Charles E. Johnson, P.A.

Attorney At Law

1332 Main Street, Suite 209
P.O. Box 12426
Columbia, South Carolina 29211

Attorney:
Charles E. Johnson, Esq.
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August 6, 2020

The Honorable, Jenny Abbott Kitchings
Clerk, South Carolina Court Of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Evans v. Aqua Seal Manufacturing and Roofing, et al
App. Case No. 2018-000922
Petition For Rehearing
Our File No.: 16-029-WCC

Dear Ms. Kitchings:

I received an email with an attachment from your office on August 5, 2020. Attached to said email was correspondence which stated that the Petition for Rehearing that I filed on July 28, 2020 was not filed within the time prescribed by Rule 221(a), SCACR. I take exception to that conclusion.

I filled the Petition within fifteen days of my receipt of the filed opinion. On July 15, 2020 at 4:32pm I received an email from Appeals Specialist, LaToyla Burns, with attachments. Said attachments included a letter dated June 24, 2020 which stated that the decision of the Court was enclosed, and the filed opinion. (Attachment A). A second email was received a few minutes later which had the Remittitur attached. (Attachment B). These were the first correspondences that I received from the court related to the filing of the opinion on June 24, 2020. Even through the letter, dated June 24, 2020, was properly addressed and stated that the decision was enclosed, no such letter was received by my

office either by mail or email until July 15, 2020. I have reviewed my email history and find no correspondence from your office, prior to July 15, 2020, related to the filed decision.

I have no idea as to why the opinion was not forwarded as indicated in the correspondence. But, I first received the opinion on July 15, 2020 more than fifteen days after it was filed thereby making it impossible to file the Petition for Rehearing within the prescribed time.

Therefore, I am requesting an extension of time to file pursuant to Rule 263(b), SCARC, with the beginning date of July 15, 2020, the date that I first received the written opinion. The petition which was filed on July 28, 2020 would clearly fall within the fifteen days window for filing under Rule 221(a), SCARC, based upon that start date. I thank that this request is reasonable under these peculiar circumstances.

Your cooperation and assistance is appreciated and if you have any questions please contact.

Sincerely,

Charles E. Johnson, Esq.

CEJ
Enclosure
cc: Helen F. Hiser, Esq.

(Attachment A)

charles201102

From: Burns, LaToyla <lburns@sccourts.org>
Sent: Wednesday, July 15, 2020 4:32 PM
To: helen.hiser@mgclaw.com; charles201102@att.net
Cc: mackenzie.broughton@mgclaw.com; johnson1935@bellsouth.net
Subject: SC Court of Appeals: Robert Evans v. Aqua Seal (2018-000922)
Attachments: Evans v. Seal Cover Letter .pdf; 20-UP-194 - Robert Evans v. Aqua Seal.docx.pdf

Good Afternoon,

Attached in this email is correspondence from the Court.

Respectfully,

LaToyla Burns

Appeals Specialist
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201
803-734-1890|Office
803-734-1839|Fax
www.sccourtsorg|Web

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

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June 24, 2020

Mr. Charles Edward Johnson, Sr., Esquire
PO Box 12426
Columbia SC 29211

Ms. Helen F. Hiser, Esquire
PO Box 650007
Mount Pleasant SC 29465

Re: Robet Evans v. Aqua Seal
Appellate Case No. 2018-000922

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

CLERK

cc: Amy Bracy

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Robert L. Evans, Employee, Appellant,

v.

Aqua Seal Manufacturing & Roofing and Builders Mutual Insurance Company, Respondents.

Appellate Case No. 2018-000922

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2020-UP-194
Submitted May 1, 2020 – Filed June 24, 2020

AFFIRMED

Charles Edward Johnson, Sr., of Charles E. Johnson, P.A., of Columbia, for Appellant.

Helen F. Hiser, of McAngus Goudelock & Courie, LLC, of Mount Pleasant, for Respondents.

PER CURIAM: Robert Evans, an employee at Aqua Seal, filed a claim against Aqua Seal Manufacturing and Roofing and Builder Mutual Insurance Company (collectively, Aqua Seal) arguing he suffered a heat-related injury and aggravation of a pre-existing condition while working on the roof of a building when the temperature exceeded 100 degrees Fahrenheit. He appeals the Appellate Panel of

the Workers' Compensation Commission's (the Appellate Panel's) order denying and dismissing his claim with prejudice. On appeal, Evans argues the Appellate Panel erred because its order was not supported by substantial evidence in the record.

We hold substantial evidence supports the Appellate Panel's ruling Evans failed to prove he suffered an injury by accident or an aggravation of a pre-existing condition and affirm pursuant to Rule 220(b), SCACR. *See Transportation Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689-90 (2010) ("[An appellate court] can modify the commission's decision . . . only if the [appellant's] substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record."); *Shealy v. Aiken Cty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) ("Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the Full Commission reached.").

First, evidence in the record supports the Appellate Panel's finding Evans failed to prove an injury by accident. *See* S.C. Code Ann. § 42-1-160 (2015) ("'Injury' and 'personal injury' mean only injury by accident arising out of and in the course of employment and shall not include a disease in any form, except when it results naturally and unavoidably from the accident . . . ."); *S.C. Second Injury Fund v. Liberty Mut. Ins. Co.*, 353 S.C. 117, 126, 576 S.E.2d 199, 204 (Ct. App. 2003) ("The burden lies with the claimant to demonstrate causation by a preponderance of the evidence."). At the hearing before the single commissioner, the deposition of Evans's doctor, Dr. Dean Floyd, was presented; Dr. Floyd testified "no discrete moment can be determined when [Evans] suffered an injury," and Evans "had a heat-related illness which appear[s] to have resulted from a cauldron of chronic medical conditions . . . , medications[,] and repeated heat exposure." *See Grice v. Dickerson, Inc.*, 241 S.C. 225, 230, 127 S.E.2d 722, 725 (1962) ("The rule has been established in this State that 'when the testimony of medical experts is relied upon to establish causal connection between an accident and subsequent disability or death, in order to establish such, the opinion of the experts must be at least that the disability or death *most probably* resulted from the accidental injury.'" (quoting *Cross v. Concrete Materials*, 236 S.C. 440, 442, 114 S.E.2d 828, 829 (1960) (emphasis added)). Moreover, Evans had experienced debilitating heat-related episodes prior to the alleged June 3, 2016 incident. Specifically, he missed a week of work after a hospital visit for heat-related episodes in summer 2015. He sought medical treatment in February 2016 to prevent future heat-related episodes in

anticipation of higher summer temperatures. Further, on June 3, he took steps to prevent a heat-related episode by placing ice around his limbs. Therefore, Evans's June 3 heat-related incident was not accidental because it was not an unlooked for event, and he could have anticipated it due to his past experiences. *See Capers v. Flautt*, 305 S.C. 254, 256, 407 S.E.2d 660, 661 (Ct. App. 1991) ("The word 'accident' has been applied by our courts in the workers' compensation context to mean an 'unlooked for or untoward event that the injured person did not expect, design or intentionally cause.'" (quoting *Linnen v. Beaufort Cty. Sheriff's Dept.*, 305 S.C. 341, 408 S.E.2d 248 (Ct. App. 1991))); *Capers*, 305 S.C. at 256, 407 S.E.2d at 661-62 (holding there was enough information in the record to support the conclusion the contact dermatitis experienced by Capers was not accidental because he had been aware of the situation for several years and had previously left a job due to the same problem. Thus, the dermatitis outbreak he suffered was not an unlooked for event Capers did not expect; rather, it was an event he could anticipate due to his past experiences). Thus, substantial evidence in the record supports the Appellate Panel's finding Evans failed to prove he suffered an injury by accident on June 3.

Second, the evidence in the record supports the Appellate Panel's finding Evans did not suffer a compensable aggravation of a pre-existing condition. *See* S.C. Code Ann. § 42-9-35 (2015) (stating when a claimant alleges aggravation of a pre-existing condition, the claimant "shall establish by a preponderance of the evidence, including medical evidence, that the subsequent injury aggravated the pre[-]existing condition . . . ."). Dr. Floyd did not testify Evans suffered an aggravation of a pre-existing condition, and Evans presented no other evidence the rhabdomyolysis was pre-existing. Further, Evans knew working in the heat resulted in significant health issues as evidenced by his hospital visit and missed week of work in 2015, going home early the two days before June 3 due to cramping, and packing ice around his limbs to prevent a heat-related episode on June 3. *See Havird v. Columbia YMCA*, 308 S.C. 397, 399-400, 418 S.E.2d 329, 330-31 (Ct. App. 1992) (holding the applicant did not prove he suffered a compensable aggravation of a pre-existing condition because he knew his work activities would worsen his condition). Therefore, the evidence supports the Appellate Panel's finding Evans did not prove he suffered a compensable aggravation of a pre-existing condition. Based on the foregoing, we affirm the Appellate Panel's order.

AFFIRMED.[1]

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

HUFF, THOMAS, and MCDONALD, JJ., concur.

(Attachment B)

charles201102

From: Burns, LaToyla <lburns@sccourts.org>
Sent: Wednesday, July 15, 2020 4:48 PM
To: helen.hiser@mgclaw.com; charles201102@att.net
Cc: mackenzie.broughton@mgclaw.com; johnson1935@bellsouth.net
Subject: RE: SC Court of Appeals: Robert Evans v. Aqua Seal (2018-000922)
Attachments: LB Evans v. Seal Remittitur.pdf

Good Afternoon,

Attached in this email is the Remittitur. The previous email contained the cover letter and opinion.

Respectfully,

LaToyla Burns

Appeals Specialist
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201
803-734-1890|Office
803-734-1839|Fax
www.sccourts.org|Web

From: Burns, LaToyla
Sent: Wednesday, July 15, 2020 4:32 PM
To: 'helen.hiser@mgclaw.com' <helen.hiser@mgclaw.com>; 'charles201102@att.net' <charles201102@att.net>
Cc: 'mackenzie.broughton@mgclaw.com' <mackenzie.broughton@mgclaw.com>; 'johnson1935@bellsouth.net' <johnson1935@bellsouth.net>
Subject: SC Court of Appeals: Robert Evans v. Aqua Seal (2018-000922)

Good Afternoon,

Attached in this email is correspondence from the Court.

Respectfully,

LaToyla Burns

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July 15, 2020

The Honorable Amy Bracy
Worker's Compensation Commission
Post Office Box 1715
Columbia SC 29202

REMITTITUR

Re: Robert Evans v. Aqua Seal
Lower Court Case No. 1608009
Appellate Case No. 2018-000922

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

Enclosure

cc: Charles Edward Johnson, Sr., Esquire
Helen F Hiser, Esquire