ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RECEIVED
APR 11 2016
SC Court of Appeals

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

Sandy Chamblee, Appellant,

v.

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

FINAL BRIEF OF RESPONDENTS

Ian C. Gohean, Esquire
Willson Jones Carter & Baxley
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 272-2664
Attorneys for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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

Sandy Chamblee,
Claimant.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENTS

Ian C. Gohean, Esquire
Willson Jones Carter & Baxley
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 272-2664
Attorneys for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES ON APPEAL

I. DID THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERR IN FINDING THAT APPELLANT FAILED TO CARRY HER BURDEN OF PROVING A COMPENSABLE INJURY BY ACCIDENT OR AGGRAVATION OF HER PREEXISTING ASTHMA CONDITION?

II. DID THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERR IN ALLOWING TESTIMONY RELATED TO THE ISSUE OF WHEN THE EMPLOYER WAS NOTIFIED OF APPELLANT'S ALLEGED ACCIDENT?

STATEMENT OF THE CASE

Appellant alleges she suffered a permanent aggravation of her preexisting asthma/lung condition on May 26, 2011, when she allegedly inhaled smoke while presenting to a fire in the course of her employment with the Anderson County Fire Department. Appellant filed a Form 50, Request for Hearing, seeking a finding of compensability and entitlement to benefits under the South Carolina Workers' Compensation Act. Respondents filed a Form 51, Answer, denying the claim, and a hearing was scheduled and held before Commissioner Gene McCaskill (hereafter, "the Single Commissioner") on November 6, 2014.

It was Appellant's position at the hearing that she suffered a permanent aggravation of her preexisting asthma condition as a direct result of smoke exposure on May 26, 2011. Appellant sought a finding of compensability, along with entitlement to medical benefits, temporary disability benefits, and permanent disability benefits. Appellant alleged she is permanently and totally disabled as a direct result of the incident of May 26, 2011.

It was Respondents' position at the hearing that Appellant failed to carry her burden of proving a compensable injury by accident or aggravation of her preexisting condition, and Respondents requested an order denying the claim in its entirety. In the alternative, Respondents argued that if the claim was compensable, Appellant had not yet reached maximum medical improvement (MMI), and a finding of permanent disability would be premature.

On March 2, 2015, the Single Commissioner issued a Decision and Order, denying Appellant's claim in its entirety. On March 13, 2015, Appellant timely appealed the Decision and Order via filing of a Form 30, Request for Commission Review. Briefs were

filed by the parties, and oral arguments were held before the Appellate Panel of the South Carolina Workers' Compensation Commission on June 15, 2015. By Decision and Order dated August 5, 2015, the Appellate Panel affirmed the Order of the Single Commissioner, with minor amendments. Appellant timely filed a Notice of Appeal to this Court, and this appeal follows.

Appellant first alleges the Commission erred in finding that she failed to carry her burden of proving either a compensable injury by accident or aggravation of her preexisting asthma condition (Appellant's Issues 1 and 2; Respondents' Issue 1). Essentially, Appellant is simply alleging the Commission "got it wrong." The standard of review for these issues is substantial evidence, and Respondents contend that substantial evidence exists to support the Commission's findings. Appellant's remaining issue (Appellant's Issue 3; Respondents' Issue 2) is that the Commission erred in allowing and considering testimony related to the issue of when the Employer was notified of Appellant's alleged accident. Respondents contend that this issue was not preserved for review, and that there was no error by the Commission in allowing and considering the testimony. Respondents further contend that, even if there were some error in allowing such testimony, any error is harmless and has no effect on the Commission's findings, as substantial evidence still exists to affirm the Commission's Order.

STATEMENT OF THE FACTS

Appellant is a lifelong and severe asthmatic. She has suffered from asthma since she was approximately six weeks old, and throughout her lifetime, she has treated extensively for issues with asthma, sinus problems, allergies, and associated issues such as sleep apnea and reflux. She has treated exhaustively with family physicians, ENTs, and pulmonologists during the course of her lifetime. Appellant's asthma condition was grossly undertreated and uncontrolled, and it was worsening in the years directly preceding May 26, 2011.

In the beginning of the month of May, 2011, Appellant developed a severe upper respiratory tract infection (a "cold"), and her asthma symptoms flared. Appellant's cold persisted during the entire month of May. On May 26, 2011, Appellant and Larry Greer, Jr., a coworker, were on their way to install smoke detectors at a private residence when they stopped to assist at the scene of a field fire. They did not assist with the fire itself; they parked a great distance from the fire and were only there to assist with wetting down a house to ensure it did not catch fire in the event the fire spread. Appellant's vehicle was parked in the front yard of a house. The fire was located in a field behind the house, and also behind a row of trees, a significant distance away. In fact, Appellant could not even see the fire from her location.

Appellant remained in the vehicle while Mr. Greer assisted on the scene. Once Mr. Greer was finished, he returned to the truck, and he noticed no difference in Appellant's physical condition when he returned. Appellant and Mr. Greer then continued on to the private residence and installed smoke detectors, then returned to the Fire Department later that day. The day of the incident, May 26, 2011, was a Thursday. Appellant returned to

work for her full eight hour shift on Friday; she was off on Saturday, Sunday, and Monday (Memorial Day); and she again returned to work her full eight hour shift on Tuesday, May 31, 2011. Appellant sought no medical treatment and missed no time from work from May 26, 2011 through May 31, 2011.

On June 1, 2011, Appellant presented to her family physician for a previously scheduled and unrelated appointment to review previously-drawn lab results. Appellant was admitted to the hospital on that date for her asthma symptoms. Appellant continued to treat with her family physician and pulmonologist for more than 18 months after her hospitalization, but there is not a single mention of the fire incident in any medical narrative during this time. In fact, the notes actually document that Appellant denied any exposure to fumes, dusts, chemicals, etc.

On December 20, 2012, Appellant was referred by her attorney for an independent medical evaluation with Dr. Michael Spandorfer, a pulmonologist in Charleston. Dr. Spandorfer opined that Appellant suffered an aggravation of her underlying asthma condition, caused by smoke inhalation on May 26, 2011. Dr. Spandorfer's report is the first mention of the fire incident in any medical record, more than a year and a half after the fact.

Appellant presented to Dr. Gregory Feldman at Upstate Lung and Critical Care Specialists in Spartanburg on March 5, 2014, for an independent medical evaluation at the referral of Respondents. Dr. Feldman opined that Appellant's asthma condition was not caused or aggravated by the fire incident of May 26, 2011. Dr. Feldman further opined that if there was an acute aggravation of her asthma in May of 2011, it was far more likely to

have been the result of Appellant's upper respiratory tract infection; which Dr. Feldman opined represents the number one cause of exacerbations in asthma patients.

STANDARD OF REVIEW

In workers' compensation cases, the South Carolina Workers' Compensation Commission is the trier of fact. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The appellate court's review of these findings of fact is limited to determining whether the findings are clearly unsupported by substantial evidence in the record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). The appellate court is not permitted to re-weigh the evidence and to substitute its own findings of fact for those of the Commission. Brown v. R. L. Jordan Oil Co., 291 S.C. 272, 353 S.E.2d 280 (1987). However, an award from the Commission cannot be based upon mere possibilities, probabilities, surmise or conjectures. Broughton v. South Carolina Game & Fish Dept., 219 S.C. 50, 64 S.E.2d 152 (1951).

The Appellate Panel's decision must be affirmed if it is supported by substantial evidence in the record. Wise v. Wise, 394 S.C. 591, 597, 716 S.E.2d 117, 120 (Ct. App. 2011) (citing Shuler v. Gregory Elec., 366 S.C. 435, 440, 622 S.E.2d 569, 571 (Ct. App. 2005)). Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion that the Appellate Panel reached, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent the Appellate Panel's finding from being supported by substantial evidence. Hill v. Eagle Motor Lines, 373 S.C. 422, 436, 645 S.E.2d 424, 431 (2007).

Section 1-23-380(A)(5) of the South Carolina Code also provides, in part:

> The Court may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are . . . (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. . . .

S.C. Code Ann., § 1-23-380(A)(5) (2007).

Thus, appellate "review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law." Rodriguez v. Romero, 363 S.C. 80, 84, 610 S.E.2d 488, 490 (2005) (citing Hendricks v. Pickens County, 335 S.C. 405, 411, 517 S.E.2d 698, 701 (Ct. App. 1999)).

ARGUMENTS

I.

SUBSTANTIAL EVIDENCE SUPPORTS THE APPELLATE PANEL'S FINDING THAT APPELLANT DID NOT SUSTAIN A COMPENSABLE INJURY BY ACCIDENT OR AGGRAVATION OF HER PREEXISTING ASTHMA CONDITION ON MAY 26, 2011.

a. Appellant suffered from lifelong and severe asthma, and her asthma was worsening in the years directly preceding her hospitalization on June 1, 2011.

Appellant suffered from lifelong and severe asthma, which was uncontrolled and drastically undertreated. Appellant testified at the hearing that when she was pregnant with her son in 2001, her pregnancy caused her asthma to worsen. Appellant testified that following her pregnancy, she had an increase in her asthma symptoms, which continued into 2003, 2004, and 2005. (R. pp. 114, 118) The medical records support that Appellant's asthma condition began to worsen in 2003, 2004, and 2005, and more importantly, the medical records indicate Appellant's condition *continued* to worsen in the years directly preceding her June 1, 2011 hospitalization, despite her testimony to the contrary.

Appellant presented to Dr. Reister, her ENT, on October 13, 2003, and Appellant's current medications included Lexapro, Singular, Advair, Zithromax, Nexium, Zyrtec, Endall HD, and Cipro. Appellant reported to Dr. Reister that she had been "sent to an asthma doctor." (R. p. 720) Appellant returned to Dr. Reister on November 5, 2003, with complaints of post-nasal drainage, and Appellant indicated she was still on all of the same medications. (R. p. 723) Appellant returned to Dr. Reister on November 21, 2003, and Dr. Reister recommended a sinus surgery on account of Appellant's sinusitis, and the surgery was performed on December 17, 2003. (R. pp. 723, 751)

Appellant returned to Dr. Reister in March of 2004 with complaints of "significant allergies" and a sore throat. (R. p. 725) Appellant returned to Dr. Reister in September 2004, with complaints of being congested and wheezing, and complaints that Appellant's throat and ears hurt and she felt stopped-up. At that time, Appellant's medications included Singular, Advair, hormones, Nexium, Celebrex and Albuterol. (R. p. 726) Appellant returned to Dr. Reister in October of 2004, where she complained of sinus trouble, trouble breathing, wheezing, coughing, sore throat, pressure in the ears, and being very stuffy. Dr. Reister indicated she listened to Appellant's lungs and Appellant "sounds like she is wheezing." (R. p. 726) Appellant returned to Dr. Reister in March of 2005, and Dr. Reister indicated Appellant was "having same symptoms." (R. p. 729)

Appellant returned to Dr. Reister in May of 2005, and Dr. Reister indicated Appellant had "significant sore throat." (R. p. 729) Appellant returned to Dr. Reister in June of 2005, and Dr. Reister noted the following: "Her asthma has been a problem. I listened to her today and she really did sound like she was not moving a lot of air but she said in the next couple of days she felt she would probably be doing better." Dr. Reister further noted Appellant "...probably would go to a pulmonologist shortly." (R. p. 728)

Appellant presented to Dr. Gregg Seymour, her primary care physician, on June 20, 2005, with complaints of cough, congestion, and wheezing. (R. p. 754) Appellant returned to Dr. Seymour on July 5, 2005, with complaints of shortness of breath and wheezing, and Dr. Seymour ordered spirometry testing and referred Appellant to a pulmonologist. (R. p. 755)

On July 25, 2005, Appellant presented to Dr. Stephen Hand, a pulmonologist with AnMed Health Carolina Pulmonary Sleep, per the referral of Dr. Seymour. (R. pp. 334-

337) Appellant indicated she had asthma since she was six weeks old, and "it became much worse during her pregnancy three years ago. She has had significant shortness of breath, wheezing, cough, worse with exposure to heat and humidity this summer." Appellant also indicated she "has been on four or five courses of prednisone this year." Appellant also told Dr. Hand, "she feels fatigued most of the time," and she had "weight gain of approximately 100 pounds in the past three years." Appellant's issues were noted to include throat pain, intermittent hoarseness, snoring and witnessed apneas, shortness of breath, wheezing, cough, headaches, daytime sleepiness, fighting sleep while driving, falling asleep while working, fighting sleep during conversation, intermittent creeping and crawling sensation in her legs, and intermittent anxiety. Appellant also indicated she was suffering from gastro-esophageal reflux, and Dr. Hand indicated, "I have advised her that this could be a contributor to her problems with asthma. She reports her symptoms are difficult to control, and also reports she sometimes has difficulty swallowing liquids." At the time of her evaluation with Dr. Hand, Appellant's current medications included Singular, Advair, Nexium, allergy shots, Albuterol, and nebulizer treatments. Dr. Hand referred Appellant for a sleep study with a diagnosis of obstructive sleep apnea. (*Id.*)

Appellant returned to Dr. Seymour on August 16, 2005, with complaints of sinus/chest congestion, dry cough, and a yellow/brown discharge. (R. p. 756) Appellant underwent a sleep study on August 26, 2005, per the referral of Dr. Hand, and she was diagnosed with obstructive sleep apnea. (R. pp. 787-790)

Appellant returned to Dr. Hand on September 6, 2005, for a follow up of her asthma and sleep apnea. Appellant reported "she had another flare of her asthma and was on prednisone briefly," and she also noted "occasional wheezing." Appellant also

complained of nasal congestion and drainage, and a headache, and Dr. Hand indicated Appellant was "being set up for CPAP." (R. p. 338) Appellant returned to Dr. Hand on October 10, 2005, and Dr. Hand indicated Appellant had increased cough productive of a yellowish sputum for the past week. (R. p. 339)

Appellant returned to Dr. Reister, the ENT, in 2005, with complaints of nasal congestion, facial pressure, sore throat, and dark green drainage. (R. p. 728) Appellant returned to Dr. Reister in January of 2006 and requested a depo medrol shot. Dr. Reister denied Appellant's request and indicated "pt should see fam MD or pulmonologist." (R. p. 730)

Appellant returned to Dr. Hand, her pulmonologist, on March 15, 2006, and Dr. Hand noted Appellant "has had two episodes of bronchitis this winter that required an antibiotic and prednisone." (R. p. 340)

Appellant returned to Dr. Seymour on June 28, 2006, and Dr. Seymour noted Appellant was "known to have asthma. Over the past several days, she has had sinus congestion and drainage. The mucus is thick and yellow. Mild sore throat has been noted. Occasional wheezes. She uses her aerosol at times." (R. p. 759)

Appellant returned to Dr. Reister in October of 2006 with complaints of hoarseness. Dr. Reister noted Appellant to be using Singular and Advair, and receiving allergy shots. (R. p. 731) Appellant returned to Dr. Reister in December of 2006 with complaints of sinus congestion and left ear fullness. Appellant indicated she had taken several Goody's headache powders that day. (R. p. 731) Appellant returned to Dr. Reister in June of 2007 with complaints of throat pain and reflux, and having had a nose bleed that day.

Appellant's medications on that date included Singular, Advair, Nexium, Amitribline, allergy shots, Elavil, and Albuterol. (R. pp. 733)

Appellant returned to Dr. Seymour on July 2, 2007, with complaints of sinus congestion, and again to Dr. Seymour on August 16, 2007, with complaints of sinusitis, bronchitis, and bronchospasm. (R. p. 765) Appellant returned to Dr. Seymour on October 17, 2007, with complaints of chest congestion, shortness of breath, wheezing, and bronchospasm, and Appellant indicated she was out of Albuterol. (R. p. 765)

Appellant returned to Dr. Reister in November of 2007 and indicated she had tried to stop her allergy shots but it did not work, and she was advised to continue her allergy shots. (R. p. 734) Appellant returned to Dr. Seymour on January 31, 2008, with complaints of sinusitis. (R. p. 766) Appellant returned to Dr. Reister in February of 2008 with complaints of severe sore throat, coughing, wheezing, and nasal congestion with brown colored nasal drainage. (R. p. 735) Appellant returned to Dr. Reister in March of 2008 with complaints of sore throat, increased facial pressure, and chest congestion, and Appellant indicated she used "last antibiotic this a.m. and believes to be getting sick all over again." Appellant requested a depo medrol shot, and Dr. Reister noted Appellant to have a cough and considerable mucus problem, along with bronchitis. (R. pp. 736-737) Appellant returned to Dr. Seymour on March 25, 2008, with complaints of cough, shortness of breath, bronchitis, and bronchospasm. (R. p. 766)

Appellant returned to Dr. Hand, her pulmonologist, on October 27, 2008. At that time, Appellant reported she had some problems with her asthma which were improving since going on allergy shots. (R. p. 341) Appellant underwent a lap band surgery in December of 2008. (R. pp. 129, 378)

Appellant returned to Dr. Seymour on January 12, 2009, with complaints of cough and sinusitis. (R. p. 767) Appellant returned to Dr. Seymour on April 14, 2009, with complaints of a cough and headache, and complaints of an "exacerbation of asthma." (R. p. 769) Appellant returned to Dr. Reister in April of 2009, where she complained of "some asthma trouble, was outside on Easter." Appellant indicated she had just had a depo medrol shot that week, along with a Z-Pack and prednisone. (R. p. 739)

Appellant returned to Dr. Seymour on May 28, 2009, with complaints of sinus congestion, dry cough, bronchitis, and bronchospasm. (R. p. 769) Appellant returned to Dr. Seymour two times in August of 2009 with complaints of chest congestion, wheezing, shortness of breath, and an "exacerbation of asthma," and she received a depo medrol shot. (R. pp. 770-771) Appellant returned to Dr. Seymour on September 28, 2009, with complaints of shortness of breath, cough, wheezing, and an "exacerbation of asthma/bronchitis." (R. p. 772)

Appellant returned to Dr. Reister in December of 2009, with complaints of having chest tightness during recent skin testing and having had to receive two Albuterol inhaler puffs during the testing, and Appellant also indicated she had been having "a lot of trouble with tomatoes and some wheezing." (R. p. 740) Appellant returned to Dr. Reister on March 3, 2010, with complaints that she was "very congested and has a sore throat and not feeling well, lots of congestion." Appellant also complained of "lots of post nasal drip." (R. p. 741) Appellant returned to Dr. Seymour on July 23, 2010, with complaints of chest congestion, wheezing, shortness of breath, and dark phlegm, and Dr. Seymour referred Appellant to a pulmonologist. (R. p. 774)

On August 25, 2010, ***just nine months before Appellant was hospitalized in June 2011***, she presented to Dr. Gowdhami Mohan, a pulmonologist at AnMed Health Carolina Pulmonary Sleep, for a pulmonary consultation at the referral of Dr. Seymour. Dr. Mohan noted the following:

> She has a long standing history of asthma, but it ***was well controlled until two years ago. For the last two years, she has been having trouble with cough, sputum productions, etc.*** The patient has nebulizer machine and she uses the nebulizer treatment (***aerosols three to four times a day***). Currently, also receiving allergy shots on a regular basis. Still continues to have persistent cough. ***Sputum production has been noted for the last 6 months***.

Appellant was prescribed Levaquin, Singulair, Pulmicort aerosols, Brovana, and Combivent inhaler. (R. pp. 342-344, all emphasis added)

At the hearing, Appellant testified that, prior to May 26, 2011, her asthma had been the same for twenty years, it had been well-controlled, and it was not getting any worse in the two to five years leading up to May 26, 2011. (R. p. 126) ***This is inconsistent with the medical evidence outlined above***, and most notably, the August 25, 2010, report of Dr. Mohan, which clearly indicates that Appellant's asthma condition was uncontrolled and had been worsening in the two to three years directly preceding her hospitalization on June 1, 2011.

b. Appellant suffered from a severe upper respiratory tract infection (a "cold") beginning in May of 2011, which persisted through the date of her hospitalization on June 1, 2011.

At the Single Commissioner hearing, Appellant testified that she had a cold which began around the beginning of the month in May of 2011, and that cold continued through the date she was admitted to the hospital on June 1, 2011. (R. pp. 136-138) Similarly, Appellant testified at her deposition that she "had ***a really bad cold***" on May 26, 2011. (R.

p. 488, emphasis added) At the Single Commissioner hearing, she again testified she had "***a really bad head cold***" on May 26, 2011. (R. p. 137, emphasis added) Appellant's mother, Maureen Chamblee, testified she was even aware that Appellant had a cold in the weeks prior to May 26, 2011. Appellant admitted that having a cold causes problems with her asthma. (R. p. 137)

Referring to the incident on May 26, 2011, Larry Greer, Jr. testified Appellant "was sick that day anyway at work," but he did not notice anything different about her condition when he returned to the truck at the site of the fire. (R. pp. 191-192)

Referring to her return to the Fire Department after installing smoke detectors on May 26, 2011, Appellant testified at her deposition: "I get to the fire department, and I was telling them, I said, '***I've got a cold***. I think I'm going to go home early because I've done got sick. I'm real – my head is killing me.'" (R. p. 491, emphasis added)

Appellant testified she told Dr. Poon she was sick when she presented on June 1, 2011, and she testified she had been sick ***for about a month*** by June 1, 2011. (R. p. 153) During her deposition, Appellant testified that at Dr. Poon's office on June 1, 2011, she told the doctor: "Well, while you're at it, you might better listen to my lungs ***because I think I've got a cold***." (R. pp. 492-493, emphasis added) It is undisputed that Appellant suffered from a severe cold during the entire month of May, 2011.

c. The medical records and evidence following the May 26, 2011 incident are *inconsistent* with Appellant's allegations, and are *consistent* with Appellant's asthma condition being related to her cold, or simply to the natural progression of her underlying condition.

Appellant sought no medical attention on the day of the fire, nor did she seek any medical attention until she returned to her personal care physician, Dr. Glenn Poon, on June 1, 2011, ***for a previously scheduled appointment*** to review her physical results. Dr.

Poon's June 1, 2011 note (approx. *one week* after the incident) indicates Appellant presented on that date for "asthma and lab results. With asthma attacks ***since one month ago*** and is getting a lot worse." (R. pp. 387-388, emphasis added) Appellant also presented with nasal congestion and a runny nose. Based on Appellant's own report to Dr. Poon, her asthma attacks had been occurring for a month, ***the same timeframe as her cold***, and she presented with nasal congestion and a runny nose, ***common symptoms of a cold***. ***There is absolutely no mention of the May 26, 2011 fire incident in Dr. Poon's June 1, 2011 record.***

Dr. Poon admitted Appellant into Elbert Memorial Hospital on June 1, 2011. The hospital records indicate: "Long history of asthma problems in the past. ***According to her***, she started to have some attacks in between now ***for a month or so...***" (R. pp. 421-444, emphasis added) Appellant was diagnosed with asthma and acute bronchitis. Appellant stayed in the hospital until June 10, 2011, and Appellant's discharge note indicates: "48 year old female patient with long history of asthma problems in the past. According to her, she has been using her nebulizer treatments ***in the past month or so***, and lately is just getting a lot worse. Patient finally came into the office for a checkup." (*Id.*) Despite being admitted to the hospital for ***ten days***, ***there is absolutely no mention of the May 26, 2011 fire incident in the hospital records***. Appellant submits that "no detailed history was taken from her" when she was admitted to the hospital, and this is why there is no mention of the fire incident in ten days' worth of hospital records. (Appellant's Brief, p. 4) Respondents find it unlikely that Appellant spent ten days in the hospital without ever being asked about any potential causes for her problem.

Appellant presented to AnMed Hospital on June 15, 2011, with complaints of sudden increasing chest pain. The hospital record indicates that during Appellant's initial evaluation, "she was noted to have significant dyspnea, which was pleuritic in nature." Appellant remained in the hospital until June 18, 2011, at which time she was discharged with diagnoses of non-specific chest pain, asthma exacerbation, constipation, depression with anxiety, and sleep apnea. (R. pp. 360-367) Again, despite being admitted for ***four days, there is absolutely no mention of the May 26, 2011 fire incident in the hospital records***. Appellant again argues that "no detailed history was taken from her" when she was admitted on June 15, 2011. (Appellant's Brief, p. 5) Again, it seems improbable that Appellant would be admitted to a hospital for four days, ***to include a visit from her personal pulmonologist***, yet she would never have the opportunity to provide a history of her condition.

Not only do the hospital records fail to mention the fire incident, but they even indicate on two separate occasions that Appellant ***was <u>not</u> exposed*** to any unusual chemicals, fumes, dust, or other exposures. The hospital records specifically indicate: "***No history of exposure to any unusual chemicals, fumes, dust, etc.***" (R. pp. 360-367, emphasis added) Appellant was seen by Dr. Mohan, her personal pulmonologist, while she was in the hospital. Under Appellant's "Occupational History," Dr. Mohan's note also indicates: "***No history of exposure to any unusual chemicals, fumes, dust, etc.***" (*Id.*, emphasis added) Very clearly, Appellant made no mention of her alleged smoke exposure during either of her hospital admissions, and in fact, it appears she even denied any such exposure.

Appellant returned to Dr. Mohan, her pulmonologist, on July 14, 2011, with a complaint of shortness of breath. Dr. Mohan noted Appellant to "have significant ***psychogenic component*** to her dyspnea." (R. pp. 345-346, emphasis added) There is again no mention of smoke exposure or the fire incident in Dr. Mohan's July 14, 2011 record.

Appellant returned to Dr. Poon on September 2, 2011, where she presented for a checkup and trouble breathing, and again, there is no mention of the fire incident. (R. pp. 402-403)

Appellant returned to Dr. Mohan on September 13, 2011. Dr. Mohan indicates Appellant returned for a "recheck of asthma, onset of the asthma has been gradual and ***has been occurring in a persistent pattern for years***. The course has been worsening." (R. pp. 347-350, emphasis added) Dr. Mohan again noted there to be a "psychogenic component to her problem," and Dr. Mohan noted "the importance of regular follow up visits reinforced." (*Id.*) Appellant was instructed to follow up in one month, but she failed to do so. Again, there is no mention of smoke exposure or the fire incident in Dr. Mohan's September 13, 2011 record.

Appellant did not return to Dr. Mohan until July 10, 2012, nearly nine months later, and more than a year after her alleged incident at work. On that date, Appellant presented with shortness of breath, hoarseness, cough, cold symptoms, and she reported her ***issues began two months ago***. (R. pp. 779-782) Appellant returned to Dr. Mohan on September 20, 2012, and Appellant's medications were refilled and she was instructed to follow up in six months. (R. pp. 783-786) Again, there is no mention of smoke exposure or the fire incident in Dr. Mohan's July 10 or September 20, 2012 records.

Appellant presented to Dr. Michael A. Spandorfer of Carolina Lung and Critical Care in Charleston, South Carolina on December 20, 2012, for an independent medical evaluation at the referral of her attorney. (R. pp. 248-252) ***Dr. Spandorfer's report, more than 18 months after the fire incident, is the first time the incident is ever noted in Appellant's medical records.*** The medical records are completely inconsistent with Appellant's allegations, as they (1) fail to mention the smoke incident at all for more than 18 months, (2) specifically indicate Appellant denied exposure to any substances, (3) indicate Appellant's problems had been occurring for a month before her hospitalization, contemporaneous to her cold, and (4) indicate Appellant's condition had occurred in a consistent pattern for years.

d. The Commission properly afforded greater weight to the opinions and testimony of Dr. Feldman, rather than the opinions of Appellant's family physician and Dr. Spandorfer, as the opinions of Dr. Feldman are most consistent with Appellant's medical records.

Appellant presented to Dr. Michael A. Spandorfer of Carolina Lung and Critical Care in Charleston on December 20, 2012, for an independent medical evaluation at the referral of her attorney. (R. pp. 248-252) Dr. Spandorder opined that Appellant's asthma was worsened by her alleged exposure to smoke on May 26, 2011.

The parties deposed Dr. Spandorfer on February 25, 2014. Dr. Spandorfer testified that exposure to smoke caused mucus production, and the mucus then aggravated Appellant's underlying asthma. Dr. Spandorfer testified in his deposition, "[t]o a reasonable degree of medical certainty, I believe that the patient has occupationally induced – excuse me, occupationally worsened asthma due to her smoke exposure." (R. p. 309) There are numerous inconsistencies in Dr. Spandorfer's report, and in much of the history

provided to Dr. Spandorfer by Appellant. Dr. Spandorfer testified that Appellant reported the following during the evaluation:

> She reported to me that prior to the exposure her asthma was ***relatively stable*** and that she had ***rare symptoms*** that she related to her asthma. She reported that prior to the fire she only needed to use rescue bronchodilator therapy approximately ***two or three times a year*** without the need for daily usage, and she reported that she ***didn't require oral steroids or inhaled steroids***, and she rarely required antibiotics which in our mind, you know, tells us the patient's controlled. They don't require rescue therapy or maintenance medicines or oral steroids and that their asthma is quiescent. (R. p. 272, emphasis added)

Dr. Spandorfer further testified that Appellant denied any history of allergies or post nasal drip, she denied any reflux, and she denied allergic rhinitis or allergy sinus disease. (R. p. 273) Contrary to Appellant's report to Dr. Spandorfer, and as outlined in Section "a" above, Appellant's asthma was not relatively stable prior to May 26, 2011, Appellant required rescue bronchodilator therapy three to four times per day, Appellant required oral steroids, inhaled steroids, and antibiotics, Appellant suffered from nasal drip and reflux, and Appellant suffered from extensive allergy and sinus issues. Dr. Spandorfer was presented with a significantly flawed history of Appellant's condition.

Dr. Spandorfer reviewed a 2005 spirometry test from AnMed Health, introduced as Exhibit 1 in the deposition, and Dr. Spandorfer testified: "She is not very much different based off of that..." (R. p. 575) Dr. Spandorfer further testified that the spirometry results "***didn't change***" from 2005 until after the smoke incident in 2011. (R. p. 288, emphasis added) Dr. Spandorfer testified that Appellant did not report to him that she had a cold at the time of the smoke incident. (R. p. 293) Lastly, Appellant reported to Dr. Michael Spandorfer that she covered her face with a wet towel, but Appellant admitted at the hearing that there was not a wet towel in the vehicle.

Dr. Spandorfer admits there is essentially no change to Appellant's ***objective*** lung function tests from 2005 until after the 2011 smoke incident, and he admits that he was provided a very flawed and inaccurate history by Appellant. Nonetheless, Dr. Spandorfer ultimately stood by his causation opinion. Dr. Spandorfer's opinion is not consistent with the medical records, and it is extremely weak, especially when compared to the unequivocal testimony and opinions issued by Dr. Gregory Feldman.

Appellant presented to Dr. Gregory Feldman at Upstate Lung and Critical Care Specialists in Spartanburg on March 5, 2014, for an independent medical evaluation at the referral of Respondents. (R. pp. 873-880) After evaluating Appellant, Dr. Feldman issued a letter and written statement opining the following:

> Ms. Chamblee is an unfortunate 48 year old female, lifelong non-smoker, with long history of asthma since the age of six weeks. She has had numerous asthma attacks and exacerbations of her asthma throughout her adolescence. She reports that her asthma has gotten better, but about one week after her exposure to smoke, her condition deteriorated. She is attributing this to the incident in question. On May 26, 2011, Ms. Chamblee was in her fire truck, when they had stopped to assist with some fire in a field. She stayed in the truck for approximately 45 minutes, about 100 yards or so away from the fire. Ms. Chamblee had also been suffering from persistent "cold" symptoms for about a week at that time. According to her medical records, she was admitted to Elbert Memorial Hospital on June 1, 2011, with severe asthma exacerbation. At that time, according to Ms. Chamblee, she started to have some attacks in between for about a month prior to her admission. To date, asthma is still not controlled. ***With regard to exposure to smoke, it is unlikely that smoke exposure has caused or contributed to her asthma.*** She did not develop an immediate bronchospasm as one would expect in asthma exacerbation secondary to smoke inhalation. ***She had poorly controlled asthma for weeks prior to exposure and had ongoing "cold" symptoms for several days prior to exposure.*** There is no doubt that Ms. Chamblee is suffering from lifelong and progressive asthma, but it is multifactorial and not properly managed at this time. (*Id.*, emphasis added)

The parties deposed Dr. Feldman on October 20, 2014, and Dr. Feldman testified to the following:

> This is a patient that has a very, very severe asthma, longstanding asthma. She has a terrible breathing test preceding her asthma – preceding her fire, and she continued to have a pretty bad cause. The fact that she got in to the hospital, it didn't happen after she was exposed to fire. It happened like a week later. In addition, she has a viral infection, cold symptoms, which is far more likely than fire that caused it, which is what generally we see in the pulmonary practice when severe asthmatics get upper respiratory infection, that would probably put you in the hospital. Far more likely than a fire. (R. pp. 626-627)

Dr. Feldman testified that Appellant suffered from a cold during the week of the smoke exposure, and the cold was far more likely than the smoke exposure to have caused an aggravation of Appellant's asthma. Dr. Feldman testified that the cold causes mucus inflammation, and the mucus then plugs the airways and produces difficulty breathing. Dr. Feldman testified that, if the smoke caused a permanent aggravation of Appellant's asthma, he would have expected an "***immediate asthma attack within like seconds or minutes***." (R. p. 628) Dr. Feldman testified that, even if we assume there was an aggravation of Appellant's asthma, it is ***99.9% likely that it was caused by her upper respiratory infection (cold), and .01% likely that it was caused by the smoke exposure***. (R. p. 635) Dr. Feldman testified that his opinion to a reasonable degree of medical certainty is that any smoke exposure on May 26, 2011, ***did not cause or contribute to Appellant's asthma condition***. (R. pp. 635-636)

Dr. Feldman reviewed the deposition transcript of Dr. Spandorfer and testified he disagrees with Dr. Spandorfer's causation opinion. Dr. Feldman testified Appellant was many yards away from the fire, Appellant already had significant preexisting symptoms, and Appellant's spirometry test from after the smoke incident "has not changed" when compared to the spirometry test performed in 2005. (R. pp. 636-637) Dr. Feldman agreed that the cause of any aggravation of Appellant's asthma was likely mucus production, but Dr. Feldman testified: "Well, I agree it was mucus, and – and it overwhelmingly likely was

a viral infection that caused it. It's not even in my – in my judgment, ***not even close***." (R. pp. 638-639, emphasis added)

Dr. Feldman testified that Appellant's asthma has been under-treated in the past, and he testified that upper respiratory infections are ***overwhelmingly the most common cause of clinical deterioration in asthma patients***. (R. p. 667) Dr. Feldman testified that Appellant's upper respiratory infection "preexisted the smoke, it continued, and then she finally was so sick that she had to be admitted, okay. ***If she come to me the day before the fire, I probably would have admitted her too***." (R. pp. 640-641, emphasis added) Dr. Feldman further testified:

> And I'm telling you, that the most common aggravation of preexisting condition is viral infection. And ***the fact that there was some smoking seven days prior [to Appellant being admitted to the hospital], okay, it is almost impossible to assign significance to that when we know that she has a viral infection, and that's the most common cause of exacerbation***." (R. p. 660, emphasis added)

On further questioning about the smoke causing an exacerbation of Appellant's asthma, Dr. Feldman stated: "If she would have gotten sick on the spot, cannot breathe, called the ambulance, I would say you're right. But seven days later, it's an ***utter speculation and unlikely***." (R. p. 666, emphasis added) Dr. Feldman further stated: "The greatest majority of the people today in every hospital in the United States of America and every other country are because of viral infection.... People are in the hospital today with asthma overwhelmingly because of a viral upper respiratory infection. That's a ***number one cause of asthma admission***." (R. p. 667, emphasis added) Dr. Feldman testified that Appellant had indicated she had a bad cold at the time of the fire incident, and Dr. Feldman testified: "When people say 'real bad cold,' what they really mean, 'really bad asthma,' okay. Because they ascribe it to cold, when ***in reality, their symptoms of asthma got bad***.

That's what they feel." (R. p. 677, emphasis added) Again, Dr. Feldman's testimony is unequivocal, and it is far more convincing than the opinions of Dr. Spandorfer, especially when read in the context of the medical evidence in the claim.

Lastly, Appellant's family physician, Dr. Poon, issued a causation statement on August 1, 2014, stating that Appellant's "...exposure to smoke ... most probably caused an aggravation of her prior asthmatic condition ..." (R. pp. 244-246) Dr. Poon is not a pulmonologist, none of his records contemporaneous with the alleged date of injury even mention the alleged exposure to smoke, and his statement is signed more than 3 years after the fact. More importantly, Dr. Poon, himself, admits he is not the best physician to address causation of Appellant's issues. In a letter dated May 14, 2012, Dr. Poon states: "Since she was under the care of her pulmonologist prior to and after this incident, ***I think her pulmonologist will be the best to consult. He can provide all your needed answers in detail.***" (R. p. 863, emphasis added) Appellant's personal pulmonologist was Dr. Mohan. Despite this statement from Dr. Poon, ***there is absolutely no causation statement from Dr. Mohan in the medical records***. Dr. Mohan was Appellant's personal pulmonologist ***prior to the incident***, and he treated her in the hospital and in his office ***directly after the incident***, yet he has not linked Appellant's asthma condition to the alleged smoke exposure. Respondents contend this is a very important piece of evidence, or lack thereof.

e. The evidence does not even establish that there *was* a permanent aggravation of Appellant's asthma condition in May or June of 2011.

It is clear from the record that Appellant's asthma condition was severe and undertreated for many years prior to her hospitalization on June 1, 2011. Appellant has admittedly pushed her asthma condition back and attempted to fight through it over the years, refusing to submit to her condition or admit the severity of her situation.

According to Dr. Feldman *and Dr. Spandorfer*, Appellant's 2005 spirometry readings were already as bad as her post-accident readings, and there is no objective evidence that her condition is any worse now than it was ten years ago. According to Dr. Feldman, Appellant would likely have been hospitalized if she had presented to Dr. Feldman *prior* to the smoke incident in May of 2011.

Despite Appellant's testimony that she wears oxygen "most all the time" now, which she did not wear prior to June 1, 2011, there is video of Appellant singing karaoke in the record, and she is not wearing oxygen, nor does she appear to have any issues singing two complete songs. (R. pp. 104-105; video) A review of the evidence in its entirety does not support that Appellant's current condition is any different than her condition was on May 25, 2011, or in 2005 for that matter.

f. When the evidence is viewed in its entirety, there is substantial evidence to support the Commission's finding that Appellant did not suffer a compensable injury by accident or aggravation of her underlying asthma condition on May 26, 2011.

The question before the Court is simple: Is there substantial evidence in the record to support the Commission's denial of Appellant's claim? When the evidence is viewed in its entirety, Respondents maintain that there can be no doubt that substantial evidence exists to support the Commission's findings. Summarily, the evidence in this claim reveals the following sequence of events:

- Appellant is a lifelong and severe asthmatic;
- Appellant's asthma worsened after her 2001 pregnancy, and she began treating with a pulmonologist (Dr. Hand) at least as early as 2005 (*contrary to her deposition testimony that she never treated with a pulmonologist until after May 26, 2011*);
- Appellant also suffers from numerous related medical issues, including GERD, severe allergies, obstructive sleep apnea, and sinus troubles;

- From 2006 onward, Appellant regularly presented to her family physician and ENT with complaints of asthma-related issues;

- In August of 2010, Appellant was again referred to a pulmonologist by her family physician, and she began treatment with Dr. Mohan (*the second pulmonologist she treated with prior to May 26, 2011, contrary to her deposition testimony*);

- Nine months before the date of her alleged accident, Appellant indicated to Dr. Mohan that her asthma had been worsening over the course of the previous two years;

- In the beginning of May, 2011, Appellant developed what she referred to as a severe cold;

- According to Dr. Feldman, asthmatics often refer to their symptoms as "cold" symptoms, when in reality, they are suffering from issues with their asthma;

- According to Dr. Feldman, colds, or upper respiratory tract infections, are overwhelmingly the number one cause of asthma exacerbations;

- Appellant is admittedly a person who tries to push her asthma back and avoid treatment if possible, as she has done her entire life;

- According to Dr. Feldman, it is very common for asthmatic patients to state and believe that they are better than they actually are, as they become accustomed to feeling poorly on account of their asthma;

- On May 26, 2011, Appellant presented to the location of a field fire, but she sat in the truck with the air conditioner on circulate and was parked a great distance from the fire itself;

- According to Larry Greer, Jr., there was a light haze of smoke in the air, but even the individuals outside did not require masks;

- Appellant did not move the truck further from the fire, nor did she exit the truck to walk a further distance away at any point;

- When Mr. Greer returned to the truck, Appellant made no indication that her asthma symptoms had flared up, nor did she have any noticeable symptoms of an asthma exacerbation;

- According to Dr. Feldman, if Appellant had suffered an aggravation of her asthma condition on May 26, 2011, he would have expected an immediate and severe response;

- After leaving the fire, Appellant went on to install smoke detectors at a private residence, as previously planned – she did not request medical attention or request

to return to the Fire Department;

- Appellant did not seek medical attention following the incident, and she missed no time from work until she presented for a pre-scheduled visit to her family doctor on June 1, 2011;

- On June 1, 2011, Appellant was admitted to the hospital, and her medical records (including 10 days of hospital records) do not mention the alleged smoke exposure;

- In fact, medical records from Appellant's subsequent hospitalization specifically indicate Appellant was *not* exposed to any chemicals, fumes, dust, etc.;

- The medical records *do* portray numerous cold-like symptoms, consistent with Dr. Feldman's causation opinion, and the records indicate Appellant's symptoms had been occurring for a *month* (*consistent with the timeframe of Appellant's cold, and inconsistent with the smoke exposure one week prior*);

- There is not a single mention of the alleged smoke exposure in any of Appellant's medical records until more than 18 months later, when she presented to Dr. Spandorfer for an IME at the referral of her attorney;

- Dr. Spandorfer, Appellant's expert, admits that there is essentially no difference in Appellant's objective spirometry tests from before and after the fire incident;

- Dr. Feldman testified that Appellant would most likely have been admitted to the hospital if she had presented to him *before* the fire incident;

- Dr. Feldman testified that Appellant's upper respiratory infection (cold) is 99.9% likely to be the cause of Appellant's admittance to the hospital;

- Dr. Mohan, Appellant's personal pulmonologist who treated her before and after the fire, has not opined that Appellant's condition was caused or aggravated by the fire incident.

When the evidence is viewed in its entirety, it is clear that Appellant's case was properly denied by the Commission, and there is certainly substantial evidence to support the Commission's Order. The Commission appropriately summarized the claim in Finding of Fact No. 28:

> The medical records are replete with references to [Appellant]'s asthma. Not only does the narrative that results when one reviews the chronological history of her asthma not support a finding for [Appellant], it paints a very clear picture that her underlying health conditions –

> unrelated to the events of May 26, 2011 – are much more likely the cause of her current condition. (R. p. 36)

Accordingly, Respondents request an order affirming the Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission.

II.

THE COMMISSION PROPERLY ALLOWED TESTIMONY RELATED TO THE ISSUE OF WHEN THE EMPLOYER WAS NOTIFIED OF APPELLANT'S ALLEGED INJURY. EVEN ASSUMING, *ARGUENDO*, THAT APPELLANT NOTIFIED THE EMPLOYER OF HER ALLEGATIONS ON MAY 26, 2011, THERE IS STILL SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S ORDER.

First, Appellant has not preserved this argument for appellate review. Appellant did not object to any of the proffered testimony or Exhibits during the hearing held before the Single Commissioner, nor did Appellant object to the consideration of any of the evidence by the Single Commissioner. If Appellant believed the testimony and evidence was improper, an objection must have been made in order to preserve the issue for appellate review. S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) (holding that to be preserved for appellate review, an issue must have been "(1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity"). As Appellant never raised any objection to the testimony and evidence she now asserts was improperly allowed and considered, she cannot raise the issue for the first time on appeal.

Secondly, even if this issue was properly preserved for review, there has been no error. Appellant alleges she reported the incident to the Employer on May 26, 2011. Respondents contend that the Employer was not actually notified of Appellant's allegations until June 20, 2011. The Form 12A, First Report of Injury, indicates Appellant notified the employer on May 26, 2011, but the Form was not completed until June 21, 2011. Appellant contends that the Form 12A constituted an admission that the

incident was reported to the Employer on May 26, 2011, citing the case of Sligh v. Newberry Elec. Co-op., 58 S.E.2d 675, 216 S.C. 401 (1950). Sligh is distinguishable from the case at hand.

In Sligh, the actual employer representative, a manager for the employer, had completed the Form 12A, and the Court held that the Form 12A was admissible as an admission against interest. The Sligh Court specifically noted that the statement was "made by a responsible official agent;" the manager of the employer. Sligh, 58 S.E.2d at 682. In the instant case, it was not an employee or representative of the Anderson County Fire Department who completed the Form 12A; it was a representative of the insurance agency with absolutely no personal knowledge related to the contents of the Form. In fact, the evidence shows that the employee of the insurance company who completed the Form was actually being provided the information *directly by Appellant.*

Based on the fact that the Form 12A was not completed by an employee of the Fire Department who would have had personal knowledge as to the facts contained therein, and the fact that the Form was actually completed with information provided by Appellant herself, Respondents maintain that Sligh is inapplicable, and the information contained in the Form 12A does not constitute an admission by Respondents. As it does not constitute an admission, the date Appellant first reported the incident to the Employer is in dispute, and the Commission properly allowed and considered evidence related to that issue.

Thirdly, the evidence supports a determination that Appellant did not report her alleged incident until June 20, 2011. At her *deposition*, Appellant testified that she reported the incident to Larry Greer, Jr. on May 26, 2011. *She did not testify that she reported the incident to any other individuals.* At the Single Commissioner hearing, Mr.

Greer testified that he did not recall Appellant reporting the incident to him at all. Appellant testified at the *hearing* that she reported the incident to Patty Ellison, a secretary at the Fire Department, on May 26, 2011. Appellant failed to testify at her deposition that she reported the incident to Patty Ellison, and she testified at the hearing that she simply forgot about Patty Ellison during her deposition. Appellant did not call Patty Ellison to testify at the hearing to corroborate her allegations.[1]

Respondents called Jimmy Sutherland to testify at the hearing. Mr. Sutherland testified he is the Fire Chief of the Anderson County Fire Department, where he has been employed since 2005. Mr. Sutherland was the Assistant Chief on May 26, 2011. Mr. Sutherland reviewed the First Report of Injury. Mr. Sutherland testified that the manner in which the First Report of Injury Form is completed is that an injured worker calls the insurance carrier directly, and ***the insurance carrier fills out the form over the phone based on the information provided by the injured worker***. Mr. Sutherland testified that ***no employee of the Fire Department fills out the first report***, and the hearing was the first time he had ever seen the report.

Respondents also called Timothy Dickson to testify at the hearing. Mr. Dickson was a fire marshal on May 26, 2011, and he was ***Appellant's direct supervisor*** at that time. Mr. Dickson testified that Appellant texted him on June 20, 2011, and asked that he call her, and Mr. Dickson testified he called Appellant on the evening of June 20, 2011. Mr. Dickson testified at the hearing that the telephone conversation with Appellant on ***June 20, 2011 was the first time he was aware that Appellant was alleging she was having problems from the smoke incident on May 26, 2011.***

[1] Respondents also did not call Patty Ellison to testify. However, prior to Appellant's hearing testimony, Respondents had no knowledge of Appellant's allegation that she had reported the incident to Patty Ellison, as Appellant failed to mention Ms. Ellison during Appellant's deposition.

Not coincidentally, the First Report of Injury Form indicates ***it was originated on June 21, 2011***, the day after Appellant reported the incident to Mr. Dickson, her direct supervisor, during an evening telephone conversation. Also not coincidentally, Appellant completed a "Disability Report" as part of the application process for her retirement benefits, and on that report, Appellant was asked whether she had filed a workers' compensation claim related to her disability. Appellant handwrote on the form: "6/20/11 Reported claim." (R. p. 352)

Mr. Dickson completed a written statement on June 22, 2011, indicating that Appellant told Mr. Dickson during their June 20, 2011 phone conversation that "the doctor told her that [her condition] was from being at a fire back in May. ***She stated that she told the doctor that she was already sick before that day. She also stated that she told the doctor that she never got out of the vehicle at this fire call.***" (R. p. 881, emphasis added) Based on the testimony and evidence in the record, Respondents believe Appellant did not actually notify anyone at the Employer of her allegations until June 20, 2011, and based on her conversation with Mr. Dickson, it appears *Appellant* did not even believe her condition was related to the May 26, 2011 incident until after she had seen a doctor.

Lastly, Respondents contend it is of no consequence *when* Appellant actually reported the alleged accident, as the compensability of this claim centers on the medical evidence. The Commission made no Findings of Fact or Conclusions of Law related to the date Appellant reported the accident, clearly indicating that the reporting date had no bearing on the decision. The fact of the matter is that substantial evidence exists in the record to support the Commission's findings, and regardless of when Appellant first reported the alleged incident, the medical evidence does not support her claim. Whether

Appellant reported the incident on May 26 or June 20, 2011, the medical evidence makes clear that Appellant's condition is unrelated to an alleged smoke exposure on May 26, 2011, and substantial evidence exists to support the Commission's Order.

CONCLUSION

Based on the foregoing, Respondents Anderson County Fire Department and State Accident Fund respectfully request that the South Carolina Court of Appeals affirm the Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.

BY: _____

Ian C. Gohean, Esquire
Willson Jones Carter & Baxley
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 272-2664
Attorneys for Respondents

April 8, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RECEIVED
APR 11 2016
SC Court of Appeals

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

Sandy Chamblee,
Claimant.....Appellant,

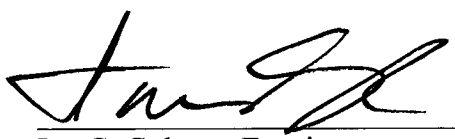
v.

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

CERTIFICATE OF COMPLIANCE WITH RULE 211(b)

I certify that the Final Brief of Respondents complies with Rule 211(b), SCACR.

April 8, 2016



Ian C. Gohean, Esquire
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607
Attorneys for Appellants