rather than to exclude them. See Cagle v. Clinton Cotton Mills, 56 S.E. 2d 747, 215 S.C. 93

Courts have held that Compensation laws should be given a liberal construction in furtherance of the beneficent purpose for which they are enacted, and, if possible, so as to avoid incongruous or harsh results. See Sligh v Pacific Mills, 35 S.E. 2d 713, 207 S.C. 316.

Any reasonable doubt as to construction of Workmen's Compensation Act must be resolved in favor of claimants, its provisions reconciled if possible, its purposes effectuated, and its presumptions and penalties directed toward the end of providing coverage rather than noncoverage. See Cokeley v Robert Lee, Inc., 14 S.E. 2d 889, 197 S.C. 157

Doubts are to be resolved in favor of compensability. See Baldwin v Pepsi-Cola Bottling Co., 108 S.E. 2d 409, 234 S.C. 320.

A claimant must show that he has sustained an injury by accident, arising out of and in the course of his employment, in order to ,make his claim compensable and to bring it within the provisions of the Workmen's Compensation Act. See Spearman v F.S. Royster Guano Co., 199 S. S.E. 530, 188 S.C. 393.

Circumstantial evidence and lay testimony are sufficient to support finding of causal connection in compensation case if facts and circumstances proved give rise to reasonable inference that there was a causal connection between disability and prior injury. See Mize v Sangamo Elec. Co., 161 S.E. 2d 846, 251 S.C. 250.

South Carolina Courts have held that pursuant to 1976 S.C. Code Section 42-1-160 that if one becomes ill while at work from natural causes, the state or condition is not "accidental" within

meaning of the Workers' Compensation Law, but if there is a subsisting condition of illness or incapacity or physical disability which is caused, increased, or accelerated by some act or even coming by change or happening fortuitously, the requisite quality of condition of the injury will exist so as to make it "accidental." See Grayson v Gulf Oil Co., 357 S.E. 2d 479, 292 S.C. 528.

In South Carolina it is well established that a work related accident which aggravates or exacerbates a pre-existing condition, infirmity or disease is compensable. See Mullinax v Winn Dixie, (S.C. App.1995) 318 S.C. 431, 458 S.E. 2d 76. This is because the employer takes the employee as it finds him or her. See Mullinax, supra.

In the present case, it is clear that Sandy Chamblee had suffered from asthma since childhood, had been a longtime employee of the employer, and although she had problems with asthma, she had always worked through these problems without any substantial time loss from work. Nothing about her condition had changed in May 2011 except one thing: her exposure to smoke on May 26, 2011. As a result, she is now totally disabled. Based on the above facts and legal authorities the Hearing Commissioner should have awarded worker's compensation benefits in this case to the claimant.

II. THE COMMISSION ERRED WHEN IT HELD THE CLAIMANT FAILED TO MEET HER BURDEN OF PROOF THAT SHE SUSTAINED AN AGGRAVATION OF HER PRE-EXISTING ASTHMA CONDITION ARISING OUT AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT DUE TO HER EXPOSURE TO SMOKE ON MAY 26, 2011 SINCE THE CLAIMANT'S TESTIMONY ALONE IS SUFFICIENT TO CARRY THE BURDEN OF PROOF IN A WORKERS' COMPENSATION CASE IN SOUTH CAROLINA.

In the case of Arnold v Benjamin Booth Company (S.C. 1971) 257 S.C. 337, 185 S.C. 2d 830,the South Carolina Supreme Court held that the lay testimony of an employee himself unsupported by any medical evidence was sufficient to support the findings of causal connection between the accident and the disability suffered by the employee. In other words, the testimony of the claimant himself or herself, if accepted as creditable by the Commission, is sufficient to carry the claimant's burden of proof in Workers' Compensation case in South Carolina. As applied to this case, this would mean that Sandy Chamblee's testimony alone would be sufficient upon which to base an award in her favor in this claim.

The following facts in this case are beyond serious dispute. On May 26, 2011, the claimant was an employee of the employer and was traveling in an employer's vehicle to install a smoke detector within the course and scope of her employment. The employee had a prior history of asthma since childhood. (Testimony from at two co-workers was given that she had asthma inhalers lying all over her desk, but that she had never missed any appreciable time from work.) The claimant testified that she always attempted to work through her asthma and while working for the employer, she had never been in a position where she was exposed to smoke and could not escape to a safe place. The claimant testified also that the exposure to smoke caused her to feel sick, a fact which she mentioned to a co-worker, clerical personnel with the employer and to her family when she got home.

The claimant further testified that she had reported for a physical examination on May 11, 2011 several weeks before the alleged incident. On June 1, 2011 within a few days after the alleged

when she reported for her follow-up visit and her same physician was concerned enough about her condition to be hospitalize her immediately for ten days. It was undisputed in the testimony that the employee had been employed by the employer for 26 years and was viewed as being a very good employee. Furthermore, at least two of the employer's witness testified that the employee, Sandy Chamblee was a truthful individual. One of them also testified as to the truthfulness of her mother.

In South Carolina it is well established that a work related accident which aggravates or exacerbates a pre-existing condition, infirmity or disease is also compensable. See Mullinax v Winn Dixie, (S.C. App.1995) 318 S.C. 431, 458 S.E. 2d 76. This is because the employer takes the employee as it finds him or her. See Mullinax, supra.

If there is a subsisting condition of illness or physical disability which is caused, increased, or accelerated by some act or event coming by chance or happening fortuitously, then the requisite quality or condition of the injury will exist so as to make it accidental. Neither is it necessary that the accidental quality or condition be created by a wound or external violence. See Hiers vs Brunson Construction Company, (S.C. 1952) 221 S.C. 212, 70 SE 2d 211. The courts have also held that the aggravation, acceleration, or lighting up of a preexisting infirmity or weakened physical condition is within the coverage of the Workers Compensation Act even though the accident would have caused no injury to a normal healthy person. Ferguson v. State Highway Department (SC 1941) 197 SC520, 15 S.E. 2d 775. Proof beyond a reasonable doubt is not required. Circumstantial evidence and lay testimony need not reach such a degree of certainty as to exclude every reasonable possible conclusion. See Arnold v. Benjamin Booth Company (SC 1971) 257 S.C. 337, 185 SE 2d 830.

In the present case, it is clear that Sandy Chamblee had suffered from asthma since childhood, had been a longtime employee of the employer, and although she had problems with asthma, she had always worked through these problems without any time loss from work.

Based on the above, there is evidence of an incident at work, a pre-existing condition of asthma, a worsening of that condition as testified to by that employee, and an inability to return to work,

as testified to by the employee. We argue that under the case of Arnold v_Benjamin Booth Company, the above fact and circumstances in and of themselves are more than sufficient upon which this Commissioner should have based an award in favor of Sandy Chamblee in this claim.

III. THE COMMISSION ERRED IN ALLOWING AND CONSIDERING TESTIMONY ON THE ISSUE OF THE TIME WHEN THE EMPLOYEER WAS NOTIFIED OF CLAIMANT'S ALLEGED INJURY AND BECAUSE THE EMPLOYER'S FIRST REPORT OF INJURY FORM 12-A INDICATES THAT THE EMPLOYER WAS NOTIFIED ON MAY 26, 2011.

Under South Carolina Workers' Compensation Regulation 67-203 (19), one of the official forms and documents authorized by the Commission is a Form 12A, Employee's First Report of Injury. This form is related to 1976 South Carolina Code Section 42-15-20, which states that every injured employee or his representative immediately shall on the occurrence of an accident or as soon thereafter as possible give a cause to be given to the employer a notice of the accident.

Notice that section 42-15-20 requires that the employee shall immediately on the occurrence of an accident or as soon as practical thereafter give or cause notice to be given to the employer notice of the accident. This is exactly what Sandy Chamblee testified that she did.

The South Carolina Bar CLE Division in 2012 published material on this issue. See Beard, Poteat, Lamar, Sumwalt, Bluestein, Sullivan, The Law of Workers' Compensation Insurance in South Carolina, Sixth Edition, 2012 (page 432), which reads as follows:

> An injury involving compensable lost time, medical attention in excess of the limit established by the Commission ($2,500), or the possibility of permanency must be reported on a Form 12A within ten business days after the occurrence and knowledge of it, as provided in Section 42-15-20....
> The report of injury, Form 12A, Employer's First Report of Injury (ACCORD Form 4), states the employer's name, nature and location of the business and the name, age, sex, wage, and occupation of the injured worker. The Report also includes the date and hour of the injury and the nature and cause of the injury, among other things. The employer prepares and files the Form 12A with its insurance carrier.

Notwithstanding the above, the Hearing Commissioner heard and considered testimony from Jimmy Ray Sutherland, Chief of the Anderson County Fire Department that the procedure they used at the work place was for the employee to call the insurance company and give the requested information. Nowhere in Section 42-15-20 and Regulation 67-203 does it place any burden or authorize an employer to tell an employee to file an Initial Report of Injury with an insurance company. The only duty placed on the employee by Section 42-15-20 is to give notice to the employer and that is what the statute says by its own terms.

The importance of the above in this case is established by the fact that the employer's First Report of Injury indicates that the employer was notified of the incident on May 26, 2011.

Later, during the trial of the case, the employer's witness testified that they weren't actually notified on that date. This is crucial because the date as shown on the employer's First Report of Injury was relied on by Sandy Chamblee as an element of proof in her case that she notified the employer on the date of the incident.

South Carolina courts have held the contents of a First Report of Injury to be an admission by the employer. In the case of Sligh v Newberry Electric Cooperative, 58 S.E. 2d 675, in discussing the importance of a First Report of Injury, the Court held that this requirement of the law is not a perfunctory matter of form, but was intended to give correct, and reliable information as to an injury suffered by an employee.... he made certain statements with regard to the alleged accident without qualification; and we think it is clear that these statements, made by a responsible official agent, constitute admissions or declarations against interest. See 58 S.C. 2d 682.

The voluntary declarations or admissions of a party to a civil suit against his interest are admissible. See Llewellyn v. Atlantic Greyhound Corporation. 28 S.E. 2d 673.

A defendant cannot both admit and deny a fact, and once it is admitted, the admission stands. See South Carolina Ins. Co. V. James C. Greene & Co. 348 S.E. 2d 617 (S.C. App. 1986).

Declarations relative to a question of fact made by a party to an action are admissible in evidence against him. An admission deliberately made, precisely identified, and clearly proved may furnish strongest and most convincing evidence. See Tyree v. Lariew 158 S.E. 2d 140.

Sandy Chamblee testified throughout this case: 1) she had a cold, which is not an unusual condition as testified to by the claimant and Dr. Feltman, 2) that she went to a grass fire, which was undisputed, 3) that she stayed in a truck with the air conditioner on and this is undisputed, 4) that she developed disabling breathing difficulties, 5) that she notified the employer of the incident the same day it occurred. For the employer to then come to the hearing and testify "oh we really didn't get notified on May 26, 2011 of this incident, even though that is what our First Report of Injury says "is really disingenuous. The employer should be held to their prepared and filed documents that they were actually notified of the event in question on May 26, 2011.

The importance of this matter is further emphasized by the arguments before the Appellate Panel of South Carolina Workers' Compensation Commission. The employer argues that there was no medical evidence to support the employer's claim until she saw Dr. Spandorfer some 18 months later. See Argument of Appellant Panel, pages 19-20. Also argued was the point that the history and physical of the two hospitalizations after the incident do not specifically mention the inhalation of smoke. Claimant argued that she told a co-worker, her family, and clerical personnel at the Fire Department about the smoke on the date it occurred and that her report was corroborated by the contents of the Form 12A Employers First Report of Injury. See Arguments of Appellant Panel, page 24.

CONCLUSION

Sandy Chamblee has been a firefighter and later a Fire Marshal for a long time. She has had asthma for an even longer time. She has had colds before-all through her life-just like everyone else. Her 26 year record at the Fire Department is a testimony to her work ethic, persistence, and dedication to her job which required that she work through her asthma as needed.

The only thing that happened to Sandy Chamblee in May 2011 that had never happened before was a prolonged exposure to smoke from which she could not escape.

It put her out of work permanently.

It reduced her lung function significantly.

She has told her story earnestly.

A fair reading and consideration of the evidence in this case will show that she has proved her case convincingly.

THOMPSON & KING LAW FIRM

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Anderson, South Carolina
Dated: 12-15-15

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
State of South Carolina Workers' Compensation Commission
Decision of the Appellant Panel

WCC 1107022

Sandy Chamblee..... Appellant

v.

Anderson County Fire Department..... Employer,
And State Accident Fund, Carrier..... Respondents

PROOF OF SERVICE

I hereby certify that I have served the Initial Brief of Appellant and Designation of Matter to be included in the Record on Appeal on Ian C. Gohean, 872 S. Pleasantburg Drive, Greenville, SC 29607,by depositing a copy of it in the United States Mail, postage prepaid on the 17th day of December, 2015.

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Dated:
12/17/15

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December 15, 2015

The Honorable Jenny A. Kitchings
Clerk of the S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Sandy Chamblee vs Anderson County
Fire Department & State Accident Fund
Case No: WCC File: 1107022

Dear Sir/Madam:

Please find enclosed the Initial Brief of the Appellant and Designation of Matter to be included in the Record on Appeal in regard to the above case, along with the Proof of Service on the Ian C. Gohean.

Thank you for your help in this matter and should you have any questions, please advise.

Very truly yours,

Richard E. Thompson, Jr.

RET:ddp
enclosure
cc: Ian Gohean

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The Honorable Jenny A. Kitchings
Clerk of the S.C. Court of Appeals
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