

APPELLATE PANEL  
DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NO. 1408826

Gennette Sowell,

EMPLOYEE,  
CLAIMANT/RESPONDENT,

v.

Piggly Wiggly,

RECEIVED

EMPLOYER,

AND

NOV 20 2017

Auto Owners Insurance, Inc.,

SC Court of Appeals

CARRIER,  
DEFENDANTS/APPELLANTS.

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Appellate Panel Review held in Columbia,  
South Carolina on August 22, 2017 per  
notices timely and properly served on all  
parties of interest

Appellate Panel Decision and Order filed

October 17, 2017.

APPEARANCES:

Claimant/Respondent represented by Preston F.  
McDaniel, Esquire of Columbia, South  
Carolina.

Defendants/Appellants represented by Christian  
Bell, Attorney of Columbia, South Carolina.

This matter came before the Hearing Commissioner for hearing on the basis of Claimant's Form 50 Request for Hearing with hearings held on June 22, 2016 and July 21, 2016. The Commissioner issued her Decision on May 16, 2017 in which the Hearing Commissioner made the following Findings of Fact, Conclusions of Law, and entered the following Award:

**FINDINGS OF FACT**

1. The Claimant has pled an injury by accident, repetitive injury, and/or an occupational disease due to exposure to chemicals and other inhaled properties at work.

2. There is no indication in the Record that there was an acute incident although there was a period of repeated severe levels of exposure as setout below.

3. The Claimant has met her burden of proof that she incurred a repetitive injury that arose out of and within the course and scope of her employment.

4. The Claimant was ultimately diagnosed with work related asthma/occupational asthma.

5. The Claimant was exposed to a number of chemicals over a course of time when the drains in the deli would back up. This was ultimately determined to be due to a pipe being broken and stopping up. After this problem occurred repeatedly overnight, and at other times throughout the day, the Claimant and her co-workers would come into the deli in the morning to standing

water. The co-worker(s) would then clean up the sewage water and put various chemicals into the drains to try and unclog them.

(This is pursuant to all testimony, including the store manager (Ms. Quick), the Claimant, and a fellow employee whose duties included maintenance (Mr. Harrington), who put many of the chemicals in the drains.) (while there is disagreement as to the amount of waste water involved, the record is clear that there was a substantial amount of standing waste water.)

6. The conditions of the drains were evaluated repeatedly by plumbers, who would snake the drain. The date of the final discovery of the cause of the backup is not in the Record, but the store manager (Ms. Quick) believed that it might have been fixed permanently sometime in 2012. (July Transcript at 33)

7. During the time of the continual back-up of the drains and attempts to clear it with chemicals, the Claimant went to the hospital on June 11, 2011, and was admitted. The diagnosis was bronchitis. (C93)

8. After her hospitalization, the Claimant saw Dr. Vaughn for a couple of visits, and then became a patient of Dr. Hammett.

9. Throughout the course of Dr. Hammett's records as set out in the Statement of the Case and below her diagnosis varied. On December 6, 2011, she states that the Claimant has acute chronic bronchitis. (C70) See also Findings below 10-.

10. The Claimant was sent to the hospital on December 22,

2011 by Dr. Hammett and during her admission there, a chemical exposure was mentioned with the hospital notes indicating that there was an asthma exacerbation, likely secondary to exposure to chemicals. (C175). December 22, 2011 is also the first mention of a diagnosis of asthma. Status Asthmaticus (c68) and Acute Asthma Exacerbation (C175).

11. Even though the chemicals are mentioned as a likely cause of exacerbation by the hospital, Dr. Hammett seemed to still be exploring what was the Claimant's diagnosis and what was the cause of the condition. Within a few days of her release from the hospital (December 27, 2011), her records state that she carries a diagnosis of asthma, "but may actually have sarcoidosis which is in the differential.". (C64; D258). She indicated that there was a pulmonary referral.

12. On February 14, 2012, Dr. Hammett's records still have a diagnosis of "rhinitis and asthma versus sarcoidosis." (C53; D263)

13. On March 6, 2012, the Claimant sees Dr. Dyce for her allergies for the first time. (C203). There is no mention of a work relationship in that record.

14. Later, Dr. Hammett's records indicate chronic bronchitis on August 8, 2012 (C43), and COPD exacerbation on September 9, 2012. (C40)

15. The Claimant presents again to the hospital on November

12, 2012, and indicates to the provider that she thinks that at work there may be a cleaning compound which she does not handle directly but which may aggravate her, and that she also thinks there may be some aggravation as does her physician from the fumes of cooking. (D233). She does indicate that she is bothered greatly by the fumes at work.

16. However, the records of Dr. Hammett still do not appear to contain a consistent diagnosis or definitive cause. On November 19, 2012, Dr. Hammett's records contain a diagnosis of COPD. (C32).

17. For the first time she sees a specialist, Dr. Dayrit (Center for Lung and Sleep Medicine) on December 19, 2012. (D306). He notes that she has worked in the same deli for twelve (12) years and she has had breathing problems for about two years with no similar symptoms prior to her current problem. Since developing her breathing problems she has had, "frequent diagnosis of bronchitis." She has never had asthma or allergies in the past prior to this problem and without any significant exposures to smoke or animals at home but then does mention the chemicals at work. (D304). A differential diagnosis between hypersensitivity pneumonia and occupational asthma is mentioned in his records, but he indicates that he favors the hypersensitivity pneumonia and it "appears" that she has sensitivity to some chemicals at work. He also states that he

does not know what she was exposed to or for how long. (D306).

18. On January 3, 2013, Dr. Dayrit's notes indicate that the Claimant is on steroids and had returned to work and has not had any exacerbations of her symptoms since returning to work. (D309). In his last visit on February 23, 2013 before closing his office he notes she was having problems again and had been off steroids for about two weeks. As part of the history he recorded that "at home" she had no pets or any issues with water leaks, or fungus, or other such infestations. His ending diagnosis was asthma. (D318).

19. On March 19, 2013, Dr. Hammett states that she has a history of chronic asthma exacerbation that was determined to be work related and it was suggested that she remove herself from the job, which she has not done yet. (C29; D268). It is unclear where the diagnosis in this statement is generated from. She is not stating that it is her diagnosis and as indicated above, her diagnosis had varied. Her subsequent notes actually including her hand written note of March 19<sup>th</sup> and through and including her note of January 9, 2014 has a diagnosis of asthma, unspecified type. (C6)). As discussed above, Dr. Dayrit listed this as a differential diagnosis, and stated that he did not know what chemicals she was exposed to and for how long which December 19, 2012 had been sent to Dr. Hammett. (D304). As noted in her handwritten note recorded at the time of her visit with Ms.

Sowell on March 19<sup>th</sup> do not mention this and records only a diagnosis of asthma. It is also noted that the typed report was only dictated on March 25<sup>th</sup> (C29) and that all of Dr. Dayrit's records (36 pages) were faxed to someone on March 20<sup>th</sup>. (D304-319).

20. Also, the Claimant's testimony is consistent with the variances in the diagnosis and that the doctors were still trying to figure out what was wrong with the Claimant:

21. The Claimant testified that Dr. Dayrit closed his practice in March. The difference between Dr. Hammett's handwritten note and her typed note supports the Claimant's testimony. (June Transcript at 50).

22. The Claimant was eventually referred to Dr. deDios (pulmonologist). The first visit appears to occur on May 22, 2013. (D269). (A questionnaire of Dr. deDios indicates the date as April 8, 2013 (C169); the May 22, 2013 note indicates it she is a "new consult." (D269) Whether the first visit is in April or May of 2013 is not critical in this determination.) The first note states that he thinks Claimant has "asthma unspecified", and that the patient likely has adult onset asthma for which she is very symptomatic. (D271).

23. The Claimant testified that she was advised in November of 2013 by her doctor (Hammett) that she felt that it was job related, and that she needed to come out of work and to see if

that was what "it was". (June Transcript at 59, 62, 77). The Claimant testified that she advised her supervisor of this. (June Transcript at 59; July Transcript at 115, 116). Although, her supervisor (Ms. Quick) indicates that work was not mentioned, her testimony is consistent that the Claimant did tell her that she needed to be out of work in order to scrape her lungs and find out what was causing her problems. (June Transcript at 24).

24. The Claimant testified that this was the first time that she was advised that work could be the cause of her condition, or a component of her condition. (June Transcript at 77, 78). Her testimony was credible.

25. On December 12, 2013, the Claimant filed for Social Security Disability noting her income from Piggly Wiggly. (D359). Consistent with her testimony that she did not know that her condition was definitively caused by her work, the Claimant indicated to the Social Security offices that she had not filed for nor intended to file for workers' compensation. (D363).

26. On January 7, 2014 Dr. deDios' records reflect that her work environment makes her asthma worse, and that she likely has adult onset asthma for which she is very symptomatic. (C23; C165; D274).

27. On January 9, 2014, Dr. Hammett indicates that the Claimant's diagnosis is asthma unspecified type. (C6)..

28. On February 4, 2014, Dr. deDios reflects that the

Claimant stated that her asthma has been better since she has been on medical leave (C158), and that clearly her work environment was making it worse. He recorded, "Pt is significantly improved since being off work. Her asthma has been better. Clearly her environment was making worse." (C161; D281).

29. The Claimant went to her supervisor (Ms. Quick) in March of 2014 and notified her that the doctors had determined that her condition was work-related.

30. The First Report of Injury was filled out by the Employer on March 25, 2014, indicating that the date of notice was March 25, 2014. (D396).

31. After the First Report of injury was filled out by the Claimant's supervisor, the Disability Claim Form -- Employer's Statement was filled out on April 2, 2014; the Employer indicated on that form that the disability was not caused by an incident that occurred at work while performing the duties of employment. (D395).

32. On April 3, 2014, Dr. deDios authored a letter to Dr. Hammett thanking her for the referral for consultation and evaluation of "f/u asthma/pt file worker com/not working at this time/feeling great." (D285).

33. The Form 50 was filed on July 22, 2014.

34. Dr. Hammett filled out a Disability Claim Form - Physician's Statement on August 29, 2014 stating that the

Claimant was permanently disabled. (D368). She indicated that the condition was due to injury or sickness arising out of the employment. (D369). The diagnosis was "Occupational Asthma." (D369).

35. At some point, Dr. Hammett authored a statement to "whom it may concern." In that letter, she stated that the Claimant had been under her care for Occupational Asthma, and that it had been diagnosed with the help of her pulmonologist. (C2). However, there is no date, so it is unclear when she had that opinion. She responded on September 29, 2014 that her opinions were stated to a reasonable degree of reasonable medical certainty. (C2).

36. In an Addendum Note, October 17, 2014 (C143) and his November 4, 2014 note (C127) and subsequent notes, the diagnosis of Dr. deDios is WRA (work related asthma) and WRE (work-exacerbated asthma).

37. The Claimant did give proper notice with regards to a repetitive injury claim. The Claimant may have suspected that the chemicals were not good for her condition, but did not know the cause of her condition until after being out of work. She was advised in November that Dr. Hammett believed that there was a causal relationship to her work; Dr. deDios indicated to the Claimant that he was "on board" with the diagnosis if after being out of work, she was better. (June Transcript at 62). This is

confirmed by his reports of January 7 and February 4<sup>th</sup>. (C165, 161).

38. An analysis under the King v. International Knife decision is appropriate. In King, the Claimant testified that his arm ached because he swung a hammer every day. The Claimant (Ms. Sowell) may have known that the chemicals at work caused her irritation, but she did not know that these were the cause of her condition. As indicated above, the diagnosis continued to vary. The Claimant did have disability (medical treatment and missed work) prior, but had not yet discovered the causation of her condition.

39. The earliest date based on a review of all of the evidence that the Claimant would have known of the work causation component was in November of 2013. She advised the employer of this. Even if her supervisor is correct that work was not mentioned, the Claimant still did not know of the definite causation until after being out of work for months. Dr. Hamnett and Dr. deDios essentially told the Claimant that being out of work would be part of that determination. (Claimant's June testimony at 59, 62, 77). The earliest date would be February 4<sup>th</sup> and the 12A was completed on March 23<sup>rd</sup>.

40. The notice for an occupational disease claim would also be based on the same facts. The Claimant was advised definitively that she had work-related asthma or occupational

asthma after she was out of work in January for a period of months. The Employer filled out the Incident report on March 23, 2014.

41. The Claimant filed her claim on July 22, 2014 within the statute of limitations.

42. As to causation, the Claimant has met her burden. The Claimant's treating pulmonologist, Dr. deDios, opines to a degree of reasonable medical certainty that the triggering factor for the Claimant's adult onset asthma was her daily and repeated and unusual and extraordinary exposure at work. (C169c). He also opines that her continual and repeated exposure in her job at the Deli after her asthma was triggered exacerbated and made her condition worse. (C169d). Dr. Hammett confirms that the Claimant's diagnosis, with the help of her pulmonologist, is Occupational Asthma. (C2). Her opinions are stated to a reasonable degree of medical certainty. (C1). The Claimant's family physician as of 2015 is Dr. Mendez; Dr. Mendez agrees to the diagnosis of occupational asthma. (Deposition of Dr. Mendez 41-42).

43. The Claimant was also seen by Dr. Early on December 17, 2015 (C219). Dr. Early is board certified in Occupational Medicine and Medical Toxicology and general preventative medicine and has a Masters in Public Health in epidemiology. (C220 and Deposition of Dr. Early at 10). Dr. Early identifies three

asthmagens to which the Claimant incurred exposure specifically related to clean up and to unclogging the drains [bleach; (sodium hypochlorite), surfactant specific amines in Pine Sol (ethoxylates); and monoethanolamine in Mr. Muscle]. (C220). His opinion is that the exposure at Piggly Wiggly in 2010 and 2011 was the cause of her Occupational Asthma. His opinions are stated to a reasonable degree of medical certainty. (C220). Dr. Early maintained his opinions in his May 18, 2016 deposition that the repeated exposure at work caused the Claimant's asthma.

44. The Defendant's expert, Robert Bennett, pharmacist, forensic scientist, and forensic toxicologist, testified at the hearing. Dr. Bennett is not a medical doctor but expressed opinions from a toxicology standpoint. Dr. Bennett's opinion is that it is more likely that Claimant's asthma was caused by her genetics rather than the chemicals at work. (July Transcript at 105). When asked whether his opinion is that working with the chemicals could cause asthma, he stated that it is possible as a couple of the products do vaporize. (July Transcript at 56-57). He indicated that in his opinion her asthma was leaning more towards a predisposition to asthma. (July Transcript at 65). Dr. Bennett indicated that she could be predisposed to asthma and that something makes the symptoms worse; he identified a number of possibilities including chemicals at work. (July Transcript at 82-83). His testimony is that bleach would produce vapors and

is a known asthmagen. (July Transcript at 87). He agreed that there are a number of components in the water in the deli, including Mr. Muscle and bleach. (July Transcript at 97-98). Dr. Bennett indicated that health problems from inhalation or absorption are all dose related. (July Transcript at 100). He stated that the amount of exposure would be a factor and that the dose is critical. (July Transcript at 106).

45. The preponderance of the evidence establishes that the Claimant's condition is related to her work, and the diagnosis is work related asthma/occupational asthma.

46. The Claimant had a repeated exposure that resulted in a condition from that repetitive exposure. The evidence establishes clearly that her asthma stems from her repetitive occupational exposure. Ms. Sowell worked as a deli manager for Piggly Wiggly in the same location for approximately ten (10) years before June of 2011 and was not treated for any allergy, asthmatic, or pulmonary related problems. It is agreed that several months before June, 2011, the deli department developed a severe problem with the drains backing up sometimes multiple times per day and multiple times per week resulting in the floor being covered in sewage and drainage water from the deli department. This water contained raw and cooked vegetables and meat, fish (seafood) and poultry byproducts, chemicals used for cleaning and chemicals used to try to unclog the drains. Because

of this almost constant problem the water contained significant quantities of chemicals used to try to unclog the drains. Three of those chemicals contain specific asthmagens in addition to molds, fungus and bacteria which are also known asthmagens. The problem with the drains was not corrected until sometime in 2012. Then between 2012 and January, 2014, Ms. Sowell was repetitively exposed on a daily basis to the raw and cooked vegetables and meat, fish and poultry byproducts, the cooking oils and greases, the waste water from preparing the food products and from cleaning those and the equipment. The medical evidence is clear that her occupational asthma was triggered by the extreme repeated exposures caused by the drain(s) clogging and backup problem in 2011. The medical evidence is also clear that the more Ms. Sowell became sensitized, the lesser and lesser a degree of exposure that would be needed to cause or exacerbate her problems. Therefore, it is clear that Ms. Sowell's condition was triggered by the extreme repetitive exposures and that after being triggered her continual repetitive exposure injuries resulted in further injury and resulted in a compensable repetitive trauma injury and disability on January 6, 2014. The development of Ms. Sowell's repetitive trauma injury is very similar to the facts in Rhame v. Charleston County School District, 415 S.C. 162, 781 S.E.2d 151 (SC App. 2015) Cert. denied (2016) King v. International Knife 395 S.C. 437, 718

S.E.2d 227 (S.C. App 2011) Cert. denied 2014 and Murphy v. Owens-Corning, 393 S.C. 77, 710 S.E.2d 454 (S.C. App. 2011).

47. While it is the finding of this Commissioner and this matter is awarded as a repetitive exposure injury, the Claimant's condition would also qualify as an occupational disease. Her occupational asthma is a condition that arises out of and in the course of her employment due to the hazards that are in excess of those ordinarily incident to an employment and which are peculiar to the employment in which the employee is engaged. In this case, on a daily basis, the Claimant was exposed to cooked and uncooked vegetables, meat, poultry, pork and fish (seafood) products and constantly exposed to cleaning and degreasing chemicals required in the food production process of the deli where she worked. Exposure to these on a constant and continual basis is peculiar to the food production industry and is a direct result of the continual exposure to the normal working conditions of that trade process and occupation. As established by the evidence, the National Institute of Occupational Safety and Health lists the Claimant's industry as among those that have a high risk of employees involved in those industries developing an occupational disease in the form of occupational asthma. The mere definition of occupational asthma and the differing condition separating occupational asthma from simply asthma is that the triggering factor or causative factor or the asthmagens

causing the asthma is an occupationally related cause such as the cleaning products and the de-clogging products that were used which it is established by the evidence triggered her occupational asthma. She was not told that her asthma had its source or origin in her work until at least November of 2013 and she was not definitively diagnosed with occupational asthma until after she became disabled. As noted above, while her occupational asthma condition would qualify as an occupational disease, I believe under the circumstances and facts of this case, it is more readily described or better described as a repetitive trauma injury. There was a period of time in which there was extreme exposure and actually an additional and increased exposure to the de-clogging chemicals during this time and it was due to this extreme exposure which was unusual and extraordinary to the normal and usual exposures in the workplace that her condition was triggered or caused to become symptomatic necessitating medical care. After that period of extreme and repetitive exposure, her exposure to the normal and usual working conditions in the workplace continued to exacerbate her desensitized condition and resulted in her disability.

48. Temporary total payments are to be paid from January 6, 2014 and continuing until the Claimant was determined to have reached maximum medical improvement at which time the Claimant is entitled to an Award for total and permanent disability. As

noted in my other findings, Dr. Hammett took Ms. Sowell out of work on January 6, 2014 and she has never returned to work. Dr. Hammett stated on September 29, 2014 that she continued to be disabled from gainful employment then Dr. Yolanda Mendez who took over Ms. Sowell's care after Dr. Hammett left the practice stated on February 4, 2016 that as previously expressed that Ms. Sowell was totally and permanently disabled. (C221). Dr. deDios had also issued a statement on February 23, 2016 that Ms. Sowell's condition was permanent and that she was totally and permanently disabled from gainful employment (C104a) and in her deposition, Dr. Mendez on May 27, 2016 specifically stated that Ms. Sowell was at maximum medical improvement and therefore as of that date, the Claimant definitely had reached maximum medical improvement, while based on Dr. Hammett's opinion, she was at maximum medical improvement at least by September 29, 2014.

49. The Claimant is at maximum medical improvement. (Dr. Mendez deposition at 29).

50. The Claimant is permanently and totally disabled. Dr. Mendez (family physician) indicates that she would be able to perform sedentary work, (Deposition of Dr. Mendez at 27 and 33) but Dr. Mendez' opinion is that the Claimant must have an "absolutely clean environment". Although not a vocational expert, Dr. Mendez also stated that based on her symptoms, she does not know who would employ Ms. Sowell. (Deposition of Dr.

Mendez at 35 and 38). Dr. Early testified that he would defer to her treating physicians as whether she would work. He testified she "possibly: could return to work if she had no irritant exposure, allowed seated work only, no lifting over 10 pounds and could use a nebulizer machine at work. (Deposition 71). As indicated, Dr. deDios is and has been the Claimant's treating physician and is a specialist and expert in pulmonology. Therefore, with regards to the Claimant's lung condition, his opinion is given greater weight. Dr. deDios' opinion is that the Claimant is permanently and totally disabled. (C104a).

51. All causally related medical from the date of disability on January 7, 2016 and all future medical is to be provided by the Defendants. The Claimant having been determined to have sustained total and permanent disability is entitled to such causally related medical care for life which specifically shall include all treatment necessary and related to the treatment of her occupational asthma and all causally related conditions and specifically includes all treatment including all medications, injections and other treatment that has been provided to control her occupational asthma from January 7, 2016 and as is contained in the records of Dr. Hammett, Dr. Mendez, Dr. deDios and Dr. Dyce beginning and including the treatment on January 6, 2014 and continuing through the present time as is reflected in the records. I find that all of this medical

treatment is causally related to the Claimant's occupational asthma condition. The Claimant is entitled to all causally related future medical care specifically to include all such medical care as will affect a cure or provide relief from the Claimant's disabling symptoms and which is reasonable and necessary to treatment the Claimant's occupational asthma and related conditions. The Claimant is placed under the care of her currently treating physicians including Dr. Angelo deDios, Dr. Yolanda Mendez and Dr. Orville Dyce. Section 42-15-60(c).

#### CONCLUSIONS OF LAW

As provided in S.C. Code §42-17-40 the following Conclusions of Law are made and applied in this decision:

1. As to the Occupational disease claim-Defined in §42-11-10; §42-11-20 and §42-11-40; Mohasco Corp., Dixiana Mills Div. v. Rising (S.C. App. 1986) 289 S.C. 130, 345 S.E.2d 249, reversed 292 S.C. 489, 357 S.E.2d 456; Hanks v. Blair Mills, Inc., 286 S.C. 378, 335 S.E.2d 91; Fox v. Newberry County Memorial Hospital (S.C. App. 1994), 316 S.C. 537, 451 S.E. 2d 28 Rehearing Denied, certiorari granted in part, reversed in part 319 S.C. 278, 461 S.E.2d 392; Muir v. C.R. Bard Inc., 336 S.C. 266, 519 Se2d 583 (S.C. App. 1999) cert denied.

2. Repetitive trauma/exposure injury and/or injury by accident/disease-Definitions §42-1-160 and §42-1-172; Strawhorn v. Chapman Constr. Co., 202 S.C. 43, 24 S.E.2d 116 (1943) (months

of inhalation of lead dust); Sturkie v. Ballenger Corp., 268 S.C. 536, 235 S.E.2d 120, (1977), (months of dust inhalation resulting in emphysema); Grayson v. Gulf Oil Co., 292 S.C. 528, 357 S.E.2d 479 (SC App. 1987), (continued exposures and massive exposure to petrochemicals resulting in immune system breakdown); Pee v. AVM, Inc., 344 S.C. 162, 543 S.E.2d 232, affirmed, 352 S.C. 167, 573 S.E.2d 785 (2001), (gradual exposure to work conditions compensable as injury by accident); I have also taken into particular consideration Grayson v. Gulf Oil, supra wherein the Claimant worked from 1965 until January 1984. In 1982 and 1983 there was massive loss of 300,000 gallons of petroleum due to loss by vaporization from storage tanks and which resulted in a massive exposure to gasoline and petroleum fumes by Claimant and then after that due to relatively minor exposures. Her immune system had been triggered/sensitized by the previous extreme period of exposure and then the minor exposures continued to trigger and exacerbate her condition leading to her disability.

3. In reference to the repetitive trauma Award made, I have taken into consideration the cases of Murphy v. Owens-Corning, 393 S.C. 77, 710 S.E.2d 454 (SC App. 2011) and Holmes v. National Services Industries, Inc., 395 S.C. 305, 717 S.E.2d 751 (2011), (Sarcoidosis caused by repetitive exposure to work environment); Rhame v. Charleston County School District, supra; King v. International Knife, supra.

4. Notice of Accident/repetitive trauma/occupational disease as provided in §42-15-20; Hanks v. Blair Mills, Inc., 286 S.C. 378, 335 S.E.2d 91; Muir v. C.R. Bard Inc., 336 S.C. 266, 519 Se2d 583 (S.C. App. 1999); Holmes v. National Service Industries, Inc., supra; Rhame v. Charleston County School District, supra; King v. International Knife, supra; Murphy v. Owens-Corning, supra.

5. Claimant's entitlement to weekly compensation for total disability and for total and permanent disability based on §42-11-20, §42-9-10 and §42-1-120. Coleman v. Quality Concrete Products, 245 S.C. 625, 142 S.E.2d 43 (1965); Stephenson v. Rice Services, 323 S.C. 113, 473 S.E.2d 699 (1996); Muir v. C.R. Bard, Inc., (S.C. App. 1999) 336 S.C. 266, 519 S.E.2d 573, rehearing denied; Mohasco Corp. v. Dixiana Mill Div. v. Rising (S.C. App. 1986) 289 S.C. 130, 345 S.E.2d 249, reversed 292 S.C. 489, 357 S.E.2d 456; Hanks v. Blair Mills, Inc., 286 SC 378, 335 S.E.2d 91.

6. Claimant's entitlement to lifetime medical care as provided in S.C. Code §42-15-60, 353 S.C. 69, 577 S.E.2d 222 (SC App 2002); Munn v. Nucor Steel Div. of Nucor Corp., 336 S.C. 28, 518 S.E.2d 289 (SC App 1999).

7. Jurisdiction, venue and average weekly wage and compensation as stipulated by the Parties.

ORDER AND AWARD

THEREFORE, IT IS ORDERED and the Claimant is hereby awarded an Award for total and permanent disability due to her repetitive trauma injury as found to be compensable and she is entitled under the Award to the payment of weekly compensation payments beginning on January 6, 2014 and weekly thereafterwards at the compensation rate of \$464.11 for a period of 500-weeks of compensation. The Claimant has requested that the payment of the Award made by this Commission be paid in a lump sum and I find that payment to be in the best interest of the Claimant and not contrary to the defendants. Therefore, the Commission shall calculate the residual lump sum value of the Award at the time of submission of such calculation with all weeks of compensation that have accrued as of that date to be paid uncommuted and to which shall be added all remaining weeks of compensation due under the 500-week Award as commuted pursuant to the Regulations of the Commission.

It Is Further Ordered that having been awarded total and permanent disability for her occupational asthma, the Claimant is entitled to any and all medical treatment causally related to her occupational asthma which will provide relief or effect a cure of the Claimant's disabling symptoms and which is reasonable and necessary medical care for the remainder of her life as set out in S.C. Code §42-15-60. The provision of medical care shall

begin with the determination of total disability on January 6, 2014. For the provision of further medical care, the Claimant is placed under the care of her currently treating physicians specifically to include Dr. Yolanda Mendez of the Medical Group; Dr. Angelo deDios, MD, pulmonologist of the Medical Group; and Dr. Orville Dyce of Hartsville ENT/Black Creek Medical Consultants, and such other medical providers as they deem appropriate to fully and completely treat the Claimant's disabling symptoms and conditions causally related to the Claimant's work-related repetitive trauma condition of occupational asthma. Such medical care shall specifically include all medical care as specifically referred to in the records of these medical doctors and specifically including all care provided by Dr. Hammett, Dr. Mendez, Dr. deDios and Dr. Dyce on and after January 7, 2014 and specifically to include all medications, injections, inhalers, nebulizing units and all medical care that has been provided and/or is being provided after January 7, 2014 and continuing at this time as is reflected in their medical records on and after January 6, 2014.

#### GROUNDS FOR REVIEW

By way of an Application for Review the Employer/Carrier as Appellants have raised the following grounds for review:

1. Did the Single Commissioner err in finding as a matter of fact that there is no indication in the Record that there was an acute incident in this case?

2. Did the Single Commissioner err in finding as a matter of fact that the Claimant has met her burden of proof that she incurred a repetitive injury that arose out of and within the course and scope of her employment?
3. Did the Single Commissioner err in finding as a matter of fact that the Claimant was ultimately diagnosed with work related asthma/occupational asthma?
4. Did the Single Commissioner err in finding as a matter of fact that the Claimant was exposed to a number of chemicals over a course of time when the drains in the deli would back up?
5. Did the Single Commissioner err in finding as a matter of fact that the Claimant and her co-workers would come into the deli in the morning to standing water and that the coworker(s) would then clean up the sewage water and put various chemicals into the drains to try and unclog them?
6. Did the Single Commissioner err in finding as a matter of fact that during the time of the continual back-up of the drains and attempts to clear it with chemicals, the Claimant was admitted to the hospital on June 11, 2011, at which time the Claimant was diagnosis was bronchitis?
7. Did the Single Commissioner err in finding as a matter of fact that the Claimant was sent to the hospital on December 22, 2011 by Dr. Hammett and during her admission there, a chemical exposure was mentioned with the hospital notes indicating that there was an asthma exacerbation, likely secondary to exposure to chemicals. December 22, 2011 is also the first mention of a diagnosis of asthma. Status Asthmaticus and Acute Asthma Exacerbation?
8. Did the Single Commissioner err in finding as a matter of fact that even though the chemicals are mentioned as a likely cause of exacerbation by the hospital, Dr. Hammett seemed to still be exploring what was the Claimant's diagnosis and what was the cause of the condition?
9. Did the single Commissioner err in finding as a matter of fact that on February 14, 2012, Dr. Hammett's records still have a diagnosis of "rhinitis and asthma versus sarcoidosis?"
10. Did the Single Commissioner err in finding as a matter of fact that on March 6, 2012 the Claimant sees Dr. Dyce for her allergies for the first time and there is no mention of

a work relationship in that record?

11. Did the Single Commissioner err in finding as a matter of fact that Dr. Hammett's records later indicate chronic bronchitis on August 8, 2012 and COPD exacerbation on September 9, 2012?
12. Did the Single Commissioner err in finding as a matter of fact that the Claimant presents to the hospital on November 12, 2012, and indicates to the provider that she thinks that at work there may be a cleaning compound which she does not handle directly but which may aggravate her, and that she also thinks there may be some aggravation as does her physician from the fumes of cooking?
13. Did the Single Commissioner err in finding as a matter of fact that the records of Dr. Hammett do not appear to contain a consistent diagnosis or definitive cause?
14. Did the Single Commissioner err in finding as a matter of fact that for the first time the Claimant sees a specialist, Dr. Dayrit (Center for Lung and Sleep Medicine) on December 19, 2012 at which time he notes differential diagnosis between hypersensitivity pneumonia and occupational asthma is mentioned in his records, but he indicates that he favors the hypersensitivity pneumonia and it "it appears" that she has sensitivity to some chemicals at work?
15. Did the Single Commissioner err in finding as a matter of fact that Dr. Dayrit's ending diagnosis was asthma as of January 3, 2013?
16. Did the Single Commissioner err in finding as a matter of fact that Dr. Hammett medical note of March 19, 2013, does not identify where the Claimant's diagnosis is generated from?
17. Did the Single Commissioner err in finding as a matter of fact that the Claimant's testimony is consistent with the variances in the diagnosis and that the doctors were still trying to figure out what was wrong with the Claimant?
18. Did the Single Commissioner err in finding as a matter of fact that the difference between Dr. Hammett's handwritten note and her typed note supports the Claimant's testimony?
19. Did the Single Commissioner err in finding as a matter of fact that the first note of Dr. deDios states that he thinks

- Claimant has "asthma unspecified", and that the patient likely has adult onset asthma for which she is very symptomatic?
20. Did the Single Commissioner err in finding as a matter of fact that whether the first visit to Dr. deDios is in April or May of 2013 is not critical in this determination?
  21. Did the Single Commissioner err in finding as a matter of fact that November of 2013 was the first-time Claimant was advised that work could be the cause of her condition, or a component of her condition and that the Claimant then advised her supervisor of same?
  22. Did the Single Commissioner err in finding as a matter of fact that the Claimant did not know her condition was definitively caused by her work until December 12, 2013, when she filed for Social Security Disability noting her income from Piggly Wiggly?
  23. Did the Single Commissioner err in finding as a matter of fact that Dr. deDios's records reflect that the Claimant's work environment makes her asthma worse, and that the Claimant likely has adult onset asthma for which she is very symptomatic?
  24. Did the Single Commissioner err in finding as a matter of fact that Dr. Hammett's medical note of on January 9, 2014, indicate Claimant's diagnosis as asthma unspecified type?
  25. Did the Single Commissioner err in finding as a matter of fact that Dr. deDios's medical note of on February 4, 2014, reflect that the Claimant stated that her asthma has been better since she has been on medical leave, and that clearly her work environment was making it worse?
  26. Did the Single Commissioner err in finding as a matter of fact that the Claimant went to her supervisor in March of 2014 and notified her that the doctors had determined that her condition was work-related?
  27. Did the Single Commissioner err in finding as a matter of fact that the First Report of Injury was filled out by the Employer on March 25, 2014, indicating that the date of notice was March 25, 2014?
  28. Did the Single Commissioner err in finding as a matter of fact that after the First Report of injury was filled out by

- the Claimant's supervisor, the Disability Claim Form - Employer's Statement was filled out on April 2, 2014; the Employer indicated on that form that the disability was not caused by an incident that occurred at work while performing the duties of employment?
29. Did the Single Commissioner err in finding as a matter of fact that on April 3, 2014, Dr. deDios authored a letter to Dr. Hammett thanking her for the referral for consultation and evaluation of "f/u asthma/pt file worker com/not working at this time/feeling great?
  30. Did the Single Commissioner err in finding as a matter of fact that Dr. Hammett filled out a Disability Claim Form - Physician's Statement on August 29, 2014 stating that the Claimant was permanently disabled and that the Claimant's condition was due to injury or sickness arising out of the employment?
  31. Did the Single Commissioner err in finding as a matter of fact that at some point Dr. Hammett authored a statement to "whom it may concern. In that letter, she stated that the Claimant had been under her care for Occupational Asthma, and that it had been diagnosed with the help of her pulmonologist?
  32. Did the Single Commissioner err in finding as a matter of fact that in Addendum Notes, dated October 17, 2014 and November 4, 2014 as well as subsequent notes, the diagnosis of Dr. deDios is WRA (work related asthma) and WRE (work-exacerbated asthma)?
  33. Did the Single Commissioner err in finding as a matter of fact that the Claimant did give proper notice with regards to a repetitive injury claim?
  34. Did the Single Commissioner err in finding as a matter of fact that an analysis under the King v. International Knife decision is appropriate?
  35. Did the Single Commissioner err in finding as a matter of fact that the earliest date based on a review of all of the evidence that the Claimant would have known of the work causation component was in November of 2013?
  36. Did the Single Commissioner err in finding as a matter of fact that the notice for an occupational disease claim would also be based on the same facts. The Claimant was advised

definitively that she had work-related asthma or occupational asthma after she was out of work in January for a period of months. The Employer filled out the Incident report on March 23, 2014?

37. Did the Single Commissioner err in finding as a matter of fact that the Claimant filed her claim on July 22, 2014 within the statute of limitations?
38. Did the Single Commissioner err in finding as a matter of fact that as to causation, the Claimant has met her burden?
39. Did the Single Commissioner err in finding as a matter of fact that the preponderance of the evidence establishes that the Claimant's condition is related to her work, and the diagnosis is work related asthma/occupational asthma?
40. Did the Single Commissioner err in finding as a matter of fact that the Claimant had a repeated exposure that resulted in a condition from that repetitive exposure?
41. Did the Single Commissioner err in finding as a matter of fact that the evidence establishes clearly that her asthma stems from her repetitive occupational exposure?
42. Did the Single Commissioner err in finding as a matter of fact that the medical evidence is clear that her occupational asthma was triggered by the extreme repeated exposures caused by the drain(s) clogging and backup problem in 2011?
43. Did the Single Commissioner the medical evidence is also clear that the more Ms. Sowell became sensitized, the lesser and lesser a degree of exposure that would be needed to cause or exacerbate her problems?
44. Did the Single Commissioner err in finding as a matter of fact that, it is clear that Ms. Sowell's condition was triggered by the extreme repetitive exposures and that after being triggered her continual repetitive exposure injuries resulted in further injury and resulted in a compensable repetitive trauma injury and disability on January 6, 2014?
45. Did the Single Commissioner err in finding as a matter of fact that the development of Ms. Sowell's repetitive trauma injury is very similar to the facts in Rhame v. Charleston County School District, 415 S.C. 162, 781 S.E.2d 151 (SC App. 2015) Cert. denied (2016) King v. International Knife,

395 S.C. 437, 718 S.E.2d 227 (S.C. App 2011) Cert. denied 2014 and Murphy v. Owens-Corning, 393 S.C. 77, 710 S.E.2d 454 (S.C. App. 2011)?

46. Did the Single Commissioner err in finding as a matter of fact that while it is the finding of this Commissioner and this matter is awarded as a repetitive exposure injury, the Claimant's condition would also qualify as an occupational disease?
47. Did the Single Commissioner err in finding as a matter of fact that the Claimant's occupational asthma is a condition that arises out of and in the course of her employment due to the hazards that are in excess of those ordinarily incident to an employment and which are peculiar to the employment in which the employee is engaged?
48. Did the Single Commissioner err in finding as a matter of fact that the National Institute of Occupational Safety and Health lists the Claimant's industry as among those that have a high risk of employees involved in those industries developing an occupational disease in the form of occupational asthma?
49. Did the Single Commissioner err in finding as a matter of fact that the mere definition of occupational asthma and the differing condition separating occupational asthma from simply asthma is that the triggering factor or causative factor or the asthmagens causing the asthma is an occupationally related cause such as the cleaning products and the de-clogging products that were used which it is established by the evidence triggered her occupational asthma?
50. Did the Single Commissioner err in finding as a matter of fact that the Claimant was not told that her asthma had its source or origin in her work until at least November of 2013 and she was not definitively diagnosed with occupational asthma until after she became disabled?
51. Did the Single Commissioner err in finding as a matter of fact that while the Claimant's occupational asthma condition would qualify as an occupational disease, under the circumstances and facts of this case, it is more readily described or better described as a repetitive trauma injury?
52. Did the Single Commissioner after a period of extreme and repetitive exposure, the Claimant's exposure to the normal

and usual working conditions in the workplace continued to exacerbate the Claimant's desensitized condition and resulted in her disability?

53. Did the Single Commissioner err in finding as a matter of fact that temporary total payments are to be paid from January 6, 2014 and continuing until the Claimant was determined to have reached maximum medical improvement at which time the Claimant is entitled to an Award for total and permanent disability?
54. Did the Single Commissioner err in finding as a matter of fact that the Claimant is at maximum medical improvement?
55. Did the Single Commissioner err in finding as a matter of fact that the Claimant is permanently and totally disabled?
56. Did the Single Commissioner err in finding as a matter of fact that all causally related medical from the date of disability on January 7, 2016 and all future medical is to be provided by the Defendants?
57. Did the Single Commissioner err in finding as a matter of fact that the Claimant having been determined to have sustained total and permanent disability is entitled to such causally related medical care for life which specifically shall include all treatment necessary and related to the treatment of her occupational asthma and all causally related conditions and specifically includes all treatment including all medications, injections and other treatment that has been provided to control her occupational asthma from January 7, 2016 and as is contained in the records of Dr. Hammett, Dr. Mendez, Dr. deDios and Dr. Dyce beginning and including the treatment on January 6, 2014 and continuing through the present time as is reflected in the records. I find that all of this medical treatment is causally related to the Claimant's occupational asthma condition. The Claimant is entitled to all causally related future medical care specifically to include all such medical care as will affect a cure or provide relief from the Claimant's disabling symptoms and which is reasonable and necessary to treatment the Claimant's occupational asthma and related conditions. The Claimant is placed under the care of her currently treating physicians including Dr. Angelo deDios, Dr. Yolanda Mendez and Dr. Orville Dyce?
58. Did the Single Commissioner err in the findings of fact marked No. 1 through 51 and located on pages 32 through 50

- of the Order?
59. Did the Single Commissioner err in concluding as a matter of law that the Claimant sustained a compensable repetitive trauma injury?
  60. Did the Single Commissioner err in concluding as a matter of law that the Claimant is entitled to weekly compensation for total disability and for total and permanent disability?
  61. Did the Single Commissioner err in concluding law the Claimant is entitled to lifetime medical care?
  62. Did the Single Commissioner err in concluding as a matter of law that the Claimant is entitled to be paid in a lump sum?
  63. Did the Single Commissioner err in concluding as a matter of law that the provision of medical care shall begin with the determination of total disability on January 6, 2014?
  64. Did the Single Commissioner err in concluding as a matter of law that the Claimant is entitled to any and all medical treatment causally related to her occupational asthma which will provide relief or effect a cure of the Claimant's disabling symptoms and which is reasonable and necessary medical care for the remainder of her life?
  65. Did the Single Commissioner err in concluding as a matter of law that the Claimant is entitled to an award of total and permanent disability for her occupational asthma?
  66. Did the Single Commissioner err in the conclusions of law as identified on pages 50 through 55 of the Order?

**FULL COMMISSION PANEL REVIEW AND DECISION**

Copies of the Grounds for Review were furnished to all interested parties prior to the oral argument scheduled before the Appellate Panel on August 22, 2017.

Pursuant to SC Code §42-17-50 (1985 as amended), the Appellate Panel reviewed the Order and Award and considered all the issues raised by the Briefs of the Appellant and Respondent.

After careful review and consideration of this matter, the Full Commission Appellate Panel AFFIRMS the Single Commissioner's Order and Award and adopts the Findings of Fact and Conclusions of Law and the Award of the Hearing Commissioner as the Findings of Fact and Conclusions of Law and Award of the Commission:

FULL COMMISSION FINDINGS OF FACT

1. The Claimant has pled an injury by accident, repetitive injury, and/or an occupational disease due to exposure to chemicals and other inhaled properties at work.

2. There is no indication in the Record that there was an acute incident although there was a period of repeated severe levels of exposure as set forth below.

3. The Claimant has met her burden of proof that she incurred a repetitive injury that arose out of and within the course and scope of her employment.

4. The Claimant was ultimately diagnosed with work related asthma/occupational asthma.

5. The Claimant was exposed to a number of chemicals over a course of time when the drains in the deli would back up. This was ultimately determined to be due to a pipe being broken and stopping up. After this problem occurred repeatedly overnight, and at other times throughout the day, the Claimant and her co-workers would come into the deli in the morning to standing water. The co-worker(s) would then clean up the sewage water and

put various chemicals into the drains to try and unclog them. (This is pursuant to all testimony, including the store manager (Ms. Quick), the Claimant, and a fellow employee whose duties included maintenance (Mr. Harrington), who put many of the chemicals in the drains.) While there is disagreement as to the amount of waste water involved, the record is clear that there was a substantial amount of standing waste water.

6. The conditions of the drains were evaluated repeatedly by plumbers, who would snake the drain. The date of the final discovery of the cause of the backup is not in the Record, but the store manager (Ms. Quick) believed that it might have been fixed permanently sometime in 2012. (July Transcript at 33)

7. During the time of the continual back-up of the drains and attempts to clear it with chemicals, the Claimant went to the hospital on June 11, 2011, and was admitted. The diagnosis was bronchitis. (C93)

8. After her hospitalization, the Claimant saw Dr. Vaughn for a couple of visits, and then became a patient of Dr. Hammett.

9. Throughout the course of Dr. Hammett's records as set out in the Statement of the Case and below her diagnosis varied. On December 6, 2011, she states that the Claimant has acute chronic bronchitis. (C70) See also Findings below.

10. The Claimant was sent to the hospital on December 22, 2011 by Dr. Hammett and during her admission there, a chemical

exposure was mentioned with the hospital notes indicating that there was an asthma exacerbation, likely secondary to exposure to chemicals. (C175) December 22, 2011 is also the first mention of a diagnosis of asthma. Status Asthmaticus (c68) and Acute Asthma Exacerbation (C175).

11. Even though the chemicals are mentioned as a likely cause of exacerbation by the hospital, Dr. Hammett seemed to still be exploring what was the Claimant's diagnosis and what was the cause of the condition. Within a few days of her release from the hospital (December 27, 2011), her records state that she carries a diagnosis of asthma, "but may actually have sarcoidosis which is in the differential." (C64; D258). She indicated that there was a pulmonary referral.

12. On February 14, 2012, Dr. Hammett's records still have a diagnosis of "rhinitis and asthma versus sarcoidosis." (C53; D263)

13. On March 6, 2012 the Claimant sees Dr. Dyce for her allergies for the first time. (C203). There is no mention of a work relationship in that record.

14. Later, Dr. Hammett's records indicate chronic bronchitis on August 8, 2012 (C43), and COPD exacerbation on September 9, 2012. (C40)

15. The Claimant presents again to the hospital on November 12, 2012, and indicates to the provider that she thinks that at

work there may be a cleaning compound which she does not handle directly but which may aggravate her, and that she also thinks there may be some aggravation as does her physician from the fumes of cooking. (D233). She does indicate that she is bothered greatly by the fumes at work.

16. However, the records of Dr. Hammett still do not appear to contain a consistent diagnosis or definitive cause. On November 19, 2012, Dr. Hammett's records contain a diagnosis of COPD. (C32).

17. For the first time she sees a specialist, Dr. Dayrit (Center for Lung and Sleep Medicine) on December 19, 2012. (D306). He notes that she has worked in the same deli for twelve (12) years and she has had breathing problems for about two years with no similar symptoms prior to her current problem. Since developing her breathing problems she has had, "frequent diagnosis of bronchitis." She has never had asthma or allergies in the past prior to this problem and without any significant exposures to smoke or animals at home but then does mention the chemicals at work. (D304). A differential diagnosis between hypersensitivity pneumonia and occupational asthma is mentioned in his records, but he indicates that he favors the hypersensitivity pneumonia and it "appears" that she has sensitivity to some chemicals at work. He also states that he does not know what she was exposed to or for how long. (D306).

18. On January 3, 2013, Dr. Dayrit's notes indicate that the Claimant is on steroids and had returned to work and has not had any exacerbations of her symptoms since returning to work. (D309). In his last visit on February 23, 2013 before closing his office he notes she was having problems again and had been off steroids for about two weeks. As part of the history he recorded that "at home" she had no pets or any issues with water leaks, or fungus, or other such infestations. His ending diagnosis was asthma. (D318).

19. On March 19, 2013, Dr. Hammett states that she has a history of chronic asthma exacerbation that was determined to be work related and it was suggested that she remove herself from the job, which she has not done yet. (C29; D268). It is unclear where the diagnosis in this statement is generated from. She is not stating that it is her diagnosis and as indicated above, her diagnosis had varied. Her subsequent notes actually including her hand written note of March 19<sup>th</sup> and through and including her note of January 9, 2014 has a diagnosis of asthma, unspecified type. (C6)). As discussed above, Dr. Dayrit listed this as a differential diagnosis, and stated that he did not know what chemicals she was exposed to and for how long which December 19, 2012 had been sent to Dr. Hammett. (D304). As noted in her handwritten note recorded at the time of her visit with Ms. Sowell on March 19<sup>th</sup> do not mention this and records only a

diagnosis of asthma. It is also noted that the typed report was only dictated on March 25<sup>th</sup> (C29) and that all of Dr. Dayrit's records (36 pages) were faxed to someone on March 20<sup>th</sup>. (D304-319).

20. Also, the Claimant's testimony is consistent with the variances in the diagnosis and that the doctors were still trying to figure out what was wrong with the Claimant.

21. The Claimant testified that Dr. Dayrit closed his practice in March. The difference between Dr. Hammett's handwritten note and her typed note supports the Claimant's testimony. (June Transcript at 50).

22. The Claimant was eventually referred to Dr. deDios (pulmonologist). The first visit appears to occur on May 22, 2013. (D269). (A questionnaire of Dr. deDios indicates the date as April 8, 2013 (C169); the May 22, 2013 note indicates it she is a "new consult." (D269) Whether the first visit is in April or May of 2013 is not critical in this determination.) The first note states that he thinks Claimant has "asthma unspecified", and that the patient likely has adult onset asthma for which she is very symptomatic. (D271).

23. The Claimant testified that she was advised in November of 2013 by her doctor (Hammett) that she felt that it was job related, and that she needed to come out of work and to see if that was what "it was". (June Transcript at 59, 62, 77). The

Claimant testified that she advised her supervisor of this. (June Transcript at 59; July Transcript at 115, 116). Although her supervisor (Ms. Quick) indicates that work was not mentioned, her testimony is consistent that the Claimant did tell her that she needed to be out of work in order to scrape her lungs and find out what was causing her problems. (June Transcript at 24).

24. The Claimant testified that this was the first time that she was advised that work could be the cause of her condition, or a component of her condition. (June Transcript at 77, 78). Her testimony was credible.

25. On December 12, 2013, the Claimant filed for Social Security Disability noting her income from Piggly Wiggly. (D359). Consistent with her testimony that she did not know that her condition was definitively caused by her work, the Claimant indicated to the Social Security offices that she had not filed for nor intended to file for workers' compensation. (D363).

26. On January 7, 2014 Dr. deDios' records reflect that the claimant's work environment makes her asthma worse, and that she likely has adult onset asthma for which she is very symptomatic. (C23; C165; D274).

27. On January 9, 2014, Dr. Hammett indicates that the Claimant's diagnosis is asthma, unspecified type. (C6).

28. On February 4, 2014, Dr. deDios reflects that the Claimant stated that her asthma has been better since she has

been on medical leave (C158), and that clearly her work environment was making it worse. He recorded, "Pt is significantly improved since being off work. Her asthma has been better. Clearly her environment was making worse." (C161; D281).

29. The Claimant went to her supervisor (Ms. Quick) in March of 2014 and notified her that the doctors had determined that her condition was work-related.

30. The First Report of Injury was filled out by the Employer on March 25, 2014, indicating that the date of notice was March 25, 2014. (D396).

31. After the First Report of injury was filled out by the Claimant's supervisor, the Disability Claim Form -- Employer's Statement was filled out on April 2, 2014; the Employer indicated on that form that the disability was not caused by an incident that occurred at work while performing the duties of employment. (D395).

32. On April 3, 2014, Dr. deDios authored a letter to Dr. Hammett thanking her for the referral for consultation and evaluation of "f/u asthma/pt file worker com/not working at this time/feeling great." (D285).

33. The Form 50 was filed on July 22, 2014.

34. Dr. Hammett filled out a Disability Claim Form - Physician's Statement on August 29, 2014 stating that the Claimant was permanently disabled. (D368). She indicated that

the condition was due to injury or sickness arising out of the employment. (D369). The diagnosis was "Occupational Asthma." (D369).

35. At some point Dr. Hammett authored a statement to "whom it may concern." In that letter she stated that the Claimant had been under her care for Occupational Asthma, and that it had been diagnosed with the help of her pulmonologist. (C2). However, there is no date, so it is unclear when she had that opinion. She responded on September 29, 2014 that her opinions were stated to a reasonable degree of reasonable medical certainty. (C2).

36. In an Addendum Note, October 17, 2014 (C143) and his November 4, 2014 note (C127) and subsequent notes, the diagnosis of Dr. deDios is WRA (work related asthma) and WRE (work-exacerbated asthma).

37. The Claimant did give proper notice with regard to a repetitive injury claim. The Claimant may have suspected that the chemicals were not good for her condition, but did not know the cause of her condition until after being out of work. She was advised in November that Dr. Hammett believed that there was a causal relationship to her work; Dr. deDios indicated to the Claimant that he was "on board" with the diagnosis if after being out of work, she was better. (June Transcript at 62). This is confirmed by his reports of January 7 and February 4<sup>th</sup>. (C165, 161).

38. An analysis under the King v. International Knife decision is appropriate. In King, the Claimant testified that his arm ached because he swung a hammer every day. The Claimant (Ms. Sowell) may have known that the chemicals at work caused her irritation, but she did not know that these were the cause of her condition. As indicated above, the diagnosis continued to vary. The Claimant did have disability (medical treatment and missed work) prior, but had not yet discovered the causation of her condition.

39. The earliest date based on a review of all of the evidence that the Claimant would have known of the work causation component was in November of 2013. She advised the employer of this. Even if her supervisor is correct that work was not mentioned, the Claimant still did not know of the definite causation until after being out of work for months. Dr. Hammett and Dr. deDios essentially told the Claimant that being out of work would be part of that determination. (Claimant's June testimony at 59, 62, 77). The earliest date would be February 4<sup>th</sup> and the 12A was completed on March 23<sup>rd</sup>.

40. The notice for an occupational disease claim would also be based on the same facts. The Claimant was advised definitively that she had work-related asthma or occupational asthma after she was out of work in January for a period of months. The Employer filled out the Incident report on March 23,

2014.

41. The Claimant filed her claim on July 22, 2014 within the statute of limitations.

42. As to causation, the Claimant has met her burden. The Claimant's treating pulmonologist, Dr. deDios, opines to a degree of reasonable medical certainty that the triggering factor for the Claimant's adult onset asthma was her daily and repeated and unusual and extraordinary exposure at work. (C169c). He also opines that her continual and repeated exposure in her job at the Deli after her asthma was triggered exacerbated and made her condition worse. (C169d). Dr. Hammett confirms that the Claimant's diagnosis, with the help of her pulmonologist, is Occupational Asthma. (C2). Her opinions are stated to a reasonable degree of medical certainty. (C1). The Claimant's family physician as of 2015 is Dr. Mendez; Dr. Mendez agrees to the diagnosis of occupational asthma. (Deposition of Dr. Mendez 41-42).

43. The Claimant was also seen by Dr. Early on December 17, 2015 (C219). Dr. Early is board certified in Occupational Medicine and Medical Toxicology and general preventative medicine and has a Masters in Public Health in epidemiology. (C220 and Deposition of Dr. Early at 10). Dr. Early identifies three asthmagens to which the Claimant incurred exposure specifically related to clean up and to unclogging the drains [bleach; (sodium

hypochlorite), surfactant specific amines in Pine Sol (ethoxylates); and monoethanolamine in Mr. Muscle]. (C220). His opinion is that the exposure at Piggly Wiggly in 2010 and 2011 was the cause of her Occupational Asthma. His opinions are stated to a reasonable degree of medical certainty. (C220). Dr. Early maintained his opinions in his May 18, 2016 deposition that the repeated exposure at work caused the Claimant's asthma.

44. The Defendant's expert, Robert Bennett, pharmacist, forensic scientist, and forensic toxicologist, testified at the hearing. Dr. Bennett is not a medical doctor but expressed opinions from a toxicology standpoint. Dr. Bennett's opinion is that it is more likely that Claimant's asthma was caused by her genetics rather than the chemicals at work. (July Transcript at 105). When asked whether his opinion is that working with the chemicals could cause asthma, he stated that it is possible as a couple of the products do vaporize. (July Transcript at 56-57). He indicated that in his opinion her asthma was leaning more towards a predisposition to asthma. (July Transcript at 65). Dr. Bennett indicated that she could be predisposed to asthma and that something makes the symptoms worse; he identified a number of possibilities including chemicals at work. (July Transcript at 82-83). His testimony is that bleach would produce vapors and is a known asthmagen. (July Transcript at 87). He agreed that there are a number of components in the water in the deli,

including Mr. Muscle and bleach. (July Transcript at 97-98). Dr. Bennett indicated that health problems from inhalation or absorption are all dose related. (July Transcript at 100). He stated that the amount of exposure would be a factor and that the dose is critical. (July Transcript at 106).

45. The preponderance of the evidence establishes that the Claimant's condition is related to her work, and the diagnosis is work related asthma/occupational asthma.

46. The Claimant had a repeated exposure that resulted in a condition from that repetitive exposure. The evidence establishes clearly that her asthma stems from her repetitive occupational exposure. Ms. Sowell worked as a deli manager for Piggly Wiggly in the same location for approximately ten (10) years before June of 2011 and was not treated for any allergy, asthmatic, or pulmonary related problems. It is agreed that several months before June, 2011, the deli department developed a severe problem with the drains backing up sometimes multiple times per day and multiple times per week resulting in the floor being covered in sewage and drainage water from the deli department. This water contained raw and cooked vegetables and meat, fish (seafood) and poultry byproducts, chemicals used for cleaning and chemicals used to try to unclog the drains. Because of this almost constant problem the water contained significant quantities of chemicals used to try to unclog the drains. ~ Three

of those chemicals contain specific asthmagens in addition to molds, fungus and bacteria which are also known asthmagens. The problem with the drains was not corrected until sometime in 2012. Then between 2012 and January, 2014, Ms. Sowell was repetitively exposed on a daily basis to the raw and cooked vegetables and meat, fish and poultry byproducts, the cooking oils and greases, the waste water from preparing the food products and from cleaning those and the equipment. The medical evidence is clear that her occupational asthma was triggered by the extreme repeated exposures caused by the drain(s) clogging and backup problem in 2011. The medical evidence is also clear that the more Ms. Sowell became sensitized, the lesser and lesser a degree of exposure that would be needed to cause or exacerbate her problems. Therefore, it is clear that Ms. Sowell's condition was triggered by the extreme repetitive exposures and that after being triggered her continual repetitive exposure injuries resulted in further injury and resulted in a compensable repetitive trauma injury and disability on January 6, 2014. The development of Ms. Sowell's repetitive trauma injury is very similar to the facts in Rhame v. Charleston County School District, 415 S.C. 162, 781 S.E.2d 151 (SC App. 2015) Cert. denied (2016) King v. International Knife 395 S.C. 437, 718 S.E.2d 227 (S.C. App 2011) Cert. denied 2014 and Murphy v. Owens-Corning, 393 S.C. 77, 710 S.E.2d 454 (S.C. App. 2011).

47. While it is the finding of this Panel that this matter is awarded as a repetitive exposure injury, the Claimant's condition would also qualify as an occupational disease. Her occupational asthma is a condition that arises out of and in the course of her employment due to the hazards that are in excess of those ordinarily incident to an employment and which are peculiar to the employment in which the employee is engaged. In this case, on a daily basis, the Claimant was exposed to cooked and uncooked vegetables, meat, poultry, pork and fish (seafood) products and constantly exposed to cleaning and degreasing chemicals required in the food production process of the deli where she worked. Exposure to these on a constant and continual basis is peculiar to the food production industry and is a direct result of the continual exposure to the normal working conditions of that trade process and occupation. As established by the evidence, the National Institute of Occupational Safety and Health lists the Claimant's industry as among those that have a high risk of employees involved in those industries developing an occupational disease in the form of occupational asthma. The mere definition of occupational asthma and the differing condition separating occupational asthma from simply asthma is that the triggering factor or causative factor or the asthmagens causing the asthma is an occupationally related cause such as the cleaning products and the de-clogging products that were used

which it is established by the evidence triggered her occupational asthma. She was not told that her asthma had its source or origin in her work until at least November of 2013 and she was not definitively diagnosed with occupational asthma until after she became disabled. As noted above, while her occupational asthma condition would qualify as an occupational disease, we believe under the circumstances and facts of this case, it is more readily described or better described as a repetitive trauma injury. There was a period of time in which there was extreme exposure and actually an additional and increased exposure to the de-clogging chemicals during this time and it was due to this extreme exposure which was unusual and extraordinary to the normal and usual exposures in the workplace that her condition was triggered or caused to become symptomatic necessitating medical care. After that period of extreme and repetitive exposure, her exposure to the normal and usual working conditions in the workplace continued to exacerbate her desensitized condition and resulted in her disability.

48. Temporary total payments are to be paid from January 6, 2014 and continuing until the Claimant was determined to have reached maximum medical improvement at which time the Claimant is entitled to an Award for total and permanent disability. As noted in our other findings, Dr. Hammett took Ms. Sowell out of work on January 6, 2014 and she has never returned to work. Dr.

Hammett stated on September 29, 2014 that she continued to be disabled from gainful employment then Dr. Yolanda Mendez who took over Ms. Sowell's care after Dr. Hammett left the practice stated on February 4, 2016 that as previously expressed that Ms. Sowell was totally and permanently disabled. (C221). Dr. deDios had also issued a statement on February 23, 2016 that Ms. Sowell's condition was permanent and that she was totally and permanently disabled from gainful employment (C104a) and in her deposition, Dr. Mendez on May 27, 2016 specifically stated that Ms. Sowell was at maximum medical improvement and therefore as of that date, the Claimant definitely had reached maximum medical improvement, while based on Dr. Hammett's opinion, she was at maximum medical improvement at least by September 29, 2014.

49. The Claimant is at maximum medical improvement. (Dr. Mendez deposition at 29).

50. The Claimant is permanently and totally disabled. Dr. Mendez (family physician) indicates that she would be able to perform sedentary work, (Deposition of Dr. Mendez at 27 and 33) but Dr. Mendez' opinion is that the Claimant must have an "absolutely clean environment." Although not a vocational expert, Dr. Mendez also stated that based on her symptoms, she does not know who would employ Ms. Sowell. (Deposition of Dr. Mendez at 35 and 38). Dr. Early testified that he would defer to her treating physicians as whether she would work. He testified

she "possibly: could return to work if she had no irritant exposure, allowed seated work only, no lifting over 10 pounds and could use a nebulizer machine at work. (Deposition 71). As indicated, Dr. deDios is and has been the Claimant's treating physician and is a specialist and expert in pulmonology. Therefore, with regard to the Claimant's lung condition, his opinion is given greater weight. Dr. deDios' opinion is that the Claimant is permanently and totally disabled. (C104a).

51. All causally related medical from the date of disability on January 7, 2016 and all future medical is to be provided by the Defendants. The Claimant having been determined to have sustained total and permanent disability is entitled to such causally related medical care for life which specifically shall include all treatment necessary and related to the treatment of her occupational asthma and all causally related conditions and specifically includes all treatment including all medications, injections and other treatment that has been provided to control her occupational asthma from January 7, 2016 and as is contained in the records of Dr. Hammett, Dr. Mendez, Dr. deDios and Dr. Dyce beginning and including the treatment on January 6, 2014 and continuing through the present time as is reflected in the records. We find that all of this medical treatment is causally related to the Claimant's occupational asthma condition. The Claimant is entitled to all causally

related future medical care specifically to include all such medical care as will affect a cure or provide relief from the Claimant's disabling symptoms and which is reasonable and necessary to treatment the Claimant's occupational asthma and related conditions. The Claimant is placed under the care of her currently treating physicians including Dr. Angelo deDios, Dr. Yolanda Mendez and Dr. Orville Dyce. Section 42-15-60(c).

FULL COMMISSION CONCLUSIONS OF LAW

As provided in S.C. Code §42-17-40 the following Conclusions of Law are made and applied in this decision:

1. As to the Occupational disease claim-Defined in §42-11-10; §42-11-20 and §42-11-40; Mohasco Corp., Dixiana Mills Div. v. Rising (S.C. App. 1986) 289 S.C. 130, 345 S.E.2d 249, reversed 292 S.C. 489, 357 S.E.2d 456; Hanks v. Blair Mills, Inc., 286 S.C. 378, 335 S.E.2d 91; Fox v. Newberry County Memorial Hospital (S.C. App. 1994), 316 S.C. 537, 451 S.E. 2d 28 Rehearing Denied, certiorari granted in part, reversed in part 319 S.C. 278, 461 S.E.2d 392; Muir v. C.R. Bard Inc., 336 S.C. 266, 519 Se2d 583 (S.C. App. 1999) cert denied.

2. Repetitive trauma/exposure injury and/or injury by accident/disease-Definitions §42-1-160 and §42-1-172; Strawhorn v. Chapman Constr. Co., 202 S.C. 43, 24 S.E.2d 116 (1943) (months of inhalation of lead dust); Sturkie v. Ballenger Corp., 268 S.C, 536, 235 S.E.2d 120, (1977), (months of dust inhalation resulting

in emphysema); Grayson v. Gulf Oil Co., 292 S.C. 528, 357 S.E.2d 479 (SC App. 1987), (continued exposures and massive exposure to petrochemicals resulting in immune system breakdown); Pee v. AVM, Inc., 344 S.C. 162, 543 S.E.2d 232, affirmed, 352 S.C. 167, 573 S.E.2d 785 (2001), (gradual exposure to work conditions compensable as injury by accident); I have also taken into particular consideration Grayson v. Gulf Oil, supra wherein the Claimant worked from 1965 until January 1984. In 1982 and 1983 there was massive loss of 300,000 gallons of petroleum due to loss by vaporization from storage tanks and which resulted in a massive exposure to gasoline and petroleum fumes by Claimant and then after that due to relatively minor exposures. Her immune system had been triggered/sensitized by the previous extreme period of exposure and then the minor exposures continued to trigger and exacerbate her condition leading to her disability.

3. In reference to the repetitive trauma Award made, We have taken into consideration the cases of Murphy v. Owens-Corning, 393 S.C. 77, 710 S.E.2d 454 (SC App. 2011) and Holmes v. National Services Industries, Inc., 395 S.C. 305, 717 S.E.2d 751 (2011), (Sarcoidosis caused by repetitive exposure to work environment); Rhame v. Charleston County School District, supra; King v. International Knife, supra.

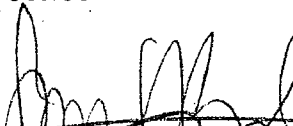
4. Notice of Accident/repetitive trauma/occupational disease as provided in §42-15-20; Hanks v. Blair Mills, Inc., 286

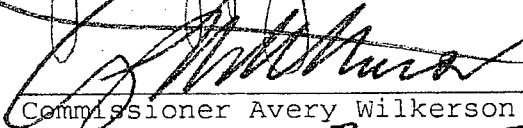
AND IT IS SO ORDERED.

SC WORKERS' COMPENSATION COMMISSION

  
\_\_\_\_\_  
Commissioner Mike Campbell  
for the Panel

I CONCUR:

  
\_\_\_\_\_  
Commissioner Susan Barden

  
\_\_\_\_\_  
Commissioner Avery Wilkerson

B      JR

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 on October 17, 2017**