

Petitioner takes issue with the Court of Appeals affirming the Commission's finding that her husband's case is not one where an alcoholic stopped his excessive drinking and returned to his alcoholic ways because of the injury. The Commission's decision relied on on Dr. James Ballenger's interpretation of Decedent's medical records. It noted that Dr. Ballenger opined Decedent "suffered from a progressively worsening alcoholism over the course of his adult life". *App. 11*. Dr. Ballenger had not treated, met, nor read the entire medical records of Decedent.

There were no medical records nor findings Decedent continued his drunken phase in the three-year period between his 2009 meltdown and May 15, 2013 when he started seeing Dr. Bonnarens for his rotator cuff. For Dr. Ballenger to testify Decedent continued his alcohol dependence during the interim period without any proof is illustrative of his occupation as a witness. When offered statements by other physicians opposing his theory of non-stop dependence on alcohol (with common uses of the English language), he boldly offered the plain meaning was not what they meant. He said he was an expert and that is what experts do.

At one point, Respondents' theory was Decedent/ Employee may have caused the re-tear of his rotator cuff when he suffered from alcohol DTS due to his alcohol withdrawal. (Court of Appeals Opinion, January 13, 2021). This would show Respondents believed Decedent had been in recovery with his alcohol abuse, and the work injury contributed to his return to his addictive behavior.

Notwithstanding this, the Court of Appeals insistence that aggravation was a requirement to recover is in conflict with the ruling in the case of *Ellison II*, where the Court of Appeals ruled

'combined effects' of the injury and the preexisting condition." *Ellison II*, 371 S.C. at 164, 638 S.E.2d at 666, as cited in *Bartley v. Allendale Cnty. Sch. Dist.*, 392 S.C. 300, 709 S.E.2d 619 (2011).

In *Ellison*, the claimant was given a 20% permanent impairment rating to his leg after injuring it on the job. *Ellison, supra at 665*. Ellison also had pre-existing physical conditions including hypertension, sleep apnea, prostate cancer, diabetes, and congestive cardiac disease, which, in combination with his workplace injury, rendered him physically unable to return to work after his accident. *Id.* Applying section 42-9-400, the commissioner concluded Ellison was totally disabled from the combined effect of his pre-existing conditions and the workplace injury to his leg.

In this case, the Commission failed to consider Dr. Dwight Jacobus, M.D.'s findings that Mr. Provins would have a permanent disability regardless of whether he had a second surgery because of the overwhelming damage done due to the delay in providing treatment.

*"This is to confirm my opinion that the above-captioned patient, who is now Appellant, would have .a 10% to 13% disability rating utilizing the shoulder regional grid border of the upper extremity on Table 15-5, page 403, of The Guides and Evaluation of Permanent Impairment. Sixth Edition. It should be noted that it is also my opinion that whether the patient was not Appellant and was able to have a second surgery, he would still have a disability percentage of at least 10% to 13% in regard to the findings of pre-operatively, surgically, and post-operatively. It is my opinion that a second surgery would not relate to a diminished percentage of disability because of the pathology that was present at the time the first surgery was completed."*

(APAs, p. 104).

This statement does not even take into account the medicinal therapy that he would have