DECISION AND ORDER
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 1315152

JACK WOODWARD,
Claimant/Appellant,

vs.

ARCELORMITTAL GEORGETOWN, INC.,
Employer,

NEW HAMPSHIRE INSURANCE COMPANY,
Carrier,

Defendants/Respondents.

Appellate Panel Review
Columbia, South Carolina
on November 17, 2015

Appellate Panel Decision & Order filed

on August 4, 2015

AFFIRMED IN FULL

William S. Duncan, Esquire, on behalf of the Claimant/Appellant

F. Drake Rogers III, Esquire, on behalf of the Employer/Carrier.

This matter was heard before the Appellate Panel of the South Carolina Workers' Compensation Commission on November 17, 2015, pursuant to a Form 30 timely filed by the Appellant on August 17, 2015. This matter was originally heard before the Single Commissioner in Aynor, South Carolina on April 28, 2015, and this was an appeal from the Order filed on August 4, 2015.

The Hearing Commissioner made the following Findings of Fact, Conclusions of Law, and Order following an evidentiary hearing:

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.

2. The Claimant's average weekly wage is $1,037.67, with a resulting compensation rate of $743.72.

3. On November 1, 2013, the Claimant filed a Form 50 request for hearing alleging that he sustained an injury in the form of hearing loss on April 4, 2013, as a result of the repetitive trauma of his work at ArcelorMittal Georgetown, LLC.

4. The within matter is clearly a repetitive trauma claim and will, therefore, be analyzed as repetitive trauma.

5. Since the Defendants have raised notice and statute of limitations defenses in this matter, it is necessary to analyze when the proverbial clock started to tick.

6. The October 19, 2011, Court of Appeals opinion in the case of King v. International Knife and Saw and S.C. Code Ann. § 42-15-20(C) are controlling law.

7. The relevant test is when the Claimant discovered or should have discovered he qualified to receive benefits for medical care, treatment, or disability due to his condition.

8. The Claimant started working at the Georgetown Steel Mill in June of 1975 and retired on March 31, 2015.

9. When the Claimant started working at the Georgetown Steel Mill, hearing protection was not required and he worked in the Steel Mill without hearing protection for the first 8 to 10 to 15 years.

10. Once the Claimant started working for ArcelorMittal Georgetown, Inc., he always wore hearing protection.

11. Sometime around 2003, the Claimant filed claims for hearing loss in both ears as a result of the repetitive trauma of his work at the Georgetown Steel Mill while employed with Georgetown Steel Corporation and ArcelorMittal Georgetown, Inc., alleging dates of accidents of October 21, 2003, and 2004 through the present time (the present time then being May 25, 2007, the date the Claimant's Pre-Hearing Brief was served on the Commission and opposing counsel).

12. The Claimant's claims against Georgetown Steel Corporation for hearing loss in WCC File Nos. 0326647 and 0326648 were settled via Order approved and filed with the South Carolina Workers' Compensation Commission on September 14, 2007.

13. ArcelorMittal Georgetown, Inc., was voluntarily dismissed from the Claimant's claim against ArcelorMittal Georgetown, Inc., and Georgetown Steel (WCC File No. 0326648) via Consent Order filed and served on November 5, 2014.

14. On September 25, 2004, the Claimant was advised that, based on his hearing test performed on September 9, 2004, he had moderate loss of hearing in both ears and he should see a hearing specialist if he had not already done so.

15. The Claimant was advised again on September 21, 2005, that, based on his hearing test performed on September 16, 2005, he had a moderately severe loss of hearing in both ears and he should see a hearing specialist if he had not already done so.

16. On June 29, 2006, the Claimant was advised by Dr. Arthur LaBruce that he had bilateral hearing loss due to industrial

noise trauma over so many years with inadequate ear protection.

17. On July 3, 2006, the Claimant was advised by Dr. Terry Fry that he had hearing loss due to industrial noise exposure and that bilateral hearing aid amplification was recommended.

18. The issue of the Claimant's alleged hearing loss was already litigated in WCC File Nos. 0326647 and 0326648 and resolved on August 23, 2007.

19. Defendant ArcelorMittal Georgetown, Inc., was named as a party defendant in WCC File No. 0326648 and subsequently dismissed via Consent Order dated November 5, 2014. As such, it is clear that the Claimant was aware of a compensable condition by at least August 23, 2007.

20. As it relates to an alleged date of repetitive trauma injury of April 4, 2013, the Claimant is misguided in relying on a last date of injurious exposure analysis.

21. The Claimant did not give notice of or file a claim for benefits as a result of the alleged subject repetitive trauma hearing loss until filing his Form 50 notice of claim with the South Carolina Workers' Compensation Commission on November 1, 2013.

22. The Claimant did not provide timely notice of his claim, notice within 90 days of the date he discovered or could have discovered by exercising reasonable diligence that his alleged condition was compensable, and his request for benefits is therefore barred.

23. The Claimant did not file his claim for benefits with the South Carolina Workers' Compensation Commission within two (2) years after he knew or should have known that his injury was compensable, so his request for benefits is barred.

24. The Claimant neglected for an unreasonable and unexplained length of time under circumstances requiring diligence to do what should have been done, so his claim for benefits is, therefore, barred under the doctrine of *laches*.

25. The Claimant failed to prove causation sufficient to entitle him to any benefits as a result of injuries allegedly sustained while working for ArcelorMittal Georgetown, Inc.

Based upon the above Statement of the Case, Evidence of the Case, and the Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-172 defines "repetitive trauma injury."

2. S.C. Code Ann. § 42-15-20(C) governs notice to employer of repetitive trauma.

3. S.C. Code Ann. § 42-15-40 governs the time for filing a claim for benefits as a result of a "repetitive trauma injury."

4. King v. International Knife & Saw – Florence (S.C. App. 2011), 395 S.C. 437, 718 S.E.2d 227, addresses the question "in the case of a repetitive trauma injury, what event triggers an injured employee's obligation to report and commences the 90-day reporting period established in § 42-15-20(C)?"

5. The "doctrine of *laches*" is based upon the maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as the neglect for an unreasonable and unexplained length of time under circumstances permitting diligence to do what in law should have been done.

ORDER

Based on the foregoing, it is hereby ordered that Claimant Jack Woodward's claim for benefits under the South Carolina Workers' Compensation Act is denied and dismissed with prejudice;

IT IS FURTHER ORDERED that Claimant Jack Woodward is not entitled to and the Defendants shall have no liability for any benefits under the South Carolina Workers' Compensation Act.

APPEAL TO APPELLATE PANEL

In his appeal to the Appellate Panel, the Claimant respectfully submits the following:

1. Whether the Commissioner misapprehended the meaning of King v. International Knife, 395 S.C. 437 when he found the Claimant's case did not meet the requirements of §42-15-20 (c) and §42-1-10?

2. Whether the Commissioner committed error when he found the Claimant knew or should have known his condition was compensable in 2005, 2006 or 2007?

EVIDENCE OF THE CASE

The Claimant is 60 years of age and worked in the steel mill in Georgetown for 39 years, 8 months, retiring on March 31, 2015. He performed jobs including maintenance, air-conditioning and electric work, and worked all over the mill but mainly on the melt floor, which he testified was the noisiest part of the mill. He testified the working conditions were extremely loud. He testified as to his current hearing problems but also testified that his hearing problems never disabled him from performing his job. Finally, the Claimant testified that it is his belief that working in the steel mill gradually caused his hearing loss.

On cross-examination, the Claimant testified that there was no hearing protection in use when he started working at the steel mill in June, 1975, and that he probably worked the first eight to ten years without any hearing protection. He testified that hearing protection gradually became available and required, that the wearing of hearing protection was much more strictly required by the time ArcelorMittal took over the plant, and that he always wore hearing protection once he started working for ArcelorMittal. The Claimant testified he started to realize at some point "way back when" that his hearing was not as good as it had been, but he never thought to seek medical attention or do anything about it. The Claimant testified that he filed a claim against Georgetown Steel sometime

around 2003 and that ArcelorMittal was included in that claim. The Claimant agreed that ArcelorMittal was dismissed from that 2003 claim and that the claim was settled with one of the employers or carriers in 2007 whereby he was paid some money for hearing loss -- the same claim in which ArcelorMittal had been a defendant.

The Claimant testified that ArcelorMittal did not become involved with the steel mill in Georgetown until after 2003. The Claimant was given a baseline hearing test by ArcelorMittal in September of 2004, the point in time at which it began operating the steel mill facility.

Finally, the Single Commissioner reviewed APA submissions and exhibits in the record including sound level surveys dated June 30, 1975, July 1, 1983, February 6, 1984, February 6, 1991, and April 7, 1993 (APA #6, pgs. 21-28), all of which pre-date ArcelorMittal's ownership of the steel mill; copies of Employer meeting notes regarding noise levels in the mill dated February 16, 2000, and May 23, 2000 (APA #7, pgs. 28-32); and copies of OSHA reports to the steel mill regarding noise levels dated from November 28, 1995, through October 3, 2002 (APA #8, pgs. 33-52), all of which pre-date ArcelorMittal's ownership of the mill. Dr. Terry Fry prepared a report on December 23, 2013, in which Dr. Fry indicated the Claimant reached maximum medical improvement on July 3, 2006, and sustained a 28% medical impairment to the right ear and a 23% medical impairment to the left ear. (APA #1, p. 2).

The Claimant underwent a hearing test performed on September 9, 2004, indicating the Claimant had a moderate loss of hearing in both his left and right ears resulting in a 19.0625% binaural hearing impairment. (APA D, pgs. 68-70). The Defendants' submissions also include a report from Dr. Howard A. Farrell dated December

27, 2013, which documents that the Claimant always used ear plugs while employed at ArcelorMittal, but did not use ear protection consistently while employed at the steel mill from June, 1975, through 2003. Dr. Farrell stated that the Claimant has a bilateral high-frequency sensorineural hearing loss that is consistent with loud noise exposure but further stated his opinion, within a reasonable degree of medical certainty, that the Claimant's hearing damage occurred prior to his employment with ArcelorMittal Georgetown, LLC. (APA #9, pgs. 53-55).

The Defendants' submissions also include a copy of a Pre-Hearing Brief prepared by the Claimant in WCC File No. 0326648, in which the Claimant alleged he suffered an injury consisting of hearing loss in both ears as a result of accidents that occurred on October 21, 2003, and from 2004 through the present time (the present time then being May 25, 2007, the date the Pre-Hearing Brief was served on the Commission and opposing counsel). ArcelorMittal was a party to that claim at that time. The submitted records also include a copy of a Consent Order dismissing ArcelorMittal and its carrier, American Zurich Insurance Company, from WCC File No. 0326648 on November 5, 2014. (APA C, pgs. 93-98).

STANDARD OF REVIEW

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1983), weigh the evidence as presented at the initial hearing, and if 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 Hearing Commissioner. Furthermore, the findings of fact and law by the Hearing Commissioner become and are the law of the case, unless within the scope of the appellant's exception to the Full Commission

and its notice to the respondent of the issues the respondent would be required to meet. Only issues within the application for review under S.C. Code Ann. section 42–17–50 are preserved for appeal to the Full Commission. Charleston Lumber Co. v. Miller Hous. Corp., 338 S.C. 171, 525 S.E.2d 869 (2000); Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940); Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993).

LEGAL ANALYSIS

I. The issues that the Claimant did not specifically raise in his Form 30 Request for Commission Review are not preserved for appeal, and as a result, the Single Commissioner's findings of fact and conclusions of law on these issues are the law of the case.

In Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1940), the South Carolina Supreme Court held that the findings of fact and law by the hearing commissioner become and are the law of the case, unless within the scope of the appellant's exception to the full commission and its notice to the respondent of the issues the respondent would be required to meet. Due process requires that litigants receive notice of the issues to be met on trial, hearing or appeal. Id. Only issues within the application for review under S.C. Code Ann. section 42–17–50 (1976) are preserved for appeal to the Commission. Id.; see also Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993) (Single Commissioner's denial of benefits, although likely based upon an error of law, was not subject to appellate review where Claimant did not assert error on the Form 30 as to that particular issue), Charleston Lumber Co. v. Miller Hous. Corp., 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) ("an unchallenged ruling, 'right or wrong, is the law of [the] case and requires affirmance'") (*quoting* Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970)).

Here, the Claimant did not assert error as to the Commissioner's determination that the claim is barred by the statute of limitations and *laches*, and the determination that the Claimant failed to sustain his burden to prove a compensable injury with the Employer. This Panel therefore concludes that it does not have the authority to reach these issues, and the Single Commissioner's findings of fact and conclusions of law on these issues are the law of the case.

II. This claim is barred because the Claimant did not provide timely and adequate notice of the claim to the Employer.

S.C. Code Ann. § 42-15-20(C) provides that, in the case of repetitive trauma, the claimant must give notice of an injury to the employer within ninety (90) days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the Commission for not giving timely notice *and* the Commission is satisfied that the employer has not been unduly prejudiced thereby. In King v. Int'l Knife and Saw, the South Carolina Court of Appeals interpreted and applied the Act's notice requirement for repetitive trauma claims. 395 S.C. 437, 718 S.E.2d 227 (Ct. App. 2011). In that case, the Court held that a claimant's repetitive trauma condition is not compensable and "the 90-day reporting clock does not start" until the condition either requires medical care or interferes with a claimant's ability to work. Id. at 444-45. Here, the Claimant was advised on September 25, 2004, that, based on his hearing test performed on September 9, 2004, he had moderate loss of hearing in both ears and he should see a hearing specialist if he had not already done so. On June 29, 2006, the Claimant was advised by Dr. Arthur LaBruce that he had bilateral hearing loss due to industrial noise trauma over so many years with inadequate ear protection. Therefore, the "90-day reporting clock" started at the earliest, on September 25,

2004, and at the latest, on June 29, 2006. However, he did not give notice of the present claim until eight years later on when he filed a Form 50 hearing request on November 1, 2013. Accordingly, the Single Commissioner's finding that the Claimant did not provide timely notice of a repetitive trauma injury is affirmed.

Furthermore, the Claimant's assertion in his brief that the Employer had "actual knowledge of every pertinent fact required of a written notice" is incorrect. (Appellant's Brief p. 6). The Employer administered periodic hearing tests, but these test results indicated that the Claimant's hearing did not decline from the time ArcelorMittal began operating the plant until the end of the Claimant's employment. Therefore, the Employer's knowledge of the Claimant's hearing test results does not constitute notice of the Claimant's present claim, and the Single Commissioner's Order must be affirmed.

III. To the extent the Claimant properly appealed the Single Commissioner's Order as to the statute of limitations, *laches*, and the Claimant's failure to sustain his burden of proof, this Panel agrees with the Single Commissioner's determination of these issues, and affirms the Order.

a. This claim is barred by the statute of limitations.

S.C. Code Ann. § 42-15-40 states that a claimant's right to compensation for a repetitive trauma injury is "barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure." This portion of the statute was added by the Legislature effective July 1, 2007, overruling the South Carolina Supreme Court's prior contrary decision in Schurlknight v. City of North Charleston, 352 S.C. 175, 574 S.E.2d 194 (2002) (holding the last day of exposure is the date from which the statute of limitations begins to run in a repetitive trauma case, rather than when claimant first discovered that he had a work-related injury). Here, the Claimant was advised on

September 25, 2004, that, based on his hearing test performed on September 9, 2004, he had moderate loss of hearing in both ears and he should see a hearing specialist if he had not already done so. On June 29, 2006, the Claimant was advised by Dr. Arthur LaBruce that he had bilateral hearing loss due to industrial noise trauma over so many years with inadequate ear protection. But, he did not file the present claim until 2013. The Claimant did not file his claim within two years after he knew his injury was compensable, and as a result, his claim is barred by the statute of limitations.

Contrary to the Claimant's assertion, a doctor's opinion linking the claimant's alleged injury to his employment, stated with a reasonable degree of medical certainty, is not an essential element of the statute of limitations defense. (Appellant's Brief p. 8). All that is required is evidence that the Claimant did not file his claim for compensation within two years of the date he knew or should have known his injury is compensable. Furthermore, the Claimant was told in 2006 that both Dr. LaBruce and Dr. Terry Fry believed his hearing loss was work-related. The Claimant cannot reasonably contend that he was unaware of this claim until less than two years before the date he filed in in 2014. Therefore, the Single Commissioner's decision that the claim is barred by the statute of limitations is affirmed.

b. This claim is barred by the doctrine of *laches*.

South Carolina Courts have defined *laches* as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Muir v. C.R. Bard. Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999). South Carolina has acknowledged the applicability of the doctrine of *laches* in a workers' compensation claim. Richey v. Dickinson, 359 S.C. 609,

612, 598 S.E.2d 307, 309 (Ct. App. 2004). "A claimant must prosecute his [workers' compensation] claim in a timely fashion or it may be barred by the doctrine of *laches*." McMillian v. Midlands Human Res., 305 S.C. 532, 533, 409 S.E.2d 443, 444 (Ct. App. 1991). If a party knows of his rights and does not timely assert them and that delay causes his adversary to incur expense or otherwise detrimentally change its position, then, under the doctrine of *laches*, equity will refuse to enforce those rights. Richey, 359 S.C. at 612, 598 S.E.2d at 309. The party asserting *laches* must show (1) negligence of the other party; (2) that party's opportunity to act sooner; and (3) as a result, the asserting party suffered material prejudice. Richey, 359 S.C. at 612, 598 S.E.2d at 309. *Laches* is a defense that operates independently from the statute of limitations. The court is vested with wide discretion in determining what is an unreasonable delay. Ham v. Flowers, 214 S.C. 212, 51 S.E.2d 753 (1949).

Here, the Claimant believed in 2003 that his hearing loss was related to his employment with the Employer. He alleged compensable hearing loss and filed a hearing request in 2007 and settled that case. He was advised on September 25, 2004, that, based on his hearing test performed on September 9, 2004, he had moderate loss of hearing in both ears and he should see a hearing specialist if he had not already done so. On June 29, 2006, the Claimant was advised by Dr. Arthur LaBruce that he had bilateral hearing loss due to industrial noise trauma over so many years with inadequate ear protection. Dr. Terry Fry also opined in 2006 that the Claimant's hearing loss work-related. The Claimant previously pursued a claim in 2006 and 2007, which he subsequently settled. Thereafter, the Claimant did not pursue the present claim until 2013. This six-year delay in pursuing the claim was unreasonable, the Claimant was negligent in his delay, and he had the opportunity to act

sooner, but did not. The Claimant offered no reasonable explanation for his six-year delay in seeking another hearing. Furthermore, the Employer/Carrier was materially prejudiced by this delay. As a result of the Claimant's unreasonable delay, the Employer/Carrier was denied the opportunity to provide appropriate medical treatment, remove the Claimant from exposure to high noise levels, or take other measures to minimize the Claimant's alleged injuries or prevent further hearing loss, should the claim have been found compensable when the Claimant originally pursued a claim in 2006 and 2007. Furthermore, contemporaneous witnesses such as the Claimant's co-workers and supervisors from 2007 would be extremely difficult to identify and depose. The Single Commissioner correctly determined that the Employer/Carrier was prejudiced by the Claimant's unreasonable delay in pursuing his claim. The Single Commissioner's determination that this claim is barred subject to the doctrine of *laches* is therefore affirmed.

c. The Claimant did not sustain his burden to prove a compensable repetitive trauma injury.

S.C. Code Ann. § 42-1-172 defines "repetitive trauma injury" and provides that "an injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury." Additionally, an injury must result from an accident that arose out of and in the course of the claimant's employment to be compensable under the Act. Bickley v. South Carolina Electric & Gas Co., 259 S.C. 463, 192 S.E.2d 866 (1972). The burden is on the claimant to prove such facts as will render the injury compensable, and such an award must not be based on surmise, conjecture, or speculation. Brady v. Sacony of St. Matthews, 232

S.C. 84, 101 S.E.2d 50 (1957). Here, there is insufficient evidence to establish the Claimant sustained hearing loss as a result of his work with the Employer. A finding of compensability would be purely speculative and contrary to the greater weight of the evidence, in light of the lack of any conclusive medical evidence stated to a reasonable degree of medical certainty to prove that the Claimant's hearing loss more likely than not worsened due to his employment with the Employer. As a result, the Single Commissioner's Order is supported by a preponderance of the evidence, and is affirmed.

Additionally, there is insufficient evidence to establish that the Claimant sustained a compensable repetitive trauma injury resulting in hearing loss in his employment with the Employer. The December 23, 2013 report from Dr. Fry stated that the Claimant's hearing loss was due to "his continued industrial noise exposure." However, this report does not specifically indicate whether the alleged worsening of the Claimant's hearing impairment from 2007 through to 2014 was, more likely than not, related to any noise exposure the Claimant may have had in his employment with the Employer. To the contrary, the preponderance of the evidence, including the persuasive opinion of Dr. Farrell, indicates that the Claimant's hearing loss pre-dated his work with the Employer, and that the Claimant did not sustain hearing loss due to his work with the Employer. Therefore, the Claimant did not sustain any injury during his work with the Employer, and the "last injurious exposure" rule as articulated in Geathers v. 3V, Inc., 371 S.C 570, 641 S.E.2d 29 (2007), does not apply to render the Employer liable for the Claimant's alleged hearing loss. The Single Commissioner's findings of fact and conclusions of law in this regard are correct, supported by a preponderance of the reliable evidence in the record, and are therefore affirmed.

Based this Panel's examination of the complete record on appeal, review of the briefs and oral arguments of the parties, and the foregoing legal analysis, we enter the following Findings of Fact and Conclusions of Law, in full affirmation of the Findings and Conclusions of the Hearing Commissioner:

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.

2. The Claimant's average weekly wage is $1,037.67, with a resulting compensation rate of $743.72.

3. On November 1, 2013, the Claimant filed a Form 50 request for hearing alleging that he sustained an injury in the form of hearing loss on April 4, 2013, as a result of the repetitive trauma of his work at ArcelorMittal Georgetown, LLC.

4. The within matter is clearly a repetitive trauma claim and will, therefore, be analyzed as repetitive trauma.

5. Since the Defendants have raised notice and statute of limitations defenses in this matter, it is necessary to analyze when the proverbial clock started to tick.

6. The October 19, 2011, Court of Appeals opinion in the case of King v. International Knife and Saw and S.C. Code Ann. § 42-15-20(C) are controlling law.

7. The relevant test is when the Claimant discovered or should have discovered he qualified to receive benefits for medical care, treatment, or disability due to his condition.

8. The Claimant started working at the Georgetown Steel Mill in June of 1975 and retired on March 31, 2015.

9. When the Claimant started working at the Georgetown Steel Mill, hearing protection was not required and he worked in the Steel Mill without hearing protection for the first 8 to 10 to 15 years.

10. Once the Claimant started working for ArcelorMittal Georgetown, Inc., he always wore hearing protection.

11. Sometime around 2003, the Claimant filed claims for hearing loss in both ears as a result of the repetitive trauma of his work at the Georgetown Steel Mill while employed with Georgetown Steel Corporation and ArcelorMittal Georgetown, Inc., alleging dates of accidents of October 21, 2003, and 2004 through the present time (the present time then being May 25, 2007, the date the Claimant's Pre-Hearing Brief was served on the Commission and opposing counsel).

12. The Claimant's claims against Georgetown Steel Corporation for hearing loss in WCC File Nos. 0326647 and 0326648 were settled via Order approved and filed with the South Carolina Workers' Compensation Commission on September 14, 2007.

13. ArcelorMittal Georgetown, Inc., was voluntarily dismissed from the Claimant's claim against ArcelorMittal Georgetown, Inc., and Georgetown Steel (WCC File No. 0326648) via Consent Order filed and served on November 5, 2014.

14. On September 25, 2004, the Claimant was advised that, based on his hearing test performed on September 9, 2004, he had moderate loss of hearing in both ears and he should see a hearing specialist if he had not already done so.

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17. On July 3, 2006, the Claimant was advised by Dr. Terry Fry that he had hearing loss due to industrial noise exposure and that bilateral hearing aid amplification was recommended.

18. The issue of the Claimant's alleged hearing loss was already litigated in WCC File Nos. 0326647 and 0326648 and resolved on August 23, 2007.

19. Defendant ArcelorMittal Georgetown, Inc., was named as a party defendant in WCC File No. 0326648 and subsequently dismissed via Consent Order dated November 5, 2014. As such, it is clear that the Claimant was aware of a compensable condition by at least August 23, 2007.

20. As it relates to an alleged date of repetitive trauma injury of April 4, 2013, the Claimant is misguided in relying on a last date of injurious exposure analysis.

21. The Claimant did not give notice of or file a claim for benefits as a result of the alleged subject repetitive trauma hearing loss until filing his Form 50 notice of claim with the South Carolina Workers' Compensation Commission on November 1, 2013.

22. The Claimant did not provide timely notice of his claim, notice within 90 days of the date he discovered or could have discovered by exercising reasonable

diligence that his alleged condition was compensable, and his request for benefits is therefore barred.

23. The Claimant did not file his claim for benefits with the South Carolina Workers' Compensation Commission within two (2) years after he knew or should have known that his injury was compensable, so his request for benefits is barred.

24. The Claimant neglected for an unreasonable and unexplained length of time under circumstances requiring diligence to do what should have been done, so his claim for benefits is, therefore, barred under the doctrine of *laches*.

25. The Claimant failed to prove causation sufficient to entitle him to any benefits as a result of injuries allegedly sustained while working for ArcelorMittal Georgetown, Inc.

Based upon the Evidence of the Case, Legal Analysis, and the above Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-172 defines "repetitive trauma injury."

2. S.C. Code Ann. § 42-15-20(C) governs notice to employer of repetitive trauma.

3. S.C. Code Ann. § 42-15-40 governs the time for filing a claim for benefits as a result of a "repetitive trauma injury."

4. King v. International Knife & Saw – Florence (S.C. App. 2011), 395 S.C. 437, 718 S.E.2d 227, addresses the question "in the case of a repetitive trauma injury, what event triggers an injured employee's obligation to report and commences the 90-day reporting period established in § 42-15-20(C)?"

5. The "doctrine of *laches*" is based upon the maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as the neglect for an unreasonable and unexplained length of time under circumstances permitting diligence to do what in law should have been done.

Based upon the Evidence of the Case, and the above Findings of Fact, and Conclusions of Law, the following Order is made:

ORDER

Based on the foregoing, it is hereby ORDERED that the decision and order of the Hearing Commissioner is hereby AFFIRMED IN FULL.

No hearing costs or penalties are assessed in this matter.

S.C. WORKERS' COMPENSATION COMMISSION

By: _____
Commissioner Avery B. Wilkerson, Jr.

CONCURRING:

By: _____
Commissioner R. Michael Campbell, II

By: _____
Commissioner Susan S. Barden

Columbia, South Carolina

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 February 29, 2016