BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

KENNETH L. BARR, Employee/Claimant, v. DARLINGTON COUNTY SCHOOL DISTRICT, Employer, and S.C. SCHOOL BOARDS INSURANCE TRUST, Carrier/Defendants.	W.C.C. FILE No. 1507304 **DECISION & ORDER**

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SC Court of Appeals

Statement of the Case

This matter came before the undersigned Commissioner for a hearing on August 31, 2016 in Florence, South Carolina, pursuant to the Forms 50 and 51. The Claimant alleges he sustained injuries, described as "Encephalopathy, Brain (headaches, memory, fatigue, confusion), neurological/central nervous system, psychological functioning," as a result of either an accident, repetitive trauma, or occupational disease on May 21, 2015. The Claimant alleges that he is either at maximum medical improvement and entitled to benefits for permanent and total disability as a result of alleged brain damage, or in the alternative, he is not at maximum medical improvement and is entitled to past and future temporary disability compensation and medical treatment for headaches.

The Defendants deny the Claimant sustained any injury or disease arising out of or in the course of his employment, whether by accident, repetitive trauma, or occupational disease. Specifically, the Defendants deny the Claimant has

encephalopathy, deny the Claimant has any injury to his brain or nervous system, and deny the Claimant's pre-existing psychological issues are causally-related to his employment. The Defendants further deny that the Claimant's working conditions were either repetitive or traumatic and deny the Claimant has satisfied the mandatory elements of the Occupational Disease statute.

Stipulations

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. Notice of the hearing was timely and properly served upon all parties in interest.
3. Venue is proper.
4. The Commission's file, save self-serving declarations and unstipulated medical reports, shall become part of the Record in this case.
5. The Claimant's average weekly wage at the time in question was $611.61 and his applicable compensation rate is $407.76.

APA Submissions

CLAIMANT'S APA SUBMISSIONS

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4	Dr. Raymond Chapman, M.D. The Medical Group	2/10/10 – 4/7/15	98 – 170
5	Dr. Roland Skinner, III, M.D.	9/23/10 – 10/16/12	171 – 192

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7	Article from Occupational & Environmental Medicine entitled "Solvent Neurotoxicity"	March 2006	208 – 218
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11	Raymond M. Chapman, M.D. The Medical Group	6/29/05—3/6/13	249-264
12	Carolina Pines Radiology	9/15/10—11/1/13	265-266
13	Terrence Hassler, M.D. Hartsville Orthopaedic Sports Medicine	1/26/12—8/29/13	267-297
14	McLeod Health Rehab Services	2/21/12—5/3/12	298-357
15	Joseph Jackson, Jr., M.D. Camden Orthopaedic Associates	5/2/12—6/29/12	358-368
16	Thomas E. Brandt, Jr., D.O. Center for Pain Control	5/9/12—5/24/12	369-395
17	Avie J. Rainwater, III, Ph.D.	5/29/12—4/30/12	396-402
18	Paul B. Pritchard, M.D. MUSC	2/2/16	403-408
19	Mark T. Wagner, Ph.D. MUSC	2/12/16	409-443
20	L. Randolph Waid, Ph.D.	2/12/16	444-446
21	David H Eagerton, Ph.D., F-ABFT, Presbyterian College	2/14/16	447-467

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23	Employer Records re: FMLA	4/8/09—6/4/12	491-498

Evidence Summary

The Claimant

The Claimant, Ken Barr, testified on his own behalf. The Claimant has been married for 25 years and has 3 children. He attended Emmanuel Baptist High School in Hartsville and described himself as an average student. After school, the Claimant worked as a furniture delivery driver, in addition to roofing and carpentry work for his father. The Claimant also worked for a year or a year and a half as a clothing salesman. Later, he worked doing rough carpentry for a construction company for a couple of years. The Claimant then went to work as a painter at a nuclear plant. Next, the Claimant delivered propane tanks to houses and then did installation of gas appliances for 4 or 5 years. After that, the Claimant started his own painting business for 4 or 5 years before coming to work at the School District. The Claimant continued to operate his own business, Kenny's Painting, after he began working at the School District.

The Claimant testified that he began working at the School District in 2009. He worked 5 days a week, 8 hours per day during the school year and in the summer, he worked 4 days a week, 10 hours per day. The Claimant testified that he did not paint with oil-based paints during the school year and when he painted in the summer, he

could leave the doors open because sometimes the air conditioning was not on in the school rooms. The Claimant testified that he primarily worked on interior painting, but did do some painting outside. According to the Claimant, he "rarely" used a sprayer to apply paint at the School District, though he did use a sprayer when doing his own jobs with Kenny's Painting because he had a sprayer at his disposal. (Hrg. T. p.138, lines 13-16).

For protection, the Claimant initially testified that he "regularly" wore latex gloves and a respirator with particulate and fume filters. Upon persistent questioning from his attorney, the Claimant subsequently testified that

> "I didn't wear 'em regularly. I wear – I wore 'em sometimes. I mean, I don't know – I mean, this week, I might not wear 'em. It depends on what I'm using and where I'm at." (Hrg. T. p. 91, lines 4—7).

Regarding the respirator, the Claimant testified that if he could not ventilate a room by opening doors and windows and using fans, he would wear his respirator. The Claimant then testified that he would

> "put it on no matter if I had the doors open, the windows open or whatever. So, therefore, I would wear it." (Hrg. T. p.92, lines 1—10).

Apparently, the respirator did not cover his eyes; however, the Claimant wears eyeglasses and was always wearing his eyeglasses while painting at the School District, sometimes with goggles. (Hrg. T. p.138, line 20 – p.139, line 4).

On cross-examination, the Claimant admitted that he "[m]ostly always" used a respirator indoors. (Hrg. T. p. 125, lines 16—23). When confronted with his sworn deposition testimony, the Claimant admitted that he had previously testified, under oath, that he had used a respirator ever since he started work at the School District and could not remember an instance when he ever pained inside without a respirator.

The Claimant was asked about his treatment with his family physician, Dr. Chapman. The Claimant sought treatment for headaches in June 2010 that he described as "fairly bad" and "severe." His headaches became progressively worse and he also complained of dizziness, fatigue, and vertigo. The Claimant admits that he was first diagnosed and treated for vertigo in 2005, prior to his employment with the School District. Dr. Chapman referred the Claimant to Dr. Skinner, who treated him for over a year. The Claimant testified that his headaches were severe when he was seeing Dr. Skinner, but not as severe as they have been in the last few years. According to the Claimant, Dr. Skinner was only giving him medicine and he wanted a second opinion.

The Claimant then sought treatment with Dr. White in 2012, who took him out of work, during which time he claims his headaches improved. However, the records of Dr. White indicate that after being out of work for 6 weeks he was still having headaches, which Dr. White diagnosed as migraines. (APA p. 34). In fact, the medical records reflect that even after being out of work for a period of approximately 4 months due to an arm injury in 2012, the Claimant was still seeking treatment for "severe" headaches. (APA p. 342).

The Claimant testified that on Monday, March 16, 2015 he reported to Carolina Elementary School for approximately 10 minutes and talked to Ms. Barrett, the principal. The principal told him they were going to have a drill of some kind, so he

went to Lowe's to buy supplies. The Claimant did not do any painting that day. According to the Claimant, when he left the school, he went down Marlboro Avenue and took a left on Carolina Avenue and the next thing he knew he was sitting a block from the school behind the chiropractor's office, feeling confused. He testified he was having a headache, but does not remember how bad it was. (Hrg. T. p.107). The Claimant called his wife and she called the Claimant's supervisor. The Claimant then took his work vehicle back to the shop a few miles away and his wife picked him up there to take him to the Emergency Room, where he was given pain medicine. The Claimant sought treatment at the Emergency Room records from the March 16, 2015 visit, the Claimant's complaints of dizziness, confusion, and headache that "occurred at home." (APA p. 88).

The Claimant later saw Dr. White who told him to get out of painting, so he spoke to his supervisor, Mr. Stegner, to see what jobs were available to him. According to the Claimant, Mr. Stegner had some job options for him that didn't involve painting, but they would have involved a pay cut.

The Claimant was asked about his condition when he saw Dr. White on May 21, 2015 and the Claimant testified that he had a

> "[t]ypical every day headache, every day, hard. It wasn't a secluded area of my head. It was my entire head like it always is. And it's – I mean, I don't – I mean, nothing – nothing really changed." (Hrg. T. p. 112, lines 10—16).

The Claimant is currently receiving treatment with a new family physician, Jennifer Lynch at CareSouth, and a neurologist, Dr. Healy. At the time of the hearing,

the Claimant testified that he was taking Lorcet, Methiamazole, Nexium, Valium, Aspirin, and Lisinopril and had not seen Dr. White in over a year.

The Claimant has not worked anywhere since May 2015. He testified that he gets confused and disoriented and has bouts of sudden fatigue. He was asked about headaches and responded that he has them every day. According to the Claimant he cannot work because of his headaches and fatigue. The Claimant admitted that he wakes up in the morning with headaches, as recorded in Dr. White's records, and his headaches even wake him up from his sleep, as noted by Dr. Healy. (APA p. 4, p. 231).

He testified that Dr. Healy is treating him with medications and a CPAP machine after performing a sleep study that showed the Claimant to have severe sleep apnea. In addition, Dr. Healy has diagnosed the Claimant with restless leg syndrome, which is treated with medications including Depakote and Requip.

On cross-examination, the Claimant was confronted with the medical records of his family physician, Dr. Chapman, indicating that he had recommended a sleep study for possible sleep apnea after the Claimant began complaining of fatigue in 2006, prior to his work at the School District. (Hrg. T. p. 130, APA p. 250—252). By 2008, Dr. Chapman began prescribing Volataren for the Claimant's complaints of headaches, which was also prior to his work at the School District. The Claimant admits that in addition to the fatigue, vertigo, and headaches, he was also treated for anxiety and panic attacks prior to his employment at the School District. The Claimant has also smoked cigarettes for a long time, smoking a pack and a half at most, though he has since cut back.

Dr. Paul Pritchard

The Claimant was evaluated by Dr. Paul Pritchard, a board-certified neurologist and clinical neurophysiologist at the Medical University of South Carolina, on February 2, 2016, at which time Dr. Pritchard also reviewed the Claimant's medical records. Dr. Pritchard's report is contained in the Record as APA #18. After review of the Claimant's medical records, meeting with the Claimant, and performing an examination, Dr. Pritchard offered the following opinion to a "reasonable degree of medical certainty":

> "Although he has been diagnosed as having an encephalopathy [by Dr. White], the neurological exam today was normal, including normal scores for orientation, memory, calculations, and language function on exam and the Montreal Cognitive Assessment. [The Claimant] did not have findings to support a diagnosis of encephalopathy on today's exam." (APA p.407).

Dr. Pritchard further opined to a "reasonable degree of medical certainty":

> "I cannot speak authoritatively on the potential for impairment from the various paint and other compounds to which he reports on the job exposure. The medical literature indicates that Denmark stands out as the only country in the European Union which regards paint exposure as a workers' compensation issue, based on a graduate student's paper which was re-examined and recanted by other psychologist in her department... As I explained to Mr. Barr and his wife, I would recommend that he be evaluated by an occupational medicine physician who has training and experience in toxicology." (APA p.407)

In addition, Dr. Pritchard testified by way of deposition that he reviewed the CT and MRI of the Claimant's brain and found it to reveal "unidentified bright objects," or nonspecific changes related to small vessels, which are uncommon in a person of the Claimant's age and are seen in people who have chronic migraines, diabetes, and hypertension. Dr. Pritchard did not believe these changes were relevant to the Claimant's cognitive complaints.

In addition to reviewing the medical records (including the reports of the neuropsychologists) and other documents provided by the Claimant, as well as meeting with the Claimant and his wife and performing a physical exam, Dr. Pritchard testified that he administered the Montreal Cognitive Assessment Exam, which showed the Claimant to have normal comprehension, naming, and fluency. Dr. Pritchard testified that

> "[a]ll components of his language were normal as were calculations and, in fact, memory. We tested that as well." (Pritchard T. p.12, lines 13—19).

The Claimant actually made a perfect score on the Montreal Cognitive Assessment Exam. The Claimant's score on the Weschler Memory Scale was also normal. In fact, nothing about the Claimant's neurological examination was abnormal according to Dr. Pritchard. Therefore, Dr. Pritchard testified that, to a reasonable degree of medical certainty, the Claimant did not have encephalopathy, or any evidence of memory problems, or any evidence of any neurological impairment or injury. Dr. Pritchard further testified that, to a reasonable degree of medical certainty, the Claimant

does not have physical brain damage as a result of his alleged exposure to volatile organic compounds at the School District. (Pritchard T. p.27, lines 8-15).

Dr. Pritchard's assessment was that the Claimant has simple chronic daily headaches, which could be migraines or muscle tension headaches. Dr. Pritchard testified that if the Claimant was taking up to three Goody's Powders per day, that could cause rebound headaches, as could overuse of caffeine. Cigarette smoking can also play a role in headaches because it triggers changes in the small blood vessels and complicates treatment.

On cross-examination, Dr. Pritchard was asked to describe different types of headaches. He was also asked about types of things that could cause brain damage. The Claimant's attorney also asked him about litigation over lead poisoning and heavy metals. Dr. Pritchard was asked about his recommendation that the Claimant see an occupational medicine physician who has training in toxicology. The Claimant's attorney also asked Dr. Pritchard to explain the different types and degrees of encephalopathy. He then asked Dr. Pritchard about a Mr. Mundy who was apparently electrocuted. Dr. Pritchard was then asked to read certain medical records and recite from MSDS provided by the Claimant's attorney.

Dr. Pritchard next explained that migraine headaches can cause dizziness and can occur first thing in the morning. Dr. Pritchard also testified that, based upon what the Claimant had reported, he has a chronic headache problem and there is nothing that can prove or disprove the cause of that headache. (Pritchard T. p.83). According to Dr. Pritchard, the number one reason for doctor visits in the United States is headache.

When Dr. Pritchard was asked about whether objective testing could confirm whether volatile organic compound exposure had caused brain damage, Dr. Pritchard

was quick to remark that the very concept of volatile organic compounds as a cause of chronic encephalopathy is "highly controversial." Dr. Pritchard further testified that the Claimant

> "didn't have encephalopathy. His neurological exam was normal. His memory was normal. His language, his calculation, all the things we do on a neurological exam were normal."

Dr. Pritchard was next asked about lead poisoning and whether it could progress. The Claimant's attorney then asked Dr. Pritchard about epilepsy and white matter changes and dementia. Later, Dr. Pritchard was asked when the IME was scheduled and when his deposition was scheduled.

On re-direct examination, Dr. Pritchard confirmed his opinion that – to a reasonable degree of medical certainty -- there is no objective evidence that the Claimant has dementia and that there is no objective evidence that the Claimant has any permanent impairment of his brain or neurological system from any cause. Finally, Dr. Pritchard testified, again to a reasonable degree of medical certainty, that the Claimant's current complaints of headaches have no causal relationship to his employment at the School District.

Dr. Roland Skinner

Dr. Roland Skinner testified at a deposition on December 10, 2015 and his medical records are contained at APA #5. Dr. Skinner is a neurologist in private practice and first evaluated the Claimant in September 2010. At that time, the

Claimant's presenting complaints were primarily headache, with some dizziness, which had been constant over a five-week period. Apparently, the Claimant experienced nausea with the headache, felt off-balance when he looked down, and had both trouble concentrating and fatigue. The Claimant also gave a history of chronic anxiety, for which he was taking several medications. According to Dr. Skinner, his neurological examination "really was pretty normal." (Skinner T. p.8, lines 11-12). Dr. Skinner's diagnosis was tension type headache, based upon the Claimant's description of the pain and the lack of other findings and symptoms.

Dr. Skinner testified that he prescribed Nortriptyline for the Claimant's tension type headaches; however, when the Claimant returned to Dr. Skinner in December 2010, but the Claimant had stopped taking the Nortriptyline and Dr. Skinner could not determine its efficacy. At that time, Dr. Skinner still believed the Claimant's headaches were due to tension and he again prescribed Nortriptyline. Dr. Skinner wanted to avoid prescribing narcotics as they are habit forming. In addition, Dr. Skinner explained a phenomenon called "analgesic rebound," in which people who take analgesics frequently get temporary relief from headaches only to have them come back progressively more frequently.

When the Claimant returned to Dr. Skinner in February 2011, Dr. Skinner still believed the Claimant's headaches were tension-type and that there was a component of depression. Dr. Skinner testified that the Claimant

> "was very focused on somatic things and even asked...if I thought he had a tumor in his spinal cord." (Skinner T. p. 18, lines 3—8).

At that time, Dr. Skinner counseled the Claimant about analgesic rebound because he was taking Aspirin, Goody Powders, Tylenol, and Aleve ... "a whole lot of short acting analgesic medications" that could be causing his headaches. (Skinner T. p.19, lines 2—10).

Dr. Skinner next evaluated the Claimant on May 18, 2011, at which time the Claimant was doing better, but his headaches were still not resolved. Nevertheless, the Claimant demonstrated no objective physical or neurological abnormalities and Dr. Skinner's diagnosis remained tension type headaches. The Claimant did not return to Dr. Skinner until August 2011, at which time he was still having daily headaches and "still taking a lot of over-the-counter analgesic medications." (Skinner T. p.22, lines 11—12). However, there were still no physical or neurological abnormalities on exam in August 2011 and Dr. Skinner still felt that the most likely diagnosis was tension headaches. Nevertheless, Dr. Skinner prescribed Depakote in hopes it would decrease the frequency of his headaches.

On November 15, 2011, the Claimant returned to Dr. Skinner and was still complaining of daily headaches, which were worse with changes in barometric pressure or with certain smells, which the Claimant did not describe. Unfortunately, the Claimant was still taking three Goody Powders daily about four days per week, which Dr. Skinner testified could alone trigger rebound headaches. Because the Claimant was also taking Tylenol, Aspirin, and Ibuprofen, Dr. Skinner was still concerned about analgesic rebound headaches.

Dr. Skinner evaluated the Claimant on one final occasion in February 2012 and the Claimant "seemed to be about as he always had been." (Skinner T. p.29, lines 17—18). The Claimant was stable at that time and Dr. Skinner felt that there were

psychological factors (anxiety) were playing a part in his headaches, so Dr. Skinner recommended counseling. However, the underlying diagnosis remained tension-type headaches.

According to Dr. Skinner, his opinion – to a reasonable degree of medical certainty -- remains that the Claimant's headaches were tension-type headaches complicated by analgesic rebound. When asked what causes tension-type headaches, Dr. Skinner responded that this was the proverbial "$64,000 question." Nevertheless, at the time Dr. Skinner last evaluated the Claimant, he did not believe him to have any evidence of physical brain damage. Dr. Skinner further testified that at no time during his treatment of the Claimant did he ever complain of his work environment impacting his headaches.

On cross-examination, the Claimant's attorney asked Dr. Skinner about his awareness of lead paint regulation, lead poisoning, and mercury toxicity in the brain. Dr. Skinner was also asked about arsenic poisoning. Dr. Skinner was subsequently asked about his understanding of the Claimant's job duties and was also asked to review MSDS provided by the Claimant's attorney. Dr. Skinner was asked to read from the MSDS and agreed that they list routes of exposure may be inhalation or eye or skin contact and suggest that repeated overexposure can cause brain and nervous system damage. Subsequently, Dr. Skinner was asked what types of headaches affect attention, memory, concentration, and fatigue and Dr. Skinner testified that any type of headaches could affect those things. Dr. Skinner was then asked to describe all of the types of headaches.

Dr. Nicholas Lind

Nicholas Lind is a psychologist in private practice in Columbia who evaluated the Claimant at the request of his attorney on December 16, 2015. Dr. Lind's report of his one-time evaluation is contained in the record as APA # 2 and he was deposed by the parties prior to the hearing. According to Dr. Lind's deposition testimony, he reviewed the records of Dr. White, but did not review any of the Claimant's other medical records. Dr. Lind administered neuropsychological testing. The results of these tests were considered valid, but demonstrated that the Claimant could be affected by a somatoform disorder, which could in turn affect his test results. The tests also revealed a severe level of depression, which Dr. Lind believed was a long-standing problem for the Claimant. Dr. Lind explained that depression and anxiety (which the Claimant also has) affect the results of neuropsychological testing by way of inattention.

Dr. Lind also tested the Claimant's intelligence and found it to be average. Dr. Lind did not believe there had been any change in the Claimant's intellectual functioning. Dr. Lind explained that the Claimant's processing speed was also within the low average range, but could be affected by stress, pain, and depression. The Claimant reportedly performed "very well" on the Weschler Memory Scale and average to above average on the Rey Complex Figure Test and the Hopkins Verbal Learning Test. According to Dr. Lind "all the tests of memory, there was no compromise." (Lind T. p.13, lines 4—5). Therefore, Dr. Lind was asked:

> Q. Is there any objective evidence of any memory loss or memory impairment in Mr. Barr's case?
>
> A. No. Not from this testing.

Q. Would his memory testing be consistent with dementia or severe cognitive impairment?

A. No. (Lind T. p.14, lines 7—12).

Dr. Lind discussed the Exide battery factory and studies of toxic lead exposure in Korea, neither of which were "relevant for this case." Dr. Lind also admitted that he only has an "assumption" that the Claimant was exposed to anything. (Lind T. p.16, p.17). Dr. Lind further acknowledged that any abnormalities revealed on his testing for be explained by things other than the Claimant's alleged exposure at work.

Regarding the test of executive functioning, Dr. Lind was forced to concede that the Claimant's performance was only "abnormal" on a single sub-test, which had not been validated by retest. Dr. Lind was also forced to concede that while testing suggested disinhibition, neither the Claimant, nor his wife complained of any symptoms of disinhibition or impulse control, and the Claimant demonstrated good impulse control in his interview with Dr. Lind. With respect to impaired motor control, Dr. Lind acknowledged that there are multiple possible explanations unrelated to any alleged chemical exposure and that, not only did the Claimant not complain about any problem with coordination, the Claimant had been treated for a complex tendon laceration in his dominate hand, of which Dr. Lind was not previously aware. In addition, Dr. Lind admitted that "disinhibition" and "impaired dexterity" were the only parameters he measured that are even potentially consistent with an alleged brain injury, and he further admitted that he can't specifically relate these issues to any toxic exposure -- they may, in fact, simply represent a constellation of unrelated symptoms. Lastly, Dr.

Lind testified that the Claimant's cognitive function is not preventing him from working or earning wages. (Lind T. p.39, lines 10—19).

On cross-examination, the Claimant's attorney asked Dr. Lind about his participation in the Exide battery cases and his "exposure with [sic] people with toxic problems." (Lind T. pp.40—41). Dr. Lind was also asked to clarify that he was "not professing to express medical opinions concerning whether or not what caused his actual problem." (Lind T.p.42, lines 7—10). Dr. Lind was then asked to explain depression and anxiety and the degrees of brain damage. Dr. Lind also stated he would defer to a neurologist regarding the Claimant's complaints of headaches.

On redirect, Dr. Lind admitted that his tests results were no consistent with a diagnosis of memory impairment.

Dr. Marshall Allyn White

Dr. White was deposed on November 23, 2015. Dr. White is a neurologist who first evaluated the Claimant on October 17, 2012, at which time the Claimant complained of a two and a half year history of headaches and back pain. While Dr. White was aware that the Claimant was previously treated by Dr. Skinner for headaches, Dr. White did not review those records. According to the new patient questionnaire the Claimant completed for Dr. White, the Claimant was actually waking up in the morning with his headache. The Claimant also admitted to being a cigarette smoker, which Dr. White admitted can cause or exacerbate headaches. According to Dr. White, after his initial evaluation of the Claimant,

> "...he just complained of headache. I mean, I wasn't that concerned about it." (White T. p.9, lines 7—9).

The Claimant apparently complained about paint fumes, so Dr. White recommended that he stay away from paint fumes for six weeks to see if his headaches went away. Despite staying out of work for 6 weeks, the Claimant's headaches were unchanged when he returned to Dr. White in November 2012, so Dr. White prescribed medication used to treat migraines. When the Claimant returned to Dr. White in January 2013, the Claimant's headaches had improved with the use of Topomax and Dr. White added Clonazepam to treat the Claimant's anxiety. When Dr. White prescribed these medications, he was unaware of the Claimant's use of other prescribed medications, including Klonopin and narcotic pain medications. In addition, Dr. White did not place the Claimant on any work restrictions.

The Claimant did not return to Dr. White until April 2015, after an absence of over two years. Dr. White testified that the Claimant returned because he was continuing to have headaches, in addition to complaints of memory loss, fatigue, disorientation, and confusion. When pressed to explain the nature of the Claimant's headaches, Dr. White admitted that he didn't know how frequently the Claimant was experiencing headaches, he couldn't describe the headaches, and he "didn't document" any symptoms associated with the Claimant's headaches. (White T. p.19). Dr. White admitted that did not review any of the Claimant's prior medical records an dhad no idea about why the Claimant was taking Lorcet, Tramadol, Meloxicam, and Tizanidine in 2015 or who was prescribing them, nor did he inquire about the Claimant's use of over-the-counter analgesics.

Dr. White then prescribed Klonopin and Topirimate for the Claimant, as well as a steroid dose pack. On follow up in May 2015, the Claimant's headaches were apparently unchanged; however, the Claimant was complaining of more memory loss and fatigue and he discussed the Claimant's workplace exposures, which the Claimant felt were "making him sick."

According to Dr. White, it is his opinion that the Claimant's "symptomatology and his syndrome is the result of VOC exposure." (White T. p.26, lines 17—21). When asked if he had any objective evidence to support his opinion, Dr. White testified that he "used [his] experience and the pattern of illness" to reach his conclusion. Dr. White then suggested that the Claimant's headaches could not be due to muscle contraction headaches, because muscle contraction headaches are not associated with memory loss, Dr. White suggested that the Claimant's headaches weren't due to analgesic rebound, because he believed they were stable and because the Claimant believed they were work-related and because analgesic rebound does not cause memory loss. Dr. White further suggested that the Claimant's cigarette smoking was not a cause of his headaches because smoking doesn't cause memory loss. Of course, objective testing showed the Claimant to have no evidence of memory loss. (*See* Lind T. p.13, lines 4—5; Pritchard T. p.12, lines 13—19).

Dr. White admits that he knows nothing about the personal protective equipment used by the Claimant at work; however, he speculates that the Claimant has been exposed to volatile organic compounds on a near daily basis for years. Dr. White further admits that there is no evidence of the alleged dose or duration of any exposure, but believed that his opinion as to cause was more important than evidence of exposure. In fact, when confronted with the fact that the Claimant testified to wearing a respirator

and asked how the Claimant could be exposed to volatile organic compounds while wearing a respirator, Dr. White testified,

> "I'm not going to make a comment in that regard. That's not, that's not within the purview of my testimony. My opinion is that there was an exposure, and how that exposure took place is not for me to determine." (White T. p.31, liens 19—25).

Dr. White further testified that he diagnosed the Claimant with encephalopathy based upon Dr. White's personal opinion that the Claimant has memory deficits and slow processing speeds. In fact, Dr. White testified that he ordered neuropsychological testing to objectively evaluate the Claimant's memory and processing speed. Of course, neuropsychological testing done by the Claimant's own psychiatrist, Dr. Lind, revealed average processing speeds and normal memory. According to Dr. Lind:

> "Q. Is there any objective evidence of any memory loss or memory impairment in Mr. Barr's case?
>
> A. No. Not from this testing.
>
> Q. Would his memory testing be consistent with dementia or severe cognitive impairment?
>
> A. No." (Lind T. p.14, lines 7—12).

Dr. White did not have benefit of Dr. Lind's testing or testimony at the time he rendered his speculative opinions about the Claimant's neuropsychological functioning.

However, he was specifically asked whether any objective evidence supported his opinions at the time:

> "Q. Because at this point there's no objective evidence he has neuropsychiatric or neuropsychological or memory deficits?
>
> A. You're here today to hear my opinions and, you know, as an expert, I'm free to opine, and I would assume that's true." (White T. p.32, line 22 – p.33, line 2).

Instead of providing evidence to support his opinion about alleged exposure and alleged memory loss, Dr. White continued to deflect by stating that he didn't believe the Claimant "is sophisticated enough to carry on a charade like this." (White T. p.33, lines 13-14). According to Dr. White, "his story and the evolution of his symptoms over the years is entirely consistent with exposure to a toxin." (White T. p.33, lines 17—19). Dr. White was then questioned as follows:

> "Q. Well, tell me what else other than the subjective statements of [the Claimant] have you based your opinions on?
>
> A. It's based upon the pattern of the illness. I think I've answered those questions.
>
> Q. All right. So what evidence is there that he has suffered any memory loss or currently has any memory problems?
>
> A. My observations." (White T. p.34, lines 8—14).

According to Dr. White, he has given his opinions regarding a diagnosis and causation "before [he] finished working him up." (White T. p.34, lines 24—25). Dr. White then suggested that he was still "working him up" and had ordered neuropsychological testing to provide objective evidence: "If there are signs of dementia, then that's going to show up. If there's signs of encephalopathy or dementia, that's going to show up." (White T. p.40, lines 14—18). Dr. White believed that neuropsychological testing would "validate" his opinions; however, it did not, despite Dr. White's claim that

> "...I really can't recall but on rare occasion the neuropsychiatric testing or the neuropsychological testing was substantially different from what my opinions are. So my opinions are typically right on target with respect to neuropsych testing." (White T. p.44, lines 12—17).

Dr. White last saw the Claimant on July 16, 2015. At that time, Dr. White prescribed Topomax, on top of the Prozac and Tramadol and Adderall the Claimant was already taking, which Dr. White admits put the Claimant at risk of developing Seratonin Syndrome, which causes headaches, confusion, elevated blood pressure, potentially seizures and even death. (White T. p.47--49). Dr. White does not know why the Claimant never returned to him and has no knowledge of his condition after July 2015. Despite prescribing a six month supply of Topomax, he never follow-up with the Claimant.

Dr. White was then asked,

> "Q. Is there any objective evidence that he has brain damage at all of any degree?
>
> A. Well, there hopefully will be after neuropsychology testing." (White T. p.53, lines 16—19).

Dr. White further volunteered that "neuropsych testing is the best objective measure we have for evaluating patients with encephalopathic conditions." (White T. p.54, lines 10-12).

On cross-examination, Dr. White was asked about commercial versus residential painting and how many hours per day the Claimant worked. Dr. White was asked about respirators and replied that he was not "an expert in respiratory or respirator technology." (White T. p.69, lines 22—23). Dr. White affirmed his previous opinions, including his opinion that the Claimant's "fatigue, migraines and memory loss are due to the VOC's." (APA p.6). The serial records of Dr. White are contained in the record in APA page one through 75c.

<u>Dr. L. Randolph Waid</u>

Dr. Waid is a private-practice neuropsychologist who reviewed and evaluated the Claimant's neuropsychological test data and medical records. Dr. Waid opined that the Claimant's neuropsychological evaluation by Dr. Lind

> "revealed [the Claimant] to perform well, particularly on tests assessing anterograde memory. Indeed, [the Claimant's] performance of a battery of neuropsychological tests failed to reveal evidence of severe impairment

> affecting brain behavior functioning. Some of the test performances that were in the low average range would be considered as being consistent with [the Claimant's] premorbid intellectual abilities." (APA p.446).

In fact, Dr. Waid specifically disagreed with the speculative opinions offered by Dr. White. According to Dr. Waid:

> "Review of the records including previous reports of evaluations conducted by multiple practitioners as well as Dr. Lind's neuropsychological test results simply do not support Dr. Marshall White's opinion that [the Claimant] suffers from an encephalopathic condition that has led to severe permanent brain damage with severe compromise in brain behavior functions. As noted above, [the Claimant's] performance on objective tests assessing anterograde memory was in the average to above average range. Review of records failed to reveal any biological markers to support that [the Claimant] is suffering from a neurobehavioral syndrome consistent with VOC exposure. [The Claimant] is not suffering from a dementing disorder as that would involve evidence of severe cognitive impairments via conduction of neuropsychological testing...Indeed, [the Claimant's] primary complaint is one of disruptive headaches that existed prior to his engagement in employment with Darlington County School District." (APA p. 446).

In summation, Dr. Waid concluded,

> "there is no evidence to indicate that [the Claimant] suffered physical brain injury as a direct result of his employment...Nor is there any compelling evidence that [the Claimant] currently suffers from an encephalopathic condition that has resulted in severe brain damage." (APA p.446).

Dr. Mark T. Wagner

Dr. Wagner is a neuropsychiatrist at the MUSC Department of Neurology. The Defendants attempted to have the Claimant tested and evaluated by Dr. Wagner; however, the Claimant refused. Therefore, Dr. Wagner reviewed the Claimant's medical records and Dr. Lind's neuropsychological test data and offered his opinions regarding the claim. According to Dr. Wagner, the Claimant's

> "neuropsychologic test scores are highly consistent with his prior academics, and more importantly his standardized test scores, all obtained well before any alleged exposure...While it is my opinion that [the Claimant's] neuropsychological test scores are primarily related to below average intellect and poor academic standing, one can not ignore other confounding factors, notably the abnormal MRI with hyperintensities mostly in the frontal white matter bilaterally and chronic noncompliance with smoking cessation. This area of the brain is responsible for deficits in disinhibition and other executive function. Likewise, slow processing speed is a cardinal symptom of clinical depression and would result in

slow performance on fine motor and psychomotor tasks." (APA pp.418–419).

With regard to the speculative opinions of Dr. White, Dr. Wagner offered the following:

> "With the exception of Dr. White's opinions, all objective basic neurologic exams with associated mental status examination by numerous physicians that have examined [the Claimant] have been unremarkable from a neuropsychiatric perspective. Even Dr. White's examination failed to demonstrate any objective neurological findings and his documentation is so limited that his nots do not allow for peer-review of his opinions. Additionally, his documentation does not allow for any other doctors to replicate abnormal findings to confirm or refute his opinions...To the extent that Dr. White relied on the neuropsychological test results to form his opinions, those findings were also normal...Indeed, [the Claimant's] objective memory performance was exceptionally strong and exceeded that of most neurologically intact people in the US reference population." (APA p.419)

Dr. Wagner ultimately concluded that there

> "was no objective evidence in the examinations or reports that [he] reviewed that would support a neurobehavioral syndrome consistent with

VOC exposure. There were not biological markers to support exposure. There is no document of any other organ system involvement to support exposure. Additionally, not only is there no objective evidence of any distinctive neuropsychiatric assessment there is no evidence to support that [the Claimant] has dementia related to severe encephalopathy as opined by Dr. White. Dementia requires **severe** [emphasis original] cognitive impairment (not documented in any of the objective cognitive testing by Lind, Pritchard, White)..." (APA pp. 419—420).

Dr. Wagner went on to explain that the episodic memory loss the Claimant' described as having with his headaches "is a common complaint with anyone that experiences severe headaches." (APA p. 420).

Dr. William Woodbury

The Claimant was evaluated by Dr. William Woodbury in April 2005 – years prior to his employment with the School District. Even at that time, the Claimant complained of a four year history of Vertigo. (APA p.247). Apparently, the Claimant was experiencing dizziness, imbalance, trouble walking and nausea, for which he was treated with the prescription medical Anitvert.

Robert Bennett

The first witness called by the Claimant at the August 31, 2016 hearing was a Dr. Robert Bennett. Dr. Bennett has a pharmacy degree from the Medical University of South Carolina and a doctorate in pharmaceutical sciences. According to Dr. Bennett,

he practices as a forensic toxicologist. However, Dr. Bennett admitted that he is not a medical doctor and has no professional licenses whatsoever, as his pharmacy license has expired. Dr. Bennett also admitted that the South Carolina Department of Labor has issued a "Cease and Desist" Order against him, prohibiting Dr. Bennett from holding himself out as a pharmacist. Apparently, the bulk of his work is in drug, alcohol, and DNA testing. No organization has certified Dr. Bennett as a specialist in toxicology. Over the objection of the Defendants, Dr. Bennett was permitted to testify at the hearing.

According to Dr. Bennett, he was given documents by the Claimant's attorney to review, including medical records, material safety data sheets ("MSDS"), and the Claimant's job description. Dr. Bennett believed that the Claimant worked as a commercial painter "and used chemicals that are required in performing those duties." (Hrg. T. p.33, liens 18—20). Dr. Bennett testified that the Claimant primarily used brushes and rollers to paint, as opposed to aerosol spray tools, and worked both inside and outside. Dr. Bennett further testified that the Claimant used a respirator while working inside buildings, which were also ventilated.

Dr. Bennett opined that based upon his review of the Claimant's job description and the MSDS sheets, he believes the Claimant was exposed to volatile organic compounds. Dr. Bennett described volatile organic compounds as being fat soluble and suggested that fat soluble compounds can cross the blood/brain barrier and affect the brain. Dr. Bennett believes that the most important factor "is what quantity does get into the brain." (Hrg. T. p.37, lines 9—10). Apparently, the Claimant could have his blood or urine or hair tested to check for the presence of volatile organic compounds, but he did not.

Dr. Bennett suggested that one could be exposed to volatile organic compounds through inhalation, absorption through the skin or eyes, or by swallowing. Dr. Bennett testified that even if a person uses protective gear, one could still be exposed to volatile organic compounds because "no device is perfect." (Hrg. T. p.46, lines 10—11). Dr. Bennett testified that acute exposure to volatile organic compounds can cause disorientation, dizziness, nausea, headaches, and sometimes vomiting, but these effects are "short lived" and "go away and the patient returns to normal" once the person is removed from the environment. (Hrg. T. p.48, lines 4-10). However, Dr. Bennett testified that if there is repeated exposure to volatile organic compounds, the toxic effects can be cumulative – it's "a dose-related response." (Hrg. T. p. 56, lines 16—25). Dr. Bennett believes it is important to have CT and MRI scans and neuropsychological testing to determine if there is any permanent disability.

Ultimately, Dr. Bennett testified that he believes the Claimant was exposed to volatile organic compounds "to some degree or extent" and subsequently exhibited symptoms consistent with exposure to volatile organic compounds. (Hrg. T. p.61, lines 4—9). Dr. Bennett went on to describe at length different types of headaches and the medications used to treat them. Dr. Bennett also gave testimony regarding terms used on the MSDS, including "percent by weight" and "evaporation rate."

On cross-examination, Dr. Bennett admitted that he cannot objectively quantify the degree or extent to which the Claimant may have been exposed to volatile organic compounds at the School District, or in his work as a private painter. Dr. Bennett conceded that "dose" is the most relevant factor in determining whether an alleged exposure was toxic, but he cannot quantify "dose" in this claim.

Dr. David H. Eagerton

Dr. David Eagerton is an Assistant Professor of Pharmacology at Presbyterian College and former Chief Toxicologist for the South Carolina Law Enforcement Division. Dr. Eagerton reviewed voluminous records in this claim, including the MSDS for the product the Claimant used most often at work – DTM and Pre-catalyzed epoxy. According to Dr. Eagerton, these products

> "contain compounds that have a relatively low vapor pressure and are not considered by some sources to be a VOC." (APA p.448).

Dr. Eagerton noted that the Claimant's professed to using a respirator on inside jobs and that "[u]tilization of a properly fitted air-purifying respirator (APR) eliminates the exposure to VOCs."

After reviewing and summarizing the Claimant's medical and vocational records, Dr. Eagerton issued the following statement:

> "It is my opinion that, within a reasonable degree of scientific and medical certainty, [the Claimant's] symptoms are not likely due to exposure of VOCs while he was employed by the Darlington County School District. This is based on the fact that 1) there is no toxicological evidence of exposure; 2) there is no definitive medical evidence that VOC exposure occurred; 3) there is no definitive medical evidence that [the Claimant's] symptoms are caused by exposure to VOCs; 4) the products that were used most frequently by [the Claimant] did not contain highly volatile

VOCs; 5) when [the Claimant] was painting inside, he used an APR and the area was ventilated; 6) [the Claimant's] headaches are not associated with exposure to pain fumes; 7) [the Claimant's] medications can cause impairment of neurologic functions; 8) [the Claimant] suffered no ill effects that are commonly seen with acute exposure to VOCs; 9) [the Claimant] has no renal or hepatic injury which can be attributed to VOC exposure; and 10) even if [the Claimant] had an exposure to VOCs, it is more likely that it occurred at a previous job or while he was moonlighting as a self-employed painter..." (APA p. 449).

Carolina Pines Regional Medical Center

Records from Carolina Pines are contained in the record at APA #3. According to a report dated March 16, 2015, the Claimant reported to the Emergency Room with complaints of dizziness, confusion, hand pain, and headache on that date, which "[o]curred at home." (APA p.88).

Hartsville Medical Group

Records from Hartsville Medical Group (Dr. Raymond Chapman) are contained in the record at APA #4 and APA #11. These detail the Claimant's history of anxiety, depression, right arm pain, stomach problems, sinus issues, neck pain, back pain, and chest pain, as well as his tobacco dependence. Regarding his headaches, Dr. Chapman noted on April 14, 2015 that the Claimant

"Has seen 4 neurologist....didn't like any. They told him they had nothing to offer him. Will start decreasing meds as he has had no real improvement clinically when any meds were increased." (APA p.105).

In addition, Dr. Chapman's records detail the Claimant's health problems prior to his work at the School District. As early as May 12, 2006, Dr. Chapman believed that the Claimant's complaints of fatigue were due to sleep apnea and a sleep study was recommended on February 2, 2007. (APA p. 250). Apparently, the Claimant never obtained this sleep study or treatment for sleep apnea until he started seeing Dr. Healy in 2016. (APA p.224). In 2007, Dr. Chapman treated the Claimant for vertigo and by 2008 Dr. Chapman had prescribed Voltaren for the Claimant's headaches. (APA p.252). According to Dr. Chapman's May 2, 2011 office note, he had diagnosed the Claimant with tension headaches which "occur for no reason." (APA p.260). Dr. Chapman referred the Claimant to Dr. Skinner for treatment of his tension headaches.

Dr. Joseph Healy

Records of Dr. Joseph Healy are contained in the Record at APA #8 and Dr. Healy gave deposition testimony on September 27, 2016. According to Dr. Healy's records, the Claimant has been diagnosed with "severe" Obstructive Sleep Apnea. (APA p.223). In fact, the Claimant's sleep apnea is so severe, he required an emergency CPAP during his sleep study. (APA p.223, 224). In addition to obstructive sleep apnea, Dr. Healy's records reveal that analgesic rebound headaches were being treated in April 2016, at which time the Claimant was also referred to a pulmonologist for possible Chronic Obstructive Pulmonary Disease secondary to his cigarette abuse. (APA p.225).

At his deposition, Dr. Healy testified that he initially evaluated the Claimant on March 31, 2016 for complaints of headache and fatigue. Dr. Healy explained that the Claimant's smoking addiction could be affecting the both the headache and fatigue symptoms the Claimant described. (Healy T. pp.8--9). At the time he came to Dr. Healy, the Claimant was taking prescription medications for Hyperthyroidism, High Blood Pressure, and the prescription pain-killer Hydrocodone. (Healy T. pp.9—10). It was unclear who was prescribing the Hydrocodone, or for what purpose, but Dr. Healy explained that chronic daily headaches can be related to too much medication, whether prescribed or over-the-counter. (Healy T. p.10). Dr. Healy testified that he performed a mini-mental exam, on which the Claimant obtained a perfect score, meaning he had normal cognition. (Healy T. pp.11—12). According to Dr. Healy, he didn't see any evidence of dementia or cognitive impairment. (Healy T. p.12, lines 14—18).

Dr. Healy saw the Claimant on follow-up on April 19, 2016, at which time the Claimant was apparently taking "[a] lot of over-the-counter medications." (Healy T. p. 13, lines 1—6). Dr. Healy felt that the Claimant may have "chronic daily headaches," which is also known as rebound or "medication overuse" headaches. (Healy T. p.13). Dr. Healy noted that the Claimant often woke in the morning with headaches, which and testified that:

> "...the whole time I'm thinking, you know, this fellow's breathing is bad. He's got a lot of reasons to be relatively hypoxic, which leads to stress, fatigue and that might be what causes his headache." (Healy T. p.15, lines 20—24).

As a result, Dr. Healy ordered a sleep study on April 27, 2016, which showed two different sleep disorders :

> "that he had severe sleep apnea, and so, I mean, in anybody that has headaches, you got to correct your sleep, you got to correct your breathing and then, too, it showed that he was a kicker...He kicks all night long which is a pattern that means you have a periodic leg movements of sleep...then I put him on Requip at bedtime..." (Healy T. p.17 lines 4—14).

Dr. Healy was testified that with sleep apnea, "you stop breathing," which can cause headaches and fatigue and lead to mental effects, including confusion, and problems with concentration. (Healy T. p.18). Dr. Healy noted that the symptoms of sleep apnea often mimic dementia or Alzheimer's. (Healy T. p.18, lines 22—25).

When the Claimant returned to Dr. Healy on May 4, 2016, Dr. Healy prescribed Requip for the restless leg issues and a CPAP machine for his sleep apnea. In addition, Dr. Healy diagnosed the Claimant abnormal arterial blood gas, which is due to structural lung disease. (Healy T. pp.19—20). Dr. Healy was asked about this abnormal arterial blood gas due to lung disease and its relationship with the Claimant's complaints of headache and fatigue:

> "Q...As so could that be playing a role in his headaches and fatigue as well?
>
> A. Oh, I think it definitely is."

(Healy T. p.20, lines 11—16). As a result, Dr. Healy referred the Claimant to a Pulmonologist.

In addition to the sleep apnea, the restless leg, and the low arterial blood gas, Dr. Healy also found the Claimant to have problems with his vision, which he described as "very poor and getting worse." (Healy T. p.21, lines 6—7). Poor vision, in turn, can contribute to headaches, and; therefore, Dr. Healy referred the Claimant to an eye doctor. Dr. Healy also prescribed an iron supplement because his iron level was borderline. (Healy T. p.21, lines 21—22).

On June 28, 2016, the Claimant

> "was having [heart] palpitations. He was having episodes where he would get palpitations. He would get chest discomfort. He would start to and then get disoriented and have his headache worsening. He'd had two episodes the day before and then I started wondering since he was such a heavy smoker and whether or not he had any cardiac issue."

(Healy T. p.22, lines 10—16). Dr. Healy believed he may have Coronary Artery Disease and he told the Claimant he needed to see a Cardiologist.

Apparently, the last time the Claimant saw Dr. Healy was July 21, 2016. At that time, the Claimant was still smoking and had not seen a Pulmonologist as recommended. (Healy T. p.24--25). Dr. Healy testified that the Claimant did not ever take the Requip he prescribed for the Claimant's restless leg (Periodic Limb Movement Syndrome, or PLMS) and it is unclear whether he ever took his prescribed iron supplement. Apparently, the Claimant had seen an eye doctor and was diagnosed with bilateral retinal hemorrhages, the cause of which he left to the opthamologists. (Healy T. p.38, lines 7—10).

According to Dr. Healy, he believes that the Claimant has primarily a pulmonary problem, which has led to his other problems, including fatigue and headaches. Dr. Healy acknowledged that pulmonary disease not uncommon for heavy smokers and that he could not say with any certainty what portion of any pulmonary problems are caused by smoking, as opposed to other alleged exposures: "that would be a question for the pulmonologist." (Healy T. p.28, lines 23--24).

While Dr. Healy endorsed a questionnaire prepared by the Claimant's attorney indicating that the Claimant's headaches and fatigue was causally-related to the alleged exposure to volatile organic compounds, he admitted on direct examination that alleged VOC exposure was merely "contributory" and given the smoking history, he would defer to a pulmonologist as to "which is felt to be the larger issue." (Healy T. p.30, lines 16—21).

On cross-examination, Dr. Healy was asked if anything other than medication excess could cause the Claimant's chronic daily headaches. Dr. Healy responded:

> "Well, I'm sure there's a lot of... I think this fellow walks around relatively hypoxic. He retains carbon dioxide. The blood chemistry isn't exactly ideal for a properly functioning [sic] in any organ system you can name."

(Healy T. p.36, lines 4—11). Dr. Healy also explained that the Claimant's elevated carbon dioxide levels

> "doesn't produce a milieu for the brain to exactly work properly and from a metabolic standpoint, headache is the end result. So that, that's my reason

for thinking that his breathing is contributory to his headaches. But what's to his breathing beyond smoking, **again I would defer to a pulmonologist**..."

(Healy T. p.38, lines 17—25; emphasis added).

Dr. Healy was also asked about the Claimant's "spells" of dizziness and headache. Dr. Healy testified that:

> "...he was having these episodes where he would get headache. He would then get anxious, palpitations, and they he would stutter and have trouble talking. And so it was almost like a ITA, which he's at risk of because of his vascular...You do see people with underlying lung disease who will get an area of mucus...and that's enough to kick him over into being hypoxic...so **I was curious about what was causing these spells, although didn't' turn up a neurologic cause**.

(Healy T. p.42, lines 4—20; emphasis added).

Dr. Healy was also asked on cross-examination whether he had treated painters in the past with chronic headaches, to which he responded, "you don't see it a lot." (Healy T. p.43, line 4).

Findings of Fact

1. The Claimant alleges that he sustained injuries to his brain, central nervous system, and psyche as a result of repetitive exposure to volatile organic compounds (VOCs) arising out of and the course of his employment on May 21, 2015. The Claimant alleges that he either sustained these alleged injuries by accident, repetitive trauma, or occupational disease. His Form 58 describes his alleged symptoms as headaches, memory, fatigue, and confusion. Apparently, the only significance of the May 21, 2015 date is that Dr. White evaluated the Claimant and issued a work excuse on this date.

2. Prior to the Claimant's employment with the School District, which began in 2009, he had been diagnosed with Chemical Pneumonitis, Agoraphobia, Fatigue, Chronic Obstructive Pulmonary Disease, Headaches, Anxiety, Depression, back pain, and possible Obstructive Sleep Apnea by his family physician, Dr. Chapman.

3. Since May 21, 2015, the Claimant has been evaluated by Dr. White, Dr. Lind, Dr Chapman, Dr. Healy, and Dr. Pritchard and has undergone a Neuropsychological testing, an EEG, and Sleep Study.

4. Although Dr. White has not evaluated the Claimant since July 2015, he opined on September 10, 2015, that the Claimant's "fatigue, migraines, and memory loss" were due to the VOCs in the paint from work to a "reasonable degree of medical certainty." (APA p.6). In October 2015, Dr. White opined that the Claimant "has suffered an encephalic condition which has led to severe permanent brain damage." However, at his deposition on November 23, 2015, Dr. White admitted that he had no expertise in toxicology and no direct knowledge of any alleged VOC exposure, but only *assumed* that there had been such an exposure in rendering his opinions as to causation. (White T. p.31, liens 19—25). According to Dr. White, he discounted all of

the other possible causes of fatigue and headaches because he assumed/believed that the Claimant's fatigue and headaches were accompanied by memory loss. Dr. White further admitted that he had no objective evidence to support his opinion regarding encephalopathy or brain damage because he was still "working him up" and had ordered neuropsychological testing to provide objective evidence, stating that "[i]f there are signs of dementia, then that's going to show up. If there's signs of encephalopathy or dementia, that's going to show up." (White T. p.40, lines 14—18). Dr. White believed that neuropsychological testing would "validate" his opinions ((White T. p.53, lines 16—19); however, the neuropsychological testing performed by Dr. Lind showed no evidence of any memory loss or memory impairment and no evidence of dementia or cognitive impairment. (Lind T. p.14, lines 7—12). Therefore, Dr. White's opinions as to the cause of the Claimant's fatigue and headaches, as well as his opinion that he has encephalopathy, dementia, and/or brain damage, are based upon hypothetical facts that have been disproven with neuropsychological testing according to three neuropsychologists (Dr. Lind, Dr. Waid, and Dr. Wagner) and more recent neurological examinations by Dr. Pritchard and Dr. Healy, both of whom disagreed with Dr. White's opinions. Because Dr. White's opinions are speculative, based upon disproven hypotheticals, uncorroborated, and are otherwise without objective basis, the statements and opinions of Dr. White are given little weight.

5. Dr. Lind conducted neuropsychological testing on December 16, 2015 to determine if the Claimant had any objective evidence of memory loss or dementia. According to Dr. Lind, "all the tests of memory, there was no compromise." (Lind T. p.13, lines 4—5). In fact, Dr. Lind further testified that, not only was there no objective

evidence that the Claimant had any memory loss or impairment, but objective testing showed no evidence of dementia or cognitive impairment. (Lind T. p.14, lines 7—12).

6. Neurologist Dr. Paul Pritchard of MUSC evaluated the Claimant on February 2, 2016. According to Dr. Pritchard, "didn't have encephalopathy. His neurological exam was normal. His memory was normal. His language, his calculation, all the things we do on a neurological exam were normal." Dr. Pritchard's testimony is consistent with his medical report in this regard. While Dr. Pritchard admitted that he could not speak authoritatively on the potential impairment from the various paint and other compounds to which the Claimant was allegedly exposed, the fact remained that, to a reasonable degree of medical certainty, the Claimant did not have encephalopathy, or any evidence of memory problems, or any evidence of any neurological impairment or injury from any cause. Dr. Pritchard further testified that, to a reasonable degree of medical certainty, the Claimant does <u>not</u> have physical brain damage as a result of his alleged exposure to volatile organic compounds at the School District. (Pritchard T. p.27, lines 8-15).

7. Dr. Mark Wagner, also of MUSC, reviewed the Claimant's medical records and the data from Dr. Lind's neuropsychological testing after the Claimant refused an evaluation by Dr. Wagner. Dr. Wagner concluded that, based upon Dr. Lind's test data, the Claimant's "objective memory performance was exceptionally strong and exceeded that of most neurologically intact people in the US reference population." (APA p.419). In the opinion of Dr. Wagner, "was no objective evidence in the examinations or reports that [he] reviewed that would support a neurobehavioral syndrome consistent with VOC exposure. There were no biological markers to

support exposure. There is no document of any other organ system involvement to support exposure. Additionally, not only is there no objective evidence of any distinctive neuropsychiatric assessment there is no evidence to support that [the Claimant] has dementia related to severe encephalopathy as opined by Dr. White. Dementia requires **severe** [emphasis original] cognitive impairment (not documented in any of the objective cognitive testing by Lind, Pritchard, White)..." (APA pp. 419—420).

8. Likewise, Dr. Randolph Waid, reviewed the Claimant's medical records and Dr. Lind's neuropsychological test data. According to Dr. Waid, "Review of the records including previous reports of evaluations conducted by multiple practitioners as well as Dr. Lind's neuropsychological test results simply do not support Dr. Marshall White's opinion that [the Claimant] suffers from an encephalopathic condition that has led to severe permanent brain damage with severe compromise in brain behavior functions. As noted above, [the Claimant's] performance on objective tests assessing anterograde memory was in the average to above average range. Review of records failed to reveal any biological markers to support that [the Claimant] is suffering from a neurobehavioral syndrome consistent with VOC exposure. [The Claimant] is not suffering from a dementing disorder as that would involve evidence of severe cognitive impairments via conduction of neuropsychological testing...Indeed, [the Claimant's] primary complaint is one of disruptive headaches that existed prior to his engagement in employment with Darlington County School District." (APA p. 446). In summation, Dr. Waid concluded, "there is no evidence to indicate that [the Claimant] suffered physical brain injury as a direct result of his employment...Nor is

there any compelling evidence that [the Claimant] currently suffers from an encephalopathic condition that has resulted in severe brain damage." (APA p.446).

9. On February 14, 2016, Dr. David Eagerton of Presbyterian College opined to a reasonable degree of medical certainty that the Claimant's symptoms are not likely caused by any alleged exposure to VOCs at work. Dr. Eagerton further opined that any VOC exposure would have been limited due to the low vapor pressure of the substances most commonly used by the Claimant and due to his use of a respirator. (APA pp. 448--449).
10. Dr. Robert Bennett testified that he believes the Claimant was exposed to volatile organic compounds "to some degree or extent" and subsequently exhibited symptoms consistent with exposure to volatile organic compounds. (Hrg. T. p.61, lines 4—9). However, the greater weight of the evidence that the Claimant does not have a brain or neurological injury from any cause outweighs the testimony of Dr. Bennett regarding the Claimant's alleged exposure.
11. On August 16, 2016, in a questionnaire from the Claimant's attorney, Dr. R. Joseph Healy endorsed an opinion that, to a reasonable degree of medical certainty, the Claimant's chronic daily headaches and fatigue were causally-related to his alleged exposure to VOCs between 2009 and 2015. (APA pp.219—220). However, when Dr. Healy was deposed on September 29, 2016, Dr. Healy testified that he believed that alleged VOC exposure was merely "contributory" and he could not state with any certainty what was causing the underlying pulmonary problems he felt were causing the Claimant's headaches and fatigue and would, instead, defer to a pulmonologist. (Healy T. p.30; p.38, lines 17—25). In fact, Dr. Healy testified that he could not find any neurological cause for the Claimant's symptoms. (Healy T. p.42, lines 4—20).

Instead, Dr. Healy believed the Claimant to have pulmonary problems for which he referred him to a Pulmonologist, cardiac problems for which he referred him to a Cardiologist, severe vision problems for which he referred him to an Opthamologist, all in addition to the severe sleep disorders (Obstructive Sleep Apnea and Periodic Limb Movement Syndrome) and abnormal arterial blood gas he had diagnosed. Dr. Healy admitted that the Claimant's severe sleep disorders, in combination, with the Claimant's abuse of cigarettes, could be causing or contributing to his symptoms of headache, fatigue, and even confusion. (Healy T. pp.8—9; Healy T. p.18; p.20). More importantly, Dr. Healy, testified that the Claimant showed no evidence of dementia or cognitive impairment. (Healy T. p.12, lines 14—18). Therefore, greater weight is given to the actual testimony of Dr. Healy than to the questionnaire he endorsed.

12. There was no evidence presented that the conditions of the Claimant's employment with the School District were either extraordinary, or unusual, in comparison to the normal conditions of the employment and I find that the conditions of the Claimant's employment with the School District were not extraordinary and not unusual, in comparison to the normal conditions of the employment of a painter, based upon the greater weight of the evidence in the record.
13. Based upon the greater weight of the evidence in the record, as described more fully herein above, the Claimant did not sustain any injury by accident, repetitive trauma, or occupational disease arising out of or in the course of his employment. The greater weight of the evidence in the record indicates that the Claimant's personal health conditions were neither caused, nor aggravated by any workplace accident or exposure.

Conclusions of Law

1. Pursuant to S.C. Code Ann. § 42-1-160, the Claimant did not sustain any injury to his brain, central nervous system, or psyche by accident arising out of or in the course of his employment on May 21, 2015 (or any other time) and his complaints of headaches, memory loss, fatigue, and confusion are otherwise not causally-related to any accident at work based upon the greater weight of the evidence. The Claimant describes no event or work conditions on May 21, 2015, or any other time, that could have caused or aggravated his condition. More importantly, the Claimant alleges that his condition was gradual in onset and due to repeated alleged exposures over time; therefore, his alleged injuries cannot be considered injuries by "accident" pursuant to the plain terms of S.C. Code Ann. § 42-1-160(F). Furthermore, the overwhelming weight of the evidence, including the opinions of Dr. Paul Pritchard, Dr. Joseph Healy, Dr. Mark Wagner, Dr. Nicholas Lind, and Dr. Randolph Waid, do not support a finding that the Claimant has any injury to his brain or nervous system, or that his headaches, fatigue, or confusion are causally-related to his employment generally, or any alleged accident on May 21, 2015 specifically. Regarding the Claimant's allegation of an accidental injury to his "memory," the objective evidence in the record shows that the Claimant has no loss or impairment of his memory from any cause.
2. Pursuant to S.C. Code Ann. § 42-11-10, the Claimant's alleged injuries to the brain, central nervous system, and psyche (including his alleged headaches, memory loss, fatigue, and confusion) do not qualify as an "occupational disease." Specifically, the greater weight of the evidence indicates that the conditions for which the Claimant seeks benefits do not "result directly and naturally from exposure... to the hazards

peculiar to the particular employment." Furthermore, the greater weight of the evidence, including the opinions of Dr. Paul Pritchard, Dr. Joseph Healy, Dr. Mark Wagner, Dr. Nicholas Lind, and Dr. Randolph Waid, indicates that the Claimant does not suffer from any disease of his brain or nervous system (or psyche). To the extent that the Claimant's condition could be attributed to some pulmonary or cardiac disease (as suggested by Dr. Healy), the Claimant has made no claim for any pulmonary or cardiac disease and any such disease would otherwise not be compensable as an "occupational disease" pursuant to S.C. Code Ann. § 42-11-10(B)(5).

3. Pursuant to S.C. Code Ann. § 42-1-172, the Claimant's alleged injuries to the brain, central nervous system, and psyche (including his alleged headaches, memory loss, fatigue, and confusion) were not caused by a compensable "repetitive trauma." Specifically, the preponderance of the medical evidence, including the opinions of Dr. Paul Pritchard, Dr. Joseph Healy, Dr. Mark Wagner, Dr. Nicholas Lind, and Dr. Randolph Waid, indicate that the Claimant does not have any injury to his brain, nervous system, or psyche from any cause. Furthermore, there is no credible evidence of a "direct causal relationship" between the Claimant's work conditions and his alleged injuries. While Dr. White has opined as to the existence of such a relationship, the opinions of Dr. White are given little weight, as they have no objective basis and they are otherwise contradicted by the overwhelming weight of the credible evidence in the record, including the opinions of the other neurologists who evaluated the Claimant and found him to have no evidence of any brain or other neurologic injury. In addition, the greater weight of the evidence, including the

opinions of Dr. Eagerton, indicate that the Claimant's alleged workplace exposures were neither repetitive, nor traumatic.

4. Pursuant to S.C. Code Ann. § 42-9-35, the Claimant's pre-existing psychological problems were not aggravated by any alleged accident, repetitive trauma, or occupational disease on May 21, 2015 based upon the greater weight and preponderance of the medical evidence. Furthermore, the Claimant's alleged psychological injury was not accompanied by any physical injury and was otherwise not caused by extraordinary or unusual employment conditions and; therefore, his alleged psychological injury is not compensable pursuant to S.C. Code Ann. § 42-1-160(B).
5. Pursuant to S.C. Code Ann. § 42-15-60, the Claimant is not entitled to any medical benefits, as the greater weight of the evidence indicates that the Claimant does not require any medical care or treatment as a result of any alleged workplace accident or exposure and any alleged period of disability is otherwise not causally-related to his employment.
6. Pursuant to S.C. Code Ann. §§ 42-9-10, 42-9-20, and 42-9-260, the Claimant is not entitled to any temporary or permanent disability benefits, as the greater weight of the evidence indicates that the Claimant does not have any loss of wage-earning capacity as a result of any alleged workplace accident or exposure and the Claimant otherwise refused offers of suitable employment.
7. Pursuant to S.C. Code Ann. § 42-9-30 and S.C. Code Reg. 67-1101, the Claimant has no permanent loss of use of any scheduled body member as a result of any alleged workplace accident or exposure.

Order

IT IS, THEREFORE, HEREBY ORDERED that the Claimant is not entitled to, and the Defendants are not responsible for, any medical or compensation benefits under the South Carolina Workers' Compensation Act;

IT IS FURTHER ORDERED that W.C.C. Claim Number 1507304 is hereby DENIED and DISMISSED WITH PREJUDICE.

IT IS SO ORDERED!

September 20, 2017

Commissioner Mike Campbell

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

September 20, 2017

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell

Kim Hinkle

Appeal Deadline: 10/3/17

Calendared KH

From:	bcheeseboro@wcc.sc.gov
Sent:	Wednesday, September 20, 2017 2:30 PM
To:	BCHEESEBORO@WCC.SC.GOV; AHAM@PFMCDLAW.COM; CDIVELY@TRASK-HOWELL.COM; CRYSTAL@PFMCDLAW.COM; GMALLOY@BELLSOUTH.NET; KBARR@TRASK-HOWELL.COM; KIM@PFMCDLAW.COM; MHANSON@TRASK-HOWELL.COM; PRESTON@PFMCDLAW.COM; ROSE@PFMCDLAW.COM; SABRINA@PFMCDLAW.COM
Subject:	Order - 1507304: Barr
Attachments:	OB5C59.pdf

Please find the following order attached:

R08 ORD - Decision & Order - 9/20/2017 - ORDER#: 63865 - WCC #: 1507304