APPELLATE PANEL DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1412824

JOANN TARBRAKE, — EMPLOYEE, CLAIMANT/APPELLANT

vs.

AMERICAN ROLLER COMPANY, — EMPLOYER,

and

ACCIDENT FUND INSURANCE COMPANY OF AMERICA c/o THIRD COAST UNDERWRITERS, — CARRIER, DEFENDANTS/RESPONDENTS,

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Appellate Panel Review held in Columbia, South Carolina, on August 16, 2016, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

November 7, 2016

APPEARANCES: Claimant/Appellant represented by Andrea C. Roche, Esquire, of Mickle & Bass, LLC of Columbia, South Carolina.

Defendants/Respondents represented by Mark A. Allison, Esquire, of McAngus Goudelock and Courie, LLC of Greenville, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Single Commissioner Melody L. James at a hearing on May 13, 2015, in Rock Hill, South Carolina. As a result of that hearing, the Single Commissioner issued an Order filed on May 2, 2016, from which the Claimant/Appellant has appealed.

In the Order filed on May 2, 2016, the following Findings of Fact, Conclusions of Law, and Order were rendered by the Single Commissioner:

FINDINGS OF FACT

1. Claimant alleges injury and/or illness to her lungs with a date of injury of July 7, 2014.

2. In July of 2014, Claimant was employed by American Roller (C.M. Acquisitions, L.L.C.). Claimant had been employed by American Roller in various positions since 1997. The last position Claimant held was in grinding and finishing, and she held that position for eight years. Claimant indicates that there were chemicals used in each of the positions she held. Claimant also reported to one provider that her job duties were performed in a "very hot environment." The undersigned Commissioner finds this evidence pertinent to this claim given subsequent findings of fact. (Defendants' APA #7, p. 100).

3. Claimant had pre-existing hypertension for which she takes medication. (Claimant's APA #1, pp. 1, 5; Defendants' APA #3, p. 65; Defendants' APA #4, pp.74, 77; Defendants' APA #5, pp. 80, 82). As set forth below, it is believed by Claimant's cardiologist that her July 9, 2014 hospitalization was related to a reaction to the change of her high blood pressure medication. Also, Dr. Adlakha, Claimant's expert, does not relate the hospital visit to a pulmonary condition. (Deposition of Dr. Adlakha).

4. Claimant has mild to moderate obstructive sleep apnea for which CPAP therapy and weight management were recommended. (Defendants' APA #5, pp. 87-89).

5. Claimant's father died of COPD, which, according to Claimant's expert, "can run in the family," as can asthma. (Deposition of Dr. Adlakha, p. 15; Defendants' APA #5, p. 80).

6. Claimant is not a smoker, but her wife is a smoker. Claimant told her expert that being around smoke bothers her and is an aggravating factor. Claimant indicated that smoking did not take place in her home.

7. Claimant sought treatment twice in 2007 for "bad" coughing, once "uncontrollably" and once accompanied by a sore throat. (Defendants' APA #4, pp. 69-70).

8. In early 2008, Claimant had a "bad cough" for three weeks. (Defendants' APA #4, p. 72).

9. Later in 2008, Claimant sought treatment for "chest pain," which is noted to be "probable [sic] due to anxiety and depression," for which Cymbalta was prescribed. (Defendants' APA #4, p. 71).

10. In 2010, Claimant sought treatment for a cough and sore throat, such that she reported that for two weeks she "can't breathe well," had shortness of breath, and also reported a nonproductive cough. There is no mention of work, fumes, or chemicals in the medical record. (Defendants' APA #4, p. 73).

11. It is notable that Claimant was fitted for a respirator, and on December 12, 2012, she did not have any problems with breathing or lung function, heart trouble, or blood pressure. (Defendants' APA #1, p. 60). Claimant further noted that she had not been exposed to hazardous solvents or airborne chemicals. (Id. p. 61). Claimant did note that she had been exposed to

asbestos, silica, and tungsten/cobalt, but the dates, location, or description of the exposure was not noted. (Defendants' APA #1, p. 62).

12. In early 2013, Claimant had a three week cough with nasal congestion, wheezing, shortness of breath, and chest pain, for which she was diagnosed with bronchitis. Claimant returned for treatment four days later and was diagnosed with an upper respiratory infection, possibly bacterial. There is no mention of work, fumes, or chemicals in this record (Defendants' APA #4, pp. 74-75).

13. In late 2013, Claimant sought treatment for shortness of breath and chest pain, as well as numbness in her arms and hands. Claimant was diagnosed with an acute upper respiratory infection, and reported at this visit that she had "shortness of breath since was sick a year ago with upper respiratory infection/bronchitis." There is no mention of work, fumes, or chemicals, whether as a causative factor or otherwise by Claimant or the physician. Claimant reported that she is taking Claritin for allergies. Claimant also complained of neck pain with bilateral numbness and tingling in her hands that "happens more at night." (Defendants' APA #4, pp. 76-78 (November 21, 2013)).

14. Due to Claimant's chest pain and abnormal stress test, Claimant was referred to a cardiologist. (Defendants' APA #5, p. 80).

15. At the December 11, 2013 visit, the cardiologist reported that Claimant's "symptoms seem to be made worse with exertion." There is no mention of an increase in symptoms at work with exposure to chemicals or other work products.

16. The December 11, 2013 cardiologist record notes "abnormal myocardial perfusion imaging" and the option of coronary CT versus cardiac catheterization was discussed.

Claimant elected for the latter, and the procedure was scheduled for December 19, 2013. (Defendants' APA #5, p. 81).

17. At the follow-up visit on July 2, 2014, the cardiologist's record indicated that Claimant had "abnormal myocardial perfusion imaging." He also noted that on occasion, Claimant's blood pressure had gotten out of control and that she had "underlying diastolic dysfunction." Also, he noted that her lungs were "clear to auscultation bilaterally." Claimant's cardiologist wrote that he suspected that Claimant's "symptoms of dyspnea and intermittent hypertension are related to her underlying diastolic dysfunction." Because of Claimant's elevated blood pressure, the cardiologist increased her Lisinopril to 20 mg. and added 12.5 mg of HCTZ, and also ordered a sleep test because of Claimant's "daytime somnolence and nonrestorative sleep." (Defendants' APA #5, p. 82).

18. In none of Claimant's myriad cardiology records entered into evidence is there any mention of fumes, chemicals, or work. In fact, Claimant reported that her "symptoms seem to be made worse with exertion" (i.e., not fumes/chemicals), and that she has "dyspnea now with mild to moderate levels of exertion which is new for her." Claimant also reported "frequent [heart] palpitations" and chest tightness with a "random onset." There is no statement to the effect that Claimant's symptoms are worse while she is at work. (Defendants' APA #5, p. 80).

19. Claimant was transported to the hospital on July 9, 2014 via EMS. She was not working on that date, but was in the shower preparing for a return doctor appointment. Claimant's chief complaints were shortness of breath. (Claimant's APA #1, p. 1).

20. On the date of the July 9, 2014 hospitalization, Claimant reported trouble with breathing and tingling and cramping hands, the onset of which was July 9, 2014. EMS records state that Claimant (the historian) attributed her symptoms of "trouble breathing, hands tingling

& cramping" to beginning her new hypertension medication (Lisinopril-HCTZ) "last Wednesday and has not felt well since beginning the new medication." (Claimant's APA # 1, p. 3). At the hospital, Claimant similarly told Dr. Warden that she "started taking Lisinopril 7 days ago and has not felt good since." (*Id.* at p. 4).

21. Claimant also reported several months of intermittent chest pressure, shortness of breath, and palpitations, with "symptoms worse over the past [one] week since change in [blood pressure] medication with the most intense episode [occurring that] morning." Claimant had "no cough" and "no appreciable wheezes, rales, or rhonchi." The symptoms were reported to have lasted one hour. Claimant had already scheduled an appointment with her cardiologist to discuss the medication. (Claimant's APA # 1, p. 5).

22. Claimant indicated that symptoms of intermittent chest pressure, shortness of breath, and palpitations had been ongoing for "several months." (Claimant's APA #1, p.5). Based upon this evidence, along with the other evidence noted herein, Claimant's contention that she has had problems for up to two years attributable to workplace exposure is not persuasive. (*Id.* at pp. 2-5).

23. On July 16, 2014, Claimant's cardiologist refers to the July 9, 2014 hospital event as the result of a "fairly severe reaction" to the new blood pressure medication prescribed for her at the early July visit. At this mid-July 2014 visit, Claimant reported that she had "no further chest pain," but that she does not have occasional dizziness. Claimant has a muscle bridge in the left anterior descending with some systolic compression. Claimant presented with chest pain and dizziness at this July 16, 2014 visit. There is no mention of fumes, chemicals, or work as a causative factor or even a possible causative factor. (Defendants' APA #6, p.84).

24. Dr. Graham, a cardiologist, noted that he added HCTZ to Claimant's medication regimen, and that she became "hypokalemic" to the medication. Dr. Graham stated that her potassium was replaced. Also, Dr. Graham indicated that she does have a muscle bridge in the left anterior descending with some systolic compression. Claimant reported to Dr. Graham that she had no further chest pain.

25. On July 25, 2014, Dr. Shah, a cardiologist, found Claimant's respiratory system "normal" and unlabored. However, he found that Claimant had "a lot of headaches" and could not take the Imdur, which had been stopped. Claimant reported that she was not feeling very well, and she could not tolerate the heat or the cold. (Defendants' APA #6, p. 91).

26. Dr. Shah completed disability paperwork on July 17, 2014, with the diagnosis of "chest pains" and elevated troponin levels. (As to whether the condition was "due to injury/sickness arising out of patient's employment," this cardiologist checked "no." Claimant's only exposure restriction prohibited exposure to heat, a cardiac restriction which would alone take Claimant out of work, as her job is performed in a "very hot" environment. (Defendants' APA #6, pp. 92-93; Defendants' APA #7, p. 100).

27. Claimant's chest CT conducted on August 4, 2014 showed moderately extensive left upper lobe fibronodular changes of most concern for pneumonitis. A pulmonary appointment was recommended. (Defendants' APA #6, pp. 96-97).

28. Claimant was seen by Dr. Adlakha for the first time on August 20, 2014. The record notes that Claimant reported the "onset of symptoms was 2 months ago," and that recently the dyspnea was severe with episodes occurring daily.

29. The very first time Claimant attributed work to her symptoms was at the August 20, 2014 visit with Dr. Adlakha, after the date that the disability application had been submitted

in July. Although Claimant alleges that her breathing problems began in 2012 or 2013, not a single prior treatment record—until Claimant's cardiac condition caused her to go out on disability—mentions chemicals in the workplace. (Claimant's APA #2, pp. 15-17).

30. A function test was performed on August 20, 2014. The test notes dyspnea o, and under "interpretation" noted "mild restriction," and that "[r]eproducibility criteria not met so interpretation may not be valid." (Claimant's APA #2, p. 21).

31. Subsequently, a pulmonary function analysis was performed on August 28, 2014. The test notes dyspnea exercise: yes. In the section marked lung volumes, it is handwritten that "could not calibrate." The meaning of the note was not addressed. (Claimant's APA #2, p. 34).

32. Claimant never reported to her work that she believed that she was having symptoms that she related to her work, until the Monday before and the after her hospitalization on July 9, 2014. (Hearing Transcript pp. 21-22, 32).

33. At a follow-up cardiology visit with Dr. Graham on September 3, 2014, Claimant reported that she had had "no further chest pain or shortness of breath or palpitations." Dr. Graham found that her blood pressure was under "good control." I accord this evidence great weight. (Defendants' APA #5, p. 89).

34. By contrast, on September 19, 2014, Claimant presented to her expert with disability paperwork. Claimant reported "fatigue," a "sore throat," and "dizziness." Claimant also had shortness of breath with "intense exercise" and stress/anxiety. (Claimant's APA #2, pp. 38-40).

35. On September 26, 2014, a CT of Claimant's chest noted the resolution of the previously noted patchy opacities within the left upper lobe. (Defendants' APA #6, p. 99).

36. On October 3, 2014, Dr. Adlakha noted the resolution of the left lung infiltrate. (Claimant's APA #2, p. 45).

37. None of the treatment records of Dr. Adlakha reference the names of any chemicals that Claimant is exposed; (b) Dr. Adlakha does not refer to any specific chemical or chemicals at his deposition, but instead merely refers to "chemicals at her place of employment" as reported by Claimant; (c) Dr. Adlakha admits that he had no information about what chemicals Claimant worked with, other than Claimant telling him that she worked with chemicals; (d) he admits he never received any written materials regarding chemicals in the workplace, or other materials from Claimant or anyone on her behalf; (e) Claimant cannot identify any particular chemical as problematic. (Claimant's APA #2 in its entirety; Deposition of Dr. Adlakha).

38. I considered the fact that Dr. Adlakha issued a causation opinion (based upon "obviously by [Claimant's] history"), which he ultimately affirmed at his deposition, but I find the opinion too flawed to give it any weight for the reasons set forth herein. I instead give greater weight to the records of the cardiologists and EMS. I also find the following:

a) Dr. Adlakha never identified a particular trigger or irritant that he believes is responsible for either the cause or an aggravation of Claimant's chronic obstructive asthma; he simply says it is the "overall environment" based upon Claimant's "symptoms, obviously by history;" and again that he is "going by her history;" therefore, Dr. Adlakha's opinion is completely based upon Claimant's subjective statements to his physician;

b) Dr. Adlakha admits that he did not review any other records or materials, including MSDS sheets or the records from Claimant's family doctor or her cardiologists;

c) At Claimant's first visit on August 20, 2014, Dr. Adlakha's diagnosis was chronic obstructive asthma, "possibly" work-related because Claimant said it got worse at work. However, Claimant told her cardiologist that her problems were not worse at work, but worse with exertion; and EMS records from the July 2014 hospitalization state that Claimant was bathing at home when her symptoms started;

d) Dr. Adlakha admits that he is not sure what caused one of Claimant's lung issues by stating, "we don't know"; it cleared up eventually either spontaneously or with Diflucan or prednisone;

e) Claimant's chest CT showed resolution of previously noted patchy opacities within the left upper lobe;

f) Dr. Adlakha diagnosed a "probable infection, probably pneumonia" which can occur from home environment and naturally occurring airborne allergens as well as from a workplace exposure according to his testimony;

g) Dr. Adlakha admits he does not know if it is chronic exposure to a general work environment over fifteen or so years or exposure to a specific agent or irritant; however, no pre-August 2014 medical records document any workplace irritant, chemical, or complaints;

h) Dr. Adlakha admits that Claimant's bronchoscopy revealed a "nonspecific biopsy" that could be mold or fungus or yeast related; Claimant's bronchoscopy showed "no apparent cause noted for the infiltrates," it was "inconclusive" except for growth of yeast. (Claimant's APA #2, pp. 29, 41).

i) By the October 3, 2014 visit, the CT changes had resolved; and

j) Dr. Adlakha's opinion of the relationship of asthma is based on the subjective reporting by Claimant of her history and the temporal relationship to work, which is not consistent with the remaining record.

39. Dr. Adlakha's answers to questions asked during the direct portion of his deposition included equivocal answers; when asked about the causation, he indicated that he would "suspect" that the asthma was caused or aggravated by her exposure to chemicals, and that he would "suspect that it was work-related." (Deposition of Dr. Adlakha, pp. 17-18).

40. Dr. Adlakha reported in his deposition that on the September 19, 2014 visit, he filled out Claimant's disability forms "as she stated she is unable to work in that current environment." (Deposition of Dr. Adlakha, p. 22). Claimant had never attempted to return to work after her unrelated hospitalization on July 9, 2014.

41. According to her testimony, Claimant had never made any complaints about the chemicals at her workplace causing a problem, until the Monday before her hospitalization, when she said she was feeling bad and needed to go home, and the week after the hospitalization. (Hearing Transcript pp. 21-22, 32). Claimant's testimony of notice of a work relationship cannot be reconciled with the hospital records, cardiologists' records, or the initial disability paperwork, as there is no mention by Claimant of her belief that chemicals were the cause of her problem. Claimant's records of care at the hospital and records upon return to her cardiologist note that her problems occurred as a result of the medication reaction. At that time, Claimant had not indicated to a provider, and no provider indicated to her, that her problems for the hospital visit were related. The disability paperwork filled out as a result indicates that she is out for a cardiac issue.

42. Claimant submitted MSDS information to the Commission at the hearing. Claimant testified at the hearing of chemicals that she was exposed to at work; the position she was working with each chemical was not identified, so the timing of the exposure was not addressed in relation to which job she was performing, and whether it was the current position, or one of the past. (Over the years, Claimant had transferred positions in the company.) Claimant also indicated that right before she left, a new chemical had just been brought into the plant, but she was not able to remember the name of the new chemical. Of greater importance is the fact that Dr. Adlakha has never seen the materials and does not know what chemicals Claimant has been exposed to or at what times. (Deposition of Dr. Adlakha, pp. 8, 14; Claimant's APA, Exhibit A). Dr. Adlakha states in his deposition that some of the occupational agents can have a short latency period and then there are various ones which can have long latency periods. (Deposition of Dr. Adlakha, p. 12).

43. Contrary to Claimant indicating that the exposure to chemicals at work causes her symptoms to be worse, Claimant testified at the hearing that there was not a particular chemical or material that she knew would cause her problems at work. She also answered that the new chemical that was introduced to the process was not causing her any worse problems, and that there was really no effect to the introduction of the new chemical in terms of how it affected her. (Hearing Transcript pp.28-29).

44. Claimant also inconsistently told cardiologists that her problems come on randomly and get worse with exertion—not because of exposure at work. (Deposition of Dr. Adlakha, p. 17; Claimant's APA #1, p.4; Defendants' APA #5, p. 80). By late September 2014, Claimant had "complete resolution of the left lung infiltrate." Claimant also presented with a

sore throat, but was not working. (Claimant's APA #2, pp. 45, 47, 50; Defendants' APA #6, p.99).

45. Because Dr. Adlakha's opinions are based upon Claimant's statements to him of the temporal relationship and her subjective reporting of the symptoms (noted throughout the deposition of Dr. Adlakha, including on page 15), his opinion is given no weight, as Claimant's testimony of her condition is not consistent with the reporting records in this matter. According to Dr. Adlakha's deposition, he did not review any of the prior records; this would include the cardiology and the family physician records (Deposition of Dr. Adlakha p. 15).

46. As indicated above, Claimant's testimony is not credible or consistent with the remainder of the record discussed above. Claimant cannot be considered to be a reliable historian in order or provide the basis of the opinion of the causal relationship admittedly based on her reporting.

47. Finally, this was not an injury by accident, as there was not a large one time release of gases, or other traumatic event. It is an exposure case based on repeated exposure, and therefore must meet the requirements in S.C. Code Section 42-11-10 for an "occupational disease." Claimant has proven that she has a disease; however, she has not met her burden with regard to its arising out of and in the course of employment.

CONCLUSIONS OF LAW

Accordingly, as provided in South Carolina Code Annotated § 42-17-40, and pursuant to other applicable law, it is the determination of the undersigned Commissioner that pursuant to South Carolina Code Annotated § 42-1-160 and § 42-11-10, Claimant failed to prove she sustained a compensable injury or occupational disease arising out of and in the course of her

employment with American Roller. Therefore, she is not entitled to any benefits, whatsoever, under the South Carolina Workers' Compensation Act.

ORDER

IT IS HEREBY ORDERED that the greater weight of the evidence does not support a finding that Claimant is entitled to compensation or any other benefits under the South Carolina Workers' Compensation Act as a result of her employment with American Roller, and Claimant's request is therefore DENIED.

Defendants shall not be responsible for making any payments in any form or fashion for Workers' Compensation benefits.

AND IT IS SO ORDERED.

Within the statutory period, Claimant filed an Application for Review in this case setting forth her assignments of alleged errors. Copies of the Application for Review were properly served upon all parties.

In her Form 30, Request for Commission Review, Claimant asserts seven errors, as follows:

1. Did the Single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law that the claimant failed to prove a compensable injury arising out of and in the course and scope of employment, when such finding was against the greater weight of the evidence and/or contrary to South Carolina law?
2. Did the Single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law that the claimant failed to prove an occupational disease arising out of and in the course and scope of employment, when such finding was against the

greater weight of the evidence and/or contrary to South Carolina law?

3. Did the Single Commissioner err in failing to find as an issue of fact, and/or concluding as a matter of law that the claimant proved a compensable injury arising out of and in the course and scope of employment, when such finding was against the greater weight of the evidence and/or contrary to South Carolina law?
4. Did the Single Commissioner err in failing to find as an issue of fact, and/or concluding as a matter of law that the claimant proved a compensable occupational disease arising out of and in the course and scope of employment, when such finding was against the greater weight of the evidence and/or contrary to South Carolina law?
5. Did the Single Commissioner err in denying this claim in its entirety based on a failure to prove the claimant's problems arose out of and were in the course and scope of employment when such a finding was against the greater weight of the evidence and/or contrary to South Carolina law?
6. Did the Single Commissioner err by giving the opinion of Dr. Adlakah no weight where such finding was against the greater weight of the evidence and/or contrary to South Carolina law?
7. All Findings of Fact, Conclusions of Law, and the remainder of the order are herein appealed if any could be construed as supporting the decision of the Single Commissioner that this case is not compensable under the South Carolina Workers' Compensation Act.

Pursuant to the S.C. Code of Laws Ann. §42-17-50, we, the Appellant Panel, have reviewed the Single Commissioner's Decision and Order and weighed the evidence as presented

at the initial hearing. We have also considered all issues raised in the briefs of Claimant/Appellant and Defendants/Respondents, as well as arguments held before this Appellant Panel on August 16, 2016.

After careful review, we hereby affirm the Single Commissioner's Decision and Order with Amendments. Accordingly, we, the Appellate Panel, adopt and issue the following amended Findings of Fact, Conclusions of Law, and Order as our own:

FINDINGS OF FACT

1. Claimant alleges injury and/or illness to her lungs with a date of injury of July 7, 2014.

2. In July of 2014, Claimant was employed by American Roller (C.M. Acquisitions, L.L.C.). Claimant had been employed by American Roller in various positions since 1997. The last position Claimant held was in grinding and finishing, and she held that position for eight years. Claimant indicates that there were chemicals used in each of the positions she held. Claimant also reported to one provider that her job duties were performed in a "very hot environment." We find this evidence pertinent to this claim given subsequent findings of fact. (Defendants' APA #7, p. 100).

3. Claimant had pre-existing hypertension for which she takes medication. (Claimant's APA #1, pp. 1, 5; Defendants' APA #3, p. 65; Defendants' APA #4, pp.74, 77; Defendants' APA #5, pp. 80, 82). As set forth below, it is believed by Claimant's cardiologist that her July 9, 2014 hospitalization was related to a reaction to the change of her high blood pressure medication. Also, Dr. Adlakha, Claimant's expert, does not relate the hospital visit to a pulmonary condition. (Deposition of Dr. Adlakha).

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22. Claimant indicated that symptoms of intermittent chest pressure, shortness of breath, and palpitations had been ongoing for "several months." (Claimant's APA #1, p.5). Based upon this evidence, along with the other evidence noted herein, Claimant's contention that she has had problems for up to two years attributable to workplace exposure is not persuasive. (*Id.* at pp. 2-5).

23. On July 16, 2014, Claimant's cardiologist refers to the July 9, 2014 hospital event as the result of a "fairly severe reaction" to the new blood pressure medication prescribed for her at the early July visit. At this mid-July 2014 visit, Claimant reported that she had "no further chest pain," but that she does not have occasional dizziness. Claimant has a muscle bridge in the left anterior descending with some systolic compression. Claimant presented with chest pain and dizziness at this July 16, 2014 visit. There is no mention of fumes, chemicals, or work as a causative factor or even a possible causative factor. (Defendants' APA #6, p.84).

24. Dr. Graham, a cardiologist, noted that he added HCTZ to Claimant's medication regimen, and that she became "hypokalemic" to the medication. Dr. Graham stated that her potassium was replaced. Also, Dr. Graham indicated that she does have a muscle bridge in the left anterior descending with some systolic compression. Claimant reported to Dr. Graham that she had no further chest pain.

25. On July 25, 2014, Dr. Shah, a cardiologist, found Claimant's respiratory system "normal" and unlabored. However, he found that Claimant had "a lot of headaches" and could not take the Imdur, which had been stopped. Claimant reported that she was not feeling very well, and she could not tolerate the heat or the cold. (Defendants' APA #6, p. 91).

26. Dr. Shah completed disability paperwork on July 17, 2014, with the diagnosis of "chest pains" and elevated troponin levels. (As to whether the condition was "due to injury/sickness arising out of patient's employment," this cardiologist checked "no." Claimant's only exposure restriction prohibited exposure to heat, a cardiac restriction which would alone take Claimant out of work, as her job is performed in a "very hot" environment. (Defendants' APA #6, pp. 92-93; Defendants' APA #7, p. 100).

27. Claimant's chest CT conducted on August 4, 2014 showed moderately extensive left upper lobe fibronodular changes of most concern for pneumonitis. A pulmonary appointment was recommended. (Defendants' APA #6, pp. 96-97).

28. Claimant was seen by Dr. Adlakha for the first time on August 20, 2014. The record notes that Claimant reported the "onset of symptoms was 2 months ago," and that recently the dyspnea was severe with episodes occurring daily.

29. The very first time Claimant attributed work to her symptoms was at the August 20, 2014 visit with Dr. Adlakha, after the date that the disability application had been submitted

in July. Although Claimant alleges that her breathing problems began in 2012 or 2013, not a single prior treatment record—until Claimant's cardiac condition caused her to go out on disability—mentions chemicals in the workplace. (Claimant's APA #2, pp. 15-17).

30. A function test was performed on August 20, 2014. The test notes dyspnea o, and under "interpretation" noted "mild restriction," and that "[r]eproducibility criteria not met so interpretation may not be valid." (Claimant's APA #2, p. 21).

31. Subsequently, a pulmonary function analysis was performed on August 28, 2014. The test notes dyspnea exercise: yes. In the section marked lung volumes, it is handwritten that "could not calibrate." The meaning of the note was not addressed. (Claimant's APA #2, p. 34).

32. Claimant never reported to her work that she believed that she was having symptoms that she related to her work, until the Monday before and the after her hospitalization on July 9, 2014. (Hearing Transcript pp. 21-22, 32).

33. At a follow-up cardiology visit with Dr. Graham on September 3, 2014, Claimant reported that she had had "no further chest pain or shortness of breath or palpitations." Dr. Graham found that her blood pressure was under "good control." We accord this evidence great weight. (Defendants' APA #5, p. 89).

34. By contrast, on September 19, 2014, Claimant presented to her expert with disability paperwork. Claimant reported "fatigue," a "sore throat," and "dizziness." Claimant also had shortness of breath with "intense exercise" and stress/anxiety. (Claimant's APA #2, pp. 38-40).

35. On September 26, 2014, a CT of Claimant's chest noted the resolution of the previously noted patchy opacities within the left upper lobe. (Defendants' APA #6, p. 99).

36. Dr. Adlakha admits that he did not review any other records or materials (including the claimant's family doctor or her cardiologist) with the exception of the MSDS sheet. (Deposition of Dr. Adlakha, p. 14, ll. 10-18).

37. None of the treatment records of Dr. Adlakha reference the names of any chemicals that Claimant is exposed; (b) Dr. Adlakha does not refer to any specific chemical or chemicals at his deposition, but instead merely refers to "chemicals at her place of employment" as reported by Claimant; (c) Dr. Adlakha admits that he had no information about what chemicals Claimant worked with, other than Claimant telling him that she worked with chemicals; (d) he admits he never received any written materials regarding chemicals in the workplace, or other materials from Claimant or anyone on her behalf; (e) Claimant cannot identify any particular chemical as problematic. (Claimant's APA #2 in its entirety; Deposition of Dr. Adlakha).

38. We considered the fact that Dr. Adlakha issued a causation opinion (based upon "obviously by [Claimant's] history"), which he ultimately affirmed at his deposition, but we find the opinion too flawed to give it any weight for the reasons set forth herein. We instead give greater weight to the records of the cardiologists and EMS. We also find the following:

k) Dr. Adlakha never identified a particular trigger or irritant that he believes is responsible for either the cause or an aggravation of Claimant's chronic obstructive asthma; he simply says it is the "overall environment" based upon Claimant's "symptoms, obviously by history;" and again that he is "going by her history;" therefore, Dr. Adlakha's opinion is completely based upon Claimant's subjective statements to his physician;

l) Dr. Adlakha admits that he did not review any other records or materials, including MSDS sheets or the records from Claimant's family doctor or her cardiologists;

m) At Claimant's first visit on August 20, 2014, Dr. Adlakha's diagnosis was chronic obstructive asthma, "possibly" work-related because Claimant said it got worse at work. However, Claimant told her cardiologist that her problems were not worse at work, but worse with exertion; and EMS records from the July 2014 hospitalization state that Claimant was bathing at home when her symptoms started;

n) Dr. Adlakha admits that he is not sure what caused one of Claimant's lung issues by stating, "we don't know"; it cleared up eventually either spontaneously or with Diflucan or prednisone;

o) Claimant's chest CT showed resolution of previously noted patchy opacities within the left upper lobe;

p) Dr. Adlakha diagnosed a "probable infection, probably pneumonia" which can occur from home environment and naturally occurring airborne allergens as well as from a workplace exposure according to his testimony;

q) Dr. Adlakha admits he does not know if it is chronic exposure to a general work environment over fifteen or so years or exposure to a specific agent or irritant; however, no pre-August 2014 medical records document any workplace irritant, chemical, or complaints;

r) Dr. Adlakha admits that Claimant's bronchoscopy revealed a "nonspecific biopsy" that could be mold or fungus or yeast related; Claimant's bronchoscopy showed "no apparent cause noted for the infiltrates," it was "inconclusive" except for growth of yeast. (Claimant's APA #2, pp. 29, 41).

s) By the October 3, 2014 visit, the CT changes had resolved; and

t) Dr. Adlakha's opinion of the relationship of asthma is based on the subjective reporting by Claimant of her history and the temporal relationship to work, which is not consistent with the remaining record.

39. Dr. Adlakha's answers to questions asked during the direct portion of his deposition included equivocal answers; when asked about the causation, he indicated that he would "suspect" that the asthma was caused or aggravated by her exposure to chemicals, and that he would "suspect that it was work-related." (Deposition of Dr. Adlakha, pp. 17-18).

40. Dr. Adlakha reported in his deposition that on the September 19, 2014 visit, he filled out Claimant's disability forms "as she stated she is unable to work in that current environment." (Deposition of Dr. Adlakha, p. 22). Claimant had never attempted to return to work after her unrelated hospitalization on July 9, 2014.

41. According to her testimony, Claimant had never made any complaints about the chemicals at her workplace causing a problem, until the Monday before her hospitalization, when she said she was feeling bad and needed to go home, and the week after the hospitalization. (Hearing Transcript pp. 21-22, 32). Claimant's testimony of notice of a work relationship cannot be reconciled with the hospital records, cardiologists' records, or the initial disability paperwork, as there is no mention by Claimant of her belief that chemicals were the cause of her problem. Claimant's records of care at the hospital and records upon return to her cardiologist note that her problems occurred as a result of the medication reaction. At that time, Claimant had not indicated to a provider, and no provider indicated to her, that her problems for the hospital visit were related. The disability paperwork filled out as a result indicates that she is out for a cardiac issue.

42. Claimant submitted MSDS information to the Commission at the hearing. Claimant testified at the hearing of chemicals that she was exposed to at work; the position she was working with each chemical was not identified, so the timing of the exposure was not addressed in relation to which job she was performing, and whether it was the current position, or one of the past. (Over the years, Claimant had transferred positions in the company.) Claimant also indicated that right before she left, a new chemical had just been brought into the plant, but she was not able to remember the name of the new chemical. Of greater importance is the fact that Dr. Adlakha has never seen the materials and does not know what chemicals Claimant has been exposed to or at what times. (Deposition of Dr. Adlakha, pp. 8, 14; Claimant's APA, Exhibit A). Dr. Adlakha states in his deposition that some of the occupational agents can have a short latency period and then there are various ones which can have long latency periods. (Deposition of Dr. Adlakha, p. 12).

43. Contrary to Claimant indicating that the exposure to chemicals at work causes her symptoms to be worse, Claimant testified at the hearing that there was not a particular chemical or material that she knew would cause her problems at work. She also answered that the new chemical that was introduced to the process was not causing her any worse problems, and that there was really no effect to the introduction of the new chemical in terms of how it affected her. (Hearing Transcript pp.28-29).

44. Claimant also inconsistently told cardiologists that her problems come on randomly and get worse with exertion—not because of exposure at work. (Deposition of Dr. Adlakha, p. 17; Claimant's APA #1, p.4; Defendants' APA #5, p. 80). By late September 2014, Claimant had "complete resolution of the left lung infiltrate." Claimant also presented with a

sore throat, but was not working. (Claimant's APA #2, pp. 45, 47, 50; Defendants' APA #6, p.99).

45. Because Dr. Adlakha's opinions are based upon Claimant's statements to him of the temporal relationship and her subjective reporting of the symptoms (noted throughout the deposition of Dr. Adlakha, including on page 15), his opinion cannot be relied upon, as Claimant's testimony of her condition is not consistent with the reporting records in this matter. According to Dr. Adlakha's deposition, he did not review any of the prior records; this would include the cardiology and the family physician records (Deposition of Dr. Adlakha p. 15).

46. As indicated above, Claimant's testimony is not credible or consistent with the remainder of the record discussed above. Claimant cannot be considered to be a reliable historian in order or provide the basis of the opinion of the causal relationship admittedly based on her reporting.

47. Finally, this was not an injury by accident, as there was not a large one time release of gases, or other traumatic event. It is an exposure case based on repeated exposure, and therefore must meet the requirements in S.C. Code Section 42-11-10 for an "occupational disease." Claimant has proven that she has a disease; however, she has not met her burden with regard to its arising out of and in the course of employment.

CONCLUSIONS OF LAW

Accordingly, as provided in South Carolina Code Annotated § 42-17-40, and pursuant to other applicable law, it is the determination of we, the Appellate Panel, that pursuant to South Carolina Code Annotated § 42-1-160 and § 42-11-10, Claimant failed to prove she sustained a compensable injury or occupational disease arising out of and in the course of her employment

with American Roller. Therefore, she is not entitled to any benefits, whatsoever, under the South Carolina Workers' Compensation Act.

ORDER

IT IS HEREBY ORDERED that the greater weight of the evidence does not support a finding that Claimant is entitled to compensation or any other benefits under the South Carolina Workers' Compensation Act as a result of her employment with American Roller, and Claimant's request is therefore DENIED.

Defendants shall not be responsible for making any payments in any form or fashion for Workers' Compensation benefits.

AND IT IS SO ORDERED.

Commissioner Gene McCaskill
For the Appellate Panel

WE CONCUR:

Commissioner T. Scott Beck

Commissioner Aisha Taylor

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 November 7, 2016