

ORIGINAL

THE STATE OF CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM SOUTH CAROLINA WORKERS' COMPENSATION
APPELLATE CASE NO: 2015-001862
WCC FILE NO: 1107022

RECEIVED

Sandy Chamblee, Appellant,

v.

Anderson County Fire Department, Employer, and State Accident Fund, Carrier,
Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- 1. DID THE COMMISSION ERR AND HOLD THAT THE CLAIMANT FAILED TO MEET HER BURDEN OF PROOF TO ESTABLISH A COMPENSABLE INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT OCCURRING ON MAY 26, 2011, SINCE THE EVIDENCE OF RECORD CLEARLY ESTABLISHED THAT THE CLAIMANT'S LUNG INJURY WAS CAUSED BY EXPOSURE OF SMOKE ON THAT DATE?**

- 2. DID THE COMMISSION ERR AND HOLD THAT THE CLAIMANT FAILED TO MEET HER BURDEN OF PROOF THAT SHE SUSTAINED AN AGGRAVATION OF HER PRE-EXISTING ASTHMA CONDITION ARISING OUT AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT DUE TO HER EXPOSURE TO SMOKE ON MAY 16, 2011 SINCE THE CLAIMANT'S TESTIMONY ALONE IS SUFFICIENT ALONE TO CARRY THE BURDEN OF PROOF IN A WORKER'S COMPENSATION CASE IN SOUTH CAROLINA?**

- 3. DID THE COMMISSION ERR IN ALLOWING AND CONSIDERING TESTIMONY ON THE ISSUE OF THE TIME WHEN THE EMPLOYER WAS NOTIFIED OF CLAIMANT'S ALLEGED INJURY BECAUSE THE EMPLOYEE'S FIRST REPORT OF INJURY FORM 12-A INDICATES THAT THE EMPLOYER WAS NOTIFIED ON MAY 26, 2011?**

STATEMENT OF THE CASE

The Claimant timely filed a Form 50 with the South Carolina Workers' Compensation Commission on July 25, 2013 alleging an injury at work on May 25, 2011 caused by the inhalation of smoke. The claimant was denied by the Employer's filing of a Form 51 on December 20, 2013. An amended Form 50 and an amended Form 51 were later filed.

The case was heard by a single hearing commissioner on November 6, 2014 in Anderson, South Carolina. A decision adhered to the claimant was filed on March 2, 2015.

The claimant filed a request for review by an appellant panel of the South Carolina Workers' Compensation Commission which heard the matter and issued a decision adhere to claimant to the claimant on August 5, 2015. The decision was the Final decision of the South Carolina Workers' Compensation Commission.

A timely filed Notice of Appeal was filed with the South Carolina Court of Appeals on or about September 1, 2015.

ARGUMENTS

I. THE COMMISSION ERRED IN HOLDING THAT THE CLAIMANT FAILED TO MEET HER BURDEN OF PROOF TO ESTABLISH A COMPENSABLE INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT OCCURRING ON MAY 26, 2011, SINCE THE EVIDENCE OF RECORD CLEARLY ESTABLISHED THAT THE CLAIMANT'S LUNG INJURY WAS CAUSED BY EXPOSURE OF SMOKE ON THAT DATE.

Sandy Chamblee was a 26 year employee of the Anderson County Fire Department serving as a Fire Marshal. (ROA pg. 91). (see ROA deposition of Sandy Chamblee pgs. 467 lines 21 through 25). Her birth date was 12-27-1962. (ROA pg. 110). She had a life-long history of asthma. (ROA 92). On May 26, 2011, Sandy, with a co-worker, Larry Greer went to install a smoke detector at a house in Anderson County. Sandy suffered from a cold that day. (ROA pgs. 93 through 94). (It is noteworthy that the Defendant's expert Dr. Feltman testified by deposition that people with asthma get colds on a frequent basis and frequently attempt to work through their asthma.) (Deposition of Dr Feltman, ROA pg. 650). See also ROA 652 line 1 though ROA 652 line 20). Sandy's job duties had not included active fire fighting, for several years. (ROA pg.110).

Enroute to install the smoke detector, Sandy Chamblee and Larry Greer came upon a grass fire in progress. (ROA pg. 93-94). Larry Greer stopped to see if he could assist in fighting the fire and Sandy Chamblee remained in the truck. Then the wind changed and the smoke from the fire drifted toward the truck. (ROA 95). Sandy testified that she had been exposed to smoke on other occasions in her job with the Anderson County Fire Department, but this was the first occasion where she had ever been in a position where she could not escape from the presence of smoke. (ROA 94,106,109 and 143).

Sandy testified that she left the air conditioner running in the truck (ROA 141) and she remained in the truck about 45 minutes in the smoke. (ROA 96). She complained that the smoke caused a bad headache, wheezing, coughing, and a sick feeling. (ROA 96-97).

After Larry Greer returned to the truck, the two drove to a residence to install a smoke detector. (ROA 97). After the installation, they returned to headquarters late in the day. (ROA 97). Sandy testified that she told the Administrative Assistant, Patty Ellison that she had been in smoke that afternoon. (ROA 97-98). Sandy testified that she reported the accident that same afternoon (ROA 98). Upon arrival at home, Sandy told her family about her smoke inhalation while at work. (ROA 103).

Sandy went to work the next day, although she was feeling bad. (ROA). The next day being a Saturday there was no work at the Anderson County Fire Department. (ROA 99). The next work day would have been a Monday which was Memorial Day (ROA 99) and Sandy Chamblee worked the following day which was Tuesday. (ROA 149).

Following the exposure to smoke and before an already scheduled visit the following week with Dr. Poon, the claimant took breathing treatments with her nebulizer and also took some Prednisone which she had on hand at home. (ROA 109-110).

Sandy testified that on June 1, she attended her doctor's appointment in Elberton, Georgia with Dr. Poon. (ROA 99). This was a follow-up appointment to discuss the results of her physical which was conducted by Dr. Poon on May 11, 2011. When Dr. Poon saw Sandy in his office, she was immediately admitted to the Elbert County Hospital due to her low oxygen level. (ROA 100). Sandy testified that she had never before missed appreciable time at her job due to asthma (ROA 101) and that when Dr. Poon put her in the Elbert County Hospital, she remained there for approximately 10 days. (ROA 101). She further testified that upon admission, no detailed history was taken from her at that time. (ROA 101).

Several days after she was discharged from the Elbert County Hospital, she was readmitted to the Anderson Area Medical Center on June 15. (ROA 102). She testified she had trouble

breathing upon admission to AnMed and that no detailed history was taken from her at that time either. (ROA 102-103). Sandy testified that she had been on nasal oxygen since being discharged from Elbert County Hospital (ROA 104) and that she had good days and bad days. (ROA 105). She was also required to use a rescue inhaler. (ROA 105).

Sandy was never able to return to work. (ROA 106).

Sandy testified that when she experienced the smoke exposure, she immediately knew that “something had happened” that had never happened before. (ROA 105-106). She also testified that she had not felt well enough to be employed since the time of her hospitalizations. (ROA 106).

When the issue was raised as to why did not get out of the truck during this event, she testified that there was more smoke outside than inside the truck (ROA 108) and also she was not sure where she would have gone if she had left the truck. (ROA 109). She testified that she did not see a doctor immediately after the incident because of her upcoming appointment with Dr. Poon. (ROA 109).

Sandy related how she had been treated at Duke University Hospital as a child for asthma. (ROA 112). She had also been treated for a lap band surgery in 2008. (ROA 129). In 2009, she had eight doctor visits because of asthma related incidents (ROA 131) and also had seen a pulmonologist in 2010. (ROA 132). On August 25, 2010, an AnMed Health medical summary indicated that her asthma had been well controlled until approximately 2 years earlier and she used a nebulizer approximately 3-4 times a day. (ROA 133). She acknowledged she had testified in her deposition that her asthma was well controlled prior to the incident. (ROA 134). “It was controlled, I never lost much work, I felt just fine.” (ROA 134). She testified on cross-examination that colds have caused her problems with asthma before. (ROA 137). Further in the hearing, Sandy advised that she was embarrassed that she could not get out and help Larry Greer during the fighting of the fire. People were calling to her and she had the vehicle parked where nobody could see her. (ROA 144).

Sandy testified that she was having symptoms when Larry Greer got back and she told him about it, but she did not call an ambulance because "I'm a firefighter." (ROA 145).

Sandy testified at length about her prior medical history. (ROA 112-134). No other events up through the time of the smoke exposure had kept her out of work or had put her on oxygen. (ROA 173). She testified at the hearing how Dr. Poon had talked to her and her husband and informed them that she would not be able to return to work as a firefighter. (ROA 177).

Maureen Chamblee, the claimant's mother testified that on the day of the incident Sandy came home and said "I have been in smoke today and I am in a mess." (ROA 179). She said that Sandy had told her exactly what had happened and that it was normal for Sandy to go to work when she did not feel like working. (ROA 180). She remembered Sandy and her husband telling her about the conversation with Dr. Poon about Sandy's inability for further employment as a firefighter. (ROA 183-184).

Larry Greer, who was an employee of the Anderson County Fire Department up till a short time before the hearing, testified that he knew Sandy had asthma and he had seen inhalers "all over her desk." (ROA 187). He corroborated that he went to the fire with Sandy (ROA 187-188), and that there was a "light haze" of smoke present. (ROA 190). He estimated that Sandy was in the truck approximately 40 minutes (ROA 191) and that on the way back she said she "wasn't feeling good." (ROA 193). Further Larry Greer testified that Sandy was already feeling bad, but that she had said again "I don't feel good." (ROA 194-195).

Larry Greer said he knew Sandy to be a truthful person and also knew her mother to be a truthful person. (ROA 196).

Timothy Dickson, an employee of the Anderson County Fire Department testified that he knew Sandy Chamblee had a history of asthma (ROA 198) and that he had never known her

to have any physical difficulties on the job. (ROA 199). He said that on June 20, 2011, Sandy called and texted him and that was his first knowledge of the smoke inhalation incident. (ROA 200-201). He further testified that Sandy Chamblee was a good employee. (ROA 202).

Jimmy Ray Sutherland testified that he was the Anderson County Fire Department Fire Chief and described in some detail how an Employee's First Report of Injury was filled out in his office. (ROA 206). (The significance of filing out an Employee's First Report of Injury is an allegation of error in this case which will be argued later.) Mr. Sutherland admitted that the Employee First Report of Injury stated that the employer was first notified on May 26, 2011. (ROA 208). He also testified that he knew Sandy Chamblee had a problem with asthma (ROA 209) and that she was always able to fight through it and come back to work. (ROA 209). He testified that this was the first time Sandy Chamblee had missed a long period of time away from work and that he believed her to be a truthful person. (ROA 209).

Dr. Poon, the physician who performed Sandy Chamblee's physical examination on May 11, before the incident and put her in the hospital after the incident gave a statement indicating that he knew Sandy Chamblee had a long history of asthma; however it was well-controlled to the extent that she was able to be employed. He also indicated in his statement that her condition was much worse after the event which caused her hospitalization. Finally he stated that her prior asthma was aggravated to the extent that she was not able to work full-time after the incident. (ROA 243-246.)

Dr. Michael Spandorfer, the Plaintiff's expert, testified by deposition. He testified that he had reviewed the records from Elbert Hospital and believed that they were incomplete as a full history was not taken on the claimant. (ROA 280-281.)

Dr. Spandorfer testified that he believed that Sandy Chamblee's asthma had worsened after the alleged incident because before the incident she was able to be employed and since the smoke

exposure, she required oxygen and was not able to be employed. (see deposition of Dr. Spandorfer ROA 284,289,290, 201). Dr. Spandorfer indicated that this was because her lungs had become sensitized. (see deposition of Dr. Spandorfer, ROA 285):

Furthermore, Dr. Spandorfer testified that even though Sandy Chamblee's spirometry had remained constant both and after the incident, but since she now required oxygen therapy, she had either developed a hole in her heart or the loss of lung function. (see deposition of Dr. Spandorfer ROA 290). In other words, according to him, the claimant suffered either a cardiac event or a loss of lung function. (There is no evidence of a cardiac event in the record).

Dr. Spandorfer further testified that Sandy Chamblee's condition was now inconsistent with employment. (see deposition of Dr. Spandorfer ROA 302-303,309) He also assigned her a 55 percent impairment rating to the lungs. (see Dr. Spandorfer deposition ROA 292).

Dr. Spandorfer further explained when an individual had impaired lungs, it did not take much change in lung function to make a lung condition much worse. (see deposition of Dr. Spandorfer ROA 304-305).

Furthermore, Dr. Spandorfer testified with exposure to smoke, a very short time as short as 30 seconds to sometimes minutes were sufficient to change lung function. (see deposition of Dr. Spandorfer ROA 306-307).

Dr. Spandorfer testified that he did believe to a reasonable degree of medical certainty that the claimant's exposure to smoke as described to him did aggravate her prior existing asthmatic condition as stated (see deposition of Dr. Spandorfer ROA 307-309)

Also Dr. Spandorfer noted that when Sandy Chamblee visited Dr. Poon the day of her hospitalization in Elberton, that she was diagnosed with status asthmaticus, which is a medical

emergency. (see deposition of Dr. Spandorfer ROA 299-301). He also indicated there is no record of her ever having had this condition before. (see deposition of Dr. Spandorfer ROA 301.)

The Defendant's expert, Dr. Feltman testified by deposition and made several points which the undersigned believes are significantly helpful in the claimant's claim.

First, he testified that Sandy Chamblee's asthma was poorly controlled even before her exposure to smoke on May 26. (see deposition of Dr. Feltman ROA 642).

Furthermore, he testified that some people can get an exacerbation of asthma by smelling burning leaves. (see deposition of Dr. Feltman, ROA 646).

Dr. Feltman further testified that some people with an exacerbation of asthma wait longer to go to the hospital than do others. (see deposition of Dr. Feltman, ROA 649). When asked was it an everyday thing for an asthmatic to get a cold or viral infection, Dr. Feltman stated,

Q. So, that's an everyday thing for an asthmatic is to get a cold or a viral Infection?

A. It's not an everyday thing, but it can happen, yes.

Q. Well, anybody can get one, asthmatic or not?

A. Yes.

See Dr. Feltman's deposition ROA 650).

Dr. Feltman testified that people do "stupid stuff like working through asthma." (see deposition of Dr. Feltman, ROA 652). Dr. Feltman also confirmed that there is not a lot of difference in Sandy Chamblee's spirometry reading between 2005 and the one taken after the alleged incident and that they were bad both times. (see deposition of Dr. Feltman, ROA 653).

Dr. Feltman again repeated that breathing in smoke can make a person have an exacerbation of asthma. (see deposition of Dr. Feltman, ROA 653).

Dr. Feltman testified that the claimant Sandy Chamblee was already in exacerbation due to the cold before she was exposed to smoke. At that point, he was asked "but would you at least give me the point it would have made her exacerbation worse?" Dr. Feltman replied, "I gave you that point." (see deposition of Dr. Feltman, ROA 653-654).

Dr. Feltman further testified that he has known people to have exacerbation of asthma, then get slightly improved, then exacerbate again due to a late response. He further stated it is very common for asthmatics to fluctuate from day to day. (see deposition of Dr. Feltman, ROA 664).

Some of the most interesting comments by Dr. Feltman, which were never specifically addressed by the Hearing Commissioner in his decision, are as follows:

A. Many asthmatic people work when they shouldn't.

Q. Well, let me ask you this. Have you ever had a case where a person had a cold or upper respiratory infection and was exposed to smoke at the same time; have you ever had a case like that in your practice?

A. It's possible, but I can't remember offhand. If you're telling me is smoking good for you, I already told you it is not.

Dr. Feldman's Deposition (employer expert)

ROA 668-669

Q. Have you ever had a person who had a cold and then was unfortunately involved in a house fire? Perhaps not as a firefighter, but perhaps as a citizen.

A. I've admitted many patients with industrial exposures to the hospital, absolutely, with asthma preexisting and without.

Dr. Feldman's Deposition (employer expert)

ROA 669-670

Q. All right, have you ever had a case with an industrial exposure where on top of that the person in question had exposure to smoke?

A. Yes of course. I mean, I've done many industrial exposures to smoking, absolutely. If it was a massive use—massive smoke inhalation and usually people can get—get very sick. It's not like burning leaves.

Q. Okay. All right, would you agree that if a person has a cold and has an industrial exposure to smoke, the smoke would cause their asthma to get worse?

A. Yes, it's different circumstances. It's a overwhelming exposures we're talking about industrial exposure. It's not like a trivial smoking exposure that Ms. Chamblee has described or burning leaves. These people get--these people can get real sick.

Dr. Feltman's Deposition

ROA 670-671

Q. Where do you draw the line between a trivial exposure to smoke and an overwhelming exposure to smoke?

A. People get sick very, very, very, quickly, almost instantaneously because it was not trivial exposure. With a trivial exposure, they don't know.

Q. If they get sick due to a significant exposure to smoke, do they know it almost instantly?

A. Yes.

Dr. Feldman's Deposition

ROA 673

The above is submitted as a summary of the testimony presented in this case.

The following facts in this case are beyond serious dispute. On May 26, 2011, the claimant was an employee of the employer and was traveling in an employer's vehicle to install a smoke detector within the course and scope of her employment. (ROA 93-94). The employee had a prior history of asthma since childhood. (ROA 92). (Testimony from at two co-workers was given that she had asthma inhalers lying all over her desk; (ROA 187) but that she had never missed any appreciable time from work. ROA 209). The claimant testified that she always attempted to work through her asthma and while working for the employer, she had never been in a position where she was exposed to smoke and could not escape to a safe place. (ROA 94,106,109, and 143) The claimant testified also that the exposure to smoke caused her to feel sick, a fact which she mentioned to a co-worker, (ROA 193), and to her family when she got home. (ROA 179).

The claimant further testified that she had reported for a physical examination on May 11, 2011 several weeks before the alleged incident. On June 1, 2011 within a few days after the alleged when she reported for her follow-up visit and her same physician was concerned enough about her condition to be hospitalize her immediately for ten days. (ROA 243-246). It was undisputed in the testimony that the employee had been employed by the employer for 26 years (ROA 91), and was viewed as being a very good employee. (ROA 202). Furthermore, at least two of the employer's witness testified that the employee, Sandy Chamblee was a truthful individual.(ROA 196, 209). One of them also testified as to the truthfulness of her mother.(ROA 196).

Under workmen's compensation law, the Supreme Court sits for review of errors of law only, and in performing such function the Supreme Court must review the record of evidence, bearing in mind that scope of inquiry is limited to ascertaining whether there is any competent testimony reasonable tending to support Industrial Commission's findings of fact, which must be based on

evidence and cannot rest on surmise, conjecture or speculation. Code 1942, Section 7035-64. See *Sligh v. Newberry Electric Cooperative*, 58S.E. 2d 675.

The Workmen's Compensation Act will be liberally construed to include injured workmen within its protection rather than to exclude them. See *Cagle v. Clinton Cotton Mills*, 56 S.E. 2d 747, 215 S.C. 93

Courts have held that Compensation laws should be given a liberal construction in furtherance of the beneficent purpose for which they are enacted, and, if possible, so as to avoid incongruous or harsh results. See *Sligh v Pacific Mills*, 35 S.E. 2d 713, 207 S.C. 316.

Any reasonable doubt as to construction of Workmen's Compensation Act must be resolved in favor of claimants, its provisions reconciled if possible, its purposes effectuated, and its presumptions and penalties directed toward the end of providing coverage rather than noncoverage. See *Cokeley v Robert Lee, Inc.*, 14 S.E. 2d 889, 197 S.C. 157

Doubts are to be resolved in favor of compensability. See *Baldwin v Pepsi-Cola Bottling Co.*, 108 S.E. 2d 409, 234 S.C. 320.

A claimant must show that he has sustained an injury by accident, arising out of and in the course of his employment, in order to make his claim compensable and to bring it within the provisions of the Workmen's Compensation Act. See *Spearman v F.S. Royster Guano Co.*, 199 S. S.E. 530, 188 S.C. 393.

Circumstantial evidence and lay testimony are sufficient to support finding of causal connection in compensation case if facts and circumstances proved give rise to reasonable inference that there was a causal connection between disability and prior injury. See *Mize v Sangamo Elec. Co.*, 161 S.E. 2d 846, 251 S.C. 250.

South Carolina Courts have held that pursuant to 1976 S.C. Code Section 42-1-160 that if one becomes ill while at work from natural causes, the state or condition is not "accidental" within

meaning of the Workers' Compensation Law, but if there is a subsisting condition of illness or incapacity or physical disability which is caused, increased, or accelerated by some act or even coming by change or happening fortuitously, the requisite quality of condition of the injury will exist so as to make it "accidental." See *Grayson v Gulf Oil Co.*, 357 S.E. 2d 479, 292 S.C. 528.

In South Carolina it is well established that a work related accident which aggravates or exacerbates a pre-existing condition, infirmity or disease is compensable. See *Mullinax v Winn Dixie*, (S.C. App.1995) 318 S.C. 431, 458 S.E. 2d 76. This is because the employer takes the employee as it finds him or her. See *Mullinax*, supra.

In the present case, it is clear that Sandy Chamblee had suffered from asthma since childhood, had been a longtime employee of the employer, and although she had problems with asthma, she had always worked through these problems without any substantial time loss from work. Nothing about her condition had changed in May 2011 except one thing: her exposure to smoke on May 26, 2011. As a result, she is now totally disabled. Based on the above facts and legal authorities the Hearing Commissioner should have awarded worker's compensation benefits in this case to the claimant.

II. THE COMMISSION ERRED WHEN IT HELD THE CLAIMANT FAILED TO MEET HER BURDEN OF PROOF THAT SHE SUSTAINED AN AGGRAVATION OF HER PRE-EXISTING ASTHMA CONDITION ARISING OUT AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT DUE TO HER EXPOSURE TO SMOKE ON MAY 26, 2011 SINCE THE CLAIMANT'S TESTIMONY ALONE IS SUFFICIENT TO CARRY THE BURDEN OF PROOF IN A WORKERS' COMPENSATION CASE IN SOUTH CAROLINA.

In the case of *Arnold v Benjamin Booth Company* (S.C. 1971) 257 S.C. 337, 185 S.C. 2d 830, the South Carolina Supreme Court held that the lay testimony of an employee himself unsupported by any medical evidence was sufficient to support the findings of causal connection between the accident and the disability suffered by the employee. In other words, the testimony of the claimant himself or herself, if accepted as credible by the Commission, is sufficient to carry the claimant's burden of proof in Workers' Compensation case in South Carolina. As applied to this case, this would mean that Sandy Chamblee's testimony alone would be sufficient upon which to base an award in her favor in this claim.

The following facts in this case are beyond serious dispute. On May 26, 2011, the claimant was an employee of the employer and was traveling in an employer's vehicle to install a smoke detector within the course and scope of her employment. (ROA 93-94). The employee had a prior history of asthma since childhood. (ROA 92). (Testimony from two co-workers was given that she had asthma inhalers lying all over her desk, (ROA 187), but that she had never missed any appreciable time from work. (ROA 209). The claimant testified that she always attempted to work through her asthma and while working for the employer, she had never been in a position where she was exposed to smoke and could not escape to a safe place. (ROA 94,106, 109, and 143). The claimant testified also that the exposure to smoke caused her to feel sick, a fact which she mentioned to a co-worker (ROA 193) and to her family when she got home . (ROA 179).

The claimant further testified that she had reported for a physical examination on May 11, 2011 several weeks before the alleged incident. On June 1, 2011 within a few days after

when she reported for her follow-up visit and her same physician was concerned enough about her condition to be hospitalized her immediately for ten days. (ROA 243-246). It was undisputed in the testimony that the employee had been employed by the employer for 26 years and was viewed as being a very good employee. (ROA 202). Furthermore, at least two of the employer's witness testified that the employee, Sandy Chamblee was a truthful individual. (ROA 196,209). One of them also testified as to the truthfulness of her mother. (ROA 196).

In South Carolina it is well established that a work related accident which aggravates or exacerbates a pre-existing condition, infirmity or disease is also compensable. See *Mullinax v Winn Dixie*, (S.C. App.1995) 318 S.C. 431, 458 S.E. 2d 76. This is because the employer takes the employee as it finds him or her. See *Mullinax*, supra.

If there is a subsisting condition of illness or physical disability which is caused, increased, or accelerated by some act or event coming by chance or happening fortuitously, then the requisite quality or condition of the injury will exist so as to make it accidental. Neither is it necessary that the accidental quality or condition be created by a wound or external violence. See *Hiers vs Brunson Construction Company*, (S.C. 1952) 221 S.C. 212, 70 SE 2d 211. The courts have also held that the aggravation, acceleration, or lighting up of a preexisting infirmity or weakened physical condition is within the coverage of the Workers Compensation Act even though the accident would have caused no injury to a normal healthy person. *Ferguson v. State Highway Department* (SC 1941) 197 SC520, 15 S.E. 2d 775. Proof beyond a reasonable doubt is not required. Circumstantial evidence and lay testimony need not reach such a degree of certainty as to exclude every reasonable possible conclusion. See *Arnold v. Benjamin Booth Company* (SC 1971) 257 S.C. 337, 185 SE 2d 830.

In the present case, it is clear that Sandy Chamblee had suffered from asthma since childhood, had been a longtime employee of the employer, and although she had problems with asthma, she had always worked through these problems without any time loss from work.

Based on the above, there is evidence of an incident at work, a pre-existing condition of asthma, a worsening of that condition as testified to by that employee, and an inability to return to work,

as testified to by the employee. We argue that under the case of Arnold v Benjamin Booth Company, the above fact and circumstances in and of themselves are more than sufficient upon which this Commissioner should have based an award in favor of Sandy Chamblee in this claim.

III. THE COMMISSION ERRED IN ALLOWING AND CONSIDERING TESTIMONY ON THE ISSUE OF THE TIME WHEN THE EMPLOYEE WAS NOTIFIED OF CLAIMANT'S ALLEGED INJURY AND BECAUSE THE EMPLOYER'S FIRST REPORT OF INJURY FORM 12-A INDICATES THAT THE EMPLOYER WAS NOTIFIED ON MAY 26, 2011.

Under South Carolina Workers' Compensation Regulation 67-203 (19), one of the official forms and documents authorized by the Commission is a Form 12A, Employee's First Report of Injury. This form is related to 1976 South Carolina Code Section 42-15-20, which states that every injured employee or his representative immediately shall on the occurrence of an accident or as soon thereafter as possible give a cause to be given to the employer a notice of the accident.

Notice that section 42-15-20 requires that the employee shall immediately on the occurrence of an accident or as soon as practical thereafter give or cause notice to be given to the employer notice of the accident. This is exactly what Sandy Chamblee testified that she did.

The South Carolina Bar CLE Division in 2012 published material on this issue. See Beard, Poteat, Lamar, Sumwalt, Bluestein, Sullivan, The Law of Workers' Compensation Insurance in South Carolina, Sixth Edition, 2012 (page 432), which reads as follows:

An injury involving compensable lost time, medical attention in excess of the limit established by the Commission (\$2,500), or the possibility of permanency must be reported on a Form 12A within ten business days after the occurrence and knowledge of it, as provided in Section 42-15-20....

The report of injury, Form 12A, Employer's First Report of Injury (ACCORD Form 4), states the employer's name, nature and location of the business and the name, age, sex, wage, and occupation of the injured worker. The Report also includes the date and hour of the injury and the nature and cause of the injury, among other things. The employer prepares and files the Form 12A with its insurance carrier.

Notwithstanding the above, the Hearing Commissioner heard and considered testimony from Jimmy Ray Sutherland, Chief of the Anderson County Fire Department that the procedure they used at the work place was for the employee to call the insurance company and give the requested information. Nowhere in Section 42-15-20 and Regulation 67-203 does it place any burden or authorize an employer to tell an employee to file an Initial Report of Injury with an insurance company. The only duty placed on the employee by Section 42-15-20 is to give notice to the employer and that is what the statute says by its own terms.

The importance of the above in this case is established by the fact that the employer's First Report of Injury indicates that the employer was notified of the incident on May 26, 2011.

Later, during the trial of the case, the employer's witness testified that they weren't actually notified on that date. This is crucial because the date as shown on the employer's First Report of Injury was relied on by Sandy Chamblee as an element of proof in her case that she notified the employer on the date of the incident.

South Carolina courts have held the contents of a First Report of Injury to be an admission by the employer. In the case of *Sligh v Newberry Electric Cooperative*, 58 S.E. 2d 675, in discussing the importance of a First Report of Injury, the Court held that this requirement of the law is not a perfunctory matter of form, but was intended to give correct, and reliable information as to an injury suffered by an employee.... he made certain statements with regard to the alleged accident without qualification; and we think it is clear that these statements, made by a responsible official agent, constitute admissions or declarations against interest. See 58 S.C. 2d 682.

The voluntary declarations or admissions of a party to a civil suit against his interest are admissible. See *Llewellyn v. Atlantic Greyhound Corporation*. 28 S.E. 2d 673.

A defendant cannot both admit and deny a fact, and once it is admitted, the admission stands. See *South Carolina Ins. Co. V. James C. Greene & Co.* 348 S.E. 2d 617 (S.C. App. 1986).

Declarations relative to a question of fact made by a party to an action are admissible in evidence against him. An admission deliberately made, precisely identified, and clearly proved may furnish strongest and most convincing evidence. See *Tyree v. Lariew* 158 S.E. 2d 140.

Sandy Chamblee testified throughout this case: 1) she had a cold, which is not an unusual condition as testified to by the claimant and Dr. Feltman, 2) that she went to a grass fire, which was undisputed, 3) that she stayed in a truck with the air conditioner on and this is undisputed, 4) that she developed disabling breathing difficulties, 5) that she notified the employer of the incident the same day it occurred. For the employer to then come to the hearing and testify “oh we really didn’t get notified on May 26, 2011 of this incident, even though that is what our First Report of Injury says “is really disingenuous. The employer should be held to their prepared and filed documents that they were actually notified of the event in question on May 26, 2011.

The importance of this matter is further emphasized by the arguments before the Appellate Panel of South Carolina Workers’ Compensation Commission. The employer argues that there was no medical evidence to support the employer’s claim until she saw Dr. Spandorfer some 18 months later. See Argument of Appellant Panel, pages 19-20. Also argued was the point that the history and physical of the two hospitalizations after the incident do not specifically mention the inhalation of smoke. Claimant argued that she told a co-worker, her family, and clerical personnel at the Fire Department about the smoke on the date it occurred and that her report was corroborated by the contents of the Form 12A Employers First Report of Injury. See Arguments of Appellant Panel, page 24.

CONCLUSION

Sandy Chamblee has been a firefighter and later a Fire Marshal for a long time. She has had asthma for an even longer time. She has had colds before-all through her life-just like everyone else. Her 26 year record at the Fire Department is a testimony to her work ethic, persistence, and dedication to her job which required that she work through her asthma as needed.

The only thing that happened to Sandy Chamblee in May 2011 that had never happened before was a prolonged exposure to smoke from which she could not escape.

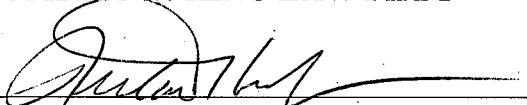
It put her out of work permanently.

It reduced her lung function significantly.

She has told her story earnestly.

A fair reading and consideration of the evidence in this case will show that she has proved her case convincingly.

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Dated: 4-4-2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RECEIVED

APR 07 2016

SC Court of Appeals

Appellate Case No. 2015-001862
SCWCC File No. 1107022

Sandy Chamblee,
Claimant

Appellant,

vs.

Anderson County Fire Department, Employer, and
State Accident Fund, Carrier,
Defendants

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211 (b), SCACR.



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4-4-2016