

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

CASE NUMBER: 2012CP4008296

RECEIVED

Alvin L Menie

MAY 16 2016

State Accident Fund

PLAINTIFF(S)

SC Court of Appeals

DEFENDANT(S)

Submitted by: _____

Attorney for: Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

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

Circuit Court Judge _____ Judge Code 2118 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 12 day of April, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Preston F. McDaniel

Andrew Elliott Haselden

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court *Jeanette W. McDaniel*

SCANNED



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Alvin L. Menie,

Appellant,

vs.

State Accident Fund,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-08296

ORDER

RICHLAND COUNTY
FILED
2016 APR 11 PM 2:17
JEANETTE W. MERRITT
C.J.P.

This matter is before the Court on Appellant Alvin L. Menie's ("Menie") Motion for New Trial pursuant to Rule 59(a), SCRPC, to Alter or Amend Judgment pursuant to Rule 59(e) SCRPC, and to Vacate and Remand this matter pursuant to Rule 60(b), SCRPC. This matter came before the Court on June 20, 2014, for a hearing on an appeal from an Order by the South Carolina Workers' Compensation Commission ("Commission") dated November 29, 2012. On November 4, 2015, the Court affirmed the Commission's Order. Appellant filed this Motion on December 7, 2015.¹ After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, Appellant's Motion is **DENIED**.

In Menie's Memorandum in Support of his Rule 59(a)&(e), and Rule 60(b) motion, Menie contends that the evidence in the record "on the element as to whether [Menie] was exposed to unusual and extraordinary conditions in the employment is uncontradicted and undisputed." Appellant's Memo. at 2. Appellant, thus, argues that the Court, in its Order affirming the Commission, "failed to specifically apply the decisions of the SC Supreme Court that where the evidence is undisputed and there is no substantial evidence in the Record to support the decisions in this case . . . this Court is required by those decisions to reverse the [Commission]." Appellant's Memo. at 4. Menie, however, fails to acknowledge that SAF did provide contradictory evidence concerning whether Applicant faced unusual and extraordinary working conditions.

Menie argues that he, one of Menie's co-workers, and Menie's supervisor all provided information in the record that Menie was facing unusual and extraordinary circumstances at the

¹ In an Order dated December 28, 2015, the Court originally denied this Motion. On January 29, 2016, the Court, however, vacated that Order.

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time he suffered from atrial fibrillation. SAF, however, according to Appellant, provided no evidence that Menie did not face unusual and extraordinary circumstances. The Court disagrees. Gerald Murphy ("Murphy") who was, at the time of the hearing, SAF's Manager of Administrative Services, testified that Menie only worked an average of 16 extra minutes per day in January and February 2003 than he did during those same months in 2002. According to Murphy, Menie worked alone for 25 days only and did not work any overtime during that period. Murphy also testified that there had been other instances when auditors worked in a similar position as Menie for as long as eight months, without issue. Murphy, moreover, testified that Menie was not required to complete all of the 600 audits within the subject period.² Murphy explained that, in fact, January typically is a month where the total number of audits performed is very low due to the lack of requisite information needed from the insureds to perform the respective audits. Menie, moreover, testified that he had already received some of the necessary information from the policyholders or was able to conduct some of the respective audits.³ Furthermore, Murphy testified that by January 10, 2003, 318 out of 522 accounts had paid their premium, which included the 24.7% increase. Moreover, Carla Johnson ("Johnson"), an employee with SAF, returned from medical leave on February 10, 2003, and began working on her workload of approximately 200 audits. Additionally, Shaun Holmon ("Holmon"), a SAF auditor who left in 2002, testified there had been previous double-digit premium increases, that other SAF employees could answer phone calls, and that auditors had up to 180 days to perform a premium audit following the close of a policy period.

In light of the evidence provided by Murphy, Johnson, and Holmon, SAF presented evidence that Menie did not face unusual and extraordinary conditions. Thus, there is substantial evidence in the record to support the Commission's finding. Even if the Commission incorrectly found that Menie did not face unusual and extraordinary working conditions, Menie failed to prove, to the Commission, that Menie's alleged unusual and extraordinary conditions caused his atrial fibrillation.

"In order for [a workers' compensation claimant] to recover workers' compensation benefits, he must prove *both*: (1) that he was exposed to unusual and extraordinary conditions in

² In fact, Menie testified that he was required only to complete 100 audits by the end of January.

³ See, e.g., Commission Hearing Transcript of Record at 105:3-8, wherein Menie stated that "some people don't have to wait until they get their W-3s. . . . Others have theirs ready and available that you could do audits on prior to February the 1st."

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his employment; and (2) that these unusual and extraordinary conditions were the proximate cause of his [heart condition].” *Shealy v. Aiken Cnty.*, 341 S.C. 448, 459, 535 S.E.2d 438, 444 (2000) (emphasis added). “Undoubtedly, the record must evince a causal connection between any extreme exertion or extraordinary or unusual conditions of employment and a claimant’s heart-related injury or death.” *South Carolina Second Injury Fund v. Liberty Mut. Ins. Co.*, 353 S.C. 117, 126, 576 S.E.2d 199, 204 (Ct. App. 2003). “Whether there is any causal connection between employment and an injury is a question of fact for the Commission.” *Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 159, 519 S.E.2d 102, 105 (1999).

The Commission found that the Appellant “failed to prove his heart condition was a result of unusual and extraordinary conditions of employment.” Appellate Panel Decision and Order at 3. Menie, via his APA submissions, submitted an opinion from Dr. Richard Hendricks (“Hendricks”) his treating physician, explaining that the conditions Menie experienced at work caused his atrial fibrillation. Hendricks’ opinion, however, was based on hypotheticals presented by Menie—hypotheticals that were not wholly supported by the facts in evidence. Menie, moreover, did not even mention stress related to his job to Hendricks until approximately a year after developing his condition as reflected in the medical records. Dr. Michael Zile (“Zile”), SAF’s medical expert, reviewed Menie’s medical records and Hendrick’s deposition testimony and noted that “to a reasonable degree of medical certainty . . . [Menie’s] atrial fibrillation was caused by pre-existing and underlying cardiovascular disease processes including but not limited to morbid obesity, sleep apnea, hypertension, sick sinus node syndrome, and diabetes.” SAF’s APA Submissions 20. At the time of onset of the atrial fibrillation, the medical records reveal that Menie had several health problems. Additionally Menie later sought treatment for several health issues by the VA due to exposure to Agent Orange while serving in Vietnam. Accordingly, even if the Commission improperly found that Menie did not face unusual and extraordinary working conditions, Menie still failed to prove that his working conditions caused his heart condition.

Appellant also argues that the Commission committed an error of law by admitting and relying on Kirk Adair’s (“Adair”) testimony. Adair, another auditor with SAF, testified that he started working with SAF in 2010 after working in the private sector. Adair provided testimony concerning his prior experience as an auditor, working conditions of his prior places of employment compared to SAF working conditions, and his working conditions at SAF during a

two-month period when he worked by himself. Adair further testified that he worked along with one additional premium auditor and they were able to perform all of SAF's premium audits.

Menie argues that there was a stark temporal distinction between when Adair worked at SAF and when Menie worked at SAF. Menie suffered his atrial fibrillation when he was working at SAF in 2003; Adair, however, provided testimony regarding the position of an auditor with SAF between 2010 and 2012. Menie contends that the conditions of employment between 2010 and 2012 were too remote to be relevant or material to the conditions of employment Menie experienced between January 1, 2003 and March 3, 2003. Menie, thus, claims the Commission erred as a matter of law by relying on Adair's testimony to make its decision.


The Court may reverse the Commission if it finds that the Commission's findings, inferences, conclusions, or decisions are affected by an error of law. *See* S.C. Code Ann. § 1-23-380(5) (Supp. 2015). Pursuant to the Administrative Procedures Act which governs hearings before the Commission, "[i]rrelevant, immaterial or unduly repetitious evidence shall be excluded." S.C. Code Ann. § 1-23-330(1) (1976). Upon further review of the record, the Court agrees with Menie that the Commission committed an error by admitting and relying upon Adair's testimony. The Court acknowledges that determinations regarding the relevancy and materiality of evidence generally are left within the sound discretion of the trial court, here the Commission. *See Bankers Trust of S.C. v. Bruce*, 283 S.C. 408, 416-17, 323 S.E.2d 523, 529 (Ct. App. 1984). Here, however, the Commission admitted and relied upon testimony from Adair concerning SAF working conditions nearly nine years after Menie suffered his heart condition. Menie suffered from his heart condition during a time when he had to manually enter "experience modifier" information into SAF's computer system; Adair did not have to manually enter experience modifier information because SAF's system was, by that time, automated. Moreover, Menie worked with SAF when it was using its own unique classification system; Adair worked for SAF after it transitioned to a national model coding system wherein the computer automatically generated necessary information. Adair's testimony was too remote to be relevant or material. *See, e.g., Rutledge v. St. Paul Fire & Marine Ins. Co.*, 286 S.C. 360, 368, 334 S.E.2d 131, 136 (Ct. App. 1985) (where the Court of Appeals upheld the trial court's determination that an appraisal of certain real property prepared three years before it was destroyed by fire was too remote to be admissible as evidence); and *Henderson v. St. Francis*

Community Hosp., 295 S.C. 441, 447–48 369 S.E.2d 652, 656 (Ct. App. 1988), *rev'd on other grounds*, 303 S.C. 177, 399 S.E.2d 767 (1990) (where the Court of Appeals upheld the trial court's determination that testimony concerning the condition of a parking lot approximately a year and a half after the plaintiff was injured in the parking lot was too remote to be admissible as evidence). The Commission expressly relied on Adair's testimony. *See Appellate Panel Decision and Order* at 3 ("A second witness for the Defendant (Mr. Adair) testified he had handled the job by himself and it was not as difficult as his previous jobs."). Accordingly, the Court finds that the Commission committed an error of law by admitting and relying upon Adair's testimony.

Although, however, the Court finds that the Commission committed an error of law by relying on Adair's testimony, this error was harmless. The Court may only reverse the Commission if Menie "has suffered the appropriate degree of prejudice *and* the [C]ommission's decision is affected by an error of law[.]" *Therrell v. Jerry's, Inc.*, 370 S.C. 22, 25, 633 S.E.2d 893, 894–95 (2006) (emphasis added). Accordingly, "an error is not reversible unless prejudice to the complaining party has resulted therefrom." *Sanders v. Wal-Mart Stores, Inc.*, 379 S.C. 554, 562, 666 S.E.2d 297, 301 (Ct. App. 2008). As discussed above, since substantial evidence exists in the record to support the Commission's decision, even when excluding Adair's testimony, Menie has not been prejudiced by the admission of Adair's testimony. In other words, this Court is not relying on Adair's testimony in finding that substantial evidence exists in the record to support the Commission's decision. The Court, thus, finds that the Commission's admission of, and reliance upon, Adair's testimony was harmless. *See, e.g., Eadie v. H.A. Sack Co.*, 322 S.C. 164, 172, 470 S.E.2d 397, 401 (Ct. App. 1996) (where the Court of Appeals found that although the Commission committed an error of law by improperly taking judicial notice of an industry standard, it was harmless and, thus, did not warrant reversal).

For the reasons stated above, the Court hereby **DENIES** Appellant's Motion for a New Trial, to Alter or Amend Judgment, and to Vacate and Remand this matter. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
April 7, 2016