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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Appellate Panel of the South Carolina Workers' Compensation Commission

R. Michael Campbell, II; Avery B. Wilkerson, Jr.; Aisha Taylor
South Carolina Workers' Compensation Commissioners

Case No. 1614297
Appellate Case No. 2021-000669

Kenneth D. Christian, Employee,

Appellant,

v.

Sew Eurodrive, Inc., Employer and
Great American Alliance Insurance Company, Carrier,

Respondents.

RECORD ON APPEAL

VOLUME I

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APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1614297

Kenneth D. Christian,	RESPONDENT
	CLAIMANT,
vs.	
Sew Eurodrive, Inc.,	EMPLOYER,
AND	
Great American Alliance Insurance Company,	CARRIER,
	DEFENDANTS/APPELLANTS

Appellate Panel Review held in Columbia, South Carolina,
on October 12, 2020 per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed
June 1, 2021

APPEARANCES:

Claimant/Respondent Kenneth D. Christian, Claimant of Easley, South Carolina represented by Thomas S. Phillips, Esquire of Smith Jordan Attorneys at Law, in Easley, South Carolina.	Defendants/Appellants represented by Benjamin M. Renfrow, Esquire of Willson Jones Carter & Baxley, P.A. in Greenville, South Carolina.
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STATEMENT OF THE CASE

The parties were heard by Commissioner Gene McCaskill, on January 24, 2020, in Spartanburg, South Carolina. On July 5, 2020, he issued the following Order:

IT IS HEREBY ORDERED that Defendants shall pay unto Claimant temporary total disability benefits from January 1, 2017 until November 19, 2018; and

IT IS FURTHER ORDERED that, subsequent to payment of the aforementioned temporary total disability benefits, Defendants shall pay unto Claimant the remaining weeks according to the discount tables designated by the South Carolina Workers' Compensation Commission; and

IT IS FINALLY ORDERED that, Defendants shall provide and pay for Claimant's past causally related medical treatment for his bilateral lungs, and, with the exception of a bilateral lung transplant which would require an agreement among the parties or a future order of the Commission, Defendants shall further provide and pay for any additional causally related medical treatment for Claimant's bilateral lungs for his lifetime at the direction of Dr. Leonard James Cochrane, Jr; and

IT IS SO ORDERED.

In his Decision and Order, dated July 5, 2020, Commissioner McCaskill made the following specific Findings of Fact and Conclusions of Law:

Findings of Fact

1. When evaluating the evidence in this case, I must consider all the evidence, both lay and medical.
2. Findings of fact "may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." See *Burnette v. City of Greenville*, 401 S.C. 417, 428, 737 S.E.2d 200, 206 (Ct. App. 2012).
3. This claim is complex by its very nature. Both parties have presented well-prepared, compelling arguments.

4. Claimant is a covered employee and Defendants are a covered employer who employs four (4) or more employees; thus, Claimant and Defendants are subject to the South Carolina Workers' Compensation Act.
5. An employment relationship existed between Claimant and Defendants on the date of accident, August 26, 2016.
6. The record is replete with medical records which give a detailed history of Claimant's lung condition.
7. Claimant suffers from a debilitating interstitial lung disease known as hypersensitivity pneumonitis.
8. Claimant asserts that while working for Employer, he used chemicals and solder that, over time, caused damage to his lungs. As such, Claimant seeks a finding of compensability and an award for back-owed temporary total disability benefits.
9. Claimant further asserts that as a result of this work-related injury, he is permanently and totally disabled. As such, Claimant seeks an award for permanent and total disability discounted only after the deduction of back-owed TTD benefits and an award for past and lifetime medical treatment.
10. Claimant specially asserts that his lung condition is causally related to exposure to solder at SEW-Eurodrive, Inc.
11. Given that Claimant asserts that he is permanently and totally disabled as a result of this alleged work-related injury, this case is subject to mandatory mediation as set forth in South Carolina Workers' Compensation Regulation 67-1802(A). As such, the parties participated in mediation on April 22, 2019 which resulted in an impasse.
12. Defendants deny that Claimant sustained an injury by accident arising out of and in the course of his employment.
13. Defendants further assert that Claimant's claim is barred by Claimant's failure to give timely and immediate notice to the Employer, and that Claimant cannot meet his burden of proof, which he must, given that this is a denied case.
14. I am persuaded that Claimant had concerns about the origin of his lung condition dating as far back as 2015.
15. In July of 2016, Claimant completed an application for Disability Income. In that application, Claimant indicated that his disability was due to a "sickness" as opposed to an "accident". The application also asked Claimant whether the condition was due to an injury or sickness arising out of his employment. The

options of answering were “Yes,” “No” or “Unknown.” The Claimant circled “No”.

16. That being said, Claimant does not have the information contained in the report from the lung biopsy until August of 2016, which provides a diagnosis of hypersensitivity pneumonitis possibly due to soldering fumes.
17. As such, I cannot conclude with any certainty that Claimant knew or should have known that his lung condition was possibly work-related prior to the biopsy in August of 2016.
18. As such, I find the claim was filed timely. The notice defense fails.
19. Claimant provided proper notice to Defendants, pursuant to the South Carolina Workers’ Compensation Act, by advising his boss, Rainer Neufelt, in September of 2016.
20. As to Claimant’s position, Claimant cites the following:
 - Claimant is 69 years old.
 - Claimant began working for Employer in September of 1983.
 - Claimant first worked in the maintenance department for eight (8) or nine (9) years before moving to the electronics lab.
 - While working in the electronics lab, Claimant regularly and routinely soldered and de-soldered.
21. Claimant testified that he originally worked in an enclosed lab with no windows and poor ventilation.
22. After approximately six (6) years in the original lab, Claimant and the lab moved to an old office space which was much smaller.
23. Claimant further testified that throughout his time in both labs, he was never provided any protective or respiratory gear by Employer.
24. Claimant worked in the lab until he retired at the end of 2016.
25. Claimant began experiencing shortness of breath in 2001.
26. Over time, the Claimant undergoes three (3) CT scans, a VATS, and a lung biopsy, which provided Claimant with a diagnosis of hypersensitivity pneumonitis.
27. Claimant has submitted medical records from his treating physician, two pathologists, another pulmonologist and a toxicologist, all of whom state that Claimant suffers from hypersensitivity pneumonitis.

28. Claimant's treating physician, Dr. Leonard James Cochrane, Jr. of GHS Lung Center, links Claimant's lung condition to his work.
29. In a Medical Questionnaire prepared by Claimant's counsel, Dr. Cochrane answers to a reasonable degree of medical certainty that he has diagnosed Claimant with interstitial lung disease. Dr. Cochrane further opines that this diagnosis is causally related to Claimant's history of working around soldering fumes at SEW-Eurodrive, Inc.
30. Claimant has also submitted into evidence the opinions of two pathologists, Dr. Jackson H. McCarter of Greenville Hospital Systems Laboratories and Dr. William D. Travis Memorial Sloan Kettering Cancer Center.
31. Dr. McCarter writes, in part, "Review of the patient's history shows no known exposure to animal dander or other organic antigens, hypersensitivity precipitins have been negative. The patient is an electronics technician who has had frequent exposure to solder fumes, which has been reported as a rare cause of hypersensitivity pneumonitis."
32. Dr. McCarter does not definitively opine as to causation.
33. Dr. McCarter then sent Claimant's slides to Dr. Travis for an outside expert consultation.
34. Dr. Travis writes Dr. McCarter, "This letter confirms our telephone conversation on September 7, 2016. We agree with your consideration of favor chronic hypersensitivity pneumonitis."
35. While Dr. Travis' letter does include the fact that Claimant was exposed to various chemicals in connection to his soldering, Dr. Travis does not opine as to causation.
36. Ultimately, the opinions I give the greatest weight to are those of the pulmonologists in this case. Both parties have provided expert medical opinions from doctors who have the necessary education and professional qualifications to provide the opinions sought.
37. Claimant's expert is Dr. James Lawrence Pearle. Dr. Pearle is the President and Medical Director of the California Research Medical Group, Inc. in Fullerton, California. Dr. Pearle completed a Pulmonary Fellowship at the University of Illinois Medical Center in 1979. He is board certified in both Internal Medicine and Pulmonary Disease.
38. Claimant has provided an extensive Curriculum Vitae for Dr. Pearle.
39. Dr. Pearle opines that Claimant has had prolonged exposure to soldering fumes and possible other substances. He also opines, to a reasonable degree of

medical probability, that Claimant has developed hypersensitivity due to his exposure.

40. Dr. Pearle further opines, to a reasonable degree of medical probability, that occupational exposure to soldering fumes in conjunction with other occupational exposures caused this hypersensitivity pneumonitis.
41. Defendants, on the other hand, offer opinions from Dr. Gregory Feldman, who is Board Certified in Pulmonary Diseases, Critical Care and Internal Medicine, and from Dr. Gordon Early, who is Board Eligible in Occupational Medicine and Toxicology.
42. Defendants have offered depositions of both Dr. Feldman and Dr. Early into evidence. I have read both of those depositions in their entirety.
43. Both Dr. Feldman and Dr. Early have very different opinions than those of Claimant's experts.
44. Dr. Early focuses on Claimant's lack of improvement once he leaves the work environment. He opines that one of the characteristics of hypersensitivity pneumonitis is that it improves once someone is no longer exposed to the trigger. Therefore, Claimant should have seen improvement in his condition after his retirement, but that has not been the case. In fact, his condition has gotten worse.
45. Dr. Early further opines that the listed exposures in the electrical repair workshop are atypical for hypersensitivity pneumonitis triggers and that most are not documented in the medical literature.
46. Dr. Early opines that it is more likely than not that Claimant's work-related exposures did not aggravate or contribute to his hypersensitivity pneumonitis.
47. Dr. Feldman has a very different view of Claimant's condition. He testifies in his deposition that Claimant, "...has interstitial lung disease." (Dep. Tr. p. 10, l. 6). He further testifies that, "It is by all constellations idiopathic..." (Dep. Tr. p. 10, l. 21).
48. When pressed in his deposition, Dr. Feldman does not rule out the possibility that Claimant has hypersensitivity pneumonitis, but if he does, Dr. Feldman testified that it is the "organic type" (Dep. Tr. p. 16, l. 20). Dr. Feldman goes on to testify, "...you've got to distinguish two types of hypersensitivity pneumonitis, which I have for you, organic and non-organic. It's consistent with organic. It's inconsistent with non-organic." (Dep. Tr. p. 17, ll. 8-11).
49. Dr. Feldman further testified, "But would we know – or more than 50 percent. We'll never know what caused it." (Dep. Tr. p. 17, ll. 17-19).

50. Both Dr. Early and Dr. Feldman do agree that Claimant's lung condition was not caused by his work. They both so opined.
51. Defendants also submitted the report of Dr. Albert Mitsos who is Board Certified in Forensic Traumatology by the American Board of Forensic Medicine.
52. Dr. Mitsos' report concludes, "Therefore, the medical records failed to demonstrate any evidence to any degree of medical certainty to causally relate Mr. Christian's condition to soldering fumes in the work environment."
53. On March 17, 2017, Palmetto EHS, LLC completed a report on the sampling of various chemicals at SEW-Eurodrive, Inc., which they conducted. All of those chemicals were below the Permissible Exposure Limits ("PELs") established by OSHA.
54. Claimant is 69 years old and worked for Employer from 1983 – 2016.
55. Claimant first worked in the maintenance department for the first eight (8) or nine (9) years of his employment. He then moved to the lab where he soldered and de-soldered as part of his job.
56. Claimant testified in his deposition that on average, at most, he would solder two (2) to three (3) times a week, and sometimes even less. However, he testified at the hearing that how much he soldered would depend on what drives came into the lab. He further testified that, "If you sat down with a drive that's blown up, you're going to have to spend two to three hours de-soldering and soldering everything back." (Dep. Tr. p. 72, ll 23-25).
57. Claimant's testimony as to how much he soldered and the testimony of Wade Blackwell differ.
58. As background, Mr. Blackwell first worked for SEW-Eurodrive, Inc. in the same lab as Claimant from 2003 until about 2007, when he was promoted to his current position.
59. Mr. Blackwell testified that he is the purchasing manager, but that he wears many hats and would also be considered the safety manager.
60. In total, Mr. Blackwell has worked for the Employer for twenty (20) years.
61. Mr. Blackwell testified that as to time spent soldering, "...you wouldn't waste three hours soldering on a tiny little board. You would just grab a board and say it's too costly to fix that board. You would replace it, and it would be much more profitable that way." [Hearing Transcript/Depo Page...]

62. Mr. Blackwell is also asked about a document that is in the record. It is a document that was based on information provided by Claimant which shows workflow. The document provided was from August of 2006. Mr. Blackwell testified that he could provide – if requested – Claimant’s entire workflow history. Claimant didn’t ask for that to be provided. However, to be fair, Defendants could have provided it themselves, but they did not. It is but a snapshot in time when the entire record could have been provided. Additionally, it is from 2006, some ten (10) years before the alleged date of injury. It would have had greater value if there had been additional records or the entire record. I give it little weight.
63. Mr. Blackwell and Rickey Jones, who also testified at the hearing and whose discovery deposition was handed up as an exhibit, both testified that they do not know of anyone in the employ of SEW-Eurodrive, Inc. who has had respiratory issues during their time there. Please note I have read Mr. Jones’ deposition in its entirety.
64. Mr. Jones is the Environmental Health and Safety Coordinator for Employer. He began working for Employer part-time while he was in high school. After college, he began his full-time employment. He has worked for the Employer for thirteen (13) years.
65. Both Mr. Blackwell and Mr. Jones are questioned about the exposure to chemicals at the facility. Both cite the study done by Palmetto EHS, LLC. *See* Finding of Fact No. 53.
66. Mr. Jones was designated by Employer as the person most knowledgeable as to Employer’s safety policies and procedures.
67. Mr. Jones was specifically questioned about Rosin, which was not tested. Mr. Jones testified, “Rosin is listed as a component. It makes up roughly 2.2 to 3 percent of the soldering as a whole, but if you look at the SDS (safety data sheets) of the solder used, it specifically – it calls out rosin below the list of chemicals as not considered hazardous.” (Dep. Tr. p. 134, ll. 10 – 15).
68. There is in the record a number of “what ifs,” that is, possible exposure to other potential causes of Claimant’s lung condition. While all of those are interesting possibilities, I cannot make any findings as to any of those possibilities without speculating, which the Court has said I cannot do. *See* Finding of Fact No. 2.
69. There is also in the record testimony about Claimant’s family history as to lung disease. Given that medical history, Claimant may have a genetic disposition to develop lung disease, but that has not been established. Even if it had been established, we take Claimants in the workers’ compensation system as we find them.

70. The central question as to causation remains: Can Claimant meet his burden as to compensability?
71. The answer to immediate foregoing question rests primarily in the medical evidence.
72. The record is voluminous, and the experts are not in agreement as to causation.
73. While I give great weight to the opinions of the other pulmonologists who have opined in this case, I must give the greatest weight to the opinion of Claimant's treating pulmonologist, Dr. Leonard James Cochrane, Jr.
74. Claimant is first seen at the Greenville Hospital System Lung Center on June 28, 2016. He ultimately treats with Dr. Justin Wayne Gregg and then, beginning on April 4, 2017, with Dr. Cochrane. Dr. Cochrane opines in November of 2018 that Claimant's interstitial lung disease is causally related to his work for Employer. *See* Finding of Fact Nos. 28 & 29.
75. When the evidence is viewed as a whole, and based on a preponderance of the medical evidence, Claimant has suffered a compensable work-related occupational disease to his bilateral lungs.
76. There is no evidence that Claimant was exposed to soldering fumes outside of his work with Employer. Furthermore, there is no proof that the myriad of potential antigens set forth by Defendants during cross-examination caused or contributed to Claimant's work-related occupational disease. *See* Finding of Fact Nos. 2 & 68.
77. While the Claimant clearly suffers from emotional distress, based on a review of the evidence, I cannot find that he has met his burden as to a compensable psychological injury.
78. A vocational report from Rock Weldon, MA, ABVE, who is a Board-Certified Vocational Expert, is in evidence. In his report of December 21, 2019, Mr. Weldon reports that he met with Claimant for a 90-minute evaluation. Mr. Weldon concludes his report, "...it is my vocational opinion that he should be considered permanently and totally vocationally disabled. I do not believe that he is capable of any type of work for eight hours a per day 40 hours per week."
79. This is the only vocational evidence in the record. Although they had the opportunity, Defendants chose not to send Claimant for a vocational evaluation by an expert of their choosing.
80. Likewise, Defendants had the opportunity to take the depositions of Dr. Cochrane and Claimant's medical experts, but they chose not to do so.

81. Based on the vocational report in evidence, I find that Claimant is permanently and totally disabled and is, therefore, entitled to an award consistent with the directives set forth in the South Carolina Workers' Compensation Act.
82. Claimant is entitled to ongoing lifetime medical care and treatment for the occupational disease to his bilateral lungs.
83. Dr. Leonard James Cochrane, Jr. is to be the authorized treating physician.
84. Claimant is entitled to any and all usual and customary treatment modalities Dr. Cochrane provides or directs, to including imaging.
85. There cannot be a transfer of care to another physician, except by agreement of the parties or an order of the Commission.
86. A future lung transplant(s) is not authorized by this Order. Such a procedure would require an agreement of the parties or a future order of the Commission.
87. Claimant is entitled to past medical treatment.
88. Claimant is entitled to back-owed temporary total disability benefits from his forced retirement until the first Medical Questionnaire of Dr. Cochrane (January 1, 2019 until November 19, 2018).
89. Claimant's back-owed temporary total disability benefits are not to be discounted as part of the commuted value.

Conclusions of Law

1. Claimant was an employee of Employer and Employer operated a business employing four (4) or more employees. Therefore, Claimant and Employer are subject to the South Carolina Workers' Compensation Act. *See* S.C. Code Ann. §§ 42-1-130 through 42-1-150.
2. The South Carolina Workers' Compensation Commission has jurisdiction over this claim because Claimant and Employer were in an employment relationship at the time of Claimant's injuries. *See Crim v. Decorator's Supply*, 291 S.C. 193, 194, 352 S.E.2d 520, 520 (Ct. App. 1987) ("An award will not be made under our Workers' Compensation Act unless an employment relationship existed at the time of the alleged injury for which the claim is made.").
3. Claimant sustained an occupational disease to his bilateral lungs arising out of and in the course of his employment with Employer on August 26, 2016. *See* S.C. Code Ann. § 42-11-10 (defining "occupational disease" to mean "a disease arising out of and in the course of employment that is due to hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged."); *see also* S.C. Code Ann. § 42-11-40 ("...the

disablement or death of an employee resulting from an occupational disease shall be treated as an injury by accident and the employee, or in case of death his dependents, shall be entitled to compensation as for an injury under this title.”).

4. Claimant provided proper notice to Employer pursuant to the South Carolina Workers’ Compensation Act. See S.C. Code Ann. § 42-15-20 (“...no compensation shall be payable unless such notice is given within ninety days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been prejudiced thereby.”); *see also Hanks v. Blair Mills, Inc.*, 286 S.C. 378, 381, 335 S.E.2d 91, 93 (Ct. App. 1985) (“In the case of occupational diseases, the “accident” occurs when the employee becomes disabled and could, through reasonable diligence, discover that his condition is a compensable one.”).
5. Claimant is entitled to back-owed temporary total disability benefits from his forced retirement on January 1, 2017 until the first Medical Questionnaire of Dr. Leonard James Cochrane, Jr. on November 19, 2018. See S.C. Code Ann. § 42-9-10 (“When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages.”).
6. Claimant is permanently and totally disabled. Therefore, Claimant is entitled to an award consistent with the directives set forth in the South Carolina Workers’ Compensation Act, commuted only after the deduction of the aforementioned back-owed temporary total disability benefits. See S.C. Code Ann. § 42-9-10 (“When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages...In no case may the period covered by the compensation exceed five hundred weeks.”); *see also* South Carolina Workers’ Compensation Regulation 16-1605(E)(5) (“The present worth of the remaining weeks is determined according to the discount tables designated by the Commission.”).
7. Claimant is entitled to past and lifetime medical treatment, including modalities and imaging at the direction of Dr. Leonard James Cochrane, Jr. See S.C. Code Ann. § 42-15-60(A) (“The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required...to effect a cure or give relief.”); *see also* S.C. Code Ann. § 42-15-60(C) (“In cases in which total and permanent disability results, reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital, and other treatment or care shall be paid during the life of the injured employee, without regard to any limitation in this title including the maximum compensation limit.”); *see also* South Carolina Workers’ Compensation

Regulation 16-1601, which provides for covered and reimbursable expenses incurred for travel to receive medical attention. Although Claimant is at maximum medical improvement, Claimant has the option to undergo a bilateral lung transplant. The same would require agreement among the parties or a future order of the Commission.

Statement of Case / Appeal

On July 17, 2020, within the statutory period, counsel for Defendants filed an application for review in the case setting forth Defendants grounds for review, copies of which were furnished to all interested parties prior to oral argument presented to the Appellate Panel on October 12, 2020. Claimant is deceased, and his date of death is October 6, 2020. By appeal, counsel for Defendants alleged that the Single Commissioner's Findings of Fact, Conclusions of Law, and Orders were not supported by the preponderance of the evidence, and they were also errors of law. In Defendants' Appellate Panel Brief, counsel for Defendants submitted the following issues for review, among others:

1. The Single Commissioner erred in finding that Claimant met his burden of proving that he sustained an injury/occupational disease by accident arising out of and in the course of his employment with SEW Eurodrive, Inc.; and
2. The Single Commissioner erred in finding that Claimant gave immediate and timely notice of a claim.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Single Commissioner.

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration. After considering all of the evidence in the record, the Appellate

Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, has fully reversed the decision and order of the Single Commissioner, and issues the following Findings of Fact and Conclusions of Law, which shall become, and hereby are, the law of the case.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. When evaluating the evidence in this case, we must consider all the evidence, both lay and medical.
2. Findings of fact "may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." See Burnette v. City of Greenville, 401 S.C. 417, 428, 737 S.E.2d 200, 206 (Ct. App. 2012).
3. This claim is complex by its very nature. Both parties have presented well-prepared, compelling arguments.
4. An employment relationship existed between Claimant and Defendants on the date of accident, August 26, 2016.
5. The record is replete with medical records which give a detailed history of Claimant's lung condition.
6. Claimant suffers from a debilitating lung condition.
7. Claimant asserts that as a result of this alleged work-related injury, he is permanently and totally disabled. As such, Claimant seeks an award for permanent and total disability discounted only after the deduction of back-owed TTD benefits and an award for past and lifetime medical treatment.

8. Claimant specially asserts that his lung condition is causally related to exposure to solder at SEW-Eurodrive, Inc.

9. Given that Claimant asserts that he is permanently and totally disabled as a result of this alleged work-related injury, this case is subject to mandatory mediation as set forth in South Carolina Workers' Compensation Regulation 67-1802(A). As such, the parties participated in mediation on April 22, 2019 which resulted in an impasse.

10. Defendants deny that Claimant sustained an injury/occupational disease to his bilateral lungs by accident arising out of and in the course of his employment.

11. Defendants further assert that Claimant's claim is barred by Claimant's failure to give timely and immediate notice to the Employer, and that Claimant cannot meet his burden of proof, which he must, given that this is a denied case.

12. As to Claimant's position, Claimant asserts the following:

- a. Claimant is 69 years old.
- b. Claimant began working for Employer in September of 1983.
- c. Claimant first worked in the maintenance department for eight (8) or nine (9) years before moving to the electronics lab.

13. Claimant worked in the lab until he retired at the end of 2016.

14. Claimant began experiencing shortness of breath in 2001.

15. Over time, Claimant underwent three (3) CT scans, a VATS, and a lung biopsy.

16. Claimant's treating physician, Dr. Leonard James Cochrane, Jr. of GHS Lung Center, links Claimant's lung condition to his work.

17. Dr. McCarter does not definitively opine as to causation.

18. Dr. McCarter then sent Claimant's slides to Dr. Travis for an outside expert consultation. While Dr. Travis' letter does include the fact that Claimant was exposed to various chemicals in connection to his soldering, Dr. Travis does not opine as to causation.

19. Both parties have provided expert medical opinions from doctors who have the necessary education and professional qualifications to provide the opinions sought.

20. Claimant's expert is Dr. James Lawrence Pearle. Dr. Pearle is the President and Medical Director of the California Research Medical Group, Inc. in Fullerton, California.

21. Claimant has provided an extensive Curriculum Vitae for Dr. Pearle.

22. Dr. Pearle opines that Claimant has had prolonged exposure to soldering fumes and possible other substances. He also opines, to a reasonable degree of medical probability, that Claimant has developed hypersensitivity pneumonitis (HP) due to his exposure.

23. Claimant had expert reports from several out of State providers, and Dr. Cochrane only signed a Questionnaire causally relating Claimant's condition. He never went to the job site or obtained information on how much soldering Claimant performed. There is no evidence that he even evaluated the Industrial Hygiene Report or had any real knowledge about Claimant's potential exposure other than the facts given to him by Claimant and his attorney.

24. Defendants, on the other hand, offer opinions from Dr. Gregory Feldman, who is Board Certified in Pulmonary Diseases, Critical Care and Internal Medicine, and from Dr. Gordon Early, who is Board Eligible in Occupational Medicine and Toxicology, and Dr. Albert Mitsos, who is Board Certified in Forensic Traumatology by the American Board of Forensic Medicine.

25. Defendants have offered depositions of both Dr. Feldman and Dr. Early, who are both licensed physicians in South Carolina, into evidence. We have read both of those depositions in their entirety.

26. Dr. Feldman, Dr. Early, and Dr. Mitsos have very different opinions than those of Claimant's experts.

27. Both doctors Feldman and Early thoroughly reviewed all of the medical records, the Industrial Hygiene Reports and one of them went to the actual job site where Claimant worked, and saw what and how he did his job.

28. Dr. Early was the only doctor that actually went to SEW Eurodrive, Inc. and reviewed the job site and the type of work Claimant performed before giving his final opinion. Dr. Early focuses on Claimant's lack of improvement once he left the work environment. He opines that one of the characteristics of HP is that it improves once someone is no longer exposed to the trigger. Therefore, Claimant should have seen improvement in his condition after his retirement, but that has not been the case. In fact, his condition has gotten worse.

29. Dr. Early further opines that the listed exposures in the electrical repair workshop are atypical for HP triggers and that most are not documented in the medical literature.

30. Dr. Early opines that there are multiple potential causes of Claimant's lung condition, and that Allergy Partners of the Upstate was concerned enough about fungal exposure to do an Aspergillus pinprick test, which came back positive. Dr. Early notes that aspergillus is a well-known trigger for fungal HP.

31. Dr. Early opines, to a reasonable degree of medical certainty, that it is more likely than not that Claimant's work-related exposures did not aggravate or contribute to his HP.

32. Dr. Early testifies in his deposition that the electronics lab is not a typical place to get HP, and that soldering is not in the top 100 causes for HP. (APA pp. 1125; 1127). He further testified that HP can be an idiopathic disease. (APA p. 1127). Moreover, reinforced the fact that Claimant's condition significantly worsened after he was no longer working at SEW Eurodrive, Inc., and he testified as follows:

“...[I]f [Claimant] had HP, he should get better when you move him away from the offending antigen. And we’re dealing with an obscure, potentially offensive antigen, if we’re alleging solder. And [Claimant] got a whole lot worse when you took him away from the...potential offensive antigen, and he got worse quick, despite steroids. So, it makes you wonder, “Hey, do we have the wrong potentially offensive antigen?” (APA p. 1128).

33. Dr. Feldman is a South Carolina based pulmonologist. He opines that soldering is not in the top one hundred potential causes of Interstitial Lung Disease and HP. He further opined that even if Claimant had HP, he had a “non-organic type” not an organic type as would be caused by soldering/ chemicals.

34. Dr. Feldman testifies in his deposition that Claimant, “...has interstitial lung disease.” (Dep. Tr. p. 10, l. 6). He further testifies that, “It is by all constellations idiopathic...” (Dep. Tr. p. 10, l. 21).

35. When pressed in his deposition, Dr. Feldman does not rule out the possibility that Claimant has HP, but if he does, Dr. Feldman testified that it is the “organic type” (Dep. Tr. p. 16, l. 20). Dr. Feldman goes on to testify, “...you’ve got to distinguish two types of [HP], which I have for you, organic and non-organic. It’s consistent with organic. It’s inconsistent with non-organic.” (Dep. Tr. p. 17, lines 8-11).

36. Dr. Feldman further testified, “But would we know – or more than 50 percent. We’ll never know what caused it.” (Dep. Tr. p. 17, lines 17-19).

37. Both Dr. Early and Dr. Feldman do agree that Claimant’s lung condition was not caused by his work. They both so opined.

38. Defendants also submitted the report of Dr. Albert Mitsos who is Board Certified in Forensic Traumatology by the American Board of Forensic Medicine.

39. Dr. Mitsos' report concludes, "Therefore, the medical records failed to demonstrate any evidence to any degree of medical certainty to causally relate Mr. Christian's condition to soldering fumes in the work environment."

40. On March 17, 2017, Palmetto EHS, LLC completed a report on the sampling of various chemicals at SEW-Eurodrive, Inc., which they conducted. All of those chemicals were below the Permissible Exposure Limits ("PELs") established by OSHA. We give this report great weight.

41. Claimant first worked in the maintenance department for the first eight (8) or nine (9) years of his employment. He then moved to the lab where he soldered and de-soldered as part of his job.

42. Claimant testified in his deposition that on average, at most, he would solder two (2) to three (3) times a week, and sometimes even less. However, he testified at the hearing that how much he soldered would depend on what drives came into the lab. He further testified that, "If you sat down with a drive that's blown up, you're going to have to spend two to three hours de-soldering and soldering everything back." (Dep. Tr. p. 72, lines 23-25).

43. Claimant's testimony as to how much he soldered and the testimony of Wade Blackwell differ.

44. As background, Mr. Blackwell first worked for SEW-Eurodrive, Inc. in the same lab as Claimant from 2003 until about 2007, when he was promoted to his current position.

45. Mr. Blackwell testified that he is the purchasing manager, but that he wears many hats and would also be considered the safety manager.

46. In total, Mr. Blackwell has worked for the Employer for twenty (20) years.

47. Mr. Blackwell testified that as to time spent soldering, "...you wouldn't waste three hours soldering on a tiny little board. We would just grab a board and say it's too costly to fix that

board. You would replace it, and it would be much more profitable that way.” (Hr. Tr. p. 102, lines 4 – 8).

48. Mr. Blackwell is also asked about a document that is in the record. It is a document that was based on information provided by Claimant which shows workflow, which Mr. Blackwell described as a “snapshot” that was pulled from his computer showing the amount of work Claimant performed in a week in August of 2006. Mr. Blackwell testified that he could provide – if requested – Claimant’s entire workflow history. (Hr. Tr. p. 102, line 9 – p. 109, line 21; APA#24; APA#34). Claimant, who has the burden of proof in this matter, did not ask for it to be provided.

49. Mr. Blackwell and Rickey Jones, who also testified at the hearing, and whose discovery deposition was handed up as an exhibit, both testified that they do not know of anyone in the employ of SEW-Eurodrive, Inc. who has had respiratory issues during their time there. We have read Mr. Jones’ deposition in its entirety.

50. Mr. Jones is the Environmental Health and Safety Coordinator for Employer. He began working for Employer part-time while he was in high school. After college, he began his full-time employment. He has worked for the Employer for thirteen (13) years.

51. Both Mr. Blackwell and Mr. Jones are questioned about the exposure to chemicals at the facility. Both cite the study done by Palmetto EHS, LLC. See Finding of Fact No. 40.

52. Mr. Jones was designated by Employer as the person most knowledgeable as to Employer’s safety policies and procedures.

53. Mr. Jones was specifically questioned about Rosin, which was not tested. Mr. Jones testified, “Rosin is listed as a component. It makes up roughly 2.2 to 3 percent of the soldering as a whole, but if you look at the SDS (safety data sheets) of the solder used, it specifically – it calls out rosin below the list of chemicals as not considered hazardous.” (Dep. Tr. p. 134, lines 10 – 15).

54. There is in the record a number of “what ifs;” that is, possible exposure to other potential causes of Claimant’s lung condition.

55. There is also in the record testimony about Claimant’s family history as to lung disease. Claimant has a long-standing personal and family history of lung problems. Claimant testified that he first began having symptoms with his lungs in the early 2000s. (Hr. Tr. p. 17, lines 3 – 9). Claimant testified that he had a sinus surgery in 2001. (Hr. Tr. p. 28, line 24 – p. 29, line 4). In 2002, Claimant had a heart stent placed. (Hr. Tr. p. 33, lines 2 – 4). Claimant testified that his father passed away from lung cancer. (Hr. Tr. p. 47, lines 4 – 15). Claimant had five brothers. One of Claimant’s brothers passed away from lung cancer. Another one of Claimant’s brothers passed away from melanoma. Moreover, a third brother died from lung disease. (Hr. Tr. p. 49, line 17 – p. 52, line 3).

56. The central question as to causation remains: Can Claimant meet his burden as to compensability?

57. The record is voluminous, and the experts are not in agreement as to causation.

58. Ultimately, we give the greatest weight to the opinion of Dr. Early, who evaluated Claimant’s specific workplace, and to the fact that Defendants submitted evidence from at least two in-State medical providers regarding the causation issues in this claim. We also give great weight to the Industrial Hygiene Sampling Report.

59. We reverse the rulings of the Single Commissioner, and find that Claimant failed to prove by a preponderance of the evidence that he sustained an occupational disease, or an injury by accident, to his bilateral lungs arising out of and in the course of his employment with SEW Eurodrive, Inc. on August 26, 2016. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions and exhibits by Claimant and Defendants, the

testimony of all witnesses at the hearing, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

60. When the evidence is viewed as a whole, and based on a preponderance of the medical evidence, Claimant has failed to prove that he suffered a compensable work-related occupational disease, or injury by accident, to his bilateral lungs.

61. Defendants provided a myriad of potential antigens that could have caused or significantly contributed to Claimant's work-related occupational disease.

62. While Claimant clearly suffers from emotional distress, based on a preponderance evidence, we cannot find that he has met his burden as to a compensable psychological injury. This finding is based on the evidence in the record as a whole, including but not limited to the APA submissions and exhibits by Claimant and Defendants, the testimony of all witnesses at the hearing, the hearing and deposition testimony of Claimant, and the evidence set forth in the Findings of Fact herein.

63. We are persuaded that Claimant had concerns about the origin of his lung condition dating as far back as 2015.

64. In July of 2016, Claimant completed an application for Disability Income. In that application, Claimant indicated that his disability was due to a "sickness" as opposed to an "accident." The application also asked Claimant whether the condition was due to an injury or sickness arising out of his employment. The options of answering were "Yes," "No" or "Unknown." Claimant circled "No".

65. Given that we find that Claimant failed to prove by a preponderance of the evidence that he sustained an occupational disease to his bilateral lungs arising out of and in the course of his employment with Employer on August 26, 2016, we decline to address the issue of whether Claimant's claim was timely filed.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Pursuant to S.C. Code Ann. § 42-17-50, the Appellate Panel has the power to affirm, amend, or reverse the decision of a single Commissioner.

2. Claimant was an employee of Employer and Employer operated a business employing four (4) or more employees. Therefore, Claimant and Employer are subject to the South Carolina Workers' Compensation Act. See S.C. Code Ann. §§ 42-1-130 through 42-1-150.

3. The South Carolina Workers' Compensation Commission has jurisdiction over this claim because Claimant and Employer were in an employment relationship at the time of Claimant's injuries. See Crim v. Decorator's Supply, 291 S.C. 193, 194, 352 S.E.2d 520, 520 (Ct. App. 1987) ("An award will not be made under our Workers' Compensation Act unless an employment relationship existed at the time of the alleged injury for which the claim is made.").

4. Claimant failed to prove by a preponderance of the evidence that he sustained an occupational disease, or injury by accident, to his bilateral lungs arising out of and in the course of his employment with Employer on August 26, 2016. See S.C. Code Ann. §§ 42-11-10, and 42-1-160.

5. Claimant failed to prove by a preponderance of the evidence that he sustained a compensable mental injury arising out of and in the course of his employment on June 15, 2017. See S.C. Code Ann. § 42-1-160.

ORDER

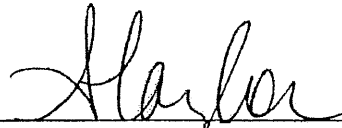
Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner filed in the above-captioned matter on July 5, 2020, is hereby reversed.

AND IT IS SO ORDERED.

REVERSED

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Aisha Taylor



P. Scott Beck, Commissioner



Commissioner Mike Campbell

Order Served via E-Mail:

Thomas Phillips Smith, Jordan, PA phillips@smithjordan.com	Benjamin M. Renfrow Wilson, Jones, Carter, & Baxley, PA bmrenfrow@wjlaw.net
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on June 1, 2021

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Ken Christian V Sew Eurodrive Inc.

SCWCC: 1614297

Commissioner: McCaskill

Panel: Taylor, Campbell, Wilkerson

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a **Motion to Reconsider**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
_____ Dismissed as Interlocutory. _____ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
_____ Granted. _____ Denied. XXX Dismissed as Premature _____ Preserved for hearing

BEFORE THE;
_____ Hearing Comm. _____ Jurisdictional Comm. _____ Full Commission.

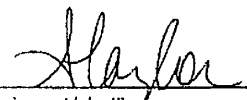
IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

_____ Remand to Panel as indicated below.
_____ Barden _____ James _____ Taylor
_____ Beck _____ Campbell _____ Wilkerson
_____ McCaskill

_____ Remand for Order consistent with the Order of the Court.
_____ Remand to the Hearing Commissioner.
_____ Remand to the Jurisdictional Commissioner.
_____ Other: _____

_____ Remand: _____ Panel Oral Argument. _____ En Banc Oral Argument.

AND IT IS SO ORDERED.

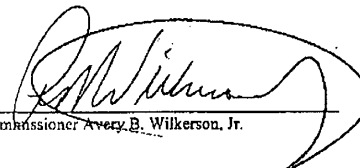


Commissioner Aisha Taylor



Commissioner Mike Campbell

Columbia, South Carolina



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPY HEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 15 day of December, 2020.

By: Eugenia Hollmon
SCWCC Judicial Department

Order Served via E-Mail:

Benjamin N. Renfrow Wilson Jones Carter & Baxley bmrenfrow@wjlaw.net	Thomas Phillips Smith Jordan PA phillips@smithjordan.com
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on December 15, 2020

WCC FILE NO. 1614297

DECISION & ORDER

STIPULATIONS

Prior to the hearing, the parties stipulated to the following:

1. The parties were timely notified of the hearing.
2. Venue is proper in Spartanburg, South Carolina.
3. Claimant's compensation rate is \$784.03, the maximum compensation rate for the year 2016.

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the parties submitted the following records:

CLAIMANT'S APA SUBMISSIONS & EXHIBITS

APA	Medical Provider	Address	Dates	Pages
1.	Kendall & Kemmerlin, P.A.	1817 Woodruff Rd, Greenville, SC	04/21/2001 – 07/28/2016	1-32
2.	St. Francis Downtown	1 St. Francis Drive, Greenville, SC	12/18/2015 – 10/04/2016	33-45
3.	Allergy Partners of the Upstate	48 Creekview Court, Greenville, SC	10/14/2016	46-50
4.	Cancer Institute – Grove	3 Butternut Drive, Suite B, Greenville, SC	07/06/2016 – 09/21/2016	51-61
5.	GHS Imaging	Various	12/21/2016 – 06/28/2016	62-77
6.	Diagnostic Imaging	Various	08/25/2015 – 08/10/2016	78-82
7.	Palmetto Pulmonary	3 St. Francis, Greenville, SC	10/30/2015 – 03/28/2016	83-108
8.	GHS Lung Center	200 Patewood Drive, Greenville, SC	06/28/2016 – 03/11/2019	109-223
9.	Ted W. Simon, Ph.D., DABT	4184 Johnston Road, Winston, GA	03/26/2019	224 – 304
10.	James Lawrence Pearle, M.D.	301 West Bastanchury Road, Suite 220, Fullerton, CA	06/19/2019	305 – 347
11.	Weldon & Associates, Inc.	3504-355 Highway 153 Greenville, SC	12/21/2019	348 - 352

Exhibit	Description	Pages
A.	Employee Check History Report	356 -358
B	Mold Inspection Report	359A – 373
C.	Order of Temporary Suspension of Ira Gordon Early	374 – 381

D.	Curriculum Vitae of Albert Mitsos, M.D.	382 – 385
E.	Internal Medicine Journal Article	386 – 389
F.	Medical News Today Article	390 – 393
G.	Communication between Defense Attorney and Drs. Feldman & Early	394 -621
H.	Recommended Modalities	622 - 625

DEFENDANTS' APA SUBMISSIONS & EXHIBITS

APA	NAME OF PHYSICIAN/OTHER	DATE OF REPORT	PAGE
11.	Upstate Lung & Critical Care Specialists, P.C.	6/28/2019	301-304
12.	Allergy Partners of the Upstate	1/14/16	305-311
13.	Drs. Kendall and Kemmerlin	4/24/01 - 12/21/16	312-409
14.	Pulmonology- Lung Center	10/10/2016	410-417
15.	Upstate Cardiology	10/15/03 - 9/28/16	418-476
16.	Anderson Radiology	8/25/15	477
17.	Baptist Easley- Medical Center of Easley	9/9/15	478
18.	Industrial Hygiene Sampling Report	3/17/17	479-598
19.	Carolina Investigations, Inc.	8/25/17-8/27/17	599-604
20.	GHS Laboratories	8/26/16	605-608
21.	Purchase Order Inquiry Printouts	Various	609-615
22.	Miscellaneous Employment Records	N/A	616-624
23.	Occupational Medicine and Medical Toxicology Consultant	N/A	625-641
24.	Data from Employer Regarding Soldering	Various 2006	642-686
25.	Dr. Gregory J. Feldman, MD, CPI- Curriculum	N/A	687-740
30.	Expert Report of Dr. Albert Mitsos	9/12/19	826-829
31.	Dr. Albert Mitsos-CV	N/A	830-833
32.	Expert Report of Dr. Gregory Feldman	9/13/19	834-835
33.	Drs. Kendall & Kemmerlin, P.A.	4/24/01-09/04/15	836-846
34.	Weekly Repair Numbers of SEW Eurodrive	Various	847-892
35.	Questionnaire from Dr. Early	9/26/19	893
36.	Correspondence between Claimant's Attorney & Drs. Pearl & Simon	3/6/19-7/31/19	894-1097
37.	Internet Printout on Dr. Pearle	N/A	1098-1101
38.	Internet Definitions of Pneumonitis	4/20/17	1102-1107
39.	Deposition of Dr. Feldman	8/23/19	1108-1117
40.	Deposition of Dr. Early	8/27/19	1118-1129

STATEMENT OF THE CASE

This matter proceeded to a hearing before the undersigned Commissioner on January 24, 2020, upon the filing of Forms 50 & 51 and subsequent to mediation that resulted in an impasse on April 22, 2019. Claimant alleged he sustained occupational injuries and/or disease arising out of and in the course of his employment with SEW-EURODRIVE, Inc. on or about August 26, 2016, as a result of decades of soldering and de-soldering in an electronics lab. As such, Claimant sought: (1) a finding that he sustained compensable injuries and/or disease to his bilateral lungs and psyche; (2) an award for back-owed temporary total disability benefits from his forced retirement on January 1, 2017 until the first Medical Questionnaire of Dr. Leonard James Cochrane, Jr. on November 19, 2018; (3) an award for permanent and total disability discounted only after the deduction of the aforementioned back-owed temporary total disability benefits; and (4) an award for past and lifetime medical treatment, including modalities and mileage.

Conversely, Defendants denied Claimant's claims in their entirety. More specifically, Defendants asserted that Claimant failed to provide timely notice of an occupational accident and/or disease pursuant to the South Carolina Workers' Compensation Act (the "Act"). However, even if Claimant did provide timely notice pursuant to the Act, Defendants maintained that Claimant was unable to meet his burden of proving an injury by accident arising out of and in the course of his employment and/or occupational disease.

EVIDENCE OF THE CASE

The following evidence was presented at the hearing:

NON-MEDICAL EVIDENCE

Submitted by Claimant:

Testimony of Claimant:

Claimant is 69-year-old lifetime non-smoker, having been born on [REDACTED] 1950. (Hr. Tr. p. 11, ll. 12-15; p. 17, ll. 22-25). He began working for Employer in September of 1983. (Hr. Tr. p. 12, ll. 5-6). Initially, Claimant worked in the maintenance department approximately eight (8) or nine (9) years before moving to the electronics lab. (Hr. Tr. p. 12, ll. 7-24). While working in the lab, Claimant regularly and routinely soldered and de-soldered. (Hr. Tr. p. 12, l. 25-p. 14, l. 9). As for the soldering and de-soldering processes, Claimant could smell fumes and hear other workers cough in the lab. (Hr. Tr. p. 14, ll. 10-17).

Initially, Claimant worked in an enclosed lab with no windows and poor ventilation, along with three (3) other workers soldering and de-soldering. (Hr. Tr. p. 14, l. 24-p. 15, l. 7). Claimant testified in his deposition that on average, at most, he would solder two (2) to three (3) times a week, and sometimes even less. However, he testified at the hearing that how much he soldered would depend on what drives came into the lab. He further testified that, "If you sat down with a drive that's blown up, you're going to have to spend two to three hours de-soldering and soldering everything back." (Dep. Tr. p. 72, ll 23-25).

Claimant testified at the hearing that one of his supervisors came in the lab and stated, "Every time I come in this lab, I start sneezing, and I start getting, seems like I'm getting an allergy and a headache." (Hr. Tr. p. 15, ll. 15). After approximately six (6) years in the original lab, Claimant and the lab moved to an old office space, which was much smaller than the original lab.

(Hr. Tr. p. 15, ll. 19-p. 16, l. 3). Throughout his time in both labs, however, Claimant was never provided any protective or respiratory gear by Employer. (Hr. Tr. p. 16, ll. 22-25). At one point during his work in the lab, Claimant was given a carbon filter fan, which did not work as intended and instead left fumes circulating in the room. (Hr. Tr. p. 16, ll. 4-21). Claimant worked in these environments until he could no longer work around fumes, thereby causing his forced retirement at the end of 2016. (Hr. Tr. p. 22, l. 23-p. 24, l. 15). Claimant testified that he was not exposed to any unusual chemicals, dust or fumes outside of his work. (Hr. Tr. p. 18, ll. 1-7). Therefore, the evidence shows that Claimant worked in Employer's electronic lab, where he was directly exposed to soldering and de-soldering fumes, for more than twenty (20) years.¹

Throughout his work with Defendants, Claimant did not suspect fumes and chemicals were causing his lung problems until a lung biopsy in August of 2016. (Hr. Tr. p. 18, ll. 8-10). Prior to that, he was evaluated by Dr. Payne, who questioned Claimant about his work conditions and the chemicals with which he worked. (Hr. Tr. p. 18, l. 8-p. 21, l. 8.). Subsequent to the aforementioned lung biopsy and diagnosis, Claimant advised his boss, Rainer Neufelt, of the same in September of 2016.²(Hr. Tr. p. 21, l. 25-p. 22, l. 6). Since his involuntary retirement, Claimant's lung function has not been good and his oxygen tank is on level four (4). (See Hr. Tr. p. 23, l. 16-p. 24, l. 16). In addition to his lungs, Claimant has also suffered anxiety and depression, neither of which had he experienced in the past. (Hr. Tr. p. 23, l. 23-p. 24, l. 3).

On cross-examination by counsel for Defendants, Claimant was questioned about a myriad of potential antigens to which he may have been exposed, as well as his family history. Below is a summary of that line of questioning:

¹ This fact was never contradicted by any evidence provided by Defendants in this case.

² This fact was also never disputed or contradicted by any evidence provided by Defendants in this case.

Question Posed by Defendants	Claimant's Response
"Were you having problems...because of the extensive amount of landscaping you were doing?" (Hr. Tr. p. 30, ll. 12-17).	"...I wasn't doing a lot of landscaping." (Hr. Tr. p. 30, ll. 18-19). "Some landscaping basically in the yard with nothing too major, like maybe just setting up a water fountain and doing some – just putting down mortar block." (Hr. Tr. p. 30, ll. 21-24). "Landscaping is some that's fun to do..." (Hr. Tr. p. 31, ll. 15-16).
"Have you ever discussed if any of the medications you were taking could have had any impact on your lungs?" (Hr. Tr. p. 34, ll. 5-7).	"I guess my medications being reviewed, if they would have saw them, I'm sure they would have brought – brought the subject up." (Hr. Tr. p. 34, ll. 8-10).
"Do you know – have you done any research or have your doctors done any research on the Air Force base that you were working on as to whether there were any toxic chemicals, substances that you could have been exposed to?" (Hr. Tr. p. 35, ll. 9-12).	"No." (Hr. Tr. p. 35, l. 16). Claimant was an Administrative Specialist at the Charleston Air Force Base, leaving in 1978. <i>See</i> Hr. Tr. p. 34, ll. 20-24; p. 35, ll. 17-22.
"Is it fair to say you've worked in the electronic world for a number of years even prior to coming to work for SEW?" (Hr. Tr. p. 37, ll. 4-6)	"In a mixture." (Hr. Tr. p. 37, l. 7). By Claimant's attorney: "Were you having any issues relating to your lungs in those past jobs?" (Hr. Tr. p. 92, ll. 3-5). Claimant's response: "No." (Hr. Tr. p. 92, l. 6).
Counsel for Defendants questions Claimant about his father and brother dying from lung cancer. <i>See</i> Hr. Tr. p. 47, ll. 10-15; p. 51, ll. 21-25.	Claimant responds that his father & brother were both smokers. <i>See</i> Hr. Tr. p. 47, l. 25-p. 48, l. 1; p. 51, ll. 21-25.
Counsel for Defendants questions Claimant about another brother who died from occupational lung disease. <i>See</i> Hr. Tr. p. 52, ll. 1-3.	Claimant's brother was a welder and also worked around chemicals. <i>See</i> Hr. Tr. p. 25, ll. 10-13.
Counsel for Defendants questions Claimant about any asbestos or other toxic materials in Claimant's homes. <i>See</i> Hr. Tr. p. 54, ll. 15-18; p. 65, ll. 17-19.	"No, I don't know." (Hr. Tr. p. 54, l. 19). Claimant further responds that no testing was done at his prior home. <i>See</i> Hr. Tr. p. 65, ll. 17-20
Counsel for Defendants questions Claimant about a woodworking hobby. <i>See</i> Hr. Tr. p. 58, ll. 23-25.	Claimant responds that he would help his wife with craft projects. <i>See</i> Hr. Tr. p. 59, ll. 10-14. "Not much. It was basically – my wife's projects and stuff – it was stuff that was already built. We might, you know, drill a hole in them or do this or put pegs in and stuff like that, just kind of little – little craft projects." (<i>Id.</i>)
"Have you gone to your pest control	"I have not asked them." (Hr. Tr. p. 60, l. 11).

service and asked them if there were any of those chemicals that could potentially cause problems...?” (Hr. Tr. p. 60, ll. 3-4).	
“...but do you know if your dog had any loose hairs flying around?” (Hr. Tr. p. 60, ll. 19-24).	“We kept our dog very clean, very clean.” (Hr. Tr. p. 60, l. 25). Claimant further responded that his wife or the grooming company would wash the dog, and that the dog would shed very little. <i>See</i> Hr. Tr. p. 61, ll. 1-9.
Counsel for Defendants questions Claimant about gas logs in his home. <i>See</i> Hr. Tr. p. 61, l. 15-p. 63, l. 8.	Claimant responds that he had gas logs in the past and they put out a bad odor that he nor his wife liked. <i>See</i> Hr. Tr. p. 61, l. 15-p. 63, l. 8.
Counsel for Defendants questions Claimant about his wife’s quilting & sewing. <i>See</i> Hr. Tr. p. 63, l. 9-p. 64, l. 19.	Claimant responds that his wife has a sewing machine, and that he does not use the sewing machine and is never around his wife when she uses it. <i>See</i> Hr. Tr. p. 63, l. 9-p. 64, l. 19. The sewing machine is also kept in the shop and not in the house. <i>Id.</i>
Counsel for Defendants questions Claimant about a sinus surgery in 2001. <i>See</i> Hr. Tr. p. 29, ll. 2-4.	Claimant was working for Employer at the time of his sinus surgery. <i>See</i> Hr. Tr. p. 91, l. 25-p. 92, ll. 1-2.
Counsel for Defendants questions Claimant about a home renovation. <i>See</i> Hr. Tr. p. 5, ll. 15-17.	Claimant moved into his home only after renovations were complete. <i>See</i> Hr. Tr. p. 92, ll. 7-13.

It should be noted that although Defendants sought to raise the foregoing issues, they failed to provide or otherwise offer any evidence or proof that any of these caused or even contributed to Claimant’s bilateral lung disease. It should further be noted that while the foregoing suspicions were intriguing, the standard of proof in this tribunal is not “beyond a reasonable doubt.” At best, Defendants’ raising of these different items on cross-examination is nothing more than surmise, conjecture, and speculation.³

Mold Inspection Report (Cl. APA pp. 359A-73):

This report demonstrates that Claimant’s home does not have elevated levels of mold. It is interesting to note that Defendants presented no evidence to the contrary.

³ *See Burnette v. City of Greenville*, 401 S.C. 417, 428, 737 S.E.2d 200, 206 (Ct. App. 2012) (Findings of fact “may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it.”).

Submitted by Defendants:

Testimony of Wade Blackwell (“Mr. Blackwell”):

Mr. Blackwell is 38 years old and has worked for Employer for nearly twenty (20) years. (Hr. Tr. p. 97, ll. 11-15). During that time, he worked in the same lab as Claimant for only two (2) or three (3) years, compared to Claimant’s more than twenty (20) years. (Hr. Tr. p. 97, l. 21-p. 97, l. 3). Today, however, he is employed as a Purchasing Manager, although he wears many hats. (Hr. Tr. p. 98, ll. 15-21). As a part of his testimony at the hearing, Mr. Blackwell discussed a weekly repair number log from August 12, 2006. (Hr. Tr. p. 102, ll. 14-20). While Mr. Blackwell testified there were more logs, he was not asked to provide any of them to the Commission in this matter. (Hr. Tr. p. 103, l. 17-p. 104, l. 1).

On cross-examination, Mr. Blackwell testified that Defendants do not test for rosin/colophony. (Hr. Tr. p. 122, l. 24-p. 124, l. 4). On re-direct examination, counsel for Defendants stated, “But the good news is we did test it after there was a suspicion”, to which Mr. Blackwell replied, “Correct.” (Hr. Tr. p. 124, ll. 8-15). However, on re-cross examination by Claimant’s attorney, Mr. Blackwell confirms, again, that testing was not done specifically for rosin/colophony. (Hr. Tr. p. 126, ll. 20-23). As is discussed later herein, the rosin/colophony was opined to be the cause of Claimant’s respiratory disease.

All in all, Mr. Blackwell provided no valuable testimony at the hearing to support Defendants’ position. He did, however, confirm that the Employer did no testing for rosin/colophony.

Testimony of Rickey Jones (“Mr. Jones”):

Mr. Jones is 29 years old and has worked for Employer for nearly thirteen (13) years. (Hr. Tr. p. 128, ll. 17-20). He is currently employed by Defendants as the Environmental Health and

Safety Coordinator, and was designated by Defendants as the person most knowledgeable about the safety policies and procedures. (Hr. Tr. p. 129, ll. 17-18; p. 129, l. 22-p. 130, l. 3). But, he agreed that Claimant would be more knowledgeable as to his exposure in the lab. (Jones Dep. Tr., p. 12, l. 21-p. 13, l. 2).

As part of his testimony, Mr. Jones testified that Defendants did not perform any testing of the lab prior to Claimant's claim and that Defendants do not test the ventilation systems or windows in the lab. (Hr. Tr. p. 136, l. 25-p. 137, l. 2; p. 173, ll. 19-21; p. 138, l. 22-p. 139, l. 11). Mr. Jones surprisingly even admitted that he had not reviewed any evidence as to the air quality prior to Claimant's claim and that no testing was performed prior to Claimant's claim. (Hr. Tr. p. 147, ll. 18-22; p. 136, l. 19-p. 137, l. 2).

All in all, the undersigned finds nothing in Mr. Jones' deposition or hearing testimony that aids Defendants in refuting this claim.

Miscellaneous Employment Records:

On July 14, 2016, Claimant filled out and executed a Disability Income Claim. (*See* Def. APA p. 623). At this time, Claimant attributed his disability to a sickness and answered "No" when questioned whether his condition arose out of his employment. (*See* Def. APA pp. 623-624). Even though Defendants sought to use this to raise the question as to whether Claimant thought his condition was related to his work, the evidence shows that this form was executed in July of 2016, three (3) months before the lung biopsy and diagnosis in August of 2016.

Pneumonitis Article (Def. APA pp. 1102-1107):

This article indicates that pneumonitis: (1) can cause permanent lung damage if the same is not caught early enough; (2) can be caused by chemicals; and (3) can be diagnosed by lung biopsy. In addition, the article also notes that once you have lung scarring, it is not reversible.

MEDICAL EVIDENCE

Submitted By Claimant:

Kendall & Kimmerlin, P.A.:

Kendall & Kimmerlin, P.A. was Claimant's primary care physician. Records indicate that on May 18, 2001, Claimant presented with complaints of chest pain that radiated to his right arm and was accompanied with some slight shortness of breath. (Cl. APA p. 2). Thereafter, on March 6, 2007, Claimant complained of sinus congestion, sore throat and drainage. (Cl. APA p. 6). Finally, on October 13, 2015, a referral to Palmetto Pulmonary was made. (*Id.*)

Records of GHS Lung Center:

GHS Lung Center has been treating Claimant since June 28, 2016, following a diagnosis of interstitial lung disease ("ILD") by his personal care physician. (Cl. APA p. 110). The main physicians who have evaluated and followed Claimant's treatment are: Dr. Justin Wayne Gregg (beginning August 23, 2016) and Dr. Leonard James Cochrane, Jr. ("Dr. Cochrane") (beginning April 4, 2017). Below is a summary of Claimant's visits:

- June 28, 2016: Upon evaluation, Claimant was referred for a thoracic biopsy for a definitive diagnosis. (Cl. APA p. 113). Notes indicate, *inter alia*, "He has some metal fume exposure and various chemicals with his soldering. Does not appear that he has had a vacation from this exposure." (Cl. APA p. 111).
- August 23, 2016: Physician suspects Claimant suffers from chronic eosinophilic pneumonia based on CT scan; however, proceed with biopsy for definitive diagnosis. (Cl. APA p. 122).
- August 26-29, 2016: Lung biopsy. (Cl. APA pp. 127-140).
- September 12, 2016: Claimant diagnosed with hypersensitivity pneumonitis ("HP") and prescribed steroids and pulmonary rehab. (Cl. APA p. 145).
- November 1, 2016: "ILD 2/2 chronic hypersensitivity pneumonitis/soldering fumes." (Cl. APA p. 155). Claimant advised to avoid fumes/antigen causing his ILD. (*Id.*). Continue pulmonary rehab. (*Id.*)

- February 9, 2017: Claimant has now retired so he shouldn't be exposed to soldering fumes anymore, so the disease process hopefully will not worsen. (Cl. APA p. 170).
- August 17, 2017: Claimant no longer working the environment that was felt to cause his problems, and Claimant has improved with Breo. (Cl. APA p. 178).
- April 25, 2018: Claimant has felt less short-of-breath on Breo and notes indicate there were discussions of beginning oxygen. (Cl. APP p. 183).
- September 26, 2018: Claimant has developed a need for exertional oxygen. (Cl. APA p. 195).
- October 29, 2018: Claimant has increased his need for exertional oxygen from 1 L to 2 L per minute since June 2018. (Cl. APA p. 200).
- November 19, 2018: **Medical Questionnaire from Dr. Cochrane indicates that Claimant has been diagnosed with interstitial lung disease that is causally related to Claimant's history of working around soldering fumes at work.** (Cl. APA p. 212). In addition, Dr. Cochrane opines that Claimant is at maximum medical improvement, requires ongoing medical treatment, and may return to a desk job with no exposure to soldering fumes and no open flames around his oxygen. (Cl. APA p. 212-213).⁴
- January 30, 2019: Claimant has progressively worsened. (Cl. APA p. 205).
- March 11, 2019: Claimant has had some improvement with steroids. (Cl. APA p. 210).
- May 14, 2019: Medical Questionnaire from Dr. Cochrane indicates a referral to MUSC for consideration of lung transplant. (Cl. APA p. 215).

Pathology Reports:

Claimant provided the Commission with the opinions of two (2) pathologists. The first pathologist, Dr. Jackson H. McCarter ("Dr. McCarter), opined Claimant suffered from chronic HP thought secondary to soldering fumes. (Cl. APA p. 121). To be sure, however, Dr. McCarter consulted another pathologist, Dr. William D. Travis, who concurred in the diagnosis. (Cl. APA p. 126)

⁴ Of particular note, Defendants chose not to depose Dr. Cochrane regarding his opinions in this case.

Reports of James Lawrence Pearle, M.D. (“Dr. Pearle”):

In addition to the opinions of the treating pulmonologist, Dr. Cochrane, Claimant also provided the Commission with the opinions of Dr. Pearle, who is board certified in pulmonary disease and internal medicine. (Cl. APA pp. 317-318). He also currently sits as the president of California Research Medical Group, Inc., Southern California Hospitalist Network, Inc., and Western Pulmonary Medical Group, Inc. (Cl. APA p. 319). Dr. Pearle completed a Pulmonary Fellowship at the University of Illinois Medical Center in 1979. He is board certified in both Internal Medicine and Pulmonary Disease. Dr. Pearle’s Curriculum Vitae is quite extensive. (See Cl. APA pp. 317-335). Defendants chose not to depose Dr. Pearle regarding his opinions in this case. Below are key excerpts from the reports of Dr. Pearle (Cl. APA pp. 305-347):

- Claimant developed HP to a reasonable degree of medical probability due to his exposure to soldering fumes and possible other substances at work.
- In the absence of any other reasonable etiology for the HP, to a reasonable degree of medical probability, occupational exposure to soldering fumes in conjunction with other occupational exposures caused this HP.

Dr. Pearle was also asked to address opinions expressed by Defendants’ expert pulmonologist, Dr. Gregory Feldman. From that request, Dr. Pearle provided a second opinion. Below are some bullet points from same:

- Dr. Feldman has tried unsuccessfully to deny the diagnosis of chronic HP.
- Dr. Feldman has raised other possible diagnoses in an attempt to muddle the picture, which have been pathologically proven not to be said diagnoses.
- Rather stunningly, Dr. Feldman concludes that this is not hypersensitivity lung disease despite reports of two pathologists, and with no supportive evidence.
- It would be difficult to refute association of soldering exposure with the diagnosis of HP, since soldering is a known cause of the same.
- Unfortunately for Dr. Feldman, the facts are in the way.

- I find Dr. Feldman's report to be ambiguous, inexplicable, and rather self-serving.
- Dr. Feldman's conclusion flies in the face of well-documented medical records and two excellent pathology reports.
- This is a case of HP almost certainly secondary to soldering exposure.

In addition to the foregoing, below is a chart showing the pathology of HP and the interpretation of Claimant's pathology reports by Dr. Pearle:

HP Pathology (Cl. APA p. 345)	Expert Interpretation (Cl. APA pp. 336-37)
Typical subsacute HP appears as peribronchiolar (centrilobular) interstitial, chronic inflammatory infiltrates of lymphocytes, plasma cells, and sometimes a few eosinophils. Subacute HPs have associated non-necrotizing granulomas or giant cells.	The first report shows: Advanced interstitial fibrotic process with UI pattern. The association with minute poorly formed granulomata is highly suggested with a chronic HP. The pathologists description shows interstitial fibrosis on various degrees of cellularity include older hypocellular fibrous tissue as well as fibrous tissue with fibroblastic proliferation. There are small numbers of plasma cells and lymphocytes within the interstitial fibrosis, scatter minute poorly formed epheloid/giant cell granulomata some with inclusions are present. Within the area of interstitial fibrosis, there are small numbers of plasma cells and lymphocytes with a few scattered eosinophils. It is clear that both of these pathologists described pathology very similar to [HP pathology].

Reports of Ted W. Simon, Ph.D., DABT ("Dr. Simon"):

Claimant provided the Commission with the opinions of Dr. Simon, who is an award-winning toxicologist and scientist that was employed for more than ten (10) years by the Environmental Protection Agency. (Cl. APA p. 282). Claimant also provided the Commission with an extensive Curriculum Vitae of Dr. Simon. (See Cl. APA pp. 282-303). Defendants chose not to depose Dr. Simon regarding his opinions in this case. Below are key excerpts from the reports

of Dr. Simon (Cl. APA pp. 217-304):

- Exposure to rosin/colophony in the solder used at [Claimant's workplace] over a multi-decade duration is more likely than not the cause of [Claimant's] respiratory symptoms and disease.
- Surgical biopsy is required for an HP diagnosis.
- [Defendants'] Hygiene Reports support my opinions.
- My opinions are to a reasonable degree of scientific certainty.

Report of Weldon & Associates, Inc. ("Mr. Weldon"):

Claimant provided a vocational opinion by Mr. Weldon, who is a board certified vocational expert. (Cl. APA p. 352). As a part of his evaluation and report of Claimant, Mr. Weldon opines that it is his vocational opinion that Claimant should be considered permanently and totally vocationally disabled. (Cl. APA p. 352). In addition, Mr. Weldon states, "I do not believe that he is capable of any type of work for eight hours per day 40 hours per week." (*Id.*). Defendants chose not to depose Mr. Weldon regarding his opinions in this case.

Submitted By Defendants:

Reports of Gregory Feldman, M.D. ("Dr. Feldman"):

Defendants hired Dr. Feldman as an expert pulmonologist, and he was provided with the medical evidence in this case. As for his opinion, Dr. Feldman diagnoses Claimant with idiopathic pulmonary fibrosis ("IPF"), apparently due to the presence of eosinophilia present in Claimant's blood. (Feldman Dep. Tr. p. 25, ll 17-18; p. 22, ll 7-11; Cl. APA p. 345). In addition to choosing a diagnosis that does not require a biopsy, below are summaries of some comments made by Dr. Feldman regarding the process of making his diagnosis:

- Soldering can cause HP. (Feldman Dep. Tr. p. 10, l 25-p. 11, ll 1-10).
- Dr. Feldman then goes on to state, "Inorganic materials, like chemicals... would be totally inconsistent with [HP] ... (Feldman Dep. Tr. p. 16, ll 24-p. 17, ll 1-2).

- In responding to whether he would need to know about Claimant's outside influences to make a diagnosis, Dr. Feldman states, "I don't need to know nothing. [50%] of organic cause to [HP] is of unknown etiology." (Feldman Dep. Tr. p. 17, ll 12-16).
- Dr. Feldman states that he sends samples to pathologists to exclude things. He then goes on to retract that statement. (Feldman Dep. Tr. p. 18, ll 17-22).
- Dr. Feldman states that Claimant's condition is not an acute illness. He says, "We're talking about years and years in development." (Feldman Dep. Tr. p. 23, l 23-p. 24, ll 1-2). When questioned on Claimant's inhalation of solder for many years, Dr. Feldman states, "I have not seen those data that he was exposed to it. I assume he was. It makes no difference...because eosinophilic..." (Feldman Dep. Tr. p. 24, ll 8-14).
- "Toxicologist has no role, play no role, other than excluding toxic causes of some acute illnesses." (Feldman Dep. Tr. p. 23, ll 23-25).

Reports of Gordon Early, M.D. ("Dr. Early"):

Defendants submitted the opinions of Dr. Early, who is not board certified in any medical specialty or toxicology. (Early Dep. Tr. p. 7, ll 9-12; p. 35, ll. 9-10) Although Dr. Early agrees with the HP diagnosis, he does not link it to solder.⁵ Below are summaries of some comments made by Dr. Early:

- Dr. Early agrees with the HP diagnosis. (Early Dep. Tr. p. 16, l 23-p.17, ll 1-3.).
- Dr. Early did not consider Claimant's deposition testimony in drawing his conclusions. (Early Dep. Tr. p. ll 1-3). Notwithstanding, he agreed Mr. Christian's history of the same is a relevant factor. (Early Dep. Tr. p. 12, ll 21-23).
- Dr. Early testified there is more information needed in this case. (Early Dep. Tr. p. 40, l 14-p. 41, ll 1-25).
- Dr. Early believes solder did not cause Claimant's HP because he was removed from the work environment and has gotten worse. (Early Dep. Tr. p. 41, ll 9-25).
- As to removal from the work environment, Dr. Early was shown an article that states, "If episodes [of exposure] go on for a long period of time or come back often,

⁵ Dr. Early also does not provide any opinion as to causation. Instead, he only does not link it to solder, although he cannot say what caused Claimant's HP.

a person may suffer permanent lung damage.” (See Exhibit to Early Dep. Tr.). In response, Dr. Early testified that even if Claimant suffered permanent lung damage, he typically wouldn’t continue to have lung problems. (Early Dep. Tr. p. 19, ll 9-14).

- Claimant could have testified positive for Aspergillus but the same not be active. (Early Dep. Tr. p. 27, ll 5-6).
- Claimant’s Aspergillus test could have been a false positive. (Early Dep. Tr. p. 27, ll 8-9).

Report of Albert Mitsos, M.D. (“Dr. Mitsos”) (Def. APA pp. 826-29):

Defendants provided the report of Dr. Mitsos, who is board certified in forensic traumatology. (Cl. APA p. 383). Interestingly, Dr. Mitsos has authored an article entitled, “Finding Pathways to Savings in Workers’ Compensation.” (Cl. APA p. 385). Like Dr. Early, Dr. Mitsos agrees with the HP diagnosis, but does not link it to solder. Dr. Mitsos’ report concludes, “Therefore, the medical records failed to demonstrate any evidence to any degree of medical certainty to causally relate Mr. Christian’s condition to soldering fumes in the work environment.” (Def. APA p. 829). Below are excerpts from his findings:

- Dr. Mitsos concurs in the HP diagnosis.
- Dr. Mitsos opines that Claimant’s first reported symptoms of shortness of breath were related to his heart attack.
- Dr. Mitsos states that Claimant was exposed to the solder for 30 years before any symptoms arose supports his opinions.
- Dr. Mitsos links Claimant’s HP to Aspergillus and mold.

Summary of Medical Evidence Submitted by Both Parties

It should be noted that the medical evidence in this complex matter is quite telling. Claimant’s diagnosis by his treating physician, two (2) pathologists, an expert pulmonologist, and two (2) of Defendants’ own experts is hypersensitivity pneumonitis (“HP”). Additionally, the

opinion and records of the treating physician, Dr. Cochrane, are very persuasive. Dr. Cochrane causally related Claimant's HP to the soldering fumes at his work.

The only physician who does not agree as to Claimant's HP diagnosis is Dr. Feldman, Defendants' expert pulmonologist. In his reports, Dr. Feldman chooses to make a diagnosis that conveniently does not require a biopsy, despite Claimant having been proven by biopsy to have HP. Dr. Feldman, who testified by way of deposition taken on August 27, 2019, also admits that soldering can cause HP, although he goes on to testify that, "Inorganic materials, like chemicals...would be totally inconsistent with [HP]." (Feldman Dep. Tr. p. 10, l 25-p. 11, ll 1-10; p. 16, ll 24-p. 17, ll 1-2).⁶ Furthermore, in his testimony, Dr. Feldman states that he sends samples to pathologists to exclude things, before going on to retract that statement later in the same testimony. Of course, however, the pathology reports in this case do not exclude – they confirm – HP. Interestingly, Dr. Feldman "do[esn't] need to know nothing. [50%] of organic cause to [HP] is of unknown etiology." He concludes this despite having a biopsy-proven HP diagnosis. Dr. Feldman wants to ignore the objective evidence in this case of a biopsy-proven HP diagnosis and instead speculate as to some other "unknown" cause.

Although the other defense experts, Dr. Early and Dr. Mitsos, both agree with the HP diagnosis, they do not agree as to causation. Dr. Mitsos uses the fact that Claimant was exposed to solder for years before any symptoms arose to support his opinions. However, there has been no evidence submitted to show that Claimant (1) had to develop symptoms from the first moment of first contact with solder; (2) could not have been affected by the solder after years of exposure; or (3) cannot become more sensitive to allergens as he ages. In addition, Dr. Mitsos tries to link Claimant's HP to *Aspergillus* and mold, which is discussed below. Dr. Early, on the other hand,

⁶ Here, it should be noted that the type of rosin/colophony that caused Claimant's HP is derived from pine pitch. *See* Cl. APA pp. 217-304.

is surprisingly sure that solder did not cause Claimant's HP, despite admitting that more information is needed in this case. (Early Dep. Tr. p. 40, l 14-p. 41, ll 1-25).

As for the issues pertaining to Aspergillus and mold, Claimant was evaluated by Allergy Partners of the Upstate on October 14, 2016, at which time there was a "[p]ositive ID to aspergillus with appropriate controls." (Cl. APA pp. 47-50). Based on the evidence in the records, the results of the Aspergillus testing was not considered significant and no further workup or treatment was warranted. In fact, Dr. Early testified in his deposition that Claimant could have testified positive for Aspergillus but the same not be active or that the Aspergillus test could have been a false positive. (Early Dep. Tr. p. 27, ll 5-9). Thus, the linkage of the HP diagnosis to mold exposure is quite interesting as: (1) Claimant's Aspergillus testing is inconclusive; and (2) Claimant's home was specifically tested after the issue was raised by Defendants in this matter, and the testing was returned negative. As such, attempting to causally relate Claimant's HP diagnosis to unproven mold exposure severely undercuts the overall opinion of Dr. Mitsos.

Following a detailed review of all of the medical evidence in this case, the records of the treating physician, Dr. Cochrane, are the most persuasive. Dr. Cochrane began treating Claimant on April 4, 2017. He has personally evaluated Claimant over many years, and he has been personally involved in Claimant's treatment plan and the progression of Claimant's HP. In a Medical Questionnaire dated November 19, 2018, Dr. Cochrane indicates that Claimant has been diagnosed with interstitial lung disease that is causally related to Claimant's history of working around soldering fumes at work. In addition, Dr. Cochrane opines that Claimant is at maximum medical improvement, requires ongoing medical treatment, and may return to a desk job with no exposure to soldering fumes and no open flames around his oxygen.⁷ Accordingly, I afford the

⁷ Again, Defendants chose not to depose Dr. Cochrane regarding these opinions.

greatest weight to the opinions of Dr. Cochrane.

FINDINGS OF FACT

Based on the evidence presented, the undersigned Commissioner makes the following findings of fact:

1. When evaluating the evidence in this case, I must consider all the evidence, both lay and medical.
2. Findings of fact “may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it.” *See Burnette v. City of Greenville*, 401 S.C. 417, 428, 737 S.E.2d 200, 206 (Ct. App. 2012).
3. This claim is complex by its very nature. Both parties have presented well-prepared, compelling arguments.
4. Claimant is a covered employee and Defendants are a covered employer who employs four (4) or more employees; thus, Claimant and Defendants are subject to the South Carolina Workers’ Compensation Act.
5. An employment relationship existed between Claimant and Defendants on the date of accident, August 26, 2016.
6. The record is replete with medical records which give a detailed history of Claimant’s lung condition.
7. Claimant suffers from a debilitating interstitial lung disease known as hypersensitivity pneumonitis.
8. Claimant asserts that while working for Employer, he used chemicals and solder that, over time, caused damage to his lungs. As such, Claimant seeks a finding of compensability and an award for back-owed temporary total disability benefits.

9. Claimant further asserts that as a result of this work-related injury, he is permanently and totally disabled. As such, Claimant seeks an award for permanent and total disability discounted only after the deduction of back-owed TTD benefits and an award for past and lifetime medical treatment.
10. Claimant specially asserts that his lung condition is causally related to exposure to solder at SEW-Eurodrive, Inc.
11. Given that Claimant asserts that he is permanently and totally disabled as a result of this alleged work-related injury, this case is subject to mandatory mediation as set forth in South Carolina Workers' Compensation Regulation 67-1802(A). As such, the parties participated in mediation on April 22, 2019 which resulted in an impasse.
12. Defendants deny that Claimant sustained an injury by accident arising out of and in the course of his employment.
13. Defendants further assert that Claimant's claim is barred by Claimant's failure to give timely and immediate notice to the Employer, and that Claimant cannot meet his burden of proof, which he must, given that this is a denied case.
14. I am persuaded that Claimant had concerns about the origin of his lung condition dating as far back as 2015.
15. In July of 2016, Claimant completed an application for Disability Income. In that application, Claimant indicated that his disability was due to a "sickness" as opposed to an "accident". The application also asked Claimant whether the condition was due to an injury or sickness arising out of his employment. The options of answering were "Yes," "No" or "Unknown." The Claimant circled "No".

16. That being said, Claimant does not have the information contained in the report from the lung biopsy until August of 2016, which provides a diagnosis of hypersensitivity pneumonitis possibly due to soldering fumes.
17. As such, I cannot conclude with any certainty that Claimant knew or should have known that his lung condition was possibly work-related prior to the biopsy in August of 2016.
18. As such, I find the claim was filed timely. The notice defense fails.
19. Claimant provided proper notice to Defendants, pursuant to the South Carolina Workers' Compensation Act, by advising his boss, Rainer Neufelt, in September of 2016.
20. As to Claimant's position, Claimant cites the following:
- Claimant is 69 years old.
 - Claimant began working for Employer in September of 1983.
 - Claimant first worked in the maintenance department for eight (8) or nine (9) years before moving to the electronics lab.
 - While working in the electronics lab, Claimant regularly and routinely soldered and de-soldered.
21. Claimant testified that he originally worked in an enclosed lab with no windows and poor ventilation.
22. After approximately six (6) years in the original lab, Claimant and the lab moved to an old office space which was much smaller.
23. Claimant further testified that throughout his time in both labs, he was never provided any protective or respiratory gear by Employer.
24. Claimant worked in the lab until he retired at the end of 2016.
25. Claimant began experiencing shortness of breath in 2001.
26. Over time, the Claimant undergoes three (3) CT scans, a VATS, and a lung biopsy, which provided Claimant with a diagnosis of hypersensitivity pneumonitis.

27. Claimant has submitted medical records from his treating physician, two pathologists, another pulmonologist and a toxicologist, all of whom state that Claimant suffers from hypersensitivity pneumonitis.
28. Claimant's treating physician, Dr. Leonard James Cochrane, Jr. of GHS Lung Center, links Claimant's lung condition to his work.
29. In a Medical Questionnaire prepared by Claimant's counsel, Dr. Cochrane answers to a reasonable degree of medical certainty that he has diagnosed Claimant with interstitial lung disease. Dr. Cochrane further opines that this diagnosis is causally related to Claimant's history of working around soldering fumes at SEW-Eurodrive, Inc.
30. Claimant has also submitted into evidence the opinions of two pathologists, Dr. Jackson H. McCarter of Greenville Hospital Systems Laboratories and Dr. William D. Travis Memorial Sloan Kettering Cancer Center.
31. Dr. McCarter writes, in part, "Review of the patient's history shows no known exposure to animal dander or other organic antigens, hypersensitivity precipitins have been negative. The patient is an electronics technician who has had frequent exposure to solder fumes, which has been reported as a rare cause of hypersensitivity pneumonitis."
32. Dr. McCarter does not definitively opine as to causation.
33. Dr. McCarter then sent Claimant's slides to Dr. Travis for an outside expert consultation.
34. Dr. Travis writes Dr. McCarter, "This letter confirms our telephone conversation on September 7, 2016. We agree with your consideration of favor chronic hypersensitivity pneumonitis."
35. While Dr. Travis' letter does include the fact that Claimant was exposed to various chemicals in connection to his soldering, Dr. Travis does not opine as to causation.

36. Ultimately, the opinions I give the greatest weight to are those of the pulmonologists in this case. Both parties have provided expert medical opinions from doctors who have the necessary education and professional qualifications to provide the opinions sought.
37. Claimant's expert is Dr. James Lawrence Pearle. Dr. Pearle is the President and Medical Director of the California Research Medical Group, Inc. in Fullerton, California. Dr. Pearle completed a Pulmonary Fellowship at the University of Illinois Medical Center in 1979. He is board certified in both Internal Medicine and Pulmonary Disease.
38. Claimant has provided an extensive Curriculum Vitae for Dr. Pearle.
39. Dr. Pearle opines that Claimant has had prolonged exposure to soldering fumes and possible other substances. He also opines, to a reasonable degree of medical probability, that Claimant has developed hypersensitivity due to his exposure.
40. Dr. Pearle further opines, to a reasonable degree of medical probability, that occupational exposure to soldering fumes in conjunction with other occupational exposures caused this hypersensitivity pneumonitis.
41. Defendants, on the other hand, offer opinions from Dr. Gregory Feldman, who is Board Certified in Pulmonary Diseases, Critical Care and Internal Medicine, and from Dr. Gordon Early, who is Board Eligible in Occupational Medicine and Toxicology.
42. Defendants have offered depositions of both Dr. Feldman and Dr. Early into evidence. I have read both of those depositions in their entirety.
43. Both Dr. Feldman and Dr. Early have very different opinions than those of Claimant's experts.
44. Dr. Early focuses on Claimant's lack of improvement once he leaves the work environment. He opines that one of the characteristics of hypersensitivity pneumonitis is

that it improves once someone is no longer exposed to the trigger. Therefore, Claimant should have seen improvement in his condition after his retirement, but that has not been the case. In fact, his condition has gotten worse.

45. Dr. Early further opines that the listed exposures in the electrical repair workshop are atypical for hypersensitivity pneumonitis triggers and that most are not documented in the medical literature.

46. Dr. Early opines that it is more likely than not that Claimant's work-related exposures did not aggravate or contribute to his hypersensitivity pneumonitis.

47. Dr. Feldman has a very different view of Claimant's condition. He testifies in his deposition that Claimant, "...has interstitial lung disease." (Dep. Tr. p. 10, l. 6). He further testifies that, "It is by all constellations idiopathic..." (Dep. Tr. p. 10, l. 21).

48. When pressed in his deposition, Dr. Feldman does not rule out the possibility that Claimant has hypersensitivity pneumonitis, but if he does, Dr. Feldman testified that it is the "organic type" (Dep. Tr. p. 16, l. 20). Dr. Feldman goes on to testify, "...you've got to distinguish two types of hypersensitivity pneumonitis, which I have for you, organic and non-organic. It's consistent with organic. It's inconsistent with non-organic." (Dep. Tr. p. 17, ll. 8-11).

49. Dr. Feldman further testified, "But would we know – or more than 50 percent. We'll never know what caused it." (Dep. Tr. p. 17, ll. 17-19).

50. Both Dr. Early and Dr. Feldman do agree that Claimant's lung condition was not caused by his work. They both so opined.

51. Defendants also submitted the report of Dr. Albert Mitsos who is Board Certified in Forensic Traumatology by the American Board of Forensic Medicine.

52. Dr. Mitsos' report concludes, "Therefore, the medical records failed to demonstrate any evidence to any degree of medical certainty to causally relate Mr. Christian's condition to soldering fumes in the work environment."
53. On March 17, 2017, Palmetto EHS, LLC completed a report on the sampling of various chemicals at SEW-Eurodrive, Inc., which they conducted. All of those chemicals were below the Permissible Exposure Limits ("PELs") established by OSHA.
54. Claimant is 69 years old and worked for Employer from 1983 – 2016.
55. Claimant first worked in the maintenance department for the first eight (8) or nine (9) years of his employment. He then moved to the lab where he soldered and de-soldered as part of his job.
56. Claimant testified in his deposition that on average, at most, he would solder two (2) to three (3) times a week, and sometimes even less. However, he testified at the hearing that how much he soldered would depend on what drives came into the lab. He further testified that, "If you sat down with a drive that's blown up, you're going to have to spend two to three hours de-soldering and soldering everything back." (Dep. Tr. p. 72, ll 23-25).
57. Claimant's testimony as to how much he soldered and the testimony of Wade Blackwell differ.
58. As background, Mr. Blackwell first worked for SEW-Eurodrive, Inc. in the same lab as Claimant from 2003 until about 2007, when he was promoted to his current position.
59. Mr. Blackwell testified that he is the purchasing manager, but that he wears many hats and would also be considered the safety manager.
60. In total, Mr. Blackwell has worked for the Employer for twenty (20) years.

61. Mr. Blackwell testified that as to time spent soldering, "...you wouldn't waste three hours soldering on a tiny little board. You would just grab a board and say it's too costly to fix that board. You would replace it, and it would be much more profitable that way." [Hearing Transcript/Depo Page...]
62. Mr. Blackwell is also asked about a document that is in the record. It is a document that was based on information provided by Claimant which shows workflow. The document provided was from August of 2006. Mr. Blackwell testified that he could provide – if requested – Claimant's entire workflow history. Claimant didn't ask for that to be provided. However, to be fair, Defendants could have provided it themselves, but they did not. It is but a snapshot in time when the entire record could have been provided. Additionally, it is from 2006, some ten (10) years before the alleged date of injury. It would have had greater value if there had been additional records or the entire record. I give it little weight.
63. Mr. Blackwell and Rickey Jones, who also testified at the hearing and whose discovery deposition was handed up as an exhibit, both testified that they do not know of anyone in the employ of SEW-Eurodrive, Inc. who has had respiratory issues during their time there. Please note I have read Mr. Jones' deposition in its entirety.
64. Mr. Jones is the Environmental Health and Safety Coordinator for Employer. He began working for Employer part-time while he was in high school. After college, he began his full-time employment. He has worked for the Employer for thirteen (13) years.
65. Both Mr. Blackwell and Mr. Jones are questioned about the exposure to chemicals at the facility. Both cite the study done by Palmetto EHS, LLC. *See* Finding of Fact No. 53.

66. Mr. Jones was designated by Employer as the person most knowledgeable as to Employer's safety policies and procedures.
67. Mr. Jones was specifically questioned about Rosin, which was not tested. Mr. Jones testified, "Rosin is listed as a component. It makes up roughly 2.2 to 3 percent of the soldering as a whole, but if you look at the SDS (safety data sheets) of the solder used, it specifically – it calls out rosin below the list of chemicals as not considered hazardous." (Dep. Tr. p. 134, ll. 10 – 15).
68. There is in the record a number of "what ifs;" that is, possible exposure to other potential causes of Claimant's lung condition. While all of those are interesting possibilities, I cannot make any findings as to any of those possibilities without speculating, which the Court has said I cannot do. *See* Finding of Fact No. 2.
69. There is also in the record testimony about Claimant's family history as to lung disease. Given that medical history, Claimant may have a genetic disposition to develop lung disease, but that has not been established. Even if it had been established, we take Claimants in the workers' compensation system as we find them.
70. The central question as to causation remains: Can Claimant meet his burden as to compensability?
71. The answer to immediate foregoing question rests primarily in the medical evidence.
72. The record is voluminous, and the experts are not in agreement as to causation.
73. While I give great weight to the opinions of the other pulmonologists who have opined in this case, I must give the greatest weight to the opinion of Claimant's treating pulmonologist, Dr. Leonard James Cochrane, Jr.

74. Claimant is first seen at the Greenville Hospital System Lung Center on June 28, 2016. He ultimately treats with Dr. Justin Wayne Gregg and then, beginning on April 4, 2017, with Dr. Cochrane. Dr. Cochrane opines in November of 2018 that Claimant's interstitial lung disease is causally related to his work for Employer. *See* Finding of Fact Nos. 28 & 29.
75. When the evidence is viewed as a whole, and based on a preponderance of the medical evidence, Claimant has suffered a compensable work-related occupational disease to his bilateral lungs.
76. There is no evidence that Claimant was exposed to soldering fumes outside of his work with Employer. Furthermore, there is no proof that the myriad of potential antigens set forth by Defendants during cross-examination caused or contributed to Claimant's work-related occupational disease. *See* Finding of Fact Nos. 2 & 68.
77. While the Claimant clearly suffers from emotional distress, based on a review of the evidence, I cannot find that he has met his burden as to a compensable psychological injury.
78. A vocational report from Rock Weldon, MA, ABVE, who is a Board-Certified Vocational Expert, is in evidence. In his report of December 21, 2019, Mr. Weldon reports that he met with Claimant for a 90-minute evaluation. Mr. Weldon concludes his report, "...it is my vocational opinion that he should be considered permanently and totally vocationally disabled. I do not believe that he is capable of any type of work for eight hours a per day 40 hours per week."
79. This is the only vocational evidence in the record. Although they had the opportunity, Defendants chose not to send Claimant for a vocational evaluation by an expert of their choosing.

80. Likewise, Defendants had the opportunity to take the depositions of Dr. Cochrane and Claimant's medical experts, but they chose not to do so.
81. Based on the vocational report in evidence, I find that Claimant is permanently and totally disabled and is, therefore, entitled to an award consistent with the directives set forth in the South Carolina Workers' Compensation Act.
82. Claimant is entitled to ongoing lifetime medical care and treatment for the occupational disease to his bilateral lungs.
83. Dr. Leonard James Cochrane, Jr. is to be the authorized treating physician.
84. Claimant is entitled to any and all usual and customary treatment modalities Dr. Cochrane provides or directs, to including imaging.
85. There cannot be a transfer of care to another physician, except by agreement of the parties or an order of the Commission.
86. A future lung transplant(s) is not authorized by this Order. Such a procedure would require an agreement of the parties or a future order of the Commission.
87. Claimant is entitled to past medical treatment.
88. Claimant is entitled to back-owed temporary total disability benefits from his forced retirement until the first Medical Questionnaire of Dr. Cochrane (January 1, 2019 until November 19, 2018).
89. Claimant's back-owed temporary total disability benefits are not to be discounted as part of the commuted value.

CONCLUSIONS OF LAW

Based on the evidence presented and the foregoing findings of fact, the undersigned Commissioner makes the following conclusions of law:

1. Claimant was an employee of Employer and Employer operated a business employing four (4) or more employees. Therefore, Claimant and Employer are subject to the South Carolina Workers' Compensation Act. *See* S.C. Code Ann. §§ 42-1-130 through 42-1-150.
2. The South Carolina Workers' Compensation Commission has jurisdiction over this claim because Claimant and Employer were in an employment relationship at the time of Claimant's injuries. *See Crim v. Decorator's Supply*, 291 S.C. 193, 194, 352 S.E.2d 520, 520 (Ct. App. 1987) ("An award will not be made under our Workers' Compensation Act unless an employment relationship existed at the time of the alleged injury for which the claim is made.").
3. Claimant sustained an occupational disease to his bilateral lungs arising out of and in the course of his employment with Employer on August 26, 2016. *See* S.C. Code Ann. § 42-11-10 (defining "occupational disease" to mean "a disease arising out of and in the course of employment that is due to hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged."); *see also* S.C. Code Ann. § 42-11-40 ("...the disablement or death of an employee resulting from an occupational disease shall be treated as an injury by accident and the employee, or in case of death his dependents, shall be entitled to compensation as for an injury under this title.").

4. Claimant provided proper notice to Employer pursuant to the South Carolina Workers' Compensation Act. See S.C. Code Ann. § 42-15-20 ("...no compensation shall be payable unless such notice is given within ninety days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been prejudiced thereby."); see also *Hanks v. Blair Mills, Inc.*, 286 S.C. 378, 381, 335 S.E.2d 91, 93 (Ct. App. 1985) ("In the case of occupational diseases, the "accident" occurs when the employee becomes disabled and could, through reasonable diligence, discover that his condition is a compensable one.").
5. Claimant is entitled to back-owed temporary total disability benefits from his forced retirement on January 1, 2017 until the first Medical Questionnaire of Dr. Leonard James Cochrane, Jr. on November 19, 2018. See S.C. Code Ann. § 42-9-10 ("When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages.").
6. Claimant is permanently and totally disabled. Therefore, Claimant is entitled to an award consistent with the directives set forth in the South Carolina Workers' Compensation Act, commuted only after the deduction of the aforementioned back-owed temporary total disability benefits. See S.C. Code Ann. § 42-9-10 ("When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly

wages...In no case may the period covered by the compensation exceed five hundred weeks.”); *see also* South Carolina Workers’ Compensation Regulation 16-1605(E)(5) (“The present worth of the remaining weeks is determined according to the discount tables designated by the Commission.”).

7. Claimant is entitled to past and lifetime medical treatment, including modalities and imaging at the direction of Dr. Leonard James Cochrane, Jr. *See* S.C. Code Ann. § 42-15-60(A) (“The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required...to effect a cure or give relief.”); *see also* S.C. Code Ann. § 42-15-60(C) (“In cases in which total and permanent disability results, reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital, and other treatment or care shall be paid during the life of the injured employee, without regard to any limitation in this title including the maximum compensation limit.”); *see also* South Carolina Workers’ Compensation Regulation 16-1601, which provides for covered and reimbursable expenses incurred for travel to receive medical attention. Although Claimant is at maximum medical improvement, Claimant has the option to undergo a bilateral lung transplant. The same would require agreement among the parties or a future order of the Commission.

ORDER

Based on the evidence presented, together with the foregoing findings of fact and conclusions of law, the undersigned Commissioner hereby orders the following:

IT IS HEREBY ORDERED that Defendants shall pay unto Claimant temporary total disability benefits from January 1, 2017 until November 19, 2018; and

IT IS FURTHER ORDERED that, subsequent to payment of the aforementioned temporary total disability benefits, Defendants shall pay unto Claimant the remaining weeks according to the discount tables designated by the South Carolina Workers' Compensation Commission; and

IT IS FINALLY ORDERED that, Defendants shall provide and pay for Claimant's past causally related medical treatment for his bilateral lungs, and, with the exception of a bilateral lung transplant which would require an agreement among the parties or a future order of the Commission, Defendants shall further provide and pay for any additional causally related medical treatment for Claimant's bilateral lungs for his lifetime at the direction of Dr. Leonard James Cochrane, Jr.; and

IT IS SO ORDERED.



Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

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

July 5, 2020

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill



WCC File #: Unknown/ New Claim
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Kenneth D. Christian SSN: [REDACTED] Employer's Name: Sew Eurodrive, Inc.
Address: [REDACTED] Cir. Address: 1295 Old Spartanburg Hwy
City: Easley State: SC Zip: 29640 City: Lyman State: SC Zip: 29365
Home Phone: (864)569-9679 Work Phone: () - Insurance Carrier: Great American Alliance Insurance Compan
Preparer's Name: W. Grady Jordan Law Firm: Smith, Jordan & Lavery, P.A. Preparer's Phone #: (864) 855 - 1661

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 8/25/2016 (Last day of exposure)

- ☐ Injury ☒ Illness ☐ Repetitive Trauma ☒ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction
1. The claimant sustained an Injury to Right Lung, Left Lung, and Depression (Part(s) of Body Injured) on 9/6/2016 (Month/Day/Year) in Spartanburg, County, SC. Body part(s) affected is: Right Lung, Left Lung and Depression
 2. Briefly describe how the accident occurred. Claimant worked with chemicals which over time caused damage to his lungs.
 3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
 4. The relationship of employer and employee existed at the time of injury.
 5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
 6. Notice of the accidental injury was given to the Employer on 9/6/16 (Month/Day/Year) in the following manner:
Advised: Rainer Neufelt
 - ☒ 7. Due to injury, the claimant is in need of (check one):
☒ (a) medical examination and treatment for: Right Lung, Left Lung and Depression
☐ (b) additional medical examination and treatment for:
 - ☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: All time lost at work.
 - ☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss
 - ☒ 9a. ☒ A determination of permanent disability is premature at this time.
 - ☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
10a. At the time of the injury, the Claimant was paid weekly wages of \$TBD, and demands accounting of days worked and wages earned as provided by law.
 - 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None
 11. Further grounds or unusual aspects of claim:
All benefits available to the Claimant under the law, continuing medical care under Dodge v. Brucoli, and S.C. Code of Laws Section 42-15-60 Utica Mohawk Language, Lump Sum Award. Claimant was injured over a span of years while working for the Defendant Employer, the date he last worked is shown above as the date of the accident simply because the form requires that an accident date be set out.
 - 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See Continuation Sheet
 - 11b. To the best of your knowledge, did you have any prior permanent disability? NO
If yes, describe: _____
 12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
 - ☒ 13a. I am filing a claim. I am not requesting a hearing at this time.
 - ☐ 13b. I am requesting a hearing. A \$25 fee is required.
 - ☐ Mediation
☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in a compromise.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov or Workers' Compensation Administrator

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Great American Alliance Insurance Company address 3655 Brookside Parkway, Suite 550, Alpharetta, GA 30022 on the 28th day of September, 2016, by ☒ first class postage ☐ certified mail ☐ personal service.
I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Attorney for Claimant
Title

Jordan@smithjordan.com
Email

9/28/2016
Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.



WCC File #: **1614297**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Kenneth Dorsey Christian SSN: [REDACTED] Employer's Name: Sew Eurodrive, Inc.
Address: [REDACTED] Circle Address: 1295 Old Spartanburg Hwy
City: Easley State: SC Zip: 29640 City: Lyman State: SC Zip: 29365
Home Phone: _____ Work Phone: () - Insurance Carrier: Great American Alliance Insurance Co.
Preparer's Name: Thomas S. Phillips Law Firm: Smith Jordan, P.A. Preparer's Phone #: (864) 855 - 1661

A claim for workers' compensation benefits is made based on the following grounds:

- ☒ Injury ☐ Illness ☐ Repetitive Trauma ☒ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction
1. The claimant sustained an injury to **Bilateral Lungs and Psyche** (Part(s) of Body Injured) on 08/26/2016 (Month/Day/Year) in Spartanburg County, SC. Body part(s) affected is: **Bilateral Lungs and Psyche**
 2. Briefly describe how the accident occurred. Claimant worked with chemicals which over time caused damage to his lungs.
 3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
 4. The relationship of employer and employee existed at the time of injury.
 5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
 6. Notice of the accidental injury was given to the Employer on 9/6/2016 (Month/Day/Year) in the following manner:
Advised: Rainer Neufelt.
- ☐ 7. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for:
☐ (b) additional medical examination and treatment for:
- ☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: All time lost at work.
- ☒ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☒ (1) General Disability: ☒ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss
- 9a. Claimant at MMI: ☒ Yes ☐ No **See No. 11 below.**
- ☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$TBD, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None.
11. Further grounds or unusual aspects of claim:
All benefits available to the Claimant under the law, continuing medical care under Dodge v. Brucoli, and S.C. Code of Laws Section 42-15-60 Utica Mohawk Language, Lump Sum Award. Claimant is at MMI but retains the option for a bilateral lung transplant.
- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See Continuation Sheet.
- 11b. To the best of your knowledge, did you have any prior permanent disability? No.
If yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 14. I am requesting a hearing. A \$50 fee is required.

Estimated time needed for hearing: 2 hours.

☒ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☒ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Benjamin M. Renfrow, Esq., bmrenfrow@wjlaw.net on the 24th day of October 2019, by first class postage ☐ certified mail ☐ personal service ☒ electronic service.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: [Signature] Attorney for Claimant: Phillips@smithjordan.com Title: _____ Email: _____ Date: 10/24/2019

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

FORM 50 CONTINUATION SHEET
CLAIMANT: KENNETH D. CHRISTIAN
WCC: 1614297

11a: List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:

Medical Provider	Address
Greenville Hospital Systems Dr. Bolton and Dr. Gregg	701 Grove Rd., Greenville, SC
GHS - Pulmonary and Critical Care Medicine	33 Villa Rd., Suite 400, Greenville, SC
Palmetto Pulmonary & Critical Care Associates, P.A.	3 St. Francis, Greenville, SC
The Lung Center	200 Patewood Drive, Greenville, SC
MUSC	171 Ashley Avenue, Charleston, SC



WCC File #: **1614297**
Carrier File #: **564-661257**
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Kenneth D. Christian SSN: [REDACTED] Employer's Name: Sew Eurodrive, Inc.
Address: [REDACTED] Cir. Address: P.O. Box 518
City: Easley State: SC Zip: 29640 City: Lyman State: SC Zip: 29365
Home Phone: (864) 569-9679 Work Phone: _____ Insurance Carrier: Great American Alliance Insurance Company
Date of Injury: 8/25/2016 Preparer's Name: Benjamin M. Renfrow Law Firm: Willson Jones Carter & Baxley, P.A. Preparer's Phone #: (864) 527-3296

Date of Injury or Illness: **8/25/2016**

Estimated time for hearing: **1 hour**

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Defendants deny the claimant sustained an injury by accident arising out of and in the course of employment, pending investigation.
2. It is **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See No. 1.
3. It is **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:
See No. 1.
4. It is **Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See No. 1.
5. It is **Denied** notice of injury was given the employer. The reasons for denial are:
See No. 1.
6. It is **Denied** the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
See No. 1.
7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :

8. It is **Denied** the employee is permanently disabled. The reasons for denial are:
See No. 1. Also, no evidence of such.
9. It is **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of **\$TBD** applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
Defendants raise the doctrine of laches and statute of limitations as defenses. Defendants reserve the right to amend and to assert defenses as they become aware of them.

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to **W. Grady Jordan, Esquire/Judicial Analysts**
Address jordan@smithjordan.com; harrington@smithjordan.com; judicialanalysts@wcc.sc.gov on the **6th** day of **February 2019**, by:

☐ first class postage ☐ certified mail ☐ personal service ☒ electronic service

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Attorney for the Employer/Insurer
Title

bmrenfrow@wjlaw.net
Email

02/06/2019
Date

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5675 www.wcc.sc.gov



WCC File #: **1614297**
Carrier File #: **564-661257**
Carrier Code #:
Employer FEIN #:

Claimant's Name: Kenneth D. Christian SSN: [REDACTED] Employer's Name: Sew Eurodrive, Inc.
Address: Easley Address: P.O. Box 518
City: Easley State: SC Zip: 29640 City: Lyman State: SC Zip: 29365
Home Phone: (864) 569-9679 Work Phone: Insurance Carrier: Great American Alliance Insurance Company
Date of Injury: 8/25/2016 Preparer's Name: Benjamin M. Renfrow Law Firm: Willson Jones Carter & Baxley, P.A. Preparer's Phone #: (864) 527-3296

Date of Injury or Illness: **8/25/2016**

Estimated time for hearing: **2 Hours**

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Defendants deny the claimant sustained an injury by accident arising out of and in the course of employment.
2. It is **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See No. 1
3. It is **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:
See No. 1
4. It is **Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See No. 1
5. It is **Denied** notice of injury was given the employer. The reasons for denial are:
See No. 1
6. It is **Denied** the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
See No. 1
7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :
8. It is **Denied** the employee is permanently disabled. The reasons for denial are:
See No. 1. Also, no evidence of such.
9. It is **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of **\$TBP** applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
Defendants reserve the right to amend and to assert defenses as they become aware of them. Claimant has failed to meet the two year Statute of Limitations. Claimant has failed to give immediate and timely notice of a claim.

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to **Thomas S. Phillips, Esq./Judicial Analysts**
Address phillips@smithjordan.com; harrington@smithjordan.com/judicialanalysts@wcc.sc.gov on the **25th** day of **November** **2019**, by:
☐ first class postage ☐ certified mail ☐ personal service ☒ electronic service

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Benjamin M. Renfrow
Attorney for the Employer/Insurer
Title

bmrenfrow@wjlaw.net
Email

11/25/2019
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

DEFENSES

1. The defendants deny that the employee sustained an injury by accident and deny that he contracted an occupational disease and deny that the claim qualifies for benefits under the South Carolina Workers' Compensation Act, including the occupational disease provision, Sections 42-11-10 through 42-11-200.
2. The injury claimed does not meet the requirements of Sections 42-11-10.
3. The claim does not meet the requirements of Section 42-11-20.
4. The injury claimed does not meet the requirements of Section 42-11-40.
5. The defendants specifically claim Section 42-11-50 as a defense.
6. The defendants specifically claim Section 42-11-60 as a defense.
7. The defendants specifically claim Section 42-11-70 as a defense and bar to the claim.
8. The defendants specifically request that, in the event an award by the Commission is issued, such award shall be apportioned in accordance with Section 42-11-90.
9. The defendants specifically claim Section 42-11-100 as a defense.
10. The defendants claim all affirmative defenses of Chapter 11 of the South Carolina Workers' Compensation Act.
11. The defendants reserve the right to request a referral to a medical panel under Section 42-11-120 or to a medical examiner as is their right by statute.
12. The defendants reserve the right to add additional parties, including insurance carriers, and/or defenses as more information becomes available.
13. The defendants assert the claimant did not sustain any injurious exposure when the claimant was allegedly employed with this employer and/or while this carrier was on the coverage and/or in the state of South Carolina. In the alternative, defendants assert that the claimant had injurious exposure after their employment and/or coverage.

Continuation Sheet

I. Summary of Expert Report of Dr. Gordon Early (Board-Eligible in Occupational Medicine and Toxicology). (APA #23)

Dr. Early's report, dated July 26, 2019, indicates the following, to a reasonable degree of medical certainty:

- The lack of improvement in Mr. Christian's respiratory condition after removal from work argues against a work related causative factor for his HP. One of the characteristics of hypersensitivity pneumonitis (HP) is that it typically gets better when removed from the trigger. If the trigger had been his work related exposures (solder, cleaning materials, and solder removal products) then he should have improved in late 2016 after removal from work. He worsened in late 2016. APA p. 631.
- The listed exposures in his electrical repair workshop are atypical for HP triggers and most are not documented in the medical literature. APA p. 632.
- Drs. Kendall and Kemmerlin (Primary care physicians) list a family history of Mr. Christian's brother having died of "occupational lung disease" in a 9-19-14 office note. This is not mentioned by other providers. APA p. 627.
- The products Mr. Christian was exposed to in soldering were primarily inorganic products. The soldering flux was inorganic. The soldering pen was inorganic. Additionally, Mr. Christian was repairing 3-4 units/day for 220 work days/year. Of these 660-880 units/year, it was estimated about half required soldering. Even if he never used his ventilation suction fan, the amount of solder fume exposure would have been rather minimal in my opinion. APA p. 631.
- There are multiple other potential causes for Mr. Christian's HP. Allergy Partners of the Upstate was concerned enough about fungal exposure to do an Aspergillus pinprick test. This test came back positive. Aspergillus is a well-known trigger for fungal HP. It is thought to be related to HP in compost exposed workers, hay exposed workers, moldy barley exposed workers, and moldy tobacco exposed workers. This fungus is one of the most commonly known substances mediating HP. In the over 1000 pages of medical records that I reviewed, no one documents the moisture conditions in Mr. Christian's home. APA p. 631.
- The medical opinions that I reviewed who opined that he had a work related HP did not discuss his home exposures, his woodworking or his positive Aspergillus pinprick test. I think that it is more likely than not Mr. Christian's work related exposures did not aggravate or contribute to his HP. APA p. 632.

II. Summary of Dr. Early's deposition. (APA #40)

In his deposition, Dr. Early reinforced his position provided in his report by testifying as follows:

- The electronics lab is not a typical place to get HP. APA p. 1125.
- Soldering is not in the top 100 causes for HP. APA p. 1127.
- HP can be an idiopathic disease. APA p. 1127.
- "The GHS doctors who are mentioning that they think that [the claimant's] HP is due to his work, do not seem to be aware of these other issues that I comment upon in my report, such as the woodworking history, such as the positive aspergillus pinprick test, such as a brother who dies of an occupational lung disease, such as – well, those three things. So, it seems to me that there was not an awareness within the GHS pulmonary group of these additional data points." APA p. 1125.
- The claimant's attorney has submitted a mold report on the claimant's home from Mold Inspection & Testing (MI&T), with an inspection date of July 31, 2019. APA pp. 796 – 814. Dr. Early highlighted the several shortcomings of this report during his deposition testimony:
 - "...[U]sually, when you do a mold inspection, you do what's called air sampling, where you do indoor, outdoor air sampling with colonies per square meter of air. And the company that dis this does not report on indoor versus outdoor air sampling. And the way it reads is you typically have a table and, in the table, you say where you sampled. Usually for... ten to twenty minutes, you have a fan that sucks air through a filter, and then you analyze what you get on the filter. And you compare indoor versus outdoor. And this MIT, mold inspection testing, company does not present the report with that data. They don't list what was found on their swab testing. They do say they found no evidence of moisture. They don't list how long Mr. Christian has resided in this house. They do list the date that the inspection was done, but that's not relevant. And the inspection was done on July 31, 2019. Our concern is what was happening between 2012 and 2015. So, we don't even know if Mr. Christian resided in this house in the time of concern." APA p. 1124.
 - "[This report is] just not answering the questions that I have...my questions are: what was going on in 2012 to '15; and I would like to see colonies per square meter cubed, comparing inside versus outside." APA p. 1124.
- "[I]f [the claimant] had HP, he should get better when he moved away from the offending antigen. And we're dealing with an obscure, potentially offensive antigen, if we're alleging solder. And [the claimant] got a whole lot worse when you took him away from the offensive – potential offensive antigen, and he got worse quick, despite steroids. So, it makes you wonder, "Hey, do we have the wrong potentially offensive antigen?"" APA p. 1128.

- The claimant's attorney presented several articles dealing w/ decreased lung function and other respiratory symptoms in electronic workers performing soldering. However, Dr. Early pointed out that the articles pertain to occupational asthma (an airway disease, and not HP, which is not an airway disease). APA p. 1126.
- After the claimant left the workplace his condition became significantly worse, despite steroids. APA p. 1127.
- It is possible that the claimant could have been exposed to whatever caused the claimant's brother's lung disease. APA p. 1128.
- Dr. Early is unaware of any names or statistics about any other employee in the employer's history that suffered from HP related to solder exposure. APA p. 1128.

III. Summary of Dr. Gregory Feldman's Expert Report, dated June 28, 2019 (Board-Certified in Pulmonary Diseases, Critical Care and Internal Medicine). (APA #11)

In Dr. Feldman's report, he opines that the claimant suffers from usual interstitial pneumonia with rapidly progressive course, with HP included in the differential diagnosis. However, Dr. Feldman concluded that soldering lung disease is an improbable diagnosis. In his report, Dr. Feldman addresses Dr. McCarter's opinion that the claimant's condition correlates to exposure to solder fumes, by stating the following: "[t]he patient is an electronics technician who has had frequent exposure to solder fume, which has been reported as a rare cause of hypersensitivity pneumonitis. However, from the medical records provided to me, I was unable to find any information to the frequency of exposure and level of exposure. Therefore, I am not certain where this information can be obtained and how Dr. McCarter arrived to that assessment." APA p. 302.

IV. Summary of Dr. Feldman's Deposition. (APA #39)

In his deposition, Dr. Feldman reinforced his position by testifying as follows:

- When asked to define "organic materials," Dr. Feldman testified as follows:
 - "Organic materials, feathers, or a variety of maybe birth-related, maybe something that comes from previously living organisms. Inorganic materials, like chemicals, that would be totally inconsistent with HP clinically, that it was caused by chemicals or metals...Solder is not a known cause of eosinophilic lung disease, not a known cause... You've got to distinguish two type[s] of hypersensitivity pneumonitis, which I have for you, organic and non-organic. It's consistent with organic. It's inconsistent with non-organic." APA p. 1112.
- "I think this man has idiopathic pulmonary fibrosis, with possible eosinophilic pneumonia superimposed....However, organic hypersensitivity pneumonitis cannot be excluded." APA p. 1114.

- “Soldering is not the cause of hyper eosinophilic syndrome or lung involvement. And, in fact it rules it out.” APA pp. 1114 – 1115.
- “In addition, the CT scan of the chest...is inconsistent w/ soldering, inconsistent...All the reports describe totally different picture of CT scan related to soldering. Remember, there’s a few, very few, case reports. They’re all inconsistent w/ the CT scans that we see.” APA p. 1115.
- The claimant’s condition could have stemmed from something that he was exposed to 20 or 30 years ago, and is just now manifesting itself. APA p. 1116.

V. Summary of Report of Dr. Albert Mitsos’ Expert Report (American Board of Forensic Medicine/Board-Certified in Forensic Traumatology). (APA #30)

On September 12, 2019, Dr. Albert Mitsos submitted a report, wherein he made the diagnosis of “[h]ypersensitivity interstitial pneumonitis unrelated to work exposure.” APA p. 828. In his report, Dr. Mitsos provided the following opinions, to a reasonable degree of medical certainty:

- “[The claimant] had been exposed to the alleged antigen (soldering fumes) for approximately 30 years prior to developing objective evidence of hypersensitivity interstitial pneumonitis. While a prolonged latency period is consistent with this disease state, 30 years is outside of the normal latency period. Further, this individual, once diagnosed by the objective studies of CT scan, bronchoscopy, and surgical biopsy, continued to be exposed to the alleged antigen (soldering fumes) and his condition on these studies did not change over time.” APA p. 828.
- “Eosinophilic reaction is consistent with hypersensitivity or allergic response to an antigen. However, the only positive antigen found was *Aspergillus* without antibodies. This antigen/antibody profile implies that Mr. Christian had been prior exposed to *Aspergillus* but no longer was mounting a reaction via antibody response. This is also consistent with hypersensitivity interstitial pneumonitis secondary to *Aspergillus*. Mr. Christian has demonstrated a positive skin test to mold. IgG antibodies which are elevated in hypersensitivity reactions and can help to determine the cause or the antigen involved have not been performed.” APA p. 828.
- “Mr. Christian, while he suffers hypersensitivity interstitial pneumonitis which can be secondary to many antigens has not demonstrated an antigenic reaction to the soldering mold and thus, has never demonstrated any evidence which would relate his condition to the soldering mold.” APA p. 829.
- “In summary, [the claimant] was exposed to the theoretic causal antigen for 30 years prior to developing objective findings consistent with his condition and has tested positive for other causative agents on objective serologic testing, however, never to this agent. Therefore, the medical records failed to demonstrate any evidence to any degree of medical certainty to causally relate Mr. Christian’s condition to soldering fumes in the work

environment. There are other causes of this condition, some of which Mr. Christian has been exposed to and demonstrate objective evidence of this exposure. APA p. 829.

VI. Summary Dr. Feldman's Expert Report, dated September 13, 2019. (APA #32)

In response to the note written by the claimant's expert, Dr. James Pearle, on June 16, 2019, Dr. Feldman submitted a second report on September 13, 2019. In this report, Dr. Feldman submitted the following opinions, to a reasonable degree of medical certainty:

- "It is no longer appropriate for clinicians to make a diagnosis of interstitial lung disease on the basis of lung biopsy and currently that requires multidisciplinary Clinical-Radiological-Pathological approach. APA p. 834.
- "Soldering lung disease, such as chronic hypersensitivity pneumonitis is a clinical not a pathological diagnosis. The pathologist simply has no tools to make a clinical diagnosis and it appears had no access to the clinical information which is not even mentioned. Moreover, due to the presence of eosinophilia, as well as significant eosinophilia on bronchoalveolar lavage, this diagnosis is clinically improbable." APA p. 834.
- "There is simply no clinical evidence for soldering-related CHP [chronic hypersensitivity pneumonitis] and it is excluded on clinical grounds such as the results of the CT chest, the presence of blood eosinophilia, BAL [bronchoalveolar lavage] eosinophilia and the presence of eosinophils in all lung biopsies." APA p. 835.
- "In conclusion, soldering induced chronic fibrotic hypersensitivity pneumonitis is excluded in this case on clinical and radiological grounds." APA p. 835.

VII. Summary of Industrial Hygiene Sampling Report. (APA #18)

On March 17, 2017, Palmetto EHS, LLC, completed a report, wherein industrial hygiene sampling for various chemicals at SEW Eurodrive was conducted. The following materials were sampled: acetone, antimony, copper, ethanol, hexane isomers, isopropyl alcohol, methanol, 1 methoxy-2 propanol (PGME), n-Hexane, n-Propyl Acetate, pentane, silver, and tin. "The results of the chemical sampling indicated that all of the chemical samples were below the respective Permissible Exposure Limits (PELs) established by the Occupational Safety and Health Administration (OSHA), as well as below the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs) and Short Term Exposure Limits (STELs)." APA p. 482.

VIII. The claimant cannot meet its burden under 42-11-10.

According to S.C. Code § 42-11-10, "[o]ccupational disease" means a disease arising out of an in the course of employment that is due to *hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged*. In a claim for an occupational disease, the employee shall establish that the occupational disease arose directly

and naturally form exposure in this State to the hazards *peculiar* to the particular employment by a preponderance of the evidence. There is no showing of a hazard that is peculiar to the occupation in which the employee is engaged. As stated above, the results of the IH Report of Industrial Hygiene Sampling indicated that all of the chemical samples were below the respective OSHA PELs, ACGIH TLVs and ACGIH STELs. There has been no evidence that Claimant was exposed to a hazard in excess of those ordinarily incident to employment, nor peculiar to Claimant's occupation. The claimant alleges that exposure to solder fumes caused his condition. However, the expert reports of Dr. Early, Dr. Feldman, and Dr. Mitsos, summarized above, strike down this claim.

IX. The claimant cannot meet its burden under 42-11-40.

According to S.C. Code § 42-11-40, "In no case shall an employer be liable for compensation for an occupational disease unless such disease was contracted by the employee while in the employ of the employer as a direct result of the employment." Both Dr. Feldman and Dr. Early testified that HP may be idiopathic. Furthermore, the fact that the claimant's condition worsened after he retired, is a clear indicator that the claimant's condition was not caused by solder fumes at work.

X. The claimant is statutorily barred from receiving workers' compensation benefits, because he failed to report his alleged injury to his employer within the ninety-day deadline.

According to S.C. Code §42-15-20, "[o]nce an employee is disabled and knows or should have known of the compensability of this disability, an employee has ninety days to report the condition to [his] employer in order to receive workers' compensation." On October 30, 2015, the claimant visited Pulmonary and Critical Care Medicine reporting that he had had a cough for years but it had worsened when he was seen for his annual physical that summer. He also had an abnormal CT scan. On December 4, 2015, he returned with a list of chemicals that he worked with, including "Flux-Off Rosin" and occasionally "green" cleaner. He stated that he "does a lots of soldering at work." His pulmonary function test showed his FVC at 91% of predicted and FEV1 at 92% of predicted. The claimant's assessment was as follows: dyspnea; abnormal CT scan: with peripheral GGO (ground-glass opacification) and occasional peripheral cyst. Concern for hypersensitivity pneumonitis, chronic eosinophilic pneumonia or other interstitial lung disease (ILD). May need bronchoscopy for cell count/diff; and persistent chronic cough. On February 17, 2016, the claimant returned reporting that he had been doing well since his last visit. He continued to have a morning cough which was productive of phlegm. His lung function test was concerning for mild restrictive changes with a moderate diffusing defect. He denied significant shortness of breath. On March 28, 2016, the claimant returned reluctant to use steroids after having side effects from his original prednisone course. He was also hesitant to pursue a lung biopsy for definitive diagnosis since he had been feeling so well. On June 28, 2016, he returned with a cough and reported his illness had lasted about two years. His pulmonary function test showed his FVC at 78% of predicted and FEV1 at 82% of predicted. The physician noted that he took a six minute walk and was able to walk 87% of the predicted distance. He was referred for a possible thorascopic biopsy. On September 12, 2016, the claimant's biopsy results came back likely chronic hypersensitivity pneumonitis "possibly due to soldering fumes."

Here, the claimant clearly had concerns that his lung condition was caused by exposure to chemicals at work. He returned to Pulmonary and Critical care on December 4, 2015 with a list of chemicals that he worked with, and advised medical personnel that he works with solder. It is worth noting that the claimant refused a biopsy at his March 28, 2016 visit, and his delay in undergoing the biopsy resulted in the results not being revealed until September 12, 2016. Moreover, the biopsy revealed likely pneumonitis, which is the same concern listed in the claimant's assessment at his December 4, 2015 visit. At the latest, the ninety-day time period for the claimant to report his alleged injury to his employer began on December 4, 2015, and it expired in March 3, 2016. By the claimant's own admission, he did not report his injury to the employer until September 6, 2016 (six days prior to the biopsy results were released). This is further evidence that the claimant did not rely on the biopsy results in forming his belief that he suffered a work-related injury. Therefore, the claimant knew or should have known of his alleged disability on or before December 4, 2015, and he is barred from receiving workers' compensation benefits, due to failing to report the alleged injury to his employer before the statutory deadline.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1614297

Kenneth D. Christian,	)	
Employee,	)	
Claimant,	)	
	)	
vs.	)	
	)	
Sew Eurodrive, Inc.,	)	Post-Hearing Memorandum
	)	
Employer,	)	
and	)	
	)	
Great American Alliance Insurance Company,	)	
	)	
Carrier,	)	
Defendants.	)	

STATEMENT OF THE CASE

On October 24, 2019, Kenneth Christian (the "Claimant"), through counsel, filed a Form 50 request for hearing, alleging that the Claimant sustained an injury to his bilateral lungs and psyche when he "worked with chemicals which over time caused damage to his lungs." The Form 50 further provides an alleged date of injury of August 26, 2016, and that notice of the injury was given to the employer on September 6, 2016. The Claimant alleged entitlement to temporary total benefits for "[a]ll time lost at work," as well as permanent and total disability. The Claimant further alleged that he has reached maximum medical improvement (MMI).

On November 25, 2019, the Defendants, through counsel, filed a Form 51, denying that the Claimant sustained an injury by accident arising out of and in the course of employment. In addition, the Defendants asserted the affirmative defenses of failure to meet the two-year statute

of limitations to file a claim, failure to give immediate and timely notice of a claim, as well as all defenses and affirmative defenses of Chapter 11 of the South Carolina Workers' Compensation Act (the "Act").

The parties participated in mediation on April 22, 2019, which resulted in an impasse. Pursuant to the Claimant's Form 50 hearing request, this matter came to a hearing in Spartanburg, South Carolina, on January 24, 2020. It is the Claimant's position that the Claimant sustained compensable injuries under the Act, and he is entitled to back owed temporary total disability ("TTD") benefits, among other things.

It is the Defendants' position that the Claimant did not sustain an injury by accident arising out of and in the course of employment, and that the Claimant failed to meet his burden of proving that the Claimant's condition is causally related to exposure to solder at SEW Eurodrive, Inc. ("SEW"). In addition, the Defendants' alleged that the Claimant failed to give immediate and proper notice under the Act, in addition to the other defenses raised in the Form 51, and the Defendants' Form 58 and Continuation Sheet. Thus, the Defendants deny that the Claimant is entitled to any benefits under the Act.

ISSUES PRESENTED

- I. Did the Claimant meet his burden of proving that he sustained an injury/occupational disease by accident arising out of and in the course of his employment with SEW?**
- II. Did the Claimant give immediate and timely notice of a claim?**

ARGUMENTS/DISCUSSION

In addition to the arguments below, the Defendants hereby incorporate the previously submitted Continuation Sheet into this Memorandum, and have attached a copy of the same as Exhibit 1.

I. The Claimant failed to meet his burden of proving that he sustained an injury/occupational disease by accident arising out of and in the course of his employment with SEW?

S.C. Code § 42-1-160(A) provides, in pertinent part: “[i]njury’ 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 and except such diseases as are compensable under the provisions of Chapter 11 of this title.” S.C. Code § 42-11-10 provides, in pertinent part: “[i]n a claim for an occupational disease, the employee shall establish that the occupational disease arose directly and naturally from exposure in this State to the hazards peculiar to the particular employment by a preponderance of the evidence.” For the reasons stated below, the Claimant has failed to meet his burden of proving that he sustained an injury by accident arising out of and in the course of his employment with SEW, and he failed to meet his burden of proving that he sustained a compensable occupational disease.

A. The Claimant’s condition significantly worsened after he retired from SEW in December of 2016.

The evidence clearly shows that the Claimant’s condition significantly worsened after he retired from SEW in December of 2016. At the hearing, the Claimant testified that Dr. Justin Gregg, whom the Claimant described as a “very smart doctor,” advised the Claimant that if he went back to work, his lung condition would worsen. (Hr. Tr. p. 46). Allegedly heeding Dr.

Gregg's advice, the Claimant retired from SEW in December of 2016. (Hr. Tr. pp. 45-46). However, it is worth noting that the Claimant previously testified in his deposition that he had already planned on retiring in May of 2017, regardless of health conditions. (Hr. Tr. p. 45). The Claimant testified that he never returned to SEW after his retirement in December of 2016. (Hr. Tr. pp. 81-82). Despite the undisputed fact that the Claimant was completely removed from SEW after his retirement, the Claimant's lung condition continued to significantly deteriorate. (Hr. Tr. pp. 81-82). Dr. Early, in his report from July 26, 2019, addressed this issue and opined as follows:

The lack of improvement in Mr. Christian's respiratory condition after removal from work argues against a work related causative factor for his [hypersensitivity pneumonitis] (HP). One of the characteristics of HP is that it typically gets better when removed from the trigger. If the trigger had been his work related exposures (solder, cleaning materials, and solder removal products) then he should have improved in late 2016 after removal from work. He worsened in late 2016. (APA p. 631).

Dr. Early reiterated his stance during his deposition. He testified that if the Claimant had HP, then he should have gotten better when he moved away from the offending antigen. However, as Dr. Early highlighted, the Claimant's condition became significantly worse after he left the workplace, despite steroids. (APA p. 1128). Notably, during the Claimant's second deposition on February 15, 2019, the Claimant testified that he was taking BREO and prednisone, because his condition was worsening. (Hr. Tr. p. 34). Again, this was despite the fact that the Claimant had retired from SEW in 2016. At the hearing, the Claimant admitted that no doctor told him that he needed to stop working, but that the Claimant felt that the doctors felt that his condition might improve if he left the environment. (Hr. Tr. p. 45). It is notable that the Claimant did not seek to obtain an expert opinion from Dr. Gregg to explain why the Claimant's symptoms worsened after he was no longer exposed to solder at SEW. The medical evidence shows that, given the fact that the Claimant's condition progressively worsened after his retirement from SEW, exposure to

solder at SEW was not the most probable cause of the Claimant's current symptoms and complaints regarding his lungs.

B. The Claimant's experts failed to investigate and/or address the Claimant's significant family history of lung problems.

The Claimant's experts failed to investigate and/or address the Claimant's significant family history of lung problems. The Claimant sought and obtained opinions from Ted W. Simon, Ph.D., and James Lawrence Pearl, M.D. regarding causation. However, none of the Claimant's expert reports mention the Claimant's significant family history of lung problems. It is undisputed that the Claimant has a long-standing personal and family history of lung problems. The Claimant testified that he first began having symptoms with his lungs in the early 2000s. (Hr. Tr. p. 17). The Claimant testified that he had a sinus surgery in 2001. (Hr. Tr. p. 29). In 2002, Claimant had a heart stent placed. (Hr. Tr. p. 33). The Claimant testified that his father passed away from lung cancer. (Hr. Tr. p. 47). The Claimant had five brothers. One of the Claimant's brothers passed away from lung cancer. (Hr. Tr. pp. 49-52). Another one of the Claimant's brothers passed away from melanoma. (Hr. Tr. pp. 49-52). Moreover, a third brother died from occupational lung disease. (Hr. Tr. pp. 49-52). Notably, Dr. Early testified in his deposition that it is possible that the Claimant could have been exposed to whatever caused the Claimant's brother's lung disease. (APA p. 1128). The failure of the Claimant's experts to address this family history is a critical omission.

C. There are multiple other potential causes for the Claimant's lung condition.

The evidence shows multiple potential causes for the condition to the Claimant's lungs other than exposure to solder at SEW. In his report, dated July 26, 2019, Dr. Early provided the following: "Allergy Partners of the Upstate was concerned enough about fungal exposure to do an

Aspergillus pinprick test. This test came back positive. Aspergillus is a well-known trigger for fungal HP. It is thought to be related to HP in compost exposed workers, hay exposed workers, moldy barley exposed workers, and moldy tobacco exposed workers. This fungus is one of the most commonly known substances mediating HP. In the over 1000 pages of medical records that I reviewed, no one documents the moisture conditions in Mr. Christian's home." (APA p. 631). Dr. Early further provided in this report as follows: "[t]he medical opinions that I reviewed who opined that he had a work related HP did not discuss his home exposures, his woodworking or his positive Aspergillus pinprick test. I think that it is more likely than not Mr. Christian's work related exposures did not aggravate or contribute to his HP." (emphasis added.) (APA p. 632).

Dr. Albert Mitsos also submitted an expert report wherein he opined that medical records failed to demonstrate any evidence to any degree of medical certainty to causally relate the Claimant's condition to soldering fumes in the work environment. Dr. Mitsos also addressed the Claimant's positive Aspergillus test, and provided the following:

Eosinophilic reaction is consistent with hypersensitivity or allergic response to an antigen. However, the only positive antigen found was Aspergillus without antibodies. This antigen/antibody profile implies that Mr. Christian had been prior exposed to Aspergillus but no longer was mounting a reaction via antibody response. This is also consistent with hypersensitivity interstitial pneumonitis secondary to Aspergillus. Mr. Christian has demonstrated a positive skin test to mold...(APA p. 828). Mr. Christian, while he suffers hypersensitivity interstitial pneumonitis which can be secondary to many antigens has not demonstrated an antigenic reaction to the soldering mold and thus, has never demonstrated any evidence which would relate his condition to the soldering mold. (APA p. 829).

Dr. Early highlighted that soldering is not in the top 100 causes for HP, and, further, that HP can be an idiopathic disease. (APA p. 1127). Moreover, Dr. Feldman testified in his deposition

that the Claimant's condition could have stemmed from something that he was exposed to 20 or 30 years ago, and is just now manifesting itself. (APA p. 1116).

Other factors to consider regarding the Claimant's condition are: 1) the Claimant's previously listed hobbies of woodworking and landscaping 2) the Claimant's use of pest control spray in his home without inquiring about the chemicals that were used; 3) the dog that the Claimant had living with him; 4) the fact that the Claimant previously used gas logs, and has since gotten rid of them because they aggravated his condition and bothered his wife; 5) the fact that the Claimant testified that he lived in his current house for approximately, which was built in the 1940s; and 6) the fact that the Claimant testified that he never had any mold testing done at his prior home at 109 Briar Park Drive. (Hr. Tr. pp. 54-65). The Claimant also admitted that cutting the grass aggravated his condition. (Hr. Tr. p. 57). The Claimant admitted that he worked in the electrical field for a number of years prior to working for SEW. (Hr. Tr. p. 37). However, he testified that he never inquired as to whether or not he could have been exposed to dangerous or toxic materials at any of his previous jobs, which included employment at Charleston Air Force Base, Pet Dairy Company, Platt Saco-Lowell, Marquette Metal Products, and National Water Lift in Beaufort (where he worked on a missile guidance system). (Hr. Tr. pp. 37-39). Moreover, it is notable that the Claimant testified at the hearing that his symptoms were worse in the mornings and evenings, even though he previously worked the day shift at SEW. (Hr. Tr. p. 70). It is interesting that the Claimant admitted that his symptoms were worse during times when he was not exposed to solder at SEW.

D. The evidence shows that the Claimant was only exposed to a minimal amount of solder.

The Claimant testified that he would sometimes solder about two or three hours per day. However, the evidence shows that the Claimant was only exposed to a minimal amount of solder. Wade Blackwell is production manager/safety manager at SEW, who has worked at SEW for nearly 20 years. (Hr. Tr. p. 97). Mr. Blackwell testified that SEW has five plants in the United States of America, and Mr. Blackwell was not aware of anyone ever complaining of lung problems related to exposure at work. (Hr. Tr. p. 99). Similar to Mr. Blackwell, Ricky Jones, the environmental health and safety coordinator at SEW, testified that in his thirteen years with SEW he was not aware of anyone ever complaining of problems with their lungs. (Hr. Tr. pp. 138-139). Mr. Blackwell even spent at least two or three years working in the same lab as the Claimant, and performing the same job as the Claimant. (Hr. Tr. pp. 97-98). When describing the amount of time that was spent soldering in the lab, Mr. Blackwell testified “[y]ou wouldn’t use hours. You would use minutes.” (Hr. Tr. p. 100). He went on to explain that the electronic lab was never a for-profit business entity within the company, and it is not economical for someone to be soldering for three hours per day. (Hr. Tr. pp. 100-101). He further testified that an employee would be admonished for soldering for three hours per day, because this would be wasting company money. (Hr. Tr. pp. 100-101).

To further illustrate the amount of time that is actually spent soldering at SEW, Mr. Blackwell obtained the log showing the amount of work the Claimant performed in one week of 2006. (Hr. Tr. pp. 102-107; APA#24; APA#34). Mr. Blackwell made it clear that this was just one sample “snapshot” that was pulled from his computer, and if asked by Claimant, his counsel, or his experts, Mr. Blackwell could have provided his entire work history. (Hr. Tr. pp. 102-106).

However, Mr. Blackwell was never asked to do so. (Hr. Tr. pp. 102-106). The log shows that there were twenty-one repairs done over a 6 day work week, and only four of the twenty-one repairs required soldering. (Hr. Tr. pp. 102-107; APA#24; APA#34). To further illustrate amount of soldering, or lack thereof, that was done at SEW, Mr. Blackwell testified that only fifteen rolls of solder were ordered from 2000 throughout the time that the Claimant continued to work with SEW. (Hr. Tr. pp. 108-109). Moreover, he testified that “[p]robably more of that solder walked off or it wound up in the trash can than what we used...” (Hr. Tr. p. 109).

Mr. Blackwell further testified that as soon as the Claimant claimed that he was having the lung problems at issue, SEW hired an industrial hygiene company to conduct a study. (Hr. Tr. pp. 109-112; APA#18). On March 17, 2017, Palmetto EHS, LLC, completed a report, wherein industrial hygiene sampling for various chemicals at SEW was conducted. (APA#18). The following materials were sampled: acetone, antimony, copper, ethanol, hexane isomers, isopropyl alcohol, methanol, 1 methoxy-2 propanol (PGME), n-Hexane, n-Propyl Acetate, pentane, silver, and tin. “The results of the chemical sampling indicated that all of the chemical samples were below the respective Permissible Exposure Limits (PELs) established by the Occupational Safety and Health Administration (OSHA), as well as below the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs) and Short Term Exposure Limits (STELs).” (APA p. 482). Mr. Blackwell testified that nothing revealed in the Industrial Hygiene Study gave him cause for concern. (Hr. Tr. p. 112). Mr. Blackwell described the lab that the Claimant was working in as being a very generous size room, with high ceilings, and proper ventilation. (Hr. Tr. pp. 113-114).

The Claimant’s experts did not come to SEW to observe the work environment. Furthermore, the Claimant testified that he never took the hygiene study to the Dr. Gregg, Dr.

Bolton, or Dr. Payne. (Hr. Tr. p. 78-79). Dr. Early testified in his deposition that he was unaware of any names or statistics about any other employee in the employer's history that suffered from HP related to solder exposure. (APA p. 1128). Unlike the Claimant's experts, Dr. Early actually visited SEW to examine the work environment. (APA p. 631). Dr. Early's report from July 26, 2019 provides the following:

The products Mr. Christian was exposed to in soldering were primarily inorganic products. The soldering flux was inorganic. The soldering pen was inorganic. Additionally, Mr. Christian was repairing 3-4 units per day for 220 workdays per year. Of these 660-880 units per year, it was estimated about half required soldering. Even if he never used his ventilation suction fan, the amount of solder fume exposure would have been rather minimal in my opinion. (APA p. 631).

Therefore, the evidence clearly shows that the Claimant was only exposed to a minimal amount of solder while working at SEW.

II. The Claimant failed to give immediate and timely notice of a claim.

The Claimant failed to give immediate and timely notice of a claim. South Carolina courts have held that S.C. Code § 42-15-20 applies in occupational disease cases. See Bass v. Isochem, 617 S.E.2d 369, 380, 365 S.C. 454 (S.C. 2005) (citing Hanks v. Blair Mills, Inc., 286 S.C. 378, 335 S.E.2d 91 (Ct.App.1985)). Section 42-15-20 requires an injured employee to "immediately on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a notice of the accident." Bass v. Isochem, 617 S.E.2d 369, 381, 365 S.C. 454 (S.C. 2005). "Generally, the injury is not compensable unless notice is given within ninety days." Id. Once an employee is disabled and knows or should have known of the compensability of his disability, an employee has ninety days to report the condition to his employer in order to receive workers' compensation. See S.C. Code § 42-15-20. "An employee must give notice of an occupational disease claim within ninety days after the date he becomes disabled and could

discover with reasonable diligence that his condition is compensable.” Id. “Notice begins to run when the employee becomes disabled and could discover with reasonable diligence his condition is compensable.” Id.

On October 30, 2015, the Claimant visited Pulmonary and Critical Care Medicine reporting that he had had a cough for years but it had worsened when he was seen for his annual physical that summer. He also had an abnormal CT scan. The Claimant’s assessment was as follows: dyspnea; abnormal CT scan: with peripheral GGO (ground-glass opacification) and occasional peripheral cyst. Concern for hypersensitivity pneumonitis, chronic eosinophilic pneumonia or other interstitial lung disease (ILD). May need bronchoscopy for cell count/diff; and persistent chronic cough. (APA pp. 84-90). On December 4, 2015, he returned with a list of chemicals that he worked with, including “Flux-Off Rosin” and occasionally “green” cleaner. The note also shows that the Claimant used “electronic silver solder (2% silver 62% tin, 36% lead). On February 17, 2016, the Claimant returned reporting that he had been doing well since his last visit. This note also references the same list of chemicals that the claimant presented on December 4, 2015. The Claimant continued to have a morning cough which was productive of phlegm. His lung function test was concerning for mild restrictive changes with a moderate diffusing defect. He denied significant shortness of breath. The Social History Narrative indicates that he “does lots of soldering at work.” His pulmonary function test showed his FVC (forced vital capacity) at 91% of predicted and FEV1 (forced expiratory volume) at 92% of predicted. (APA pp. 91-99). On March 28, 2016, the Claimant returned reluctant to use steroids after having side effects from his original prednisone course. He was also hesitant to pursue a lung biopsy for definitive diagnosis since he had been feeling so well. (APA pp. 100-108). On June 28, 2016, the claimant presented to GHS Lung Center with a cough and reported his illness had lasted about two years. (APA p. 110). His

pulmonary function test showed his FVC at 78% of predicted and FEV1 at 82% of predicted. (APA p. 113). The physician noted that he took a six-minute walk and was able to walk 87% of the predicted distance. (APA pp. 112-113). He was referred for a possible thorascopic biopsy. (APA p. 113). On August 26, 2016, the Claimant presented to GHS Lung Center for a right lung biopsy. (APA pp. 123-140). On September 12, 2016, the Claimant returned to GHS Lung Center for a follow-up after the biopsy, and the results came back “likely chronic hypersensitivity pneumonitis possibly due to soldering fumes.” (APA pp. 141).

At the hearing, the Claimant was questioned regarding his deposition testimony. During the Claimant’s deposition, he was asked when he first formulated the idea that his condition could be work-related. The Claimant responded “[a]fter I went to the lung doctor, and he started looking at the lungs and asking questions and what I did and stuff like this and how long I had been working, et cetera.” (Hr. Tr. p. 68). He further testified “I went and seen the family doctor around November of 2015. So, they made me an appointment to go see a lung doctor. So, I’m estimating it was probably maybe early 2016 when I got an appointment.” (Hr. Tr. p. 68).

In July of 2016, six months prior to his retirement, the Claimant completed an application for disability. (Hr. Tr. pp. 88-91; APA pp. 623-624). In the application, the Claimant indicated that his disability was due to a “sickness,” as opposed to an “accident.” (APA pp. 623). Furthermore, the Claimant indicated that his symptoms began to appear in 2014¹. (APA pp. 623). When filling out the application question asking “[i]s this condition due to an injury or sickness arising out of your employment?,” the Claimant circled “no.” (APA pp. 624). Notably, the Claimant was given the option to reply “yes,” “no,” or “unknown” to this question. The Claimant

¹ This statement actually corroborates a medical note from January 14, 2016, from Allergy Partners of the Upstate, wherein the Claimant reported that he was bothered by chronic, daily, coughing, and his symptoms began 2 years ago (which would be 2014), and there were no triggers identified. (APA p. 305).

also admitted that he completed this application five months after he obtained MSDS sheets and records from SEW after biopsy, because he believed his condition was related to exposure to solder. (Hr. Tr. p. 88).

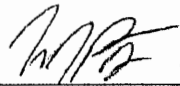
The Claimant clearly had concerns that his lung condition was caused by exposure to chemicals at work in 2015. Moreover, the aforementioned disability application, along with the January 14, 2016 medical note from Allergy Partners of the Upstate, suggests that the Claimant may have believed that his symptoms were work-related in 2014. The Claimant returned to Pulmonary and Critical care on December 4, 2015 with a list of chemicals that he worked with, and advised medical personnel that he works with solder, and the same list is included in the note on February 17, 2016. It is worth noting that the Claimant refused a biopsy at his March 28, 2016 visit, and his delay in undergoing the biopsy resulted in the results not being revealed until September 12, 2016. Moreover, the biopsy revealed likely pneumonitis, which is the same concern listed in the Claimant's assessment at his October 30, 2015 visit. The ninety-day time period for the Claimant to report his alleged injury to his employer began on December 4, 2015. However, even if the ninety-day time period did not begin until February 17, 2016, the Claimant still failed to give timely and proper notice of his alleged injury. The Form 50 indicates that the Claimant did not report his injury to the employer until September 6, 2016 (six days prior to the Claimant's follow-up appointment after biopsy). This is further evidence that the Claimant did not rely on the biopsy results in forming his belief that he suffered a work-related injury. Therefore, the Claimant knew or should have known of his alleged disability no later than February 17, 2016, and he is barred from receiving workers' compensation benefits, due to failing to report the alleged injury to his employer before the statutory deadline.

CONCLUSION

For the reasons stated above, the Defendants respectfully request that the Commissioner find that the Claimant failed to meet his burden of proving that he sustained an injury by accident arising out of and in the course of his employment with SEW, 2) failed to give immediate and timely notice of a claim, and 3) and is not entitled to any benefits under the Act.

Respectfully submitted,

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Attorneys for Defendants

Date: March 9, 2020

EXHIBIT 1

WILLSON JONES CARTER & BAXLEY, P.A.

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January 21, 2020

Via Email

**The Honorable McCaskill
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202**

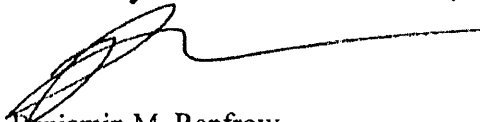
**Re: Kenneth Christian vs. SEW Eurodrive, Inc.
 WCC File No.: 1614297 DOI: 8/25/2016
 Carrier: Great American Alliance Insurance Company - Claim No.: 564-661257
 WJC&B File No.: 0285.00350**

Dear Commissioner McCaskill:

Please find attached Defendants Continuation Sheet in the above claim. By copy of this communication I am providing the claimant with a copy of same.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



Benjamin M. Renfrow

BMR/gll

**cc: Thomas S. Phillips, Esq. (via e-mail)
 Ms. Patricia Kline**

Continuation Sheet

I. Summary of Expert Report of Dr. Gordon Early (Board-Eligible in Occupational Medicine and Toxicology). (APA #23)

Dr. Early's report, dated July 26, 2019, indicates the following, to a reasonable degree of medical certainty:

- The lack of improvement in Mr. Christian's respiratory condition after removal from work argues against a work related causative factor for his HP. One of the characteristics of hypersensitivity pneumonitis (HP) is that it typically gets better when removed from the trigger. If the trigger had been his work related exposures (solder, cleaning materials, and solder removal products) then he should have improved in late 2016 after removal from work. He worsened in late 2016. APA p. 631.
- The listed exposures in his electrical repair workshop are atypical for HP triggers and most are not documented in the medical literature. APA p. 632.
- Drs. Kendall and Kemmerlin (Primary care physicians) list a family history of Mr. Christian's brother having died of "occupational lung disease" in a 9-19-14 office note. This is not mentioned by other providers. APA p. 627.
- The products Mr. Christian was exposed to in soldering were primarily inorganic products. The soldering flux was inorganic. The soldering pen was inorganic. Additionally, Mr. Christian was repairing 3-4 units/day for 220 work days/year. Of these 660-880 units/year, it was estimated about half required soldering. Even if he never used his ventilation suction fan, the amount of solder fume exposure would have been rather minimal in my opinion. APA p. 631.
- There are multiple other potential causes for Mr. Christian's HP. Allergy Partners of the Upstate was concerned enough about fungal exposure to do an Aspergillus pinprick test. This test came back positive. Aspergillus is a well-known trigger for fungal HP. It is thought to be related to HP in compost exposed workers, hay exposed workers, moldy barley exposed workers, and moldy tobacco exposed workers. This fungus is one of the most commonly known substances mediating HP. In the over 1000 pages of medical records that I reviewed, no one documents the moisture conditions in Mr. Christian's home. APA p. 631.
- The medical opinions that I reviewed who opined that he had a work related HP did not discuss his home exposures, his woodworking or his positive Aspergillus pinprick test. I think that it is more likely than not Mr. Christian's work related exposures did not aggravate or contribute to his HP. APA p. 632.

II. Summary of Dr. Early's deposition. (APA #40)

In his deposition, Dr. Early reinforced his position provided in his report by testifying as follows:

- The electronics lab is not a typical place to get HP. APA p. 1125.
- Soldering is not in the top 100 causes for HP. APA p. 1127.
- HP can be an idiopathic disease. APA p. 1127.
- "The GHS doctors who are mentioning that they think that [the claimant's] HP is due to his work, do not seem to be aware of these other issues that I comment upon in my report, such as the woodworking history, such as the positive aspergillus pinprick test, such as a brother who dies of an occupational lung disease, such as – well, those three things. So, it seems to me that there was not an awareness within the GHS pulmonary group of these additional data points." APA p. 1125.
- The claimant's attorney has submitted a mold report on the claimant's home from Mold Inspection & Testing (MI&T), with an inspection date of July 31, 2019. APA pp. 796 – 814. Dr. Early highlighted the several shortcomings of this report during his deposition testimony:
 - "...[U]sually, when you do a mold inspection, you do what's called air sampling, where you do indoor, outdoor air sampling with colonies per square meter of air. And the company that dis this does not report on indoor versus outdoor air sampling. And the way it reads is you typically have a table and, in the table, you say where you sampled. Usually for... ten to twenty minutes, you have a fan that sucks air through a filter, and then you analyze what you get on the filter. And you compare indoor versus outdoor. And this MIT, mold inspection testing, company does not present the report with that data. They don't list what was found on their swab testing. They do say they found no evidence of moisture. They don't list how long Mr. Christian has resided in this house. They do list the date that the inspection was done, but that's not relevant. And the inspection was done on July 31, 2019. Our concern is what was happening between 2012 and 2015. So, we don't even know if Mr. Christian resided in this house in the time of concern." APA p. 1124.
 - "[This report is] just not answering the questions that I have...my questions are: what was going on in 2012 to '15; and I would like to see colonies per square meter cubed, comparing inside versus outside." APA p. 1124.
- "[I]f [the claimant] had HP, he should get better when he moved away from the offending antigen. And we're dealing with an obscure, potentially offensive antigen, if we're alleging solder. And [the claimant] got a whole lot worse when you took him away from the offensive – potential offensive antigen, and he got worse quick, despite steroids. So, it makes you wonder, "Hey, do we have the wrong potentially offensive antigen?"" APA p. 1128.

- The claimant's attorney presented several articles dealing w/ decreased lung function and other respiratory symptoms in electronic workers performing soldering. However, Dr. Early pointed out that the articles pertain to occupational asthma (an airway disease, and not HP, which is not an airway disease). APA p. 1126.
- After the claimant left the workplace his condition became significantly worse, despite steroids. APA p. 1127.
- It is possible that the claimant could have been exposed to whatever caused the claimant's brother's lung disease. APA p. 1128.
- Dr. Early is unaware of any names or statistics about any other employee in the employer's history that suffered from HP related to solder exposure. APA p. 1128.

III. Summary of Dr. Gregory Feldman's Expert Report, dated June 28, 2019 (Board-Certified in Pulmonary Diseases, Critical Care and Internal Medicine). (APA #11)

In Dr. Feldman's report, he opines that the claimant suffers from usual interstitial pneumonia with rapidly progressive course, with HP included in the differential diagnosis. However, Dr. Feldman concluded that soldering lung disease is an improbable diagnosis. In his report, Dr. Feldman addresses Dr. McCarter's opinion that the claimant's condition correlates to exposure to solder fumes, by stating the following: "[t]he patient is an electronics technician who has had frequent exposure to solder fume, which has been reported as a rare cause of hypersensitivity pneumonitis. However, from the medical records provided to me, I was unable to find any information to the frequency of exposure and level of exposure. Therefore, I am not certain where this information can be obtained and how Dr. McCarter arrived to that assessment." APA p. 302.

IV. Summary of Dr. Feldman's Deposition. (APA #39)

In his deposition, Dr. Feldman reinforced his position by testifying as follows:

- When asked to define "organic materials," Dr. Feldman testified as follows:
 - "Organic materials, feathers, or a variety of maybe birth-related, maybe something that comes from previously living organisms. Inorganic materials, like chemicals, that would be totally inconsistent with HP clinically, that it was caused by chemicals or metals... Solder is not a known cause of eosinophilic lung disease, not a known cause... You've got to distinguish two type[s] of hypersensitivity pneumonitis, which I have for you, organic and non-organic. It's consistent with organic. It's inconsistent with non-organic." APA p. 1112.
- "I think this man has idiopathic pulmonary fibrosis, with possible eosinophilic pneumonia superimposed....However, organic hypersensitivity pneumonitis cannot be excluded." APA p. 1114.

- “Soldering is not the cause of hyper eosinophilic syndrome or lung involvement. And, in fact it rules it out.” APA pp. 1114 – 1115.
- “In addition, the CT scan of the chest...is inconsistent w/ soldering, inconsistent...All the reports describe totally different picture of CT scan related to soldering. Remember, there’s a few, very few, case reports. They’re all inconsistent w/ the CT scans that we see.” APA p. 1115.
- The claimant’s condition could have stemmed from something that he was exposed to 20 or 30 years ago, and is just now manifesting itself. APA p. 1116.

V. Summary of Report of Dr. Albert Mitsos’ Expert Report (American Board of Forensic Medicine/Board-Certified in Forensic Traumatology). (APA #30)

On September 12, 2019, Dr. Albert Mitsos submitted a report, wherein he made the diagnosis of “[h]ypersensitivity interstitial pneumonitis unrelated to work exposure.” APA p. 828. In his report, Dr. Mitsos provided the following opinions, to a reasonable degree of medical certainty:

- “[The claimant] had been exposed to the alleged antigen (soldering fumes) for approximately 30 years prior to developing objective evidence of hypersensitivity interstitial pneumonitis. While a prolonged latency period is consistent with this disease state, 30 years is outside of the normal latency period. Further, this individual, once diagnosed by the objective studies of CT scan, bronchoscopy, and surgical biopsy, continued to be exposed to the alleged antigen (soldering fumes) and his condition on these studies did not change over time.” APA p. 828.
- “Eosinophilic reaction is consistent with hypersensitivity or allergic response to an antigen. However, the only positive antigen found was Aspergillus without antibodies. This antigen/antibody profile implies that Mr. Christian had been prior exposed to Aspergillus but no longer was mounting a reaction via antibody response. This is also consistent with hypersensitivity interstitial pneumonitis secondary to Aspergillus. Mr. Christian has demonstrated a positive skin test to mold. IgG antibodies which are elevated in hypersensitivity reactions and can help to determine the cause or the antigen involved have not been performed.” APA p. 828.
- “Mr. Christian, while he suffers hypersensitivity interstitial pneumonitis which can be secondary to many antigens has not demonstrated an antigenic reaction to the soldering mold and thus, has never demonstrated any evidence which would relate his condition to the soldering mold.” APA p. 829.
- “In summary, [the claimant] was exposed to the theoretic causal antigen for 30 years prior to developing objective findings consistent with his condition and has tested positive for other causative agents on objective serologic testing, however, never to this agent. Therefore, the medical records failed to demonstrate any evidence to any degree of medical certainty to causally relate Mr. Christian’s condition to soldering fumes in the work

environment. There are other causes of this condition, some of which Mr. Christian has been exposed to and demonstrate objective evidence of this exposure. APA p. 829.

VI. Summary Dr. Feldman's Expert Report, dated September 13, 2019. (APA #32)

In response to the note written by the claimant's expert, Dr. James Pearle, on June 16, 2019, Dr. Feldman submitted a second report on September 13, 2019. In this report, Dr. Feldman submitted the following opinions, to a reasonable degree of medical certainty:

- "It is no longer appropriate for clinicians to make a diagnosis of interstitial lung disease on the basis of lung biopsy and currently that requires multidisciplinary Clinical-Radiological-Pathological approach. APA p. 834.
- "Soldering lung disease, such as chronic hypersensitivity pneumonitis is a clinical not a pathological diagnosis. The pathologist simply has no tools to make a clinical diagnosis and it appears had no access to the clinical information which is not even mentioned. Moreover, due to the presence of eosinophilia, as well as significant eosinophilia on bronchoalveolar lavage, this diagnosis is clinically improbable." APA p. 834.
- "There is simply no clinical evidence for soldering-related CHP [chronic hypersensitivity pneumonitis] and it is excluded on clinical grounds such as the results of the CT chest, the presence of blood eosinophilia, BAL [bronchoalveolar lavage] eosinophilia and the presence of eosinophils in all lung biopsies." APA p. 835.
- "In conclusion, soldering induced chronic fibrotic hypersensitivity pneumonitis is excluded in this case on clinical and radiological grounds." APA p. 835.

VII. Summary of Industrial Hygiene Sampling Report. (APA #18)

On March 17, 2017, Palmetto EHS, LLC, completed a report, wherein industrial hygiene sampling for various chemicals at SEW Eurodrive was conducted. The following materials were sampled: acetone, antimony, copper, ethanol, hexane isomers, isopropyl alcohol, methanol, 1 methoxy-2 propanol (PGME), n-Hexane, n-Propyl Acetate, pentane, silver, and tin. "The results of the chemical sampling indicated that all of the chemical samples were below the respective Permissible Exposure Limits (PELs) established by the Occupational Safety and Health Administration (OSHA), as well as below the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs) and Short Term Exposure Limits (STELs)." APA p. 482.

VIII. The claimant cannot meet its burden under 42-11-10.

According to S.C. Code § 42-11-10, "[o]ccupational disease" means a disease arising out of an in the course of employment that is due to *hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged*. In a claim for an occupational disease, the employee shall establish that the occupational disease arose directly

and naturally from exposure in this State to the hazards *peculiar* to the particular employment by a preponderance of the evidence. There is no showing of a hazard that is peculiar to the occupation in which the employee is engaged. As stated above, the results of the IH Report of Industrial Hygiene Sampling indicated that all of the chemical samples were below the respective OSHA PELs, ACGIH TLVs and ACGIH STELs. There has been no evidence that Claimant was exposed to a hazard in excess of those ordinarily incident to employment, nor peculiar to Claimant's occupation. The claimant alleges that exposure to solder fumes caused his condition. However, the expert reports of Dr. Early, Dr. Feldman, and Dr. Mitsos, summarized above, strike down this claim.

IX. The claimant cannot meet its burden under 42-11-40.

According to S.C. Code § 42-11-40, "In no case shall an employer be liable for compensation for an occupational disease unless such disease was contracted by the employee while in the employ of the employer as a direct result of the employment." Both Dr. Feldman and Dr. Early testified that HP may be idiopathic. Furthermore, the fact that the claimant's condition worsened after he retired, is a clear indicator that the claimant's condition was not caused by solder fumes at work.

X. The claimant is statutorily barred from receiving workers' compensation benefits, because he failed to report his alleged injury to his employer within the ninety-day deadline.

According to S.C. Code §42-15-20, "[o]nce an employee is disabled and knows or should have known of the compensability of this disability, an employee has ninety days to report the condition to [his] employer in order to receive workers' compensation." On October 30, 2015, the claimant visited Pulmonary and Critical Care Medicine reporting that he had had a cough for years but it had worsened when he was seen for his annual physical that summer. He also had an abnormal CT scan. On December 4, 2015, he returned with a list of chemicals that he worked with, including "Flux-Off Rosin" and occasionally "green" cleaner. He stated that he "does a lots of soldering at work." His pulmonary function test showed his FVC at 91% of predicted and FEV1 at 92% of predicted. The claimant's assessment was as follows: dyspnea; abnormal CT scan; with peripheral GGO (ground-glass opacification) and occasional peripheral cyst. Concern for hypersensitivity pneumonitis, chronic eosinophilic pneumonia or other interstitial lung disease (ILD). May need bronchoscopy for cell count/diff; and persistent chronic cough. On February 17, 2016, the claimant returned reporting that he had been doing well since his last visit. He continued to have a morning cough which was productive of phlegm. His lung function test was concerning for mild restrictive changes with a moderate diffusing defect. He denied significant shortness of breath. On March 28, 2016, the claimant returned reluctant to use steroids after having side effects from his original prednisone course. He was also hesitant to pursue a lung biopsy for definitive diagnosis since he had been feeling so well. On June 28, 2016, he returned with a cough and reported his illness had lasted about two years. His pulmonary function test showed his FVC at 78% of predicted and FEV1 at 82% of predicted. The physician noted that he took a six minute walk and was able to walk 87% of the predicted distance. He was referred for a possible thorascopic biopsy. On September 12, 2016, the claimant's biopsy results came back likely chronic hypersensitivity pneumonitis "possibly due to soldering fumes."

Here, the claimant clearly had concerns that his lung condition was caused by exposure to chemicals at work. He returned to Pulmonary and Critical care on December 4, 2015 with a list of chemicals that he worked with, and advised medical personnel that he works with solder. It is worth noting that the claimant refused a biopsy at his March 28, 2016 visit, and his delay in undergoing the biopsy resulted in the results not being revealed until September 12, 2016. Moreover, the biopsy revealed likely pneumonitis, which is the same concern listed in the claimant's assessment at his December 4, 2015 visit. At the latest, the ninety-day time period for the claimant to report his alleged injury to his employer began on December 4, 2015, and it expired in March 3, 2016. By the claimant's own admission, he did not report his injury to the employer until September 6, 2016 (six days prior to the biopsy results were released). This is further evidence that the claimant did not rely on the biopsy results in forming his belief that he suffered a work-related injury. Therefore, the claimant knew or should have known of his alleged disability on or before December 4, 2015, and he is barred from receiving workers' compensation benefits, due to failing to report the alleged injury to his employer before the statutory deadline.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1614297

Kenneth D. Christian,	)	
Employee,	)	
Claimant/Respondent,	)	
	)	
vs.	)	
	)	
Sew Eurodrive, Inc.,	)	BRIEF OF DEFENDANTS/APPELLANTS
	)	
Employer,	)	
and	)	
	)	
Great American Alliance Insurance Company,	)	
	)	
Carrier,	)	
Defendants/Appellants.	)	

STATEMENT OF THE CASE

On October 24, 2019, the Claimant, through counsel, filed a Form 50 request for hearing, alleging that the Claimant sustained an injury/occupational disease to his bilateral lungs and psyche when he “worked with chemicals which over time caused damage to his lungs.” The Form 50 further provides an alleged date of injury of August 26, 2016, and that notice of the injury was given to the employer on September 6, 2016. The Claimant alleged entitlement to temporary total benefits for “[a]ll time lost at work,” as well as permanent total disability. The Claimant further alleged that he has reached maximum medical improvement (MMI), “but retains the option for a bilateral lung transplant.”

On November 25, 2019, the Defendants, through counsel, filed a Form 51, denying that the Claimant sustained an injury by accident arising out of and in the course of employment. In addition, the Defendants asserted the affirmative defenses of failure to meet the two-year statute of limitations to file a claim, failure to give immediate and timely notice of a claim, as well as all

defenses and affirmative defenses of Chapter 11 of the South Carolina Workers' Compensation Act (the Act).

The parties participated in mediation on April 22, 2019, which resulted in an impasse. A hearing was held on January 24, 2020, before the Honorable Gene McCaskill (hereinafter, the "Single Commissioner"), in Spartanburg, South Carolina, to determine the issues outlined in the parties' Forms 50 and 51. At the hearing, it was the Claimant's position that the Claimant sustained compensable injuries under the Act, and he was entitled to back owed temporary total disability ("TTD") benefits from the date that he left work from "involuntary retirement" until his treating doctor wrote him out of work on November 19, 2018. The Claimant further sought a finding that back TTD not be discounted as far as the commuted value. In addition, the Claimant alleged entitlement to past and lifetime medical treatment, as well as a finding that the Claimant is permanently and totally disabled.

It was the Defendants' position that the Claimant did not sustain an injury by accident arising out of and in the course of employment, and that the Claimant failed to meet his burden of proving that the Claimant's condition was causally related to exposure to solder at SEW. In addition, the Defendants' argued that the Claimant failed to give immediate and proper notice under the Act, in addition to the other defenses raised in the Form 51, and the Defendants' Form 58 and Continuation Sheet. Thus, the Defendants denied that the Claimant was entitled to any benefits under the Act.

Following the hearing, the Single Commissioner issued a Decision and Order, dated July 5, 2020, whereby he found, in relevant part: 1) The Claimant suffered a compensable work-related occupational disease to his bilateral lungs; and 2) The claim was filed timely.

On July 17, 2020, the Defendants, through counsel, timely filed a Form 30 Request for Commission Review.

STATEMENT OF THE FACTS/EVIDENCE

Mr. Kenneth Christian (the “Claimant”) began working with SEW Eurodrive, Inc. (“SEW”) in September of 1983 in the maintenance department. (Hr. Tr. p. 12, lines 5 – 11). After approximately eight or nine years, the Claimant moved to the assembly molding department within SEW. (Hr. Tr. p. 12, lines 12 – 17). A portion of the Claimant’s job duties in the molding department included soldering. (Hr. Tr. p. 12, line 18 – p. 13, line 1). The Claimant testified that he started experiencing coughing and symptoms with his lungs in the early 2000s. (Hr. Tr. p. 17, lines 3 - 9. Thereafter, the Claimant, on his own, began receiving medical treatment for the symptoms in his lungs. The Claimant was eventually diagnosed with hypersensitivity pneumonitis (“HP”). The Claimant retired from SEW in December of 2016, allegedly due to his lung condition. In the Claimant’s deposition that took place on December 13, 2016, the Claimant testified that he actually planned to retire from SEW in May of 2017, regardless of whether he had a lung condition. (Hr. Tr. p. 44, line 2 – p. 47, line 3). It is undisputed that the Claimant’s condition significantly worsened after his retirement from SEW.

ISSUES PRESENTED

- I. Did the Single Commissioner err in finding that the Claimant met his burden of proving that he sustained an injury/occupational disease by accident arising out of and in the course of his employment with SEW?**
- II. Did the Single Commissioner err in finding that the Claimant gave immediate and timely notice of a claim?**

ARGUMENTS/DISCUSSION

- I. The Single Commissioner erred in finding that the Claimant met his burden of proving that he sustained an injury/occupational disease by accident arising out of and in the course of his employment with SEW?**

S.C. Code § 42-1-160(A) provides, in pertinent part: “[i]njury” 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 and except such diseases as are compensable under the provisions of Chapter 11 of this title. S.C. Code § 42-11-10 provides, in pertinent part: “[i]n a claim for an occupational disease, the employee shall establish that the occupational disease arose directly and naturally from exposure in this State to the hazards peculiar to the particular employment by a preponderance of the evidence.” For the reasons stated below, the Claimant has failed to meet his burden of proving that he sustained an injury/occupational disease by accident arising out of and in the course of his employment with SEW.

A. The Claimant’s condition significantly worsened after he retired from SEW in December of 2016.

The evidence clearly shows that the Claimant’s condition significantly worsened after he retired from SEW in December of 2016. At the hearing, the Claimant testified that Dr. Justin Gregg, whom the Claimant described as a “very smart doctor,” advised the Claimant that if he went back to work, his lung condition would worsen. (Hr. Tr. p. 46, lines 12 – 16). Allegedly heeding Dr. Gregg’s advice, the Claimant retired from SEW in December of 2016. (Hr. Tr. p. 44, line 2 – p. 47, line 3). However, it is worth noting that the Claimant previously testified in his deposition that he had already planned on retiring in May of 2017. *Id.* The Claimant testified that he never returned to SEW after his retirement in December of 2016. (Hr. Tr. pp. 81, line 21 – p. 82, line 13). Despite the undisputed fact that the Claimant was completely removed from SEW after his retirement, the Claimant’s lung condition continued to significantly deteriorate. *Id.* Dr. Early, in his report from July 26, 2019, addressed this issue and opined as follows:

The lack of improvement in Mr. Christian’s respiratory condition after removal from work argues against a work related causative

factor for his HP. One of the characteristics of hypersensitivity pneumonitis (HP) is that it typically gets better when removed from the trigger. If the trigger had been his work related exposures (solder, cleaning materials, and solder removal products) then he should have improved in late 2016 after removal from work. He worsened in late 2016. (APA p. 631).

Dr. Early reiterated his stance during his deposition. He testified that if the Claimant had HP, then he should have gotten better when he moved away from the offending antigen. However, as Dr. Early highlighted, the Claimant's condition became significantly worse after he left the workplace, despite steroids. (APA p. 1128). Notably, during the Claimant's second deposition on February 15, 2019, the Claimant testified that he was taking BREO and prednisone, because his condition was worsening. (Hr. Tr. p. 34 lines 11 – 19). Again, this was despite the fact that the Claimant had retired from SEW in 2016. At the hearing, the Claimant admitted that no doctor told him that he needed to stop working, but that the Claimant felt that the doctors felt that his condition might improve if he left the environment. (Hr. Tr. p. 45, lines 17 – 23). It is notable that the Claimant did not seek to obtain an expert opinion from Dr. Gregg to explain why the Claimant's symptoms worsened after he was no longer exposed to solder at SEW. The medical evidence shows that, given the fact that the Claimant's condition progressively worsened after his retirement from SEW, exposure to solder at SEW was not the most probable cause of the Claimant's current symptoms and complaints regarding his lungs.

B. The Claimant's experts failed to investigate and/or address the Claimant's significant family history of lung problems.

The Claimant's experts failed to investigate and/or address the Claimant's significant family history of lung problems. The Claimant sought and obtained opinions from Ted W. Simon, Ph.D., and James Lawrence Pearl, M.D. regarding causality, who both opined that the Claimant's complaints and symptoms of lung problems are related to exposure to solder at SEW. However, none of the Claimant's expert reports mention the Claimant's significant family history of lung

problems. It is undisputed that the Claimant has a long-standing personal and family history of lung problems. The Claimant testified that he first began having symptoms with his lungs in the early 2000s. (Hr. Tr. p. 17, lines 3 – 9). The Claimant testified that he had a sinus surgery in 2001. (Hr. Tr. p. 28, line 24 – p. 29, line 4). In 2002, Claimant had a heart stent placed. (Hr. Tr. p. 33, lines 2 – 4). The Claimant testified that his father passed away from lung cancer. (Hr. Tr. p. 47, lines 4 – 15). The Claimant had five brothers. One of the Claimant's brothers passed away from lung cancer. Another one of the Claimant's brothers passed away from melanoma. Moreover, a third brother died from lung disease. (Hr. Tr. p. 49, line 17 – p. 52, line 3). Notably, Dr. Early testified in his deposition that it is possible that the Claimant could have been exposed to whatever caused the Claimant's brother's lung disease. (APA p. 1128). The failure of the Claimant's experts to address this family history is a critical omission.

C. There are multiple other potential causes for the Claimant's lung condition.

The evidence shows multiple potential causes for the condition to the Claimant's lungs other than exposure to solder at SEW. In his report, dated July 26, 2019, Dr. Early provided the following: "Allergy Partners of the Upstate was concerned enough about fungal exposure to do an Aspergillus pinprick test. This test came back positive. Aspergillus is a well-known trigger for fungal HP. It is thought to be related to HP in compost exposed workers, hay exposed workers, moldy barley exposed workers, and moldy tobacco exposed workers. This fungus is one of the most commonly known substances mediating HP. In the over 1000 pages of medical records that I reviewed, no one documents the moisture conditions in Mr. Christian's home." (APA p. 631; emphasis added). Dr. Early further provided in this report as follows: "[t]he medical opinions that I reviewed who opined that he had a work related HP did not discuss his home exposures, his woodworking or his positive Aspergillus pinprick test. I think that it is more likely than not Mr.

Christian's work related exposures did not aggravate or contribute to his HP." (APA p. 632; emphasis added).

Dr. Albert Mitsos also submitted an expert report wherein he opined that medical records failed to demonstrate any evidence to any degree of medical certainty to causally relate the Claimant's condition to soldering fumes in the work environment. Dr. Mitsos also addressed the Claimant's positive Aspergillus test, and provided the following:

Eosinophilic reaction is consistent with hypersensitivity or allergic response to an antigen. However, the only positive antigen found was Aspergillus without antibodies. This antigen/antibody profile implies that Mr. Christian had been prior exposed to Aspergillus but no longer was mounting a reaction via antibody response. This is also consistent with hypersensitivity interstitial pneumonitis secondary to Aspergillus. Mr. Christian has demonstrated a positive skin test to mold... (APA p. 828). Mr. Christian, while he suffers hypersensitivity interstitial pneumonitis which can be secondary to many antigens has not demonstrated an antigenic reaction to the soldering mold and thus, has never demonstrated any evidence which would relate his condition to the soldering mold. (APA p. 829).

Dr. Early highlighted that soldering is not in the top 100 causes for HP, and, further, that HP can be an idiopathic disease. (APA p. 1127). Moreover, Dr. Feldman testified in his deposition that the Claimant's condition could have stemmed from something that he was exposed to 20 or 30 years ago, and is just now manifesting itself. (APA p. 1116).

Other factors to consider regarding the Claimant's condition are: 1) the Claimant's previously listed hobbies of woodworking and landscaping; 2) the Claimant's use of pest control spray in his home without inquiring about the chemicals that were used; 3) the dog that the Claimant had living with him; 4) the fact that the Claimant previously used gas logs, and has since gotten rid of them because they aggravated his condition and bothered his wife; 5) the fact that the Claimant testified that he lived in his current house for over nine years, which was built in the 1940s; and 6) the fact that the Claimant testified that he never had any mold testing done at his

prior home at 109 Briar Park Drive. (Hr. Tr. p. 11, lines 16 – 19; p. 54, line 8 – p. 65, line 20). The Claimant also admitted that cutting the grass aggravated his condition. (Hr. Tr. p. 56, line 8 – p. 57, line 14). The Claimant admitted that he worked in the electrical field for a number of years prior to working for SEW. However, he testified that he never inquired as to whether or not he could have been exposed to dangerous or toxic materials at any of his previous jobs, which included employment at Charleston Air Force Base, Pet Dairy Company, Platt Saco-Lowell, Marquette Metal Products, and National Water Lift in Beaufort (where he worked on a missile guidance system). (Hr. Tr. p. 37, line 4 – p. 39, line 10). Moreover, it is notable that the Claimant testified at the hearing that his symptoms were worse in the mornings and evenings, even though he previously worked the day shift at SEW. (Hr. Tr. p. 71, lines 16 – 24). It is interesting that the Claimant admitted that his symptoms were worse during times when he was not exposed to solder at SEW.

D. The evidence shows that the Claimant was exposed to only a minimal amount of solder.

The Claimant testified that he would sometimes solder about two or three hours per day. However, the evidence shows that the Claimant was only exposed to a minimal amount of solder. Wade Blackwell is production manager/safety manager at SEW, who has worked at SEW for nearly 20 years. (Hr. Tr. p. 97, lines 13 – 15). Mr. Blackwell testified that SEW has five plants in the United States of America, and Mr. Blackwell was not aware of anyone ever complaining of lung problems related to exposure at work. (Hr. Tr. p. 98, line 22 – p. 99, line 24). Similar to Mr. Mr. Blackwell even spent at least two or three years working in the same lab as the Claimant, and performing the same job as the Claimant. (Hr. Tr. p. 97, line 16 – p. 98, line 3). When describing the amount of time that was spent soldering in the lab, Mr. Blackwell testified “[y]ou wouldn’t use hours. You would use minutes.” (Hr. Tr. p. 100, lines 6 – 13). He went on to explain that the

electronic lab was never a for-profit business entity within the company, and it is not economical for someone to be soldering for three hours per day. He further testified that an employee would be admonished for soldering for three hours per day, because this would be wasting company money. (Hr. Tr. p. 100, line 15 – p. 102, line 8).

To further illustrate the amount of time that is actually spent soldering at SEW, Mr. Blackwell obtained the log showing the amount of work the Claimant performed in a week in 2006. Mr. Blackwell made it clear that this was just one sample “snapshot” that was pulled from his computer, and if asked by Claimant, his counsel, or his experts, Mr. Blackwell could have provided his entire work history. However, Mr. Blackwell was never asked to do so. The log shows that there were twenty-one repairs done over a 6 day work week, and only four of the twenty-one repairs required soldering. To further illustrate amount of soldering, or lack thereof, that was done at SEW, Mr. Blackwell testified that only fifteen rolls of solder were ordered from 2000 throughout the time that the Claimant continued to work with SEW. Moreover, he testified that “[p]robably more of that solder walked off or it wound up in the trash can than what we used...” (Hr. Tr. p. 102, line 9 – p. 109, line 21; APA#24; APA#34).

Mr. Blackwell further testified that as soon as the Claimant claimed that he was having the lung problems at issue, SEW hired an industrial hygiene company to conduct a study. (Hr. Tr. p. 109, line 22 – p. 112, line – 15; APA#18). On March 17, 2017, Palmetto EHS, LLC, completed a report, wherein industrial hygiene sampling for various chemicals at SEW was conducted. (APA#18). The following materials were sampled: acetone, antimony, copper, ethanol, hexane isomers, isopropyl alcohol, methanol, 1 methoxy-2 propanol (PGME), n-Hexane, n-Propyl Acetate, pentane, silver, and tin. “The results of the chemical sampling indicated that all of the chemical samples were below the respective Permissible Exposure Limits (PELs) established by the Occupational Safety and Health Administration (OSHA), as well as below the American

Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs) and Short Term Exposure Limits (STELs).” (APA p. 482). Mr. Blackwell testified that nothing revealed in the Industrial Hygiene Study gave him cause for concern. (Hr. Tr. p. 112, lines 6 – 15). Mr. Blackwell described the lab that the Claimant was working in as being a very generous size room, with high ceilings, and proper ventilation. (Hr. Tr. p. 112, line 16 – p. 114, line 18).

The Claimant’s experts did not come to SEW to observe the work environment. Furthermore, the Claimant testified that he never took the hygiene study to the Dr. Gregg, Dr. Bolton, or Dr. Payne. (Hr. Tr. p. 78, line 25 – 79, line 23). Dr. Early testified in his deposition that he was unaware of any names or statistics about any other employee in the employer’s history that suffered from HP related to solder exposure. (APA p. 1128). Unlike the Claimant’s experts, as well as Dr. Leonard Cochrane (whom the Single Commissioner gave the greatest weight), Dr. Early actually visited SEW to examine the work environment. (APA p. 626). Dr. Early’s report from July 26, 2019 provides the following:

The products Mr. Christian was exposed to in soldering were primarily inorganic products. The soldering flux was inorganic. The soldering pen was inorganic. Additionally, Mr. Christian was repairing 3-4 units per day for 220 workdays per year. Of these 660-880 units per year, it was estimated about half required soldering. Even if he never used his ventilation suction fan, the amount of solder fume exposure would have been rather minimal in my opinion. (APA p. 631).

The evidence clearly shows that the Claimant was only exposed to a minimal amount of solder while working at SEW.

- E. There is no evidence that any employees of SEW have ever sustained a work-related lung injury due to exposure solder fumes and/or other chemicals at SEW.

During the hearing, the Claimant testified that he was not aware of anyone that worked in the lab at SEW who ever complained of having lung problems from exposure to solder or other chemicals at SEW. (Hr. Tr. p. 40, line 15 – p. 43, line 13). This testimony is consistent with the

hearing testimony of Wade Blackwell and Rickey Jones. Mr. Blackwell, who is currently employed as a purchasing manager and safety manager, actually worked two or three years alongside the Claimant in the lab. As indicated above, Mr. Blackwell testified that he knew of people who worked at SEW for thirty (30) years or more, and he was unaware of anyone ever complaining of lung or respiratory issues, in or outside of the lab, across SEW's five plants across the country. (Hr. Tr. p. 98, line 22 – p. 99, line 24). Rickey Jones is employed with SEW as an environmental health and safety coordinator, and he has worked with SEW for approximately thirteen (13) years. (Hr. Tr. p. 128, lines 7 – 20). Consistent with the testimony of the Claimant and Mr. Blackwell, Mr. Jones testified at the hearing that he was not aware of anyone that has worked at SEW that has complained of lung problems. (Hr. Tr. p. 138, line 20 – p. 139, line 21). Mr. Jones further testified that either he or Mr. Blackwell is to be notified in the event of an accident. (Hr. Tr. p. 139, lines 2 – 14). Furthermore, the Claimant did not produce any evidence that any other SEW employees, current or former, ever complained of any problems with their lungs or respiratory system. Therefore, no evidence was submitted at the hearing showing that any employee of SEW, other than the Claimant, ever complained of lung or respiratory problems due to solder fumes and/or other chemicals at SEW.

II. The Claimant failed to give immediate and timely notice of a claim.

The Claimant failed to give immediate and timely notice of a claim. South Carolina courts have held that S.C. Code § 42-15-20 applies in occupational disease cases. See Bass v. Isochem, 617 S.E.2d 369, 380, 365 S.C. 454 (S.C. 2005) (citing Hanks v. Blair Mills, Inc., 286 S.C. 378, 335 S.E.2d 91 (Ct. App. 1985)). Section 42-15-20 requires an injured employee to “immediately on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a notice of the accident.” Bass v. Isochem, 617 S.E.2d 369, 381, 365 S.C. 454 (S.C. 2005). “Generally, the injury is not compensable unless notice is given within ninety days.” Id.

Once an employee is disabled and knows or should have known of the compensability of his disability, an employee has ninety days to report the condition to his employer in order to receive workers' compensation. See S.C. Code § 42-15-20. "An employee must give notice of an occupational disease claim within ninety days after the date he becomes disabled and could discover with reasonable diligence that his condition is compensable." Id. "Notice begins to run when the employee becomes disabled and could discover with reasonable diligence his condition is compensable." Id.

On October 30, 2015, the Claimant visited Pulmonary and Critical Care Medicine reporting that he had had a cough for years, but it had worsened when he was seen for his annual physical that summer. He also had an abnormal CT scan. (APA pp. 84 – 90). On December 4, 2015, he returned with a list of chemicals that he worked with, including "Flux-Off Rosin" and occasionally "green" cleaner. The note also shows that the Claimant used "electronic silver solder (2% silver 62% tin, 36% lead). The Social History Narrative indicates that he "does lots of soldering at work." His pulmonary function test showed his FVC at 91% of predicted and FEV1 at 92% of predicted. The Claimant's assessment was as follows: dyspnea; abnormal CT scan: with peripheral GGO (ground-glass opacification) and occasional peripheral cyst. Concern for hypersensitivity pneumonitis, chronic eosinophilic pneumonia or other interstitial lung disease (ILD). May need bronchoscopy for cell count/diff; and persistent chronic cough. On February 17, 2016, the Claimant returned reporting that he had been doing well since his last visit. He continued to have a morning cough which was productive of phlegm. His lung function test was concerning for mild restrictive changes with a moderate diffusing defect. He denied significant shortness of breath. This note also references the same list of chemicals that the claimant presented on December 4, 2015. (APA pp. 91 – 99). On March 28, 2016, the Claimant returned reluctant to use steroids after having side effects from his original prednisone course. He was also hesitant to

pursue a lung biopsy for definitive diagnosis since he had been feeling so well. (APA pp. 100 – 108). On June 28, 2016, the Claimant presented to GHS Lung Center with a cough and reported his illness had lasted about two years. His pulmonary function test showed his FVC at 78% of predicted and FEV1 at 82% of predicted. The physician noted that he took a six minute walk and was able to walk 87% of the predicted distance. He was referred for a possible thorascopic biopsy. On September 12, 2016, the presented to GHS Lung Center for a follow-up after his lung biopsy on August 26, 2016. The biopsy results came back likely chronic hypersensitivity pneumonitis “possibly due to soldering fumes.” (APA pp. 141 – 145).

At the hearing, the Claimant was questioned regarding his deposition testimony. During the Claimant’s deposition, he was asked when he first formulated the idea that his condition could be work-related. The Claimant responded “[a]fter I went to the lung doctor, and he started looking at the lungs and asking questions and what I did and stuff like this and how long I had been working, et cetera.” (Hr. Tr. p. 68, lines 10 – 15). He further testified “I went and seen the family doctor around November of 2015. So, they made me an appointment to go see a lung doctor. So, I’m estimating it was probably maybe early 2016 when I got an appointment.” (Hr. Tr. p. 68, lines 17 – 24).

In July of 2016, six months prior to his retirement, the Claimant completed an application for disability. (Hr. Tr. p. 88, line 6 – p. 91, line 15; APA pp. 623 – 624). In the application, the Claimant indicated that his disability was due to a “sickness,” as opposed to an “accident.” (APA pp. 623). Furthermore, the Claimant indicated that his symptoms began to appear in 2014¹. *Id.* When filling out the application question asking “[i]s this condition due to an injury or sickness arising out of your employment?,” the Claimant circled “no.” (APA pp. 624). Notably, the

¹ This statement corroborates a medical note from January 14, 2016, from Allergy Partners of the Upstate, wherein the Claimant reported that he was bothered by chronic, daily, coughing, and his symptoms began 2 years ago (which would be 2014), and there were no triggers identified. (APA p. 305).

Claimant was given the option to reply “yes,” “no,” or “unknown” to this question. Interestingly, the Claimant admitted that he completed this application five months after he obtained MSDS sheets and records from SEW, because he believed his condition was related to exposure to solder. (Hr. Tr. p. 88, lines 6 – 18).

The Claimant clearly had concerns that his lung condition was caused by exposure to chemicals at work in 2015. Moreover, the aforementioned disability application, along with the January 14, 2016 medical note from Allergy Partners of the Upstate, suggests that the Claimant may have believed that his symptoms were work-related in 2014. The Claimant returned to Pulmonary and Critical care on December 4, 2015 with a list of chemicals that he worked with, and advised medical personnel that he works with solder. It is worth noting that the Claimant refused a biopsy at his March 28, 2016 visit, and his delay in undergoing the biopsy resulted in the biopsy not being performed until August 26, 2016. (APA pp. 100 – 108). Moreover, the biopsy revealed likely pneumonitis, which is the same concern listed in the Claimant’s assessment at his December 4, 2015 and February 17, 2016 visits. Notably, the Single Commissioner included a finding of fact in the Decision and Order stating that he was “persuaded that Claimant had concerns about the origin of his lung condition dating as far back as 2015.” (Decision and Order, dated July 5, 2020, p. 21, Finding of Fact no. 14). At the latest, the ninety-day time period for the Claimant to report his alleged injury to his employer began on February 17, 2016, and it expired after May 17, 2016. By the Claimant’s own admission, he did not report his injury to the employer until September 6, 2016 (six days prior to the Claimant’s follow-up appointment with GHS Lung Center after the biopsy). (Form 50, dated October 24, 2019; APA pp. 141 – 145). This is further evidence that the Claimant did not rely on the biopsy results in forming his belief that he suffered a work-related injury. Therefore, the Claimant knew or should have known of his alleged disability on or

before February 17, 2016, at the latest, and he is barred from receiving workers' compensation benefits, due to failing to report the alleged injury to his employer before the statutory deadline.

CONCLUSION

For the reasons stated above, the Defendants respectfully request that the Commission reverse the Single Commissioner's rulings that the Claimant sustained a compensable injury/occupational disease, and that his claim was timely filed, and that the Commission find that the Claimant: 1) failed to meet his burden of proving that he sustained an injury/occupational disease by accident arising out of and in the course of his employment with SEW; 2) failed to give immediate and timely notice of a claim; and 3) is not entitled to any benefits under the Act.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.

 *Willie Peters for B.M.R.*

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Attorney for Defendants

Date: September 11, 2020

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1614297

Kenneth D. Christian,)
Employee,)
Claimant,)
vs.)
Sew Eurodrive, Inc.,)
Employer,)
and)
Great American Alliance Insurance Company,)
Carrier,)
Defendants.)

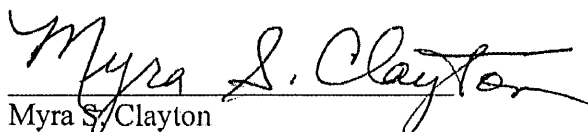
CERTIFICATE OF SERVICE

I, Myra S. Clayton, do hereby certify that I am the Legal Assistant for Benjamin M. Renfrow, Esquire, attorney for the defendants with **WILLSON JONES CARTER & BAXLEY, P.A.** in Greenville, South Carolina, and that on the 11th day of September, 2020, I sent via electronic mail and via mail the foregoing BRIEF OF DEFENDANTS/APPELLANTS to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

(Via email: phillips@smithjordan.com; harrington@smithjordan.com)

(Via First Class Mail):

Thomas S. Phillips, Esq.
Smith Jordan, PA
PO Box 1207
Easley, SC 29641



Myra S. Clayton
to Benjamin M. Renfrow, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1614297

Kenneth D. Christian,	)
	)
Employee,	)
Respondent,	)
	)
vs.	)
	)
SEW-EURODRIVE, Inc.,	)
	)
Employer,	)
and	)
	)
Great American Alliance Insurance Company,	)
	)
Carrier,	)
Appellant.	)

EMERGENCY
MOTION TO RECONSIDER
REQUEST FOR PROPOSED
DECISION & ORDER

TO: THE HONORABLES R. MICHAEL CAMPBELL, II, AISHA TAYLOR, AND AVERY B. WILKERSON, JR. (THE "APPELLATE PANEL"); AND BENJAMIN M. RENFROW, ESQ., ATTORNEY FOR APPELANT:

The undersigned hereby moves the Appellate Panel for immediate reconsideration of their Request for a Proposed Decision & Order (the "Order Instructions"). This Motion is based upon extraordinary circumstances and the following grounds:

1. The Order Instructions specifically set forth grounds for reversal of the Single Commissioner **based upon evidence that does not exist in the record.**
2. Specifically, the Order Instructions of the Appellate Panel state, "We give *greater weight to the two South Carolina physicians who had an opportunity to evaluate the claimant in person as well as claimant's workplace.*"
3. None of the defense experts (physicians) personally evaluated Claimant.
4. Only one (1) of the defense experts (physicians) allegedly visited Claimant's

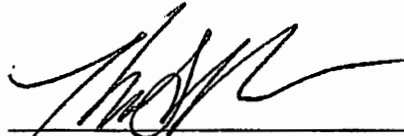
SCWCC
DEC 01 2020
JUDICIAL¹⁷

workplace.

5. Therefore, there do not exist two (2) physicians that evaluated Claimant and his workplace. Likewise, there does not even exist one (1) physician that evaluated Claimant and his workplace.

WHEREFORE, the undersigned moves the Appellate Panel for immediate reconsideration of their Request for a Proposed Decision & Order, attached hereto as Exhibit "A". **Given the non-existence of facts for which the Order Instructions are based, as outlined above, the undersigned would show that an Order cannot therefore be properly drafted.**

Respectfully Submitted,



Thomas S. Phillips
Smith Jordan, P.A.
P.O. Box 1207
Easley, SC 29641
(864) 855-1661
phillips@smithjordan.com

ATTORNEY FOR RESPONDENT

November 23, 2020
Easley, South Carolina

EXHIBIT "A"

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER**

This document is not a Decision and Order. It is a request for a proposed order.
The Commissioners reserve the right to modify and/or delete any or all portions
of the submitted Decision and Order.

**Ken Christian v Sew-Eurofrive
SCWCC: 0503764
Commission Panel: Wilkerson, Taylor, Campbell; Chair
Order Assigned to Commissioner: Taylor
Court Reporter – Amber Scarborough- 803-252-3445**

Benjamin M. Renfrow
Thomas S. Phillips

Defendants/Appellant
Claimant/Respondent

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **Reversed** the decision and order of the Single Commissioner. We give greater weight to the two South Carolina physicians who had an opportunity to evaluate the claimant in person as well as claimant's workplace. The air quality testing weighed into this decision as well.

Mr. Renfrow please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at ehollmon@wcc.sc.gov or call at 803.737.5737

Judicial

Transmitted via email this 23 November 2020

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1614297

Kenneth D. Christian,	)	
Employee,	)	
Claimant,	)	
	)	
vs.	)	
	)	
Sew Eurodrive, Inc.,	)	RESPONSE TO CLAIMANT'S MOTION
	)	TO RECONSIDER REQUEST
Employer,	)	FOR PROPOSED
and	)	DECISION & ORDER
	)	
Great American Alliance Insurance Company,	)	
	)	
Carrier,	)	
Defendants.	)	

In response to the Claimant's Motion to Reconsider Request for Proposed Decision & Order, the Defendants would argue as follows:

I.

It is clear from the evidence and the Full Commission's decision that this case should be overturned. Defendants submitted expert reports from several doctors in South Carolina - Dr. Gregory Feldman, and Dr. Gordon Early. Both doctors thoroughly reviewed all of the medical records, the Industrial Hygiene Reports and one of them went to the actual job site where the Claimant worked, and saw what and how he did his job. These two in-State opinions and the overwhelming evidence support the Full Commission's finding. While neither of them actually treated the Claimant, or evaluated him in person the evidence is overwhelming. Dr. Early was the only provider from either side to go to the plant and really look at the job and the alleged exposure before giving his final opinion.

II.

Dr. Feldman is a very well-respected South Carolina based pulmonologist. He says that soldering is not in the top one hundred potential causes of Interstitial Lung Disease and Hypersensitivity Pneumonitis ("HP"). And that even if Claimant had HP he had a "non-organic type" not an organic type as would be caused by soldering/ chemicals.

III.

Dr. Gordon Early is the other South Carolina provider who offered opinions on this case. He is a Toxicologist. He performed a thorough file review, and again actually went to the plant and reviewed the job site and the type of work Claimant performed. His opinion was that there is essentially no way this job could have caused the Claimant's lung disease.

IV.

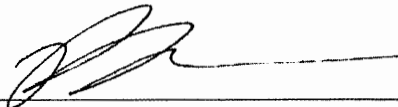
The Claimant had expert reports from several out of State providers, and Dr. Cochrane only signed a Questionnaire causally relating the Claimant's condition. He never went to the job site or obtained information on how much soldering the Claimant performed. There is no evidence he even evaluated the Industrial Hygiene Reports or had any real knowledge about the Claimant's potential exposure other than the facts given to him by Claimant and his attorney.

VII.

For the reasons set forth above, the Defendants respectfully request that this Commission issue an Order denying the Claimant's Motion to Reconsider Request for Proposed Decision & Order. The typed instruction can be easily fixed to support the Full Commissions' intentions which are clearly to overturn the Single Commissioner's Order.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.



Benjamin M. Renfrow, Esquire
325 Rocky Slope Road, Suite 201
Greenville, SC 29607
Attorneys for Defendants

Date: November 25, 2020

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1614297

Kenneth D. Christian,)
)
 Claimant,)
)
v.)
)
SEW-EURODRIVE, Inc.,)
)
 Employer,)
)
and)
)
Great American Alliance)
Insurance,)
)
 Carrier/Defendants.)
-----)

FULL COMMISSION HEARING

Monday, October 12, 2020
2:08 p.m. - 2:32 p.m.

COPY

The Full Commission Hearing was heard virtually via ZOOM before Commissioners Aisha Taylor, Avery Wilkerson, and R. Michael Campbell, II, at the South Carolina Workers' Compensation Commission, 1333 Main Street, Columbia, South Carolina on the 12th day of October, 2020, before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



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1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES

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EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



1 CALL TO ORDER:

2 COMMISSIONER CAMPBELL: Madame Court Reporter, please
3 call the case.

4 COURT REPORTER: Okay. Today is October 12th, 2020.
5 This is South Carolina Workers' Compensation
6 case number 1614297. This is the case of
7 Kenneth Christian versus SEW-EURODRIVE,
8 Incorporated and Great American Alliance
9 Insurance. The Appellate is the Defendant,
10 represented by Benjamin Renfrow. The
11 Respondent is represented by Thomas Phillips.
12 Each side is allowed ten minutes for oral
13 argument and the Appellant three minutes in
14 reply. You are requested to argue the grounds
15 of exception and stay within the record.

16 COMMISSIONER CAMPBELL: All right. And prior to
17 going on the record we had a discussion about
18 this, but there were some exhibits that had
19 been inadvertently omitted but were listed as
20 a part of the -- the Order and those will be
21 included as a part of the record and the -- the
22 -- at the very least the Order will be amended
23 to reflect that.

24 MR. RENFROW: Excellent. Thank you.

25 COMMISSIONER CAMPBELL: All right. Well, if you



1 would, Mr. Renfrow you have ten minutes, sir.

2 **APPELLANT/DEFENDANT'S POSITION:**

3 **MR. RENFROW:** Thank you, Commissioner, and may it
4 please the Court. Commissioner, this is a sad
5 case and a sympathetic case. By all accounts
6 Kenneth Christian was a good man and was a very
7 good employee for 20 plus years while he worked
8 for SEW-EURODRIVE in the upstate of South
9 Carolina. For about two hours back in January
10 Mr. Phillips and I had to ask questions of Mr.
11 Christian while his oxygen tank hummed in the
12 back and he and his wife were very sad. It --
13 it's a terrible situation and certainly a very
14 sad and sympathetic case. We found out Mr.
15 Christian just passed away this week I believe
16 or last week. But the sadness of this case
17 can't be a reason ignore the overwhelming facts
18 and the law in the state of South Carolina.
19 I've been practicing law for 16 or 17 years now
20 and I've never had a case that had better facts
21 that would overwhelmingly support denial in
22 this matter. And my fear is the sympathy
23 clouded the ability to follow those facts and
24 just to review those facts fairly. The
25 Claimant certainly can't meet his burden of



1 proof that his interstitial lung disease was
2 caused by work. SEW is a 90 year old company.
3 They have five plants across the United States.
4 Not a single person in all five plants have
5 ever made a report of the lung-related claim
6 that they felt was due to work. That's based
7 on the testimony of two witnesses who spoke at
8 the deposition or at the -- at the hearing.
9 The Claimant has one of the most incredible
10 family histories of lung disease I've ever
11 seen. His father died of lung cancer. Brother
12 Billy died of lung cancer. Brother Bobby died
13 of a lung disease, which we just found out
14 about for the first time at the hearing on --
15 and Mr. Christian failed to tell us about that
16 at the previous deposition. His -- the
17 Claimant also submitted IMEs from two to three
18 out of state experts who he hired to evaluate
19 this case. Not a single one of them addressed
20 the Claimant's family history of lung issues.
21 I've never seen a family history with that many
22 cases of lung problems and it's a vital part of
23 this case in my opinion. The one doctor that
24 the Claimant relied on that is from South
25 Carolina who the Commissioners seem to give the



1 most weight to was Dr. Cochran. Not one time
2 does Dr. Cochran address the family history or
3 anything else that was brought up in this case
4 related to his problems. He just takes the
5 patient at his word of what he did and what he
6 was exposed to and didn't even put his opinion
7 in a report and signed the questionnaire that
8 Mr. Phillips had to send him. Doesn't address
9 the mold testing that his office did where the
10 Claimant tested positive in January or February
11 of 2016. That's APA 172 I believe if you need
12 to review that. The Commissioner also ignored
13 and gives more weight to the Defendant's
14 experts, two of which were from South Carolina.
15 Dr. Feldman is a very well respected upstate
16 pulmonologist who said that soldering isn't in
17 the top 50 to 100 causes of interstitial lung
18 disease and hypersensitivity pneumonitis. And
19 even if the Claimant has HP he says he doesn't
20 have the type or that the type he has is
21 inconsistent with exposure to soldering fumes.
22 Dr. Early is the other provider. Dr. Early
23 went a step further. He is a toxicologist who
24 we hired to go to the plant to see what the
25 Claimant did, see what he was using, how much

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1 he was using it, and he said there was no way
2 that this could have caused lung disease in
3 this gentleman from soldering and being around
4 those chemicals. All the experts including the
5 Claimant say that ILD, interstitial lung
6 disease, is often found more times than not
7 idiopathic. Nobody knows why we get it. The
8 record is replete with a number of other things
9 that could have caused these problems. I --
10 I've submitted to you A through I in exhibits.
11 I don't know if you have them. Their all in
12 the record but I thought it might be easier to
13 refer to them. I've underlined the important
14 parts. Mr. Christian said landscaping was a
15 hobby of his. That's A. His APA page 352. He
16 was a carpenter. Woodworking was a hobby.
17 That's Exhibit B. Like I said earlier he
18 tested positive for aspergillus mold in January
19 or February of 2016 right around the time this
20 started getting very serious for Mr. Christian
21 and nobody ever addressed that, well on the
22 Claimant's side, but Dr. Early addressed it on
23 our side. Exhibit E is his summary of how
24 important that is to this case. I mean, this
25 gentleman tested positive for mold exposure and



1 yet the Order said the only rational basis for
2 this -- his problem is exposure to soldering
3 fumes at work. He had a home renovation done
4 a few years ago. Didn't have a mold inspection
5 done on it at the time he did the renovations.
6 He had a dog living in his home -- in the home
7 and yet all the Claimant's experts indicate
8 that he was not exposed to pet dander. If you
9 refer back to Exhibit F they say he was not
10 exposed to pet dander. Sounds silly but it is
11 a reason for lung problems, we know that. He
12 lived on a military base in Charleston, South
13 Carolina for several years of his life. Nobody
14 addresses that. He's done electrical work his
15 whole life. Nobody addresses anything other
16 than the time he spent at SEW-EURODRIVE. His
17 wife is a -- is a sewer. She's got a sewing
18 machine at home. They admit that they're
19 sewing at home together and he's exposed to
20 cotton dust and other things that could be in
21 the yarn and the things she's sewing with.
22 They have pest control service. Nobody has
23 that evaluated. Gas logs were so irritant to
24 him at his home that he had to have them
25 removed, yet his -- his experts don't address



1 whether or not that could be a -- related or
2 have caused these types of problems. The Order
3 says that proof was not offered to show of
4 causal connection between one of these things
5 or some of these things and his condition and
6 we disagree with that. All three of the
7 Defendant's experts, the gentleman from South
8 Carolina, Early from South Carolina and Dr.
9 Mitsos another expert from Illinois all say
10 that there are a number of things that could
11 have caused his problem and the least of which
12 was soldering fumes at SEW. We've also
13 submitted Exhibit H, how little soldering this
14 Claimant did. This is not like something he
15 did 40 hours a week. At most he would do two
16 to three hours a week of soldering. Sometimes
17 none at all. We submitted and the only
18 evidence in the record is a one week's snapshot
19 of what he did and it actually shows four
20 events out of 21 jobs where he had to solder.
21 If he did have to solder it was very minimal.
22 Picking soldering to be Mr. Christian's problem
23 is much like me claiming that the Nutrasweet
24 I take with my coffee every morning here at
25 Wilson Jones if I was diagnosed with colon



1 cancer next year was the cause of my colon
2 cancer. They're grasping at straws, pulling
3 something out of the air, and the evidence is
4 abundantly clear that this is not what caused
5 his problems. We also had -- oh, one other
6 thing. In 20 years at SEW they do so little
7 soldering on these electrical circuits. And
8 soldering is not like welding; you do this
9 almost with a pin. In 20 years the company's
10 had to purchase 15 orders of soldering
11 materials since back in 2000. There's also a
12 notice defense to this case. He admitted at
13 the hearing that he didn't tell anybody at the
14 company that he thought his problems were
15 related to work until September of 2016. He
16 was diagnosed with interstitial lung disease in
17 December of 2015 or January of 2016. If you
18 look at Exhibit J that I've handed up, and his
19 APA 91, which I didn't provide for you because
20 it was -- there were several documents, is a
21 list of chemicals he was providing to his
22 experts, to his doctors that were treating him
23 back in February of 2016, seven, eight, nine
24 months before he told anybody at SEW that his
25 problems were work related. Then to confuse



1 everybody there is a short-term disability
2 application in the record. You can look at
3 that real quickly at Exhibit I. Even though he
4 was doing all this in February and he had told
5 us at his deposition that in June he felt,
6 after he started seeing Dr. Gregg and some of
7 his partners, that his problems were work
8 related, in July of '14 he signs a short-term
9 disability application two separate places,
10 July 14, 2000 and 7/14/2016. If you turn to
11 page two of Exhibit I the very first question
12 it says, history, is your condition due to an
13 injury or sickness arising out of the patient's
14 employment? He had three options, yes, no, or
15 unknown. Well, he admitted he already felt
16 like this was related in the transcript in June
17 and given the doctors stuff about the soldering
18 fumes and the chemicals he was exposed to in
19 February, so when monies on the line in July,
20 his short-term disability, he doesn't check
21 unknown, he checks no, it's not related to
22 work. There are all kinds of problems. We
23 believe the evidence is overwhelmingly clear
24 that this is not a work related condition. It
25 is a very sad case. I'm very sorry. We're all



1 very sorry for Mr. Christian but there is no
2 way the Court can find that there's enough
3 evidence to support the findings that this is
4 a compensable claim. There are also a lot of
5 other problems in this Order. In the Order,
6 Fisher says that the Claimant's attorney
7 prepared that the problems begin back in 2000,
8 20 years ago and that the Defendant's are
9 responsible for all past medical. So we're
10 sitting here looking at an Order, in addition
11 to all the other problems in the Order, it says
12 my client's are responsible for medical
13 treatment 20 years ago. When he doesn't give
14 his employer notice of this being work-related
15 until September of 2016. All kinds of
16 problems, but at the end of the day there's
17 tons of evidence only one side expert went to
18 the plant and looked at the job, looked at how
19 much was done and how it had to be done and
20 that was the Defendant's and we believe that
21 the scales of justice overwhelmingly tip in
22 favor of the Defendants and this case should be
23 overturned and/or be remanded back to the
24 Single Commission for clarification on all the
25 problems that we have in this Order.



1 **COMMISSIONER CAMPBELL:** All right. Any questions?

2 All right, and Mr. Renfrow you will have three
3 minutes to reply, sir. Okay, Mr. Phillips?

4 **RESPONDENT/CLAIMANT'S POSITION:**

5 **MR. PHILLIPS:** Thank you, Commissioner. And may it
6 please the Court. Mr. Renfrow is correct. Mr.
7 Christian unfortunately passed away last week.
8 I was able to attend his visitation this
9 morning but I missed the funeral service to
10 attend this hearing. At the end of the day
11 this case is medically complex and I believe it
12 really turns from the medical evidence that has
13 been submitted. The Defense proffered by the
14 Appellants in this case is purely based on
15 surmise and speculation. Their entire defense
16 is based on casting doubt onto the finder of
17 facts. And they seemed to have confused
18 Commissions standards of that of a criminal
19 court. Firstly, the Appellate you know really
20 discussed, Respondent -- that Respondent's
21 condition or the Claimant's condition worsen as
22 a basis to saying this is not work-related and
23 in doing so they allowed their experts opinion
24 by Dr. Early. However, I did have a chance to
25 depose Dr. Early. Dr. Early did not consider



1 the response at the Claimant's deposition
2 testimony in generating his report.
3 Surprisingly Dr. Early also testified there is
4 more information needed in this case. He goes
5 on to state the solder did not cause the
6 Claimant's lung disease because he was removed
7 from the work environment. In response I gave
8 him an article that states a person, you know,
9 if the exposure goes on for long periods of
10 time they're going to start -- suffer permanent
11 lung damage. And surprisingly Dr. Early
12 testified that even if he suffered permanent
13 lung damage he typically wouldn't continue to
14 have lung problems. Also in -- in response to
15 the fact that the Claimant's condition worsened
16 I want to point out an article submitted by
17 Appellants in this case. That article is APA
18 1102 through 1107. That article states that
19 the Claimant's lung condition can cause
20 permanent lung damage. Once you have lung
21 sparing it is not reversible. Secondly,
22 Commissioners, Mr. Renfrow notes that the
23 Claimant has a significant history of lung
24 problems and they also state multiple other
25 causes of Claimant's condition. Again, these



1 are speculative and what ifs. Mr. Renfrow
2 pointed out the landscaping job, my client's
3 job delivering mail in the Air Force, prior
4 work in electronic work. Commissioner, there
5 is no evidence that any of this caused my
6 client's lung condition. Furthermore, you
7 know, my client -- my client's father and
8 brother both died of lung disease. If you look
9 at the testimony response, the Claimant's
10 father and brother were both smokers. Another
11 brother died of occupational lung disease. If
12 you look at the testimony on that, that brother
13 was a welder and was exposed to welding fumes
14 throughout his career. And Commissioner, as to
15 whether or our experts and the treating
16 physician knew about the Claimant's history of
17 lung problem or family history of lung
18 problems. This history is noted throughout his
19 medical records. Dr. Cochran has treated the
20 Claimant for a number of years and before that
21 Dr. Gregg. It's noted in his medical records
22 that there's a family history of lung problems
23 and they didn't seem to think there was a need
24 to address that. We -- in addition, we also
25 sent these same records to our experts. They



1 knew about the lung problems. The Appellants,
2 you know, they had ample opportunity to depose
3 the treating physician and our experts. In
4 fact, I believe we had the expert deposition
5 scheduled and they cancelled and they chose not
6 to depose those experts. They could have
7 clearly had the opportunity to question the
8 expert and the treating physician on the
9 Claimant's past work history. Thirdly,
10 Commissioners, the Respondent, I mean the
11 Appellants note that the Claimant was only
12 exposed to a minimal amount of solder at work.
13 Again, Mr. Renfrow said -- they submitted, you
14 know, a one week snap shot from 2006. The
15 Claimant worked in this lab for 20 plus years
16 and that surely is not representative of all
17 the soldering he was doing. During 20 years in
18 the lab versus a one week snap shot. Also at
19 the hearing Wade Blackwell testified. He was
20 one of the Appellants witnesses. Mr. Blackwell
21 worked in the same lab as the Claimant probably
22 two or three years and this is again compared
23 to the Claimant's 20 plus years in the lab. He
24 also admitted at the hearing that the employer
25 does not test specifically for rosin or



1 colophony, which are the substances in the
2 solder that were found to be the cause of
3 Claimant's lung condition. Also at the hearing
4 Ricky Jones testified, another one of the
5 Appellants' witnesses. He was also designated
6 as the employer who was the most knowledgeable
7 to the safety policies and procedures of SEW.
8 That witness agreed that were -- that my client
9 would be more knowledgeable as to exposure in
10 the lab than anyone else. He also admitted
11 that no testing was done at the lab at SEW
12 until this claim was filed by my client. So
13 there's no evidence of the air quality prior to
14 -- to the filing of this claim back in 2016.
15 Furthermore, Commissioners, the only certain
16 evidence in this case is our experts, Dr. Simon
17 and Dr. Pearl and the treating physician.
18 They're the only doctors that can -- that
19 definitively say the cause of Claimant's lung
20 condition. As already stated, the -- the
21 Appellant's experts already say that there is
22 more information needed in this case. As for
23 Dr. Feldman, Dr. Feldman conveniently makes a
24 diagnosis that does not require a biopsy
25 despite the Claimant already having biopsy



1 proven hyper-sensitivity pneumonitis. And
2 lastly, Your Honors, as to the notice issue
3 brought up by Mr. Renfrow, although there is an
4 exact date mentioned on our Form 50, pleadings
5 are to be liberally construed. The Claimant
6 has never testified as to an exact date of
7 notice. Claimant was questioned about the date
8 in his first deposition, he did not give an
9 exact date of notice. He also testified at the
10 hearing that, again, no exact date of notice,
11 but he did say September of 2016. Also of
12 note, the Appellants have also never questioned
13 the Claimant's notice to Ryan Newfeld. They
14 have never once questioned or disputed that my
15 client gave notice to the employer of --of this
16 claim. They also pointed out the disability
17 application for July 2016. Commissioners, this
18 shows that my client did not know that his
19 condition was -- was truly work related until
20 after July of 2016. Regardless, even if you
21 were to accept Appellants argument that the
22 notice is -- that this claim is barred by
23 failure to give notice, the period of notice
24 does not begin to run until the Claimant is
25 disabled. Commissioners, my client worked,



1 continued to work up until after his -- after
2 his biopsy in August 2016. He was not disabled
3 before that biopsy was performed. He had the
4 biopsy about several weeks, went back to work
5 I believe for a few weeks before he was forced
6 into retirement 'cause he couldn't work around
7 the fumes anymore. Also, Commissioners, the
8 Appellant's have further not alleged any
9 prejudice as a result of failure to notify.
10 Even if you were to accept Mr. Renfrow's
11 argument, they have not alleged any type of
12 prejudice for failure to give proper notice.
13 But at the end of the day, Commissioners, this
14 is a complex medical case and Defendants are
15 putting the burden on the Claimant to make a
16 complex lung diagnosis. They're asking him to
17 self-diagnosis and determine exactly when he
18 knew his -- his lung condition was compensable.
19 But overall, Commissioners, if you look at
20 evidence of the case the Defense is purely
21 based on surmise and speculation. The only
22 definitive answers we have are from our two
23 experts, Dr. Simon and Dr. Pearl and the
24 treating physician who has been treating the
25 Claimant for a number of years now. Thank you.



1 COMMISSIONER CAMPBELL: Questions. All right. Mr.

2 Renfrow you have three minutes in reply, sir.

3 APPELLANT/DEFENDANT'S REPLY:

4 MR. RENFROW: Thank you. Mr. Phillips is a friend
5 of mine, a very good lawyer, but he seems to
6 confuse the fact that his -- he and his client
7 has the burden of proof in this case and not
8 the Defendants. One of the things he brought
9 up that I think is very important; the Claimant
10 took himself out of work. He was planning
11 already to retire before he ever knew anything
12 about lung problems in May. Took his self out
13 of work in November/December because his doctor
14 told him if you got the kind of condition we
15 think you have you're going to get better when
16 you're removed from the exposure. Well, he got
17 worse not better. The picture on the
18 surveillance in the record where he looks like
19 a strong, bulky, physically fit man and then a
20 month or two later after having retired, maybe
21 six months later, he's on oxygen about to die.
22 So that alone is a very important piece of
23 this, is that he got worse when they removed
24 him from the soldering fumes not better.
25 Secondly, there is an industrial hygiene



1 report, the only evidence in the record that
2 tested the air at SEW- EURODRIVE, he prepared
3 a report and said that everything in that plant
4 is safe and above the normal levels and nothing
5 that would cause a guy the problems with this
6 job he was complaining of. The only evidence
7 in this record from doctors in South Carolina
8 that address these issues is from Dr. Early and
9 Dr. Feldman. The Claimant relies on the two
10 opinions from Dr. Simon from Georgia and Dr.
11 Pearl from California. We know what that
12 means. And there is no credibility in those
13 reports if you read those reports carefully.
14 And none of them -- if -- if he is right, all
15 of them had the information regarding his long
16 standing family history of four -- three or
17 four family members with severe lung problems,
18 none of them addressed it, which is very
19 concerning to me. At the end of the day this
20 is a case -- this case is overwhelming. I
21 don't -- I'm not sure if I ever had a case that
22 had more overwhelming evidence in favor of the
23 denial and with that regard I ask that this the
24 Full Commission to carefully review it and
25 overturn this decision or at least remand it to



1 a Single Commission to address all the problems
2 that exist in this Order.

3 **COMMISSIONER CAMPBELL:** Okay. All right. Anything
4 more? Anybody have questions?

5 **COMMISSIONER WILKERSON:** No.

6 **COMMISSIONER CAMPBELL:** No? All right. Well, thank
7 y'all both and y'all it's good to see everybody
8 and stay healthy and safe.

9 **(There being nothing further, the hearing concluded**
10 **at 2:32 p.m.)**

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CERTIFICATE

This is to certify that the within hearing consisting of twenty two (22) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on July 29, 2021.



Amber Scarborough

Notary Public for South Carolina
My Commission Expires: May 30, 2023



SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1614297

EMPLOYEE/CLAIMANT: KENNETH CHRISTIAN
EMPLOYER: SEW-EURODRIVE, INC.
INSURER: GREAT AMERICAN ALLIANCE INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 24TH DAY OF
JANUARY, 2020, COMMENCING AT THE HOUR OF 9:07 A.M. IN
SPARTANBURG, SOUTH CAROLINA, BEFORE THE HONORABLE GENE
MCCASKILL, ATTENDED BY COUNSEL AS FOLLOWS:

**JAN L. WHITWORTH
VERBATIM REPORTER**

**JAN L. WHITWORTH
WHITWORTH COURT REPORTING
POST OFFICE BOX 551
ROEBUCK, S.C. 29376
(864) 494-2705**

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ALSO ATTENDING:

ALEX CABLE
PATRICIA KLINE
WILLIE PETERS
WADE BLACKWELL
RICKEY JONES
CAROL CHRISTIAN

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1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN SPARTANBURG,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * * *

6 **BY COMMISSIONER MCCASKILL:**

7 Today's date is January 24th, 2020. This is
8 Workers' Compensation Commission File Number
9 1614297. This is the case of Ken Christian versus
10 SEW-Eurodrive, Inc. The carrier is Great American
11 Alliance Insurance Company. The Claimant is
12 represented today by Thomas Phillips, and the
13 employer/carrier represented by Benjamin M. Renfrow.
14 Will one of you gentlemen give me the average weekly
15 wage and comp rate?

16 **BY MR. RENFROW:**

17 It's \$784.03 is the comp rate. It's the max
18 for 2016.

19 **BY COMMISSIONER MCCASKILL:**

20 \$784.03?

21 **BY MR. RENFROW:**

22 Yes, sir.

23 **BY COMMISSIONER MCCASKILL:**

24 All right. And that's the max rate. Mr.
25 Phillips, do you stipulate that's correct?

1 **BY MR. PHILLIPS:**

2 That's correct, Commissioner.

3 **BY COMMISSIONER MCCASKILL:**

4 All right. Date pled is August 26th, 2016.

5 Any objections to jurisdiction, venue, APA
6 submissions or any other items?

7 **BY MR. PHILLIPS:**

8 None from Claimant.

9 **BY MR. RENFROW:**

10 None from Defendants.

11 **BY COMMISSIONER MCCASKILL:**

12 All right. Without objection, the Commission
13 file becomes a part of the record with the exception
14 of self-serving declarations and unstipulated
15 medical reports.

16 We are here today, Mr. Phillips, pursuant to a
17 Form 50 you filed on behalf of your client.

18 **BY MR. PHILLIPS:**

19 That's correct.

20 **BY COMMISSIONER MCCASKILL:**

21 If you would, place your client's position on
22 the record.

23 **BY MR. PHILLIPS:**

24 Commissioner, we are here today seeking a
25 finding that the Claimant sustained compensable

1 injuries under the Act. We are seeking a finding
2 that he is entitled to back owed temporary total
3 disability benefits from the date he went out from
4 involuntary retirement until his treating doctor
5 wrote him out on November 19th, 2018. We are also
6 seeking a finding that the back TTD not be
7 discounted as far as the commuted value. We're also
8 seeking a finding that the Claimant is entitled to
9 past and lifetime medical treatment and that he is
10 permanently and totally disabled.

11 **BY COMMISSIONER MCCASKILL:**

12 Well, let's stop for just a moment. Have y'all
13 attempted to mediate this?

14 **BY MR. PHILLIPS:**

15 We have.

16 **BY MR. RENFROW:**

17 Yes, sir.

18 **BY COMMISSIONER MCCASKILL:**

19 All right. 'Cause as we all know, 67-1802
20 requires it when P&T is pled, so. Who was your
21 mediator?

22 **BY MR. PHILLIPS:**

23 Mike Farry.

24 **BY MR. RENFROW:**

25 That's right.

1 **BY COMMISSIONER MCCASKILL:**

2 All right. I'm just trying to capture it for
3 the record, and that was -- the mediation obviously
4 was not successful or we would not be here today?

5 **BY MR. PHILLIPS:**

6 That's correct.

7 **BY COMMISSIONER MCCASKILL:**

8 All right. Anything else, Mr. Phillips?

9 **BY MR. PHILLIPS:**

10 That's all, Commissioner.

11 **BY COMMISSIONER MCCASKILL:**

12 All right. Mr. Renfrow.

13 **BY MR. RENFROW:**

14 Thank you, Commissioner. It is our position
15 that Mr. Ken Christian did not sustain a compensable
16 workers' compensation claim under the Act. We do
17 not believe that he can meet his burden of proving
18 that his condition is related, and we believe the
19 overwhelming evidence in this case specifically, all
20 of the medical records coupled with expert opinions
21 from Dr. Early, Dr. Feldman and Dr. Mitsos will show
22 that this gentleman's condition did not arise out of
23 or within the course and scope of employment. He
24 had a longstanding family history of lung problems,
25 which his experts did not even reference in their

1 reports, and we believe that while it is very
2 difficult to point to exactly what has caused Mr.
3 Christian's unfortunate condition, that his work
4 clearly did not. We also have a position in this
5 case and take the position today in December of
6 2015, Mr. Christian gathered for one of his doctors
7 evidence, MSDS sheets and information from the
8 employment about what could be causing his lung
9 condition, and so we believe that he knew that his
10 condition could -- or should have known his
11 condition could be related to work as early as
12 December of 2015. Notice was not given until August
13 or September of 2016, and so we are raising the
14 statute of limitations with regards to him having to
15 give immediate and proper notice under the Act, and
16 I think that's our position.

17 **BY COMMISSIONER MCCASKILL:**

18 Anything else, Mr. Phillips?

19 **BY MR. PHILLIPS:**

20 Nothing from the Claimant, Commissioner.

21 **BY COMMISSIONER MCCASKILL:**

22 All right. Let me move this so I won't be
23 impeded.

24 Call your witness, Mr. Phillips.

25 **BY MR. PHILLIPS:**

1 Commissioner, we call Ken Christian.

2 **BY COMMISSIONER MCCASKILL:**

3 All right, Mr. Christian, if you will come up
4 and have a seat up here, sir?

5 Good morning, sir.

6 **BY MR. CHRISTIAN:**

7 Good morning.

8 **BY COMMISSIONER MCCASKILL:**

9 I have two requests for you.

10 **BY MR. CHRISTIAN:**

11 Okay.

12 **BY COMMISSIONER MCCASKILL:**

13 The first is to speak up. These microphones
14 don't work, okay? So, speak up. It's imperative
15 that the attorneys hear you and the court reporter
16 hears you.

17 **BY MR. CHRISTIAN:**

18 Okay.

19 **BY COMMISSIONER MCCASKILL:**

20 And obviously, I have to hear you. I'm the
21 oldest person, but I'm sitting closest to you. So,
22 I think that should not be a problem. The second
23 request is if you are asked a yes or no question,
24 please give us a verbal "yes" or a verbal "no." If
25 you shake or nod your head, and I do that all the

1 time, if you shake or nod your head, this young lady
2 actually has to put in the record that's what you
3 did, and that's going to slow her down.

4 **BY MR. CHRISTIAN:**

5 I understand.

6 **BY COMMISSIONER MCCASKILL:**

7 And things like "uh-uh" and "uh-huh" are too
8 easily misunderstood. If you say that, one of the
9 attorneys or I almost assuredly will ask you if
10 that's a yes or a no. Now, don't let that throw
11 you. We're just trying to get clarity for us here
12 today and clarity in the record. All right?

13 **BY MR. CHRISTIAN:**

14 I understand.

15 **BY COMMISSIONER MCCASKILL:**

16 All right. Please swear the witness.

17 **BY THE COURT REPORTER:**

18 Mr. Christian, if you can raise your right
19 hand, please?

20 * * * * * * * * * * * * * * * *

21 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
22 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
23 MATTER HEREIN:

24 **KENNETH CHRISTIAN**

25 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

1 **BY THE COURT REPORTER:**

2 Thank you.

3 **BY COMMISSIONER MCCASKILL:**

4 All right. Please state your full name for the
5 record.

6 **BY THE CLAIMANT:**

7 Kenneth Dorsey Christian.

8 **BY COMMISSIONER MCCASKILL:**

9 Thank you, Mr. Christian.

10 Mr. Phillips, your witness.

11 **DIRECT EXAMINATION BY MR. PHILLIPS:**

12 Q. Ken, can you tell us your date of birth?

13 A. August 13th, 1950.

14 Q. Okay. How old does that make you?

15 A. It makes me 69.

16 Q. Okay. And what is your address?

17 A. [REDACTED] Circle, Easley, South Carolina 29640.

18 Q. Okay. How long have you lived at that address?

19 A. About nine, nine-and-a-half years.

20 Q. Okay. Where did you last work before retiring?

21 A. SEW-Eurodrive Corporation.

22 Q. And about how many people work at SEW?

23 A. Technically, both plants, about 300.

24 Q. Okay. So, 300 more or less?

25 A. Yes.

1 Q. Approximately -- did you like your job there?

2 A. Yes, I did.

3 Q. Did you get along with everybody there?

4 A. Yes, I did.

5 Q. All right. When did you begin working there?

6 A. I began working there in September 1983.

7 Q. Okay. What were you doing when you first started at
8 SEW?

9 A. I worked in the maintenance department.

10 Q. Okay. What did that job entail?

11 A. Troubleshoot CNC equipment.

12 Q. Okay. How long did you do that job?

13 A. I worked there around about eight years, I guess.

14 Q. Eight years.

15 A. Eight or nine.

16 Q. Okay. And you moved departments; is that correct?

17 A. I did move to the assembly molding.

18 Q. Okay. What did you do in that job?

19 A. The lab was moved down from Ohio to South Carolina.
20 So, Ernie Gertz and myself started the lab up and
21 the assembly. So, then eventually I had -- I took
22 over the lab, did all of the work because the
23 workforce got too much for Ernie. He had to go back
24 to maintenance. That was his responsibility.

25 Q. And did you solder as part of that job?

1 A. Yes.

2 Q. About how often did you solder?

3 A. Soldering during a day, sometimes I would solder
4 about two to three hours a day.

5 Q. I'm going to stop you. I think a better way, why
6 don't you tell us how -- how you soldered, the
7 soldering process throughout a normal day at your --
8 at work.

9 A. Repeat that, please.

10 Q. Just tell us the -- can you tell us about the
11 soldering process or just a typical day in your job
12 while you were working?

13 A. Yes. Companies send in control systems, electronic
14 control systems. Our job is to troubleshoot,
15 evaluate and repair. So, we would have to tear them
16 down. Some drives would be totally hit by
17 lightening. Some would be hit with water. So, it
18 would be definitely shorts all through them. So,
19 you would have to do a lot of de-soldering to get
20 this drive back up in a running condition. So,
21 therefore, you have de-soldering that you have a lot
22 of excess soldering fumes that develop from that.
23 Then you have to clean your boards with a cleaner,
24 and then you have to mount your new components,
25 which therefore there's more soldering.

1 Q. So, it wasn't like you were soldering five minutes
2 out of a day?

3 A. No.

4 Q. Was it an all day thing?

5 A. Most -- some drives would come in blown up. You're
6 not -- some days you might solder a couple of hours.
7 Some days, it might be three hours. Some days, 40
8 minutes, you know. It just depends on what drive
9 you pick up you're working on.

10 Q. Okay. Could you smell the solder fumes?

11 A. Yes.

12 Q. Did you know -- well, what did the solder fumes
13 smell like?

14 A. Rotten eggs.

15 Q. Rotten eggs, okay. Did the solder fumes ever make
16 you cough when you were soldering?

17 A. Yes.

18 Q. Did you hear other people cough in the lab ---

19 A. Yes.

20 Q. --- while they're soldering?

21 A. Yes.

22 Q. What was the space like you were working in?

23 A. The space wasn't that large.

24 Q. And let me stop you. Where was the original lab?

25 A. The original lab was in a room, which was enclosed

1 with no -- no windows or anything, but it did have
2 the air conditioning, but you know, it stayed
3 enclosed. No windows. You had one, two, three,
4 four work benches set up in there with people
5 soldering, de-soldering and working.

6 Q. What was the ventilation like in that room?

7 A. Poor.

8 Q. Did any of your supervisors say anything about the
9 ventilation while you were in that specific lab?

10 A. One of the supervisors quoted "Every time I come in
11 this lab, I start sneezing, and I start getting,
12 seems like I'm getting an allergy and a headache."
13 So, he had turned it over to management, and then
14 they had someone come in, and he said "Yeah, you
15 guys need your duct work cleaned."

16 Q. And about how many years were you in that lab?

17 A. That lab, we were probably in that room there six
18 years.

19 Q. Okay. Did the lab move?

20 A. It moved -- the lab did move out of that room into
21 the next room that was associated with it.

22 Q. Okay. What was the ventilation like in that room?

23 A. That was an office. That was an office space, and
24 we turned it into an electronic lab. The
25 ventilation was better air conditioning, but it had

1 some windows but no -- with just side windows.

2 Q. Was that a smaller room than the original lab?

3 A. Much smaller room.

4 Q. Okay. Did y'all have any carbon filter fans?

5 A. We did not technically have carbon filter fans.

6 Later on, we had got some, but that was like before
7 I retired.

8 Q. And how did those fans work?

9 A. Those fans are not strong at all. You put the fan
10 in front of you, and as you are soldering, you
11 actually have to have the solder so close to the fan
12 for it to suck the fumes that it was -- say this is
13 say I'm soldering right here, and it's very
14 difficult. So, it did not suck the fumes at all.

15 Q. What did it do instead of sucking fumes?

16 A. Excuse me?

17 Q. What did it do instead of sucking fumes?

18 A. It just let the fumes kind of circulate around in
19 the air.

20 Q. Were they circulating around the room?

21 A. Yes.

22 Q. Okay. During your time at SEW, were you ever
23 provided any protective gear like a respiratory
24 mask?

25 A. No.

- 1 Q. Was that required?
- 2 A. No.
- 3 Q. And do you remember when you first began having
- 4 symptoms with your lungs?
- 5 A. Back -- back in 20 -- I think it was 20 -- I went
- 6 and saw my doctor, Dr. Kemmerlin.
- 7 Q. Dr. Kemmerlin. Do you agree that it was early
- 8 2000s?
- 9 A. Somewhere around there, I believe it is.
- 10 Q. Okay. What symptoms were you having at that time?
- 11 A. It was just a coughing. He said it was a dry cough,
- 12 and then he said he would take an X-ray and said "I
- 13 see some issue with your lungs here." So, he sent
- 14 me to a lung doctor.
- 15 Q. Okay. Did you know what was wrong with you at the
- 16 time?
- 17 A. No, I did not.
- 18 Q. Okay. Did they think it was COPD originally?
- 19 A. No.
- 20 Q. They didn't think it was COPD?
- 21 A. No.
- 22 Q. Okay. Have you ever smoked?
- 23 A. No.
- 24 Q. You've never smoked in your life?
- 25 A. No.

1 Q. Outside of your work at SEW and other than, you
2 know, normal household chemicals and grass, cutting
3 grass, grass, dust, are you exposed to any chemicals
4 dust or fumes outside of SEW?

5 A. No.

6 Q. Nothing out of the ordinary?

7 A. None out of the ordinary.

8 Q. Did you suspect that the fumes and chemicals were
9 the cause of your lung problems?

10 A. Not until after my lung biopsy.

11 Q. Okay. It had been a while. You went to -- did you
12 go to Dr. Payne in 2015, October of 2015?

13 A. Yes, I did.

14 Q. Okay. And did she ask you about your work
15 conditions?

16 A. Yes.

17 Q. Did you bring her a list of chemicals that you
18 worked with?

19 A. Yes.

20 Q. And why did you do that?

21 **BY COMMISSIONER MCCASKILL:**

22 Hold on a second. He went to see Dr. who?

23 **BY MR. PHILLIPS:**

24 Payne.

25 **BY COMMISSIONER MCCASKILL:**

1 P-a-y-n-e?

2 **BY THE CLAIMANT:**

3 Yes, that's right, P-a-y-n-e.

4 **BY COMMISSIONER MCCASKILL:**

5 All right. Thank you.

6 **DIRECT EXAMINATION RESUMED BY MR. PHILLIPS:**

7 Q. And why did you bring a list of chemicals back to
8 Dr. Payne?

9 A. When I went to Dr. Payne, she asked me, you know,
10 what kind of occupation I did, what did I do at my
11 work, and I told her, you know, I'm an electronic
12 technician and what we did, and she just said "Could
13 you bring me a copy ---

14 **BY MR. RENFROW:**

15 Commissioner, I'm going to have to object.
16 This is hearsay. The medical records speak for
17 themselves. I've let it go a little bit, but I just
18 ---

19 **BY MR. PHILLIPS:**

20 Commissioner, he's just -- he's telling why he
21 brought the ---

22 **BY COMMISSIONER MCCASKILL:**

23 But he can't tell me what she said.

24 **DIRECT EXAMINATION RESUMED BY MR. PHILLIPS:**

25 Q. Just don't -- just tell us why you brought the list.

1 A. Okay.

2 **BY COMMISSIONER MCCASKILL:**

3 And the reason why, Mr. Christian, is she is
4 not here for Mr. Renfrow to cross examine.

5 **BY THE CLAIMANT:**

6 Okay.

7 **BY COMMISSIONER MCCASKILL:**

8 So, if you could just stick to why or your
9 understanding, ---

10 **BY THE CLAIMANT:**

11 Okay.

12 **BY COMMISSIONER MCCASKILL:**

13 --- we'll be in much better shape.

14 **THE WITNESS ANSWERS:**

15 A. Well, she was asking me what I ---

16 **DIRECT EXAMINATION RESUMED BY MR. PHILLIPS:**

17 Q. Wait. Don't say ---

18 A. Okay.

19 Q. --- what she said.

20 A. All right.

21 **BY COMMISSIONER MCCASKILL:**

22 It's very difficult, because it's not the way
23 we talk normally.

24 **DIRECT EXAMINATION RESUMED BY MR. PHILLIPS:**

25 Q. Did you bring a list of chemical to Dr. Payne

1 because you thought or suspected that that was what
2 was causing your lung problems?

3 A. No.

4 Q. Okay. When did you first learn the cause of your
5 condition?

6 A. After my lung biopsy.

7 Q. And was that in August of 2016?

8 A. Yes.

9 Q. And what is your understanding -- what do you
10 believe your diagnosis is? What have the doctors
11 diagnosed you with?

12 A. Can you reroute that?

13 Q. What is the name of your lung condition?

14 A. It's interstitial lung disease.

15 Q. Okay. Have you also been diagnosed with
16 hypersensitivity pneumonitis?

17 A. I think it's something else associated with that
18 name.

19 Q. And what is your understanding of the cause of this
20 diagnosis?

21 A. My understanding it's due from the work, the area
22 that I was working in, which was soldering fumes
23 and, you know, also other kinds of chemicals that
24 was associated.

25 Q. Okay. Did you tell anybody at work once you found

1 out?

2 A. I told my boss Rainer Neufelt.

3 Q. Okay. When did you tell him?

4 A. In September.

5 Q. Of 2016?

6 A. Yes. I'm sorry, 2016.

7 Q. Okay. Did you ultimately have to stop working?

8 A. After I had the lung biopsy, I did have to stop
9 working.

10 Q. Okay.

11 A. They messed the medication up with me, so I was in
12 the hospital for a week. More days than I should
13 have been, and then the recovery at home was longer
14 than it should have been.

15 Q. Okay. Did you end up retiring?

16 A. Yes, I did.

17 (Interruption - off the record briefly)

18 **BY MR. PHILLIPS:**

19 Are we back on?

20 **BY COMMISSIONER MCCASKILL:**

21 Yes, we are back on the record.

22 **DIRECT EXAMINATION RESUMED BY MR. PHILLIPS:**

23 Q. Did you -- did you ultimately retire?

24 A. Yes.

25 Q. When did you retire?

1 A. In December of 2016.

2 Q. Did you plan to retire at that time?

3 A. No.

4 Q. Did your doctor ultimately say that you could not go
5 back to work in and around fumes?

6 **BY MR. RENFROW:**

7 Object to what the doctor said.

8 **BY COMMISSIONER MCCASKILL:**

9 Sustained to anything that the doctor said.

10 **DIRECT EXAMINATION RESUMED BY MR. PHILLIPS:**

11 Q. Was it your understanding that you could no longer
12 work around fumes?

13 A. Yes.

14 Q. Is that why you retired?

15 A. That's why I retired.

16 Q. How is your condition affecting you today? Can you
17 tell us about a normal day in your life?

18 A. A normal day in my life is not good. I sit down to
19 put my pants on and to put my shirt on, and if I
20 walk across the room, I totally give out of breath,
21 and that's with oxygen on level four. I can't eat
22 too heavy of a meal, because -- in other words,
23 because then it becomes a breathing issue, and
24 there's -- the medication I'm on is anxiety and
25 depression, and some times I feel like I'm

1 claustrophobic.

2 Q. Have you ever had anxiety or depression in the past?

3 A. Not until this lung issue.

4 Q. Okay.

5 Q. And you are on oxygen here today; is that correct?

6 A. Level four.

7 Q. Did you have a bad morning this morning trying to
8 get here?

9 A. Bad morning.

10 Q. What happened?

11 A. Just -- just some mornings seem to be better than
12 others. This morning just trying to get everything
13 together, going through the house, getting the
14 oxygen and everything, and it just -- totally just
15 give out of breath. So, I had to just sit down and
16 fan even with my oxygen on.

17 Q. Okay. Have you had to pay out of pocket for medical
18 costs and modalities?

19 A. Yes.

20 Q. Is your treatment ongoing with Dr. Cochrane at this
21 time?

22 A. Yes.

23 Q. And you have the option for a bilateral lung
24 transplant?

25 A. Yes.

1 Q. Has workers' compensation paid you any benefits?

2 A. No.

3 Q. And did your brother suffer occupational lung
4 disease?

5 A. He suffered from a lung issue, and -- but I was
6 under -- see, I can't say hearsay, because I'm
7 quoting his wife.

8 Q. Well, what is your understanding of his -- how he --
9 -

10 A. He worked in maintenance at Monroe Auto Equipment
11 Shock Absorber Company, and they thought it was due
12 from welding and a few other chemical stuff that he
13 worked around.

14 Q. Okay. Are you asking the Commissioner today to find
15 that you sustained compensable injuries under the
16 Workers' Compensation Act?

17 A. Yes.

18 Q. And those injuries would be to your bilateral lungs
19 and psyche? Your lungs and your anxiety and
20 depression?

21 A. Yes.

22 Q. Are you asking the Commissioner to order back
23 temporary total disability benefits?

24 A. Yes.

25 Q. Are you asking the Commission to award past and

1 lifetime medical treatment?

2 A. Yes.

3 Q. Are you asking the Commission to find that you are
4 permanently and totally disabled?

5 A. Yes.

6 Q. Please, answer any questions Mr. Renfrow has for
7 you.

8 BY MR. RENFROW:

9 Thank you, Mr. Christian. Do you need a break?

10 BY THE CLAIMANT:

11 No, I just need some water here.

12 BY MR. RENFROW:

13 If you need a break, you let us know.

14 BY COMMISSIONER MCCASKILL:

15 We will happily stop if you need us to.

16 BY MR. PHILLIPS:

17 Let me ask him real quick. What is your tank
18 on right now?

19 BY THE CLAIMANT:

20 Four. Level four.

21 BY MR. PHILLIPS:

22 Are you running low?

23 BY THE CLAIMANT:

24 No, it's probably good for another hour.

25 BY MR. PHILLIPS:

1 Okay.

2 **BY MR. RENFROW:**

3 You let me know if you need to take a break.

4 **BY MR. PHILLIPS:**

5 Yeah, that's fine. If it gets low, you just
6 let us know, okay?

7 **BY THE CLAIMANT:**

8 Okay.

9 **CROSS EXAMINATION BY MR. RENFROW:**

10 Q. All right, Mr. Christian, I've got some questions
11 for you, and I want to start back from the beginning
12 a little bit. You were born in Georgia; is that
13 correct?

14 A. Correct.

15 Q. And you had dropped out of high school, but then you
16 went back and finished your degree, high school
17 degree in night school; is that right?

18 A. Correct.

19 Q. All right. And then you have a bunch of associate's
20 degrees from areas, college in the Upstate of South
21 Carolina; is that correct?

22 A. Yes.

23 Q. You have a Civil Engineering Associate's Degree ---

24 A. Yes.

25 Q. --- from TriCounty Tech. You've got an Electronic

1 Engineering Degree, Associate's Degree from
2 Greenville Tech?

3 A. Yes.

4 Q. And you have an Electronic -- Industrial Electronic
5 Engineering Degree from Greenville Tech?

6 A. Yes.

7 Q. Okay. You also have some certification working in
8 HVAC?

9 A. Yes.

10 Q. Okay. You spent two years in the military, and you
11 worked on an air force base; is that correct?

12 A. Correct.

13 Q. That was between 1976 and 1978?

14 A. Yes.

15 Q. And that was after the Vietnam War, correct?

16 A. Yes.

17 Q. You never spent any time in any active duty
18 situation?

19 A. No.

20 Q. All right. After two years of working on the Air
21 Force base, you decided you had had enough, and you
22 quit; is that right?

23 A. Correct.

24 Q. All right. Now, your attorney asked you some
25 questions about your medical history, and we've got

1 over 1000 pages of medical records going back to
2 2000, I think it is, maybe before, but you've had a
3 sinus surgery back in 2001; is that correct?

4 A. Correct.

5 Q. And you testified earlier you think that's around
6 the time your problems began now that we are looking
7 back on it; is that right?

8 A. No, I don't think my lungs was associated with that
9 sinus surgery at all.

10 Q. Your attorney asked you some questions earlier about
11 when you feel like the problems you currently have
12 kind of currently began, and you said early in
13 2000s; is that right?

14 A. I'm trying to think. Sinus... I'm just trying to
15 remember, because the medication, it affects my
16 memory.

17 Q. Sure. If there are medical records showing that you
18 were having coughing and congestion and sinus
19 problems as far back as 2001, 2002, you won't
20 dispute what your medical records say, correct?

21 A. No, I probably wouldn't.

22 Q. In my APA page 350.

23 **BY MR. RENFROW:**

24 I'm going to refer to a couple of pages,
25 Commissioner, for your convenience.

CROSS EXAMINATION RESUMED BY MR. RENFROW:

Q. In March of 2011, you were taking Singulair and Advair; is that correct?

A. Umm...

Q. Do you recall taking those medications?

A. Yes.

Q. What were you taking those medicines for?

A. Singulair and Advair, probably just sinus.

Q. Okay. And then you were taking Mucinex around that same time. What was that for?

A. Sinus.

Q. Okay. In my APA page 366, one of the things that he mentions is that you were doing a lot of landscaping. Were you having problems with your sinuses and having to take these medications because of the extensive amount of landscaping you were doing?

A. What kind of -- actually, I wasn't doing a lot of landscaping.

Q. Okay. Was that a hobby of yours?

A. Some landscaping basically in the yard with nothing too major, like maybe just setting up a water fountain and doing some -- just putting down some mortar block.

Q. Okay. I'm going to show you a medical report from

1 September the 18th of 2012.

2 BY MR. RENFROW:

3 And this is APA page 366, Commissioner, of my
4 prehearing brief.

5 CROSS EXAMINATION RESUMED BY MR. RENFROW:

6 Q. This is a medical record from I think your family
7 doctors, Dr. Kemmerlin and Kendall, and it asks for
8 your hobbies, and one of the things it lists here is
9 computer games -- or two things: computer games and
10 landscaping.

11 A. Yeah.

12 Q. So, you are into computer games?

13 A. Yeah, I like computer games.

14 Q. Gotcha.

15 A. Land -- landscaping is something that's fun to do as
16 far as maybe if you just want to do some block work
17 or, you know, a borderline, something like that.
18 Nothing -- you don't go out and dig up trees or
19 plant trees or go out and you know -- the kind of
20 landscaping that you're thinking of and the kind I
21 do is far in between.

22 Q. Right. Well, I cut my grass myself and do some
23 things like that in my yard, but I don't tell my
24 doctors that my hobby is landscaping. So, did you
25 tell the doctor that, or...?

1 A. Well, you know, yeah, I like -- cutting grass is
2 fun.

3 Q. All right. And you mentioned earlier that you were
4 never exposed to any chemicals outside of work, I
5 think is how you said it, but how do you know you
6 weren't exposed to chemicals when you were out there
7 working in the yard?

8 A. Because I never used any -- put down -- put down in
9 my yard.

10 Q. And do you know if your neighbors did?

11 A. No, I don't.

12 Q. Okay. So, you don't necessarily know exactly what
13 you could have been exposed to doing landscaping?

14 A. Well, technically no. I guess that's true. Anyone
15 -- anyone doing something like that really wouldn't
16 know what they were involved in, but the -- if I'm
17 just going to do a border block, stuff like this,
18 kind -- that's kind of basic simple.

19 Q. Do you ever use any weed killers and stuff to kill
20 the grass when you were putting in the blocks?

21 A. No.

22 Q. Never? Ever use weed killer in your life in your
23 yard or in the landscaping project?

24 A. No, you just -- just put out sand.

25 Q. Okay.

1 A. Sand -- sand will do the same thing.

2 Q. All right. Let's get back on track. In 2002, you
3 had a heart stent placed; is that correct?

4 A. Correct.

5 Q. And you've been taking cholesterol medication since
6 that time; is that correct?

7 A. Correct.

8 Q. All right. When I deposed you the first time, you
9 were taking Claritin for coughing and phlegm; is
10 that correct?

11 A. Yes.

12 Q. And that would have been in 2016 right after you
13 filed this claim. Had you been taking Claritin for
14 a while at that point, or was that something that
15 you had recently started taking?

16 A. Claritin was just basically something recently I, I
17 guess, you know, I was taking it, it was just to see
18 if it would maybe help -- help sinus or something
19 like that.

20 Q. Okay. And then you were also taking some vitamins
21 for your cholesterol, correct?

22 A. Yes, I was taking vitamins.

23 Q. And I think you said you took aspirin daily?

24 A. Yes.

25 Q. Did you inquire with any of the doctors that you've

1 seen if any of the medications you had taken around
2 that time or were taking even before that would have
3 caused any type of residual lung condition?

4 A. Could you repeat that?

5 Q. Yeah. Have you ever discussed if any of the
6 medications you were taking could have had any
7 impact on your lungs?

8 A. I guess my medications being reviewed, if they would
9 have saw them, I'm sure they would have brought --
10 brought the subject up.

11 Q. Okay. And then by the time we took your second
12 deposition, which was two or three years later, you
13 hadn't worked in about two years at that point?

14 A. Correct.

15 Q. You were taking prednisone and a drug called BREO;
16 is that correct?

17 A. Correct.

18 Q. And was that because your condition was worsening?

19 A. Yes.

20 Q. All right. Now, you mentioned earlier that you
21 worked two years in the Charleston Air Force base,
22 and your job was to deliver mail on the base; is
23 that correct?

24 A. Administrative specialist.

25 Q. So, your job was to go in and out of buildings,

1 warehouses, office space and hand folks their mail
2 on base?

3 A. Well, you would just -- you wouldn't actually hand
4 it to them. It was just -- just go in the office
5 and put them down wherever they belong.

6 Q. Gotcha. And you did that -- that was pretty much
7 what you did for two years?

8 A. Yes.

9 Q. Do you know -- have you done any research or have
10 your doctors done any research on the Air Force base
11 that you were working on as to whether there were
12 toxic chemicals, substances that you could have been
13 exposed to?

14 A. No.

15 Q. Have you looked into that at all?

16 A. No.

17 Q. All right. Now, after quitting the military in 1978
18 -- and why did you quit?

19 A. I just didn't want to pursue it.

20 Q. Just decided not to do it, okay. After you quit,
21 you went into the work force; is that correct?

22 A. Correct.

23 Q. And I happen to have ---

24 **BY COMMISSIONER MCCASKILL:**

25 Mr. Renfrow, before you go on, you've asked him

1 twice if he quit the military.

2 Was your enlistment up?

3 **BY THE CLAIMANT:**

4 No, sir, it was not.

5 **BY COMMISSIONER MCCASKILL:**

6 You left?

7 **BY THE CLAIMANT:**

8 Yes, sir.

9 **BY COMMISSIONER MCCASKILL:**

10 How were you discharged?

11 **BY THE CLAIMANT:**

12 Honorable discharge.

13 **BY COMMISSIONER MCCASKILL:**

14 Very good. I just wanted to get clarification.

15 **BY MR. RENFROW:**

16 Thank you, Commissioner.

17 **CROSS EXAMINATION RESUMED BY MR. RENFROW:**

18 Q. Mr. Christian, we are fortunate enough that when you
19 applied for your job at SEW-Eurodrive, you submitted
20 a resume. And so, we've got a pretty detailed
21 history of your work life, and I'm not going to
22 spend too much time on it, because we have this.

23 **BY MR. RENFROW:**

24 And, Commissioner, this is APA pages 616 and
25 617.

1 **BY COMMISSIONER MCCASKILL:**

2 All right.

3 **CROSS EXAMINATION RESUMED BY MR. RENFROW:**

4 Q. Is it fair to say that you've worked in the
5 electronic world for a number of years even prior to
6 coming to work for SEW; is that correct?

7 A. In a mixture.

8 Q. Okay. Did you do electronic work when you worked at
9 Pet Dairy Company?

10 A. Basically just electrical. They didn't have that
11 much electronics.

12 Q. Okay. And what type of electrical work?

13 A. Just control panels, keeping the dairy machine
14 running.

15 Q. Okay. And then you also worked for Platt Saco-
16 Lowell. What ---

17 A. Platt Saco-Lowell.

18 Q. Okay. And you did electrical; you were an
19 electrician there?

20 A. Just electrical. We just fed wire in the machines.

21 Q. And then you worked for Marquette Metal Products.
22 Did you do electrical there? Did you do electrical
23 there?

24 A. Marquette?

25 Q. I'll read this to you.

1 A. I don't even remember Marquette to be honest with
2 you.

3 Q. This says in August of 1982 you went to work there,
4 and you worked as an electronic technician. You
5 tested and repaired solid state electronic equipment
6 to component level.

7 A. Okay. Marquette, yeah.

8 Q. All right.

9 A. They didn't last too long, and then they started
10 laying people off.

11 Q. All right. And you also worked for the National
12 Water Lift in Beaufort, South Carolina; is that
13 correct?

14 A. Correct.

15 Q. Have you looked in to see if you could have been
16 exposed to any dangerous or toxic chemical in any of
17 your prior jobs?

18 A. No.

19 Q. And do you know if anybody has filed claims for
20 those companies due to lung conditions related to
21 working at those companies?

22 A. No.

23 Q. You haven't looked into it at all?

24 A. No.

25 Q. Do you know if your experts have?

1 A. No.

2 Q. The National Water Lift in Beaufort, you were
3 working on a missile guidance system; is that
4 correct?

5 A. Yes.

6 Q. Was that a Department of Defense contract?

7 A. It was a military contract.

8 Q. Were you exposed to any toxic substances or
9 chemicals when you worked there that you know of?

10 A. No.

11 Q. Now, you went to work at SEW, we've established, in
12 1983 or 1984; is that correct?

13 A. Uh-huh.

14 Q. And you've worked there ever since?

15 A. Yes.

16 Q. And when I first deposed you in I think December of
17 2016, you were still working there, correct?

18 A. Correct.

19 Q. And then you retired at the end of December of that
20 year, correct?

21 A. In 2016.

22 Q. Right.

23 A. Yes.

24 Q. And then I think we established that you worked
25 about 20 years in the assembly engineering

1 department or the lab that you referred to?

2 A. Uh-huh -- yes.

3 Q. Okay. And when you worked there, did you work with
4 Wade Blackwell who is here with me today?

5 A. Wade worked with us in there a couple of years, two
6 or three years.

7 Q. Have you ever had any problems with Wade?

8 A. No.

9 Q. Have you ever known Wade to be dishonest?

10 A. No.

11 Q. Are you aware of any condition Wade has had or
12 complained of with regards to problems with his
13 lungs?

14 A. No.

15 Q. All right. Now, are you aware of anybody you worked
16 with in the lab or that ever worked at SEW-Eurodrive
17 who complained about having lung problems?

18 A. No.

19 Q. Okay. Have you ever heard of anybody who worked at
20 SEW-Eurodrive in any capacity having problems with
21 their lung?

22 **BY THE CLAIMANT:**

23 Commissioner, if I could just step out here on
24 a limb here just for a second. Kevin Brewster, he
25 passed away with cancer here months back. Now, he

1 worked in the lab with me for a long time, and Kevin
2 would come in with major sinus issues, blowing his
3 nose with sinus conditions all the time, and then
4 when he got into soldering, he was coughing and
5 blowing of the nose, everything got worse. I told
6 him that you need to -- "You know, you need to
7 really, you know, watch that stuff." So, he was the
8 only one that, you know, that got involved with the
9 sinus and the coughing and stuff.

10 **CROSS EXAMINATION RESUMED BY MR. RENFROW:**

11 Q. And do you have any idea if Kevin Brewster had any
12 sinus problems related to working at SEW?

13 A. I don't know if they were related to that.

14 Q. You don't know?

15 A. No.

16 Q. And do you have any idea if the reason he died had
17 anything to do with his lungs?

18 A. No, I do not.

19 Q. Okay. Would it surprise you if it had something to
20 do with his appendix?

21 A. I have no idea of what happened.

22 Q. Okay. Let me ask you some questions, and I'm going
23 to refer to your deposition that I took back in
24 December of 2016, and this is when you were still
25 working at SEW.

1 A. Okay.

2 Q. And my question to you was "Do you know anybody who
3 has worked in the lab for more than ten years?" and
4 your answer was "Yeah, Kevin Brewster has been there
5 about 10 years." Is that what you put right here?

6 A. Uh-huh.

7 Q. All right. And I said, "Have you ever heard of
8 anyone that has any type of lung disease or lung
9 related problems that have worked at your job?" and
10 what was your answer?

11 A. The answer is "no."

12 Q. And I said, "Well, did Kevin Brewster ever mention
13 to you any problems?" and what was your answer?

14 A. "No."

15 Q. Okay. And so why didn't you tell me about the sinus
16 problems that you ---

17 A. Well, normally -- normally, people don't go around
18 discussing, you know, their condition with people --
19 -

20 Q. Right.

21 A. --- in the lab.

22 Q. But you brought up for the first time ever today in
23 front of this Commissioner that Kevin Brewster had a
24 sinus problem and I asked you about that three or
25 four years ago, and you didn't mention it to me.

1 A. Maybe I misunderstood your question. I don't know,
2 but...

3 Q. I intentionally asked you the exact same question
4 today that I asked you at your deposition, and you
5 today for the first time bring that up. As we sit
6 here today, do you have any idea if Kevin Brewster's
7 sinus problems that you say he had were related to
8 his job at SEW?

9 A. I do not know.

10 Q. Okay. And do you have any idea if any problems
11 Kevin Brewster had when he died had anything to do
12 with working with SEW?

13 A. I do not know.

14 Q. Okay. Let's take Kevin Brewster and put him aside
15 for a minute. You said there were 300 people that
16 work in this ---

17 A. Well, I'm guessing. I'm guessing.

18 Q. Of the other 299, have you ever heard of or know
19 anything about any of them ever complaining to you
20 about problems with sinuses, their lungs, or
21 anything related to exposure to chemicals while
22 working there?

23 A. No, I don't talk to all of them.

24 Q. Okay. Did you talk to any of them that have told
25 you about those problems?

1 A. No.

2 Q. Now, in December of 2016, you were 66 years old, or
3 65?

4 A. I guess.

5 Q. And you had had plans for years long before you even
6 knew you had a lung condition that you were going to
7 retire in May of 2017; is that correct?

8 A. Well, I wanted to continue working as long as I
9 could.

10 Q. Okay. All right. Let me show you the deposition.
11 Do you remember when I took your deposition back in
12 December of 2016? I just showed it to you earlier,
13 right?

14 A. Right.

15 Q. Do you remember that? And at your deposition at
16 page 29, I said, "So even before you started having
17 lung issues, you had thought I would work through
18 May of 2017," and your answer was what? "That was
19 my goal."

20 A. "That was my goal."

21 Q. Okay. And you said -- you said "I was kind of
22 shooting for something like that." I said "Well,
23 what was it about May of 2017 right before the lung
24 issue that made you want to retire?" and you said
25 "Nothing spectacular. I don't have any hobbies, you

1 know, that I'm doing stuff like that," and I think
2 you went on to tell me that you just wanted to enjoy
3 life a little bit; is that right?

4 A. Yeah.

5 Q. Okay. And that's understandable.

6 A. A man can shoot for a goal.

7 Q. Sure.

8 A. Goals can be changed.

9 Q. But when I took your deposition in July of '16 you
10 told me you were going to retire in May of 2017
11 whether you had a lung condition or not, correct?

12 A. That's what I was thinking it would be nice if -- to
13 retire and enjoy life.

14 Q. Sure.

15 A. You know, work as long as you can and then enjoy
16 some golden years.

17 Q. Okay. You also told me that same deposition
18 literally on the same page that no doctor told you
19 that you needed to stop work but that you felt that
20 the doctors felt that if you got out of the
21 environment, it might help your condition improve;
22 is that correct?

23 A. Yes.

24 Q. So, that is why you decided to retire in December of
25 2016?

1 A. Correct.

2 Q. Right? But no doctor told you that you had to
3 retire?

4 A. Let me rephrase that. One doctor said, quote, or
5 pretty close to his wording ---

6 **BY THE CLAIMANT:**

7 If I may, Commissioner?

8 **BY COMMISSIONER MCCASKILL:**

9 He asked you the question.

10 **CROSS EXAMINATION RESUMED BY MR. RENFROW:**

11 Q. Please do.

12 A. Dr. Gregg, which is a very smart doctor, he said,
13 "Ken, I cannot tell you to go back to work, but if
14 you do, your lung condition will worsen." So,
15 basically on the lower scale of that, I read him
16 loud and clear as to get out of the lab.

17 Q. Okay. And so it was your understanding and it was
18 Dr. Gregg's understanding in his explanation to you
19 that if you got out of the lab, you would get
20 better?

21 A. He didn't say I would get better. He just said that
22 if I stayed in there, I would continue to get worse.

23 Q. Okay, all right. At the time I deposed you in 2016,
24 because of your age and in preparation for
25 retirement, you had started drawing your Social

1 Security; is that right? Your age based Social
2 Security?

3 A. Yes.

4 Q. All right. I asked you at your deposition, if you
5 remember, since we are referring back to that now if
6 either one of your children or parents had had lung
7 problems that you knew about. Do you remember me
8 asking you that?

9 A. Yes.

10 Q. And I think you told me -- and I asked you. You
11 told me your father passed away with cancer; do you
12 remember telling me that?

13 A. Yes.

14 Q. Okay. But you didn't know what kind of cancer?

15 A. Lung cancer.

16 Q. Okay. But I asked you at your deposition if you
17 knew, and you told me you didn't know. Do you
18 remember telling me that?

19 A. No, because when we were in that deposition, my
20 memory was like really really low, because I was --
21 I had just gotten over the biopsy and then the
22 medication and stuff I was on, my memory was like,
23 gah, it's -- it was kicking my hinny.

24 Q. I understand.

25 A. Yeah, my father died of -- they said my father died

1 of cancer from smoking.

2 Q. And you were young when that happened?

3 A. I was three months old.

4 Q. Right. And I asked you at your deposition before we
5 started that deposition if you had any trouble
6 understanding or had any problems that would prevent
7 you from asking my questions to ask me to rephrase
8 or we could even stop the deposition and reconvene.
9 Do you remember that?

10 A. Yes.

11 Q. All right. And did you or are you aware if you or
12 any of your lawyers disclosing to me that you were
13 having trouble remembering things that day before we
14 started?

15 A. I actually quoted that during the deposition at some
16 point.

17 Q. Okay. All right. Well, let me show you your
18 deposition here. This is page 39 of that
19 deposition. This is at the time you were still
20 working for SEW-Eurodrive. It says "Anybody in your
21 family ever been diagnosed with cancer?" You said
22 "My father passed away with cancer."

23 A. Right.

24 Q. Do you see that? I said "Well, what kind of cancer
25 is it?" You said, "I don't know. He passed away

1 when I was three months old." So, ---

2 A. I'm quoting my family.

3 Q. Right.

4 A. You know, what they told me.

5 Q. Have they told you since this claim started, or did
6 you know about it ---

7 A. Oh, no, I knew. They had told me about dad passing
8 away with cancer many times.

9 Q. And so your reason for not telling me about that
10 back at the deposition, and since we've uncovered
11 the medical records, and I've shared that with your
12 attorney, but at the deposition back in December
13 2016, you think you forgot?

14 A. Yeah, I did.

15 Q. Okay.

16 A. Or either it was just a misunderstanding on that.

17 Q. All right. Any other members of your family ever
18 had lung problems?

19 A. Only my brother that passed away in Georgia.

20 BY MR. RENFROW:

21 Commissioner, I'm referring to page 326 of my
22 APA.

23 CROSS EXAMINATION RESUMED BY MR. RENFROW:

24 Q. All right. This is from April of 2004, Mr.
25 Christian. This is a medical record from your

1 family doctors.

2 A. Okay.

3 Q. I just want to show it to you. It says in April of
4 2004, you told Dr. Kendall or Kemmerlin, whoever it
5 was you were seeing, that your father had died at
6 age 40 of question of lung cancer, correct?

7 A. Uh-huh.

8 Q. Is that a yes?

9 A. Yes.

10 Q. And then you said "I have two brothers -- two
11 brothers who had cancer, and one was lung," correct?

12 A. Two brothers and one was lung?

13 Q. Yeah. Is that what your medical record says here?

14 A. Yeah, it says "lung," but it wasn't -- but it wasn't
15 -- I'm trying to think. Ask that again.

16 Q. Yeah. I was just showing you that in your medical
17 records, you told the doctors that your father had
18 lung cancer ---

19 A. Right. Yeah, they ask you about your family
20 history.

21 Q. Right. And your brother had lung cancer, one of
22 your brothers, and the other one had melanoma.

23 A. From smoking. From smoking.

24 Q. All right. So, your brother that died from lung
25 cancer died from smoking?

1 A. That was Billy, I think, he died -- yeah, he died.

2 Q. How old were you when that happened?

3 A. I was probably...

4 Q. Approximately?

5 A. I'm trying to think here. I was married then. I
6 guess I was probably around 30.

7 Q. Okay. All right. This is the same doctor's note,
8 the same doctor, different note. This is from 2011,
9 so four or five years later. In 2011, you talk
10 about your family history, and you said "I have five
11 brothers. One died of a heart attack. Two from
12 cancer, and one died of occupational lung disease."
13 So, is that the same brother that died from smoking?

14 A. No, occupational lung disease was Bobby, which was
15 working at Monroe Auto Equipment.

16 Q. Okay. So, your father died of lung cancer, you
17 believe?

18 A. From smoking, yes.

19 Q. Your father?

20 A. Uh-huh.

21 Q. Okay. And then you've got another brother died from
22 smoking?

23 A. Yes.

24 Q. He died from lung cancer?

25 A. Yes.

1 Q. And you have a third family member, another brother
2 who died of occupational lung disease?

3 A. Correct.

4 Q. Okay. Now, your attorney in this case hired two
5 experts to review your file, the medical records,
6 the -- I think at least one of them reviewed a
7 deposition. Did you ever meet with those two
8 doctors?

9 A. No, I did not.

10 Q. Dr. Pearle and Dr. Simon?

11 A. No, I have not.

12 Q. All right. And do you know what medical records
13 were sent to those two doctors, or did your attorney
14 handle all of that?

15 A. I let the attorneys handle that.

16 Q. Okay. Do you know if your two doctors were ever
17 told or given records that showed you have not two,
18 but three family members die of lung cancer or lung
19 disease?

20 A. No, I don't.

21 Q. Have you seen the reports that those two doctors
22 have issued in your case?

23 A. I haven't actually sat down and read the
24 documentation.

25 Q. You have or have not?

1 A. Have not.

2 Q. So, do you know what those doctors said caused your
3 condition or what your problems were?

4 A. No.

5 Q. Okay. Do you know if either one of those doctors
6 came out to SEW-Eurodrive and looked at the plant to
7 determine what your work station looked like and
8 what you were exposed to?

9 A. I do not.

10 Q. Would it surprise you if I told you they didn't?

11 A. (No verbal response)

12 Q. Would it surprise you if I told you they didn't
13 come?

14 A. I don't know.

15 Q. Okay. Would it surprise you if I told you that I
16 have read the reports, and I think there's two or
17 three reports, two initial reports and then a
18 rebuttal to one of my experts that none of those
19 reports mentioned that you have a significant family
20 history of lung problems and lung cancer and lung
21 disease?

22 A. That wouldn't surprise me that you read the
23 documentation.

24 Q. Would it surprise you that that's not in there?

25 A. I said it wouldn't surprise me that you've read the

1 documentation.

2 Q. Sure. I have read it. Would it surprise you though
3 if there's no mention of your family history in
4 those reports about lung disease and lung cancer?

5 A. That's kind of hard to answer. You know, I guess I
6 could say that it wouldn't surprise me. I don't
7 know.

8 Q. And you mentioned earlier that you live at [REDACTED]
9 [REDACTED] Circle, and you've lived there for about
10 nine years in Easley; is that right?

11 A. Yes.

12 Q. All right. And that house though was built in the
13 1940s?

14 A. Correct.

15 Q. And do you know if there was ever any asbestos
16 containing material or other toxic materials or
17 chemicals that could damage your lungs in your home
18 at any point between 1940 and today?

19 A. No, I don't know.

20 Q. Did you ever have a study done prior to you filing
21 this claim at your home to determine if there was
22 anything toxic in that house that could be causing -
23 --

24 A. Yes.

25 Q. --- problems? And when was that study done?

1 A. At the -- the mold inspection was done last year.

2 Q. Right. Your attorney had one done just recently
3 this past year, but my question is you filed this
4 claim in 2016 when they determined by biopsy that
5 you had something going on with your lungs. Had you
6 ever had that study done prior to that diagnosis, a
7 mold study or any kind of study?

8 A. No.

9 Q. Okay. And so do you know if there was anything -- I
10 asked you about your yard earlier and some of the
11 landscaping, but do you know if there was anything
12 in your house that could have caused problems in
13 your lungs?

14 A. No, I do not.

15 Q. Okay. Y'all did a major renovation to that house in
16 2006 right before you and your wife moved in,
17 correct?

18 A. The house was -- was renovated by five different
19 contractors. I had five different groups come in
20 and the -- which they're good at their job, and so,
21 yes, that is correct.

22 Q. And then in 2006 right before you moved in y'all had
23 the roof completely replaced, correct?

24 A. Correct.

25 Q. Did you during that time have anybody come out and

1 do an air sample or anything to determine if there
2 was anything toxic in the old roof or shingles or
3 anything like that?

4 A. No.

5 Q. You also have a garage at the back of your home; is
6 that correct?

7 A. I have a garage.

8 Q. And at the time I deposed you the first time, you
9 were still cutting your own grass. You mentioned
10 landscaping.

11 A. Yes.

12 Q. You cut your own grass, and you have about a half
13 acre of land; is that right?

14 A. I wouldn't say a half acre, probably under a half.

15 Q. And I pulled that from your deposition. So, you
16 said about a half an acre at your deposition, and
17 you also said ---

18 A. And maybe it is. You know, I don't know.

19 Q. About a half an acre. We'll stick to that.

20 A. Give or take.

21 Q. When you cut that grass, it aggravated the pain that
22 you were feeling in your chest and lungs, didn't it?

23 A. No.

24 Q. It didn't? Let me show you --

25 A. After I started -- go ahead.

1 Q. No, you go ahead.

2 A. You're fine. No, I was just going to say you were
3 asking me if cutting grass agitated my lungs, but I
4 can't say technically that it agitated my lungs at
5 all, 'cause, you know, I ride around on a riding
6 lawnmower.

7 Q. Right. But I think you told me at your deposition
8 back in 2016 when you were still working at SEW
9 right after you had been diagnosed with this
10 condition that when you cut the grass, it aggravates
11 your condition. It made your symptoms worse.

12 A. Oh, yeah, when I was pushing. When I was pushing
13 the lawnmower to trim out, yeah, it would make me
14 run out of breath.

15 Q. I gotcha. All right. Now, we talked a little bit
16 about your hobbies, Mr. Christian, and we
17 established you like to do a little landscaping of
18 some fashion, correct?

19 A. Basic, basic.

20 Q. All right. And I asked you at your deposition if
21 you had any other hobbies like carpentry or
22 anything, and you told me you didn't; is that
23 correct?

24 A. That's correct.

25 Q. And that was in December of 2016. But have you in

1 the past had a hobby of doing woodworking and
2 carpentry?

3 A. I'm not a carpenter, and I'm terrible working with
4 wood. So, my extent of woodworking would be cutting
5 a base corner round or putting down baseboard. You
6 know, nothing -- nothing out here extravagant.

7 Q. And I have some hobbies, too, and I'm not good at
8 any of them, but this didn't ask you if you were
9 good at them. It just says "What are your hobbies?"

10 A. Okay.

11 **BY MR. RENFROW:**

12 And this is a medical report, Commissioner,
13 from page 382.

14 **CROSS EXAMINATION RESUMED BY MR. RENFROW:**

15 Q. From your family doctor back, and this is 2015, and
16 it says "What are your hobbies?" Now, on this one,
17 it's got the computer games.

18 A. Right.

19 Q. That was a hobby. Do you agree that was a hobby?

20 A. Yes.

21 Q. Landscaping according to your medical report ---

22 A. Uh-huh.

23 Q. --- was a hobby, and it says "woodworking."

24 A. Well, woodworking was working with my wife on her
25 wood projects.

1 Q. Sure. So, did you -- do you think you probably told
2 the doctor you were doing woodworking back in 2015
3 right around the time this condition was diagnosed?

4 A. Well, as God as my witness, none of this had
5 anything to do with what I'm dealing with right now;
6 I can tell you that.

7 Q. And so do you know what you were exposed to in the
8 dust and the chemicals when you were doing
9 woodworking?

10 A. Not much. It was basically -- my wife's projects
11 and stuff -- it was stuff that was already built.
12 We might, you know, drill a hole in them or do this
13 or put pegs in and stuff like that, just kind of
14 little -- little craft projects.

15 Q. Okay.

16 A. That's woodworking.

17 Q. But do you have any idea what you could have been
18 exposed to doing those projects with the dust in the
19 air and the particles in the air?

20 A. I didn't see any dust or particles in the air.
21 None.

22 Q. Okay, all right. Now, at your home, you have, like
23 I have at my home, pest control service; is that
24 right?

25 A. Yes, I do.

1 Q. And they come, is it Terminix or somebody like that?

2 A. It's Palmetto.

3 Q. And they come and spray for bugs and termites and
4 other rodents?

5 A. Yes, they do.

6 Q. All right. Have you gone to your pest control
7 service and asked them if there were any of those
8 chemicals that could potentially cause problems that
9 they know about now that maybe they didn't know
10 about last year or in the past?

11 A. I have not asked them.

12 Q. Okay. You have a couple of animals at your house;
13 is that right?

14 A. I have one dog.

15 Q. One dog? And did the dog live inside or outside?

16 A. Inside.

17 Q. All right. And did it sleep with you?

18 A. No.

19 Q. Okay. And one of the things that came up in some of
20 your medical records was whether you could have been
21 exposed to animal dander or hair particles and
22 things that maybe the dog had on him, and you said
23 that you weren't, but do you know if your dog had
24 any loose hairs flying around?

25 A. We kept our dog very clean, very clean.

1 Q. Did you wash the dog?

2 A. My wife.

3 Q. You didn't wash the dog?

4 A. Well, actually, let me take that back. The pet
5 company, the grooming company, we take her to a
6 groomer.

7 Q. Okay. And did she ever shed any hair in your house
8 occasionally?

9 A. Very little.

10 Q. But some? But some?

11 A. Some, yeah. I think every dog sheds some hair.

12 Q. All right. Another thing that I asked you about.
13 Do you have gas logs at your home?

14 A. No.

15 Q. Have you ever had gas logs at your home?

16 A. Yes.

17 Q. When did those get taken out?

18 A. I took those out when they were -- probably after my
19 lung biopsy and stuff. That's -- yeah, we got rid
20 of them.

21 Q. At the time I deposed you, you had gas logs. That
22 was in 2016.

23 A. Yeah.

24 Q. Okay.

25 A. Yes.

1 Q. And that was after the lung biopsy when I deposed
2 you. Why did you take the gas logs out for?

3 A. Basically, when you run gas, a lot of gas logs does
4 not burn 99.9 percent efficiency, so when they burn
5 anywhere from 80 to 85, whatever, then -- and it
6 also bothered my wife a little bit, too. She don't
7 like the gas fire, so I said "Let's just take them
8 out."

9 Q. So, was it bothering your condition?

10 A. It was bothering my condition a little bit. So, I
11 decided we'll just dispose of them, get rid of them.

12 Q. All right. And how did you learn all of that about
13 the gas logs? Did you have somebody come and point
14 to that, or did a doctor tell you about that, or did
15 you just do your own research?

16 A. In what category are you speaking of?

17 Q. Well, you just threw out some impressive numbers
18 that ---

19 A. Oh, the burning efficiency?

20 Q. Right.

21 A. Well, the gas log people have that documentation
22 with their gas logs. I mean, you can go out here at
23 basically all of these companies. There's gas logs
24 that burns -- I mean, not gas logs -- well, yeah,
25 the gas logs can burn a certain amount of

1 efficiency, but anyway. Yeah, we got rid of the gas
2 logs, one because my wife didn't like them, and
3 because if I turn them on, and it gives a smell, you
4 know, an odor, so I said "get rid of them."

5 Q. Did it make you feel short of breath at times being
6 around the gas logs?

7 A. Not short of breath. It was just put a bad odor out
8 kind of, so, I got rid of them.

9 Q. Okay, all right. Now, your wife is real into
10 quilting; is that correct?

11 A. That is correct.

12 Q. And one of the things you told me at your
13 deposition, which I thought was excellent, was that
14 you were going to help your wife quilt, maybe have
15 some more extensive quilting done when you retired;
16 is that correct?

17 A. Correct.

18 Q. And do y'all have a sewing machine at home where you
19 sew the quilts?

20 A. She has a sewing machine.

21 Q. All right. Do you use it at all?

22 A. No.

23 Q. Are you around her when she uses it?

24 A. No.

25 Q. Have you ever been around the sewing machine at all?

1 A. Have I been around her sewing machine?

2 Q. Yes.

3 A. No.

4 Q. And my mom was a sewer, so I understand that when
5 that sewing machine is going, it's vibrating pretty
6 heavily, and stitching particles from the yarn and
7 the materials are kind of flying up in the air
8 everywhere. Do you notice that at all with the
9 sewing machine?

10 A. Actually, when I said I was going to be helping her
11 on those projects, that kind of just diverted down.
12 So, no, I haven't been doing anything with that --
13 with her quilting.

14 Q. The sewing machine is at the house that you live in?

15 A. Not in the house. It's in the shop.

16 Q. Okay.

17 A. It's in the shop.

18 Q. Do you ever go in the shop?

19 A. Every now and then.

20 Q. All right.

21 A. I think I've been in the shop once in the last
22 month.

23 Q. Gotcha, all right. And did you stop going in the
24 shop as much after the diagnosis with the lung
25 condition?

1 A. No, I stopped going because whenever I walk now
2 across the room or anywhere, I give out of breath
3 and with my oxygen and stuff. I haven't even been -
4 - I haven't been across the yard.

5 Q. So, it's fair to say though that before this
6 condition, you were able to go in that shop more
7 often than you are -- or before your diagnosis than
8 you are today?

9 A. Yes.

10 Q. Now, prior to living at the current address, you
11 lived at 109 Briar Park Drive in -

12 A. Correct.

13 Q. --- in Easley. Is that Easley?

14 A. No, that's -- it's in Greer.

15 Q. Okay.

16 A. Greer.

17 Q. And did you ever have any mold or testing -- mold
18 testing or chemical or toxin testing done on that
19 home?

20 A. No.

21 Q. One of the things your doctors mentioned, and I know
22 my doctor mentioned was that lots of times the type
23 fo condition you have there's a latent period,
24 right? So, you were exposed to something 30 years
25 ago, 20 years ago, it manifests itself today. Have

1 you ever done any research on any of that?

2 A. No.

3 Q. Do you know what I'm talking about? Have you ever
4 heard anybody refer to what I'm talking about,
5 latency period of exposure to toxic substances?

6 A. I've heard of that.

7 Q. Okay. So, you understand that concept?

8 A. Yes.

9 Q. So, as we sit here today, is it possible you were
10 exposed to something living at that house in Greer -
11 --

12 A. No.

13 Q. --- that could have damaged your lungs?

14 A. No.

15 Q. How do you know that?

16 A. I just know.

17 Q. But you never had anybody test it; it's just your --
18 your opinion?

19 A. It never was tested, but -- but I never saw any kind
20 of mold or anything whatsoever accumulate anywhere.

21 Q. When I took your deposition, I think you told me
22 that you first started having problems with your
23 lungs around November of 2015, correct?

24 A. Somewhere around there.

25 Q. Okay. Now, I heard you tell your attorney earlier

1 today that it was early 2000. So, do you know
2 really when you started having lung problems?

3 A. Well, I went to Dr. Kemmerlin, and he said he had
4 noticed that I had been having a dry cough, and
5 that's why he wanted to do an X-ray of the lungs.

6 Q. So, you ---

7 A. And that was 20 -- I don't know.

8 Q. And I think you said November of 2015 you went to
9 see Dr. Kemmerlin, and he said something about
10 having noticed this cough for quite a while?

11 A. Yeah.

12 Q. And he referred you to a specialist; is that
13 correct?

14 A. Yes.

15 Q. All right. And then in November 2015, that's when
16 they did the X-ray or referred you for the X-ray for
17 your lungs; is that right?

18 A. Yes.

19 Q. And then you got a CT scan done right after the
20 first of the year 2016?

21 A. Yes.

22 Q. Okay. So, you first started formulating the idea
23 that this could be related to work in 2015 and early
24 2016; is that fair?

25 A. I didn't know it was formulated to work until after

1 the lung biopsy September -- I think that was
2 September 2016 that was done.

3 Q. I just want to show you your deposition one more
4 time. This is page 50, and I asked you that exact
5 question at your deposition, in 2016. I said, "When
6 did it first dawn on you -- when did you first
7 formulate the idea that this could be related to
8 something at work?"

9 A. Okay.

10 Q. And you said "After I went to the lung doctor, and
11 he started looking at the lungs and asking questions
12 and what I did and stuff like this and how long I
13 had been working, et cetera." And I said, "Well,
14 was that back in 2015?" You said, "I think I went
15 to the lung doctor, it was probably 2011."

16 A. 2011?

17 Q. Yeah. Then you go on to clarify. "I went and seen
18 the family doctor around November of 2015. So, they
19 made me an appointment to go see a lung doctor. So,
20 I'm estimating it was probably maybe early 2016 when
21 I got an appointment," And we've established that's
22 about the time you had the CT scan February of 2016,
23 correct?

24 A. I was giving those dates with a very vague memory.

25 Q. Okay. Now, did you -- when you started formulating

1 this opinion that it could be work related, in your
2 word, you started in February of 2016, did you go
3 tell anybody at the plant or any of your supervisors
4 you've worked with or any of these people that
5 you've worked with for 20, 30 years that your
6 problems could be related to work?

7 A. I reported it to Rainer Neufelt in, I think it was
8 September. I think it was September 2016.

9 Q. Okay. So, you had an idea it was work related in
10 February, but you didn't tell anybody until
11 September?

12 A. February? Now, I'm confused on all that with you.

13 Q. And I'm confused, too. I'm just looking back at
14 your testimony and at the dates in the medical
15 records. So, let's look at a medical record.

16 BY MR. RENFROW:

17 It's my APA page 305, Commissioner.

18 CROSS EXAMINATION RESUMED BY MR. RENFROW:

19 Q. This is a medical record from the Allergy Partners
20 of the Upstate from January of 2016, okay?

21 BY MR. RENFROW:

22 Again, this is 305, Commissioner.

23 CROSS EXAMINATION RESUMED BY MR. RENFROW:

24 Q. And this was when you were seeing Dr. Payne.

25 A. Right.

1 Q. Who you referenced in your testimony earlier. It
2 says your symptoms first appeared two years ago.
3 So, if that's the case then your symptoms that you
4 were there seeing her, which was the coughing, would
5 have been in 2014. So, is it fair to say that you
6 were having those problems as far as back as even
7 2014?

8 A. No, I don't think so. I think that is incorrect.

9 Q. And it says "No triggers have been identified." He
10 says "My condition is generally worse in the morning
11 and in the evening." Let me ask this question: what
12 was your shift?

13 A. I was talking about, like, with them, was allergies.
14 I was telling her about my allergies and my sinus
15 condition.

16 Q. But this says that you were most bothered by
17 coughing, which is the symptom that they sent you to
18 have the lung biopsy for because you were having
19 this coughing that had gone on for a year. So, is
20 it fair to say that you were there for coughing?

21 A. I was there for an evaluation for -- for allergies.
22 She wanted to find out if I was allergic to
23 anything.

24 Q. Okay. And this doctor notes that you have
25 eosinophils that showed up by bronchoscopy. Do you

1 know what any of that means?

2 A. No.

3 Q. As early as 2016, this doctor noticed that you have
4 that condition based on tests you had had done just
5 prior to seeing her; is that what that medical
6 record appears to show you?

7 A. That was the -- you're talking about Dr. Payne?

8 Q. Right.

9 A. That was a scopic?

10 Q. Bronchoscopy.

11 A. Yeah, she did a bronchoscopy to find out if I had
12 any kind of cancer, something like that in the
13 lungs.

14 Q. Sure.

15 A. And I did not.

16 Q. Okay. Now, one thing I asked you about that we
17 passed up. This says that your problems are
18 generally worse in the morning when you wake up, I
19 guess, and then in the evening; is that correct?

20 A. Uh-huh.

21 Q. Is that how it played out in your situation?

22 A. Yes.

23 Q. What shift did you work at SEW?

24 A. Day shift.

25 Q. All right. And when you worked at SEW, did -- when

1 you worked with -- looking back on it, when you
2 worked with soldering or you worked with one of
3 these chemicals that you believe could have caused
4 this problem, did you notice anything immediately
5 every time you used one?

6 A. I didn't give it that much thought actually until
7 after my -- the bronchoscopy.

8 Q. Okay. Let's talk about your job requirements. When
9 you worked at SEW, I think you testified earlier
10 that you would solder, sometimes as much as three
11 hours in a day; is that right?

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. Yes.

15 Q. When I asked you that same question at your
16 deposition, and you said that on average at most you
17 would solder two to three times a week and sometimes
18 even less than that; is that right?

19 A. Depending on what kind of drives you get in.

20 Q. Okay.

21 A. I mean, you never know what what kind of control
22 system that's coming in from one day to the next.
23 If you sat down with a drive that's blown up, you're
24 going to have to spend two to three hours de-
25 soldering and soldering everything back.

1 Q. Sure.

2 A. And then the next day you might spend 30 minutes
3 soldering.

4 Q. And then some days you didn't solder at all?

5 A. Some days was very very rare. It was very very
6 rare. You might get a drive in to where you just go
7 in and change the boards and then troubleshoot.

8 Q. So, what was rare? Was it rare that there would be
9 days that you didn't solder?

10 A. Yeah, very rare. Some days -- some days if you
11 didn't solder, then you would probably be working on
12 a drive that we change out electronic cards, but a
13 large percentage of the time when you're dealing
14 with electronic drives that comes in with
15 lightening, with water, you're going to do a major
16 amount of soldering.

17 Q. Were there ever weeks where you didn't solder at
18 all?

19 A. Weeks?

20 Q. Yeah.

21 A. No.

22 Q. There was never a time where you would go a week or
23 two and wouldn't solder?

24 A. No.

25 Q. Okay. So, let me show you your deposition

1 testimony. This is deposition pages 70 -- 69 and
2 70. I said, "Okay. But you said there are some
3 days you don't solder?" and you said "And some days
4 you solder." So, I said, "On the days that you
5 didn't solder, you wouldn't be exposed to any
6 soldering, correct?"

7 A. Correct.

8 Q. And I think you said earlier the most you would be
9 exposed at any time was, worst case scenario up to
10 three hours, correct?

11 A. The -- well, I mean, you may solder -- you may
12 solder an hour in the morning. You may solder on
13 another job 30 minutes in the middle of the day, and
14 in the afternoon, you may have another job that
15 needs -- that needs that re-work.

16 Q. Okay.

17 A. And then the next day, it could just be some
18 basically light.

19 Q. Okay. And I'm going to show you some documents from
20 SEW in a minute, but I want to show you one other
21 thing real quick.

22 **BY MR. RENFROW:**

23 Do you need a break? Can we take a break,
24 Commissioner, so he can get his oxygen tank.

25 **BY COMMISSIONER MCCASKILL:**

1 Sure.

2 (Off the record)

3 **BY COMMISSIONER MCCASKILL:**

4 We are back on the record. Mr. Renfrow.

5 **BY MR. RENFROW:**

6 Thank you, Commissioner.

7 **CROSS EXAMINATION RESUMED BY MR. RENFROW:**

8 Q. You testified -- well, first, let me ask this, Mr.
9 Christian, you understand you're under oath -- you
10 are still under oath?

11 A. Yes.

12 Q. Okay. You testified earlier that you were
13 diagnosed, I think in August of 2016, which
14 corresponds to the date of your alleged injury that
15 your attorney has placed on the pleadings; is that
16 right, August 26th?

17 A. Yes.

18 Q. All right. And that was based on a biopsy that was
19 done by Dr. Gregg; is that right, who you said was
20 very smart, very competent doctor; is that right?

21 A. Yes, sir.

22 Q. Did Dr. Gregg, after doing that biopsy, did he ever
23 -- I know I asked about your experts, but did Dr.
24 Gregg who did the biopsy or ordered the biopsy, did
25 he ever go out to the plant to see what type of work

1 you did or how much soldering you did on a daily
2 basis?

3 A. No.

4 Q. All right. Did Dr. Gregg review any of your safety
5 data sheets, the pictures of the products that you
6 used at work?

7 A. Yes, I think he did.

8 Q. And has Dr. Gregg ever been out to your house ---

9 A. No.

10 Q. --- to do any testing or studying out there?

11 A. No.

12 Q. Okay. Before we get into a few more of the medical
13 records that I want to ask you about, I want to make
14 sure something is clear. You mentioned earlier you
15 have some incidental expenses that you've had to pay
16 out of pocket for medication and things since t his
17 happened; is that right?

18 A. Yes.

19 Q. When I took your deposition back in December of 2016
20 and then again in 2019, at that time, all of your
21 medical bills had been paid. So, are these most
22 recent bills, is this just something new that's been
23 added to your ---

24 A. Yes, the -- the what I've paid out of pocket is the
25 vertical lift so I can get inside my house in a

1 wheelchair.

2 Q. Okay.

3 A. And then I had to have a lift put on the vehicle,
4 and then I spoke with Dr. Cochrane about the walk-in
5 tub, and he said that would be a great benefit so
6 you wouldn't fall.

7 Q. Have you had that done?

8 A. Yes.

9 Q. And who did that construction?

10 A. Safe -- Safe Step did the tub.

11 Q. Were you living in the house when they were doing
12 the construction?

13 A. Yes.

14 Q. Okay. Other than those things, have you had -- all
15 of your medical bills have been paid for in this
16 case; is that correct?

17 A. The doctor visits and stuff like that, yes. I've
18 had to pay -- I've had to pay out of pocket for some
19 medications.

20 Q. How much do you think you are out of pocket excluded
21 the new bathtub, a lift on the car and house?

22 A. I'm sorry?

23 Q. Yeah. How much money do you think you are out of
24 pocket if you take out fixing the bathtub and adding
25 a lift to the car and to the house, how much are you

1 out of pocket for the other stuff: drugs, doctor's
2 visits?

3 A. The vehicle lift and ---

4 Q. Excluding that. We'll exclude it for a second.
5 I'll come back to that.

6 A. You're just looking for -- you're just looking for
7 out of pocket for drugs, medical?

8 Q. And doctors visits.

9 A. Doctors visits. Oh, I can't give you an honest
10 answer on that without having some time to calculate
11 it out.

12 Q. A couple thousand dollars max?

13 A. Probably.

14 Q. All right. Let's go over some medical records.

15 **BY MR. RENFROW:**

16 I'm going to refer you, Commissioner, to my tab
17 number 18, which is APA pages 479 through 598.

18 **CROSS EXAMINATION RESUMED BY MR. RENFROW:**

19 Q. Mr. Christian, were you aware that after you made
20 the allegations against the company that there was
21 something there that could be causing your lung
22 problems that they had an industrial hygiene study
23 done at SEW?

24 A. No.

25 Q. Had you ever seen this report before today?

1 A. No.

2 Q. All right. And we sent this to your attorney a
3 while back, but would it surprise you if they tested
4 soldering chemicals and all the other chemicals you
5 work with, and it revealed it was nothing that you
6 would have been exposed to that was at a dangerous
7 level with regards to OSHA standards, which are even
8 more stringent than most or any other standards?

9 A. I guess I'm not -- I guess I don't the answer you're
10 looking for.

11 Q. Sure. Would it surprise you that the industrial
12 hygiene study that was done shows there was nothing
13 that you would have been exposed to that could cause
14 you problems?

15 A. I don't know.

16 Q. Okay, all right. And do you know if this study was
17 sent to your experts who gave opinions in this case?

18 A. I don't know.

19 Q. Did you ever take this to the doctors, Dr. Gregg and
20 Dr. Bolton ---

21 A. No.

22 Q. --- and Dr. Payne?

23 A. No.

24 Q. Okay, all right.

25 **BY MR. RENFROW:**

1 Commissioner, now I'm just going to move along
2 through some of these APAs in just no particular
3 order.

4 **CROSS EXAMINATION RESUMED BY MR. RENFROW:**

5 Q. All right. Mr. Christian, my tab APA number 19,
6 which is pages 599 through 604, this is a
7 surveillance report where an investigator went out
8 and took pictures of you and a video of you doing
9 landscaping in your yard. Have you ever seen this
10 report before?

11 A. I don't have it.

12 Q. Okay. This surveillance was done back in August of
13 2017, so about a year after you retired from SEW,
14 and it shows you -- they have a video of you
15 trimming bushes in the front yard, trimming hedges
16 and things like that. Is this some of the
17 landscaping ---

18 A. With a -- with an electric trimmer, yeah. Nothing
19 major.

20 Q. All right. And do you know if you were exposed to
21 any chemicals or substances on those hedges that
22 could have caused you to have some initial lung
23 problems?

24 A. We don't spray our bushes like that.

25 Q. All right. There's a man in a window here on a

1 treadmill. This is August of 2017. Is that you on
2 a treadmill? Let's see if the name of the gym is on
3 here.

4 A. Planet Fitness.

5 Q. At Planet Fitness. Is that a gym you used to go to
6 and work out?

7 A. Yeah.

8 Q. All right. And one of the things I see here in this
9 particular case, there's a gentleman that's got a
10 little more weight on him.

11 A. Right.

12 Q. Looks like he's in pretty good shape. Is that you?

13 A. Yes.

14 Q. And you didn't have an oxygen tank in August of
15 2017, correct?

16 A. I'm not sure when they actually issued me the oxygen
17 tank.

18 Q. But you weren't running on the treadmill when you
19 were on the oxygen tank, correct?

20 A. No, I wasn't on the oxygen tank then.

21 Q. All right. And so I guess my point is since you
22 left SEW back in December of 2016 and retired, have
23 you been back to the plant one time?

24 A. No.

25 Q. Did you walk inside the building for any reason

1 since then?

2 A. No.

3 Q. So, is it fair to say then the gentleman I saw back
4 in December of '16 in the pictures I have here of
5 you in 2017 that your condition has significantly
6 deteriorated ---

7 A. Yes.

8 Q. --- even though you haven't been in that plant?

9 A. Correct.

10 Q. And have you done soldering at home or been exposed
11 to chemicals like you were exposed to at work since
12 you've been out of work?

13 A. No.

14 Q. All right.

15 BY MR. RENFROW:

16 Commissioner, I'm going to point to APA page
17 605.

18 CROSS EXAMINATION RESUMED BY MR. RENFROW:

19 Q. This will be brief, but this is a copy of the biopsy
20 that was done, and in this biopsy report, and again
21 this was done -- this must have been a second
22 biopsy. Yes, this was in August of 2016; so, this
23 was the first one. It says "Review of the patient's
24 history shows no known exposure to animal dander or
25 other organic antigens," and it talks about that you

1 were possibly exposed to some inhaled antigens
2 presumably at work. Did you have a dog in August of
3 2016?

4 A. I don't know when she passed away.

5 Q. I think you told me at your deposition in December
6 you had a dog. So, assuming that's true.

7 A. Yes.

8 Q. So, do you know why this would say you weren't
9 exposed to any animal dander? Did you tell them you
10 had a dog that lived inside and that even though you
11 got it's hair cut at the vet that every once in a
12 while you had some hair particles and stuff in the
13 house?

14 A. No. I couldn't really -- I never really really seen
15 any animal hair in the house.

16 Q. Okay. But you are not disputing that if you've got
17 an animal and it's got hair and ---

18 A. Yeah.

19 Q. --- it's in the house, there's probably some hair
20 somewhere in the house?

21 A. I'm sure there's some somewhere.

22 Q. All right.

23 A. I don't guess anybody can say if they have an
24 animal, I don't have any hair in the house at all.
25 If you do, ---

1 Q. Yeah. I've got a dog, so I get it.

2 A. --- something's wrong.

3 Q. One of the questions your attorney asked you earlier
4 that I want to clarify.

5 **BY MR. RENFROW:**

6 Commissioner, I'm going to refer to my APA page
7 385.

8 **CROSS EXAMINATION RESUMED BY MR. RENFROW:**

9 Q. You were asked earlier when they first started
10 looking into your problems in August of 2015 when
11 you had a CT scan done and an X-ray done, and the
12 doctors thought you had COPD, and you said you had
13 never had a doctor tell you that you might have
14 COPD. Do you remember that?

15 A. No.

16 Q. You don't remember testifying to that earlier?

17 A. I don't remember any doctor telling me I had COPD.

18 Q. All right. So, this is a referral to Anderson
19 Radiology by Dr. Richard Kemmerlin. That's your
20 family doctor?

21 A. Uh-huh.

22 Q. Is that correct?

23 A. Yeah, Dr. Kemmerlin.

24 Q. All right. And you were getting this done in August
25 of 2015, a year before you told the folks at SEW

1 that you had a condition that you thought was work
2 related, that you had hyper inflammation suggestive
3 of COPD, and there's also diffuse fibrosis that was
4 shown on your X-ray. So, did you ever have that
5 discussion with your doctor after that X-ray was
6 done?

7 A. Nothing about COPD, no.

8 Q. Okay.

9 A. 'Cause none of the doctors said anything about COPD.

10 Q. Gotcha. Did either of your brothers or your father
11 that died of lung related problems have COPD?

12 A. I don't know.

13 Q. Okay. And this also talked about diffuse fibrosis,
14 and at least one of the experts in this case says
15 that your condition is suggestive for pulmonary
16 fibrosis. Did you ever discuss the fibrosis
17 diagnosis with any of your doctors?

18 A. Technically, no, I don't think so. They might have
19 went into it. Of course, they covered so much.

20 Q. But you pretty quickly in this case formulated the
21 opinion that you have, like your brother, an
22 industrial related lung condition, right? Because
23 you started going and getting MSDS sheets and
24 showing those to your doctors, right?

25 A. Yes.

1 Q. But did y'all not explore some of these other
2 potential problems that the doctor saw that could
3 have said your problem was something else?

4 A. No.

5 Q. And you just made up your mind that it needed to be
6 work related at that time?

7 A. Well, I could not cover -- recall any remembering
8 back, anything that could have been an association
9 with me that would have caused that kind of
10 condition. I'm a pretty well -- I'm a safety guy.
11 I put safety first out of all things.

12 Q. To add to the confusion, and again I'm just -- this
13 is my APA page 478, and this is a patient chief
14 complaint form that you had with one of the doctors
15 you went to see, and in September of 2015 is when
16 you filled out this report. Does that look like
17 your handwriting on there?

18 A. (No verbal response)

19 Q. And it could be somebody wrote that for you. It
20 doesn't matter. Does that look like your
21 handwriting?

22 A. That looks like my handwriting.

23 Q. Okay. And on here, it says that you were having
24 this problem for over a year and you didn't know
25 what was causing your problems. Is that -- is that

1 right?

2 A. That's right, I did not.

3 Q. You did or you didn't?

4 A. No, I did not know.

5 Q. Okay. By February, you had decided it was probably
6 related to work, which is why you started gathering
7 MSDS sheets in February of 2016?

8 A. Only after the lung biopsy is when that they came up
9 with the theory that it was work related.

10 **BY MR. RENFROW:**

11 Give me one minute, Commissioner. I'm probably
12 getting close to being done.

13 All right, Commissioner, I'm going to refer you
14 to my APA page 623.

15 **CROSS EXAMINATION RESUMED BY MR. RENFROW:**

16 Q. This is two documents that were in your personnel
17 file, one document, two pages for a disability
18 income claim that you made through SEW-Eurodrive.
19 I'm going to show you this document.

20 **BY MR. RENFROW:**

21 It's 623 and 624, Commissioner.

22 **CROSS EXAMINATION RESUMED BY MR. RENFROW:**

23 Q. This is a document, Mr. Christian, it looks like you
24 filled out.

25 A. Uh-huh.

1 Q. Signed in several different places. Is that your
2 signature right there on page 623?

3 A. Yes, sir.

4 Q. And again at the top of 624?

5 A. Correct.

6 Q. Now, this is what I believe to be an application for
7 some type of short term or long term disability
8 income that you applied for in July of 2016.

9 A. Correct.

10 Q. And that was six months before you retired, correct?
11 Five or six months?

12 A. Correct.

13 Q. Okay. And this was filled out four or five months
14 after you had had that biopsy and started gathering
15 MSDS sheets and all that stuff related to what you
16 believe was the cause of your problem working for
17 SEW, correct?

18 A. Correct.

19 Q. Okay. So, there are several questions on here. "Is
20 this disability due to an accident or sickness?"
21 And what did you check? Which one is circled,
22 colored in? Accident or sickness, I'll help you out
23 here.

24 A. It's sickness.

25 Q. Okay.

1 A. But an accident, you know, trying to differentiate -
2 --

3 Q. Sure.

4 A. --- an accident. To me an accident is if -- if --
5 say if you are carrying something and you fall or
6 something falls on you, that's an accident. I
7 classified this as a sickness.

8 Q. Sure, and I'm not questioning you on that. I was
9 actually leading to the next line.

10 A. Yeah.

11 Q. Underneath where you circled that, you put "Symptoms
12 began to appear 2014." So, we are getting closer to
13 having more consistency in that your problems
14 started at least as 2014, correct? Is that your
15 handwriting?

16 A. That's my handwriting, and what I might have been
17 referring to there may have been just, you know,
18 sinus conditions or whatever.

19 Q. Okay. But you didn't say that, and on the very next
20 page, 624, it says "Is this condition due to an
21 injury or sickness arising out of your employment?"
22 and what did you circle? Yes or no?

23 A. I see what I circled. I see that "no" is circled,
24 but I'm trying to think what they were -- what this
25 was referring to.

1 Q. And I'll explain in a minute, but what's interesting
2 about this question is it says "Is your condition
3 due to an injury or sickness arising out of your
4 patient's employment?" The options you have are
5 "yes," "no" or "unknown," and you circled which one?

6 A. If I circled it, "no" is circled.

7 Q. Somebody circled and signed -- is that your
8 signature on it?

9 A. That's my signature on it.

10 Q. And does that say "no"?

11 A. It says "no," but I don't know why I would have
12 circled it "no."

13 Q. All right. And this was five months after you had
14 gotten a bunch of records for for your folks after
15 the biopsy because you believed it was related to
16 exposure to solder?

17 A. Right.

18 Q. So, our options were yes, I think it's related to
19 work; no, I don't, or I don't know, and you didn't
20 check I don't know, did you?

21 A. No.

22 Q. And is the reason you didn't was because you knew if
23 you were completely honest on this report, that you
24 wouldn't get short-term or long-term disability?

25 A. Well, I tried -- when I filled it out, I tried to

1 fill it out to the best of my ability, but I see
2 what you're saying "no" there, but I don't know why
3 I would have circled "no."

4 Q. Okay. Either you didn't think it was related to
5 work; you weren't -- you had an option to be
6 unclear, but you didn't circle the unclear option.
7 You circled definitively no. So, either you didn't
8 think it was related in July or you checked "no" and
9 weren't being honest because you knew if you checked
10 no -- if you checked "yes," you wouldn't qualify for
11 disability. You would have to pursue this under
12 workers' comp?

13 A. I don't know.

14 Q. Okay.

15 A. I don't know why I did that.

16 **BY MR. RENFROW:**

17 I'm done. Thank you, Commissioner.

18 **BY COMMISSIONER MCCASKILL:**

19 Mr. Phillips.

20 **BY MR. PHILLIPS:**

21 Yes, sir, briefly.

22 **BY COMMISSIONER MCCASKILL:**

23 All right.

24 **REDIRECT EXAMINATION BY MR. PHILLIPS:**

25 Q. Ken, you were asked about your sinus surgery. Were

1 you working for SEW during that time?

2 A. Yes.

3 Q. Okay. And Mr. Renfrow went through a lot of your
4 job history. Were you having any issues relating to
5 your lungs in those past jobs?

6 A. No.

7 Q. And did you and Carol move into the home after the
8 renovations were completed?

9 A. Yes.

10 Q. So, y'all weren't living in the house ---

11 A. No.

12 Q. --- while the renovations were going on?

13 A. No.

14 Q. Okay. Are you a doctor?

15 A. Excuse me?

16 Q. Are you a doctor?

17 A. No.

18 Q. Are you a toxicologist?

19 A. No.

20 Q. Prior to your biopsy and the results, did any doctor
21 tell you that this was related, that your condition
22 was related to solder?

23 BY MR. RENFROW:

24 Object to the form of what the doctor has told
25 him.

1 **BY COMMISSIONER MCCASKILL:**

2 Why don't you rephrase that.

3 **BY THE WITNESS:**

4 What was the question again?

5 **REDIRECT EXAMINATION RESUMED BY MR. PHILLIPS:**

6 Q. Prior to your biopsy and the results from that
7 biopsy, were you under the impression -- did you
8 understand that your condition was related to the
9 solder?

10 A. Not until after the lung biopsy.

11 Q. And while you were at SEW, was there a period of
12 time where you were the only doing the soldering at
13 SEW?

14 A. Yes, I was the only person assigned to the
15 electronic lab. That was for maybe about three
16 years.

17 Q. Okay. So, you did all of the soldering for SEW?

18 A. I did all of the repairs, troubleshooting,
19 soldering, and everything.

20 **BY MR. PHILLIPS:**

21 That's all, Your Honor.

22 **BY COMMISSIONER MCCASKILL:**

23 Anything else, Mr. Renfrow?

24 **BY MR. RENFROW:**

25 Real quickly, Commissioner.

RE-CROSS EXAMINATION BY MR. RENFROW:

Q. Mr. Christian, you mentioned earlier that -- you were trying to explain how much soldering you did during a week, and has any doctor explained to you or have you seen any research that has suggested to you that if you have been exposed to soldering for eight hours a day or for one hour a day that it could cause the type of problem you have?

A. No.

Q. So, in your mind, does it matter if you did it for one minute or eight hours a day?

A. Repeat that.

Q. Yeah. Have you seen -- in your mind, the fact that you did it two or three times a week, I think you said, sometimes as much as maybe three hours in the worst case scenario versus doing it for eight hours a day or if you are doing the soldering and you being the only one doing the soldering, have you seen any evidence to suggest that there was a certain level of soldering you could do and if you got above that level, it could cause you to have the kind of problem you have?

A. No.

BY MR. RENFROW:

I don't have any other questions of this

1 witness, Commissioner.

2 **BY COMMISSIONER MCCASKILL:**

3 All right. Mr. Phillips.

4 **BY MR. PHILLIPS:**

5 No questions.

6 **BY COMMISSIONER MCCASKILL:**

7 All right. Thank you, sir. You may step down.

8 Other witnesses, Mr. Phillips?

9 **BY MR. PHILLIPS:**

10 No, Commissioner.

11 **BY COMMISSIONER MCCASKILL:**

12 Is that your case?

13 **BY MR. PHILLIPS:**

14 That is, Commissioner.

15 **BY MR. RENFROW:**

16 Mr. Renfrow, witnesses?

17 **BY MR. RENFROW:**

18 Thank you, Commissioner. I'm going to call

19 Wade Blackwell to the stand.

20 **BY COMMISSIONER MCCASKILL:**

21 All right.

22 **BY MR. RENFROW:**

23 Do you need another break before we start? Are

24 you okay, Mr. Christian?

25 **BY MR. CHRISTIAN:**

1 I'm fine.

2 **BY COMMISSIONER MCCASKILL:**

3 All right. You were present for my speak up
4 and answer yes or no, and if you need an
5 explanation, I'll explain. If not, raise your right
6 hand.

7 Please swear the witness.

8 **BY THE COURT REPORTER:**

9 * * * * * * * * * * * * * *

10 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
11 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
12 MATTER HEREIN:

13 **WADE BLACKWELL**

14 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

15 **BY THE COURT REPORTER:**

16 Thank you.

17 **BY COMMISSIONER MCCASKILL:**

18 All right. Please, state your full name for
19 the record.

20 **BY MR. BLACKWELL:**

21 Stephen Wade Blackwell.

22 **BY COMMISSIONER MCCASKILL:**

23 All right. You're going to have to speak up a
24 little bit, Mr. Blackwell. I'm old.

25 **BY MR. BLACKWELL:**

1 Yes, sir.

2 **BY COMMISSIONER MCCASKILL:**

3 All right, Mr. Renfrow, your witness.

4 **DIRECT EXAMINATION BY MR. RENFROW:**

5 Q. All right, Mr. Blackwell, you go by Wade; is that
6 correct?

7 A. That is correct.

8 Q. Can I call you Wade?

9 A. Yes, sir.

10 Q. All right. How old are you?

11 A. Oh, wow. I didn't prepare for that question. I'm
12 38 years old.

13 Q. Thirty-eight years old. And how long have you
14 worked for SEW-Eurodrive?

15 A. It will be 20 years in November.

16 Q. Okay. And during the time that you worked there,
17 did you have some portion of that time that you got
18 to work alongside or in the same business with
19 Kenneth Christian?

20 A. Yes.

21 Q. Okay. And some part of that time, did you actually
22 work in the same lab that he has referred to several
23 times today?

24 A. That is correct.

25 Q. And at least two or three of those years, you were

1 in the same capacity as him where y'all did the same
2 exact job?

3 A. That is correct.

4 Q. All right. And during that time frame, well, what
5 years was that, the best you can remember?

6 A. Yeah, I'm going to have to estimate here. It was in
7 the 2003 time frame. I moved to the lab after
8 completing my co-op and my schooling. I graduated
9 in the 2002 time frame, and I'm pretty sure 2003 is
10 when I started.

11 Q. And so then at some point throughout 2007 or so, you
12 were promoted above the position you were in; is
13 that correct?

14 A. That is correct.

15 Q. And what is your current position with the company?

16 A. Purchasing manager.

17 Q. Okay. And you also -- do you have any role with
18 safety?

19 A. Yes, I do wear lots of hats at the company, and
20 safety is certainly one of my responsibilities. I
21 would be considered safety manager.

22 Q. Okay. Since you've worked at SEW for 20 years, are
23 you aware of anybody there that works -- who has
24 worked with the company longer than you at this
25 time?

1 A. There's lots of folks who have worked there longer.
2 People come to SEW; they don't want to leave.

3 Q. Right. And are you aware of anybody who has worked
4 there for 30 years?

5 A. Yes.

6 Q. Okay. Are you aware of anybody that's worked there
7 for 20, 30 years or even longer that has complained
8 of any problems in their lungs related to exposure
9 at work?

10 A. In my involvement in safety, no. I mean, I'm not
11 aware of anybody that's complained about a lung or
12 respiratory issue in any department either in the
13 lab or outside of the lab or across the U.S. as a
14 whole. We have five plants in the U.S.

15 Q. And has anybody ever come to you or have you gotten
16 information from anyone that worked in a lab similar
17 to the one you and Mr. Christian worked in that has
18 a lung related problem or any symptoms that they
19 believe are related to working with soldering fumes?

20 A. No.

21 Q. And are the things that you do in that position
22 today and then back when you worked there that
23 didn't require you to solder?

24 A. Yes, there's lots of activities that don't.

25 Q. In your -- in your opinion, do you feel like you are

1 qualified to tell me on average what you did back
2 when you worked in the lab and compare it to what
3 your folks do in 2015, '16, '17 when you weren't
4 necessarily in the lab?

5 A. Absolutely.

6 Q. Okay. And when you worked in the lab the years you
7 worked in there alongside Mr. Christian, did you do
8 some soldering?

9 A. Yes.

10 Q. And on average in a week, how much would you say you
11 would do? If we had to quantify a 40-hour week, how
12 many hours would you spend soldering?

13 A. You wouldn't use hours. You would use minutes.

14 Q. Okay.

15 A. You know, you would on average solder about two to
16 three times a week, and let me tell you why, if you
17 don't mind.

18 Q. Sure.

19 A. The electronic lab as a whole was never a for profit
20 business unit within the company. The electronic
21 lab, you know, we always just wanted to break even.
22 We were there as a support group for our customer
23 base. We -- you know, our business is to sell gear
24 motors and drives. We want to sell those. We don't
25 want to -- we're not in the fix it business, right?

1 So, at the end of the day, it's not economical if
2 someone is sitting there soldering for three hours a
3 day. Your know, our billing rate is \$150 per hour
4 of time, and if you just spent three hours
5 soldering, you could have just replaced the board,
6 which would have cost much less money. So, we would
7 -- somebody would get a butt chewing, quite
8 honestly, if they were soldering for three hours a
9 day.

10 Q. Right.

11 A. Because that would be wasting company money.

12 Q. So, let me be clear. My dad was an auto mechanic,
13 and he had a little garage, and one of his guys, his
14 job was just to work on brakes, and he would spend
15 eight hours a day spinning rotors, fixing brakes
16 pads and fixing brakes all day long. That's not
17 necessarily the requirement of someone who works as
18 a lab technician at SEW like Mr. Christian did and
19 like you did with him for a few years?

20 A. No, this was not a production job. Absolutely not.

21 Q. And so he wasn't sitting there all day with that
22 torch and that solder in his hand ---

23 A. Absolutely not.

24 Q. --- working on and fixing things?

25 A. No, we have -- we have machines and robots, and in

1 manufacturing, that's where the heavy soldering is
2 done in the production of those parts, and these
3 little boards, like I said, they're not terribly
4 expensive. You know, you wouldn't waste three hours
5 soldering on a tiny little board. We would just
6 grab a board and say it's too costly to fix that
7 board. You would replace it, and it would be much
8 more profitable that way.

9 Q. One of the things that we've submitted in this
10 prehearing brief here.

11 **BY MR. RENFROW:**

12 It's my tab, Commissioner, 24.

13 **DIRECT EXAMINATION RESUMED BY MR. RENFROW:**

14 Q. These are some documents that I want to show you,
15 Mr. Blackwell. Wade, this document starting at page
16 642 and going through 686. Let's talk about 642 and
17 643 for a moment. This is the weekly repair numbers
18 from August the 12th of 2006 to August the 18th of
19 2006; is that correct?

20 A. That is correct.

21 Q. Now, who prepared this document?

22 A. Ken Christian.

23 Q. Okay. And ---

24 A. Let me -- let me clarify. Ken Christian prepared
25 the original spreadsheet, and I went and added a

1 couple of columns.

2 Q. Okay. So, basically you took -- y'all have a log
3 somewhere that would show how much he did over the
4 course of every week he worked in that lab, and this
5 was a snapshot of one week in August of 2006,
6 correct?

7 A. That is correct. We were required -- I shouldn't
8 say require. We kept this sheet to show management
9 and our superiors that we were, you know, keeping up
10 with production, getting work done and on average we
11 wanted to look at three units per day. So, on
12 average 15 units per week we would want to evaluate.

13 Q. Okay. And I didn't ask you to go to August of 2006.
14 This is just a one sample snapshot that you just
15 pulled out of your computer; is that correct?

16 A. Sure, it is.

17 Q. And if any expert from Mr. Christian's side or
18 anybody had asked you to prepare all of these, it
19 might have taken a while, but you could get every
20 week ---

21 A. Sure.

22 Q. --- for his whole entire work history?

23 A. It would be thousands. If anybody wants that, I
24 would be happy to show them if they've got the time.

25 Q. Right. But you've never been asked to provide that?