THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2007-CP-14-00150

Diane C. Dingle, Claimant, Appellant,

v.

Federal Mogul Corporation, Employer, and
Travelers Property Casualty Company of America, Carrier ..... Respondents,

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

Procedural History

This claim was commenced with the filing of a Form 50 on December 19, 2000. Thereafter, the Commission held a hearing on April 16, 2004 and the Single Commissioner issued her Decision and Order on March 24, 2005, finding the claim compensable and awarding the Appellant/Claimant benefits pursuant to the Workers' Compensation Act.

The Respondents submitted an application for Commission review and, after hearing oral arguments, the Commission's Appellate Panel issued its Decision and Order on October 18, 2005, affirming the original Decision and Order of the Hearing Commissioner. The Respondents then filed an appeal with the circuit court. Following a hearing on June 14, 2006, the Court issued its decision remanding the entire matter to the Commission with specific instructions to make more detailed findings of fact and conclusions of law and for the Commission to comply with the dictates of the case of Mohasco Corp., Dixiana Mill Div. v. Rising, 289 S.C. 130, 345 S.E.2d 249 (Ct. App. 1986), *Remand portion of Order reversed and Circuit Court Order Order adopted as final* at 292 S.C. 489, 357 S.E.2d 456 (1987). The Commission's Appellate Panel issued a second Decision and Order dated February 26, 2007 affirming the original decision but for the inclusion of the recitation of several statutes. The Mohasco instructions were not changed. The Respondents again filed an appeal with the circuit court. Following another hearing on June 17, 2007, the Court again remanded the

matter to the Commission with instructions to consider the prior order of Judge Cooper.

Ultimately, the Commission's Appellate Panel on March 11, 2008 issued a decision whereby it vacated the prior decisions and remanded the entire matter to the jurisdictional Commissioner for a hearing *de novo*. This matter was heard on May 22, 2008 by the Single Commissioner and he thereafter issued his Decision and Order on July 15, 2008 denying the Appellant's claim for benefits. The Appellant then filed her application for Commission review and, after hearing oral arguments, the Commission's Appellate Panel issued its decision and order on December 17, 2008 affirming the decision of the Hearing Commissioner and upholding the denial of benefits. The Claimant subsequently filed her appeal to this Court and was ultimately directed to appeal to the circuit court whereupon Judge Cothran issued his decision on August 1, 2011 affirming the Appellate Panel's 2008 decision. A subsequent Motion to Reconsider was denied. This appeal, filed by the Claimant, follows.

Statement of the Case

The Claimant filed a claim by which she seeks benefits under the South Carolina Workers' Compensation Act for injuries allegedly resulting from an accidental injury and/or occupational disease while in the employment of the defendant employer, Federal Mogul. Specifically, the issues in this case are whether the Claimant's symptoms involving her lungs and throat are causally related to her employment, whether the Claimant gave proper notice to her employer pursuant to S.C. Ann. § 42-15-20, whether the Claimant is entitled to medical care/treatment for the alleged injuries/conditions, the date of maximum medical improvement, and the extent of any benefits to which she may be entitled under the South Carolina Workers Compensation

Act, including any permanent partial disability benefits.

The Claimant was the sole witness to testify on her behalf at the last hearing *de novo*. (See Procedural History.) On direct examination, she testified that she was 48 years old and completed high school, but has had no further formal education other than a little college at Sumter Tech. (R. p. 574 line 20; p. 575 lines 2-6.)

The Claimant's employment with Federal Mogul was at its plant in Summerton, South Carolina and commenced in November, 1996, through Kelly's Temporary Service. The Claimant spent approximately three months as a mold press operator in the mold department. (R. p. 575 line 11; p. 576 lines 1-14.) The mold press uses heat as part of its process to bond rubber to a metal oil seal for use in automobile engines. The Claimant was hired full time by Federal Mogul by mid-December, 1996, or early January, 1997 and was moved to the gasket department. (R. p. 576 lines 6-11; p. 579 lines 1-2.) The Claimant worked in the gasket department for a year on a press that made automobile gaskets. In approximately, January, 1998, Claimant was moved back to the mold department and worked there until she left her employment at the plant in August, 2000. (R. p. 580 lines 1-14.)

Claimant testified that, prior to her employment in November, 1996, she had no respiratory problems, however, the medical records document sinus problems. (R. p. 575 lines 12-23; p. 730-31.) She testified that, in June or July 1998, she began to have headaches, stomach pain and "bad sinuses" and was treated by her family doctor, Dr. Keith. (R. p. 580 lines 17-25; p. 581 lines 1-3.) Dr. Keith took her out of work several times in 1998 and in 1999, sent her for an MRI and CT scan and referred her to Dr. Cassone. (R. p. 581 lines 9-21.) The Claimant testified that she told her supervisor,

Johnny Mitchell, in January of 2000 that her medical problems were job related. (R. p. 582 lines 19-23.) She further testified that after being told, Johnny Mitchell and Laverne Houston moved her around to other areas and she worked in assembly, packing and engine. (R. p. 583 lines 9-16.) The Claimant testified that her condition got worse from 2000 up to the time she left the plant (August, 2000). (R. p. 585 lines 4-7.)

The first of the Claimant's complaints that were voiced concurrent with her work at Federal Mogul was to her primary care physician, Dr. Edward Keith, on May 5, 1998, who diagnosed her with sinusitis and allergic rhinitis. (R. p. 732, 734.) Additional records from 1998 show that the Claimant's subjective complaints to Dr. Keith consisted of congestion, headaches, sinusitis and vertigo in which Dr. Keith diagnosed as sinusitis and allergic rhinitis and treated her with steroids, antibiotics and antihistamines. (R. p. 125-27, 734-39; 772-77.) Dr. Rocco Cassone also treated the Claimant in 1998 for difficulty with "allergies and stopped up nose". (R. p. 745.) On March 13, 2000, Dr. Cassone stated that her "nose shows mild to moderate rhinitis" and on April 25, 2000, diagnosed her with sinusitis. (R. p. 746-47.) The Claimant was evaluated by Dr. James Atkison on June 13, 2000 for respiratory problems. However, at that time, Dr. Atkison reported that the Claimant's pulmonary functions were within normal limits. (R. p. 220-21.)

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act establishes the standard for judicial review of decisions of the Workers' Compensation Commission. S.C. Code Ann. § 1-23-380 (2011 Supp.) Lark v. Bi-Lo, Inc., 276 SC 130, 276 SE2d 304 (1981); Hargrove v. Titan Textile Co., 360 SC 276, 599 SE2d 604 (Ct. App. 2004). A reviewing

court may reverse or modify a decision of an agency if the findings, inferences, conclusions or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Bursey v. South Carolina Department of Health & Environmental Control, 360 SC 135, 600 SE2d 80 (Ct. App. 2004; SC Code Ann. §1-23-380(A)(6)(e). The substantial evidence rule of the APA governs the standard of review in a Workers' Compensation decision. Frame v. Resort Services, Inc. 357 SC 520, 593 SE2d 491 (Ct. App. 2004). Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. Pratt v. Morris Roofing, Inc., 357 SC 619, 594 SE2d 272 (2004); Jones v. Georgia-Pacific Corporation, 355 SC 413, 586 SE2d 111 (2003); Etheredge v. Monsanto Co., 349 SC 451, 562 SE2d 679 (Ct. App. 2002); Broughton v. South of the Border, 336 SC 488, 520 SE2d 630 (Ct. App. 1999).

ARGUMENT

1. WHETHER OR NOT THE CIRCUIT COURT ERRED IN FINDING THAT THE APPELLANT FAILED TO MEET HER BURDEN OF PROVING THAT SHE SUSTAINED COMPENSABLE INJURIES BY ACCIDENT AND, FURTHER, WHETHER SHE SUSTAINED COMPENSABLE INJURIES AS A RESULT OF AN OCCUPATIONAL DISEASE.

The Claimant failed to meet her burden in proving a compensable injury by accident, whether the result of an occupational disease or not, and the Single Commissioner's, the Appellate Panel's and the Circuit Court's decisions denying the Claimant benefits should be affirmed.

The Claimant in her argument returns time and again to bits and pieces of the hearing transcripts of the numerous circuit court decisions beginning with the first in

2006 but prior to the *de novo* hearing in 2008. These comments must be taken, not as the Claimant portrays, but in their entirety and in a complete review of these same proceedings. (R. p. 74-78; p. 57-59; p. 8; p. 521-567.) An appellate court must view the trial court's statements as a whole to determine its reasoning. State v. Evans, 354 S.C. at 584, 582 S.E.2d at 410 (2003). Furthermore, "[a]n order should be construed within the context of the proceeding in which it is rendered." Dibble v. Sumter Ice & Fuel Co., 283 S.C. at 282, 322 S.E.2d at 677 (Ct. App. 1984); see also Eddins v. Eddins, 304 S.C. at 135, 403 S.E.2d at 166 (Ct. App. 1991) (holding judgments are to be construed as other instruments, and the determinative factor is the intention of the court, considering the judgment in its entirety). Notwithstanding the sound reasoning of the prior circuit court decisions, Claimant's extensive and profuse protests regarding the Circuit Court's rulings on appeal have little relevance to this appeal because the hearing of May 22, 2008 was *de novo.* The Claimant never objected to nor appealed the Commission's ruling vacating the 2006 decision. While it may have been considered interlocutory, if the Claimant wished to revisit those decisions, the proper procedure would have been to enter her objections at the *de novo* hearing and/or to appeal the Commission's ruling vacating the prior decisions. She did neither. Therefore, the Respondents' position is that the Commission's ruling in March 2008 vacating the Full Commission and Single Commissioner's decisions of 2006 and 2007 obviates the requirement for this Court to thoroughly review these prior decisions. (R. p. 48-52.) Additionally, there has been no prejudice to the Claimant as she was free to clarify, rectify or object to anything that she saw fit at the hearing *de novo* on May 22, 2008. While it is true that the record does not disappear (R. p. 39 line 22), the Claimant's

protests, including her arguments about: the Statute of Limitations, when the Form 50 was filed, what type of injury was opted for, whether Commissioner Childs made complete findings, whether the employer had proper notice, etc., were all either answered or had the ability to be addressed at that hearing. The Claimant made only one objection at this hearing and it was regarding testimony by a witness as to his knowledge of the plant during the timeframe that the Claimant worked there. (R. p. 613 lines 8-19.) The Claimant never objected to the hearing itself.

According to the Single Commissioner's Order at that *de novo* hearing, he found that "the case could be considered from an occupational disease standpoint or as a repetitive trauma injury or as an aggravation of an underlying condition." (R. p. 40 lines 9-10.)

In light of that fact and the Claimant's ability to reassert old evidence as well as to present any new evidence in favor of her position, it is improper as well as irrelevant of her to paint those past proceedings as the source of the Claimant's problems with her case. She essentially had a new apple to bite as of May 22, 2008.

As to the Claimant's copious citations of her own medical history in her Brief, one can assume that out of the massive amount of evidence in this case, she has put forth her most compelling in these excerpts. Yet, despite the multiple and duplicative notes referencing her allergies and "stopped up nose," her sore throat and sinusitis, there is insubstantial, if any evidence, in the way of an expert opinion that ties these occurrences and conditions to her work. Certainly her evidence is not to the standard of substantial, reliable and probative evidence that would compel this Court to overrule the prior decisions of the Single Commissioner, the Appellate Panel and the Circuit Court.

There are numerous doctors' reports noting that the Appellant *feels* that it is work related. These cannot be concluded to be reliable and substantial evidence from a medical expert that her condition and symptoms are indeed, work related. The medical records clearly note that the chemicals at the work place are not recognized as allergens. (App. Brief. p. 14). Her doctor further states that her wheezing "might" sound like asthma or occupational asthma, but he "could prove none of that today." (R. p. 220-21.) This evidence is not adequate even for the minimum requirements of causation for a claim prior to 2007. (If a medical expert is unwilling to state with certainty a connection between an accident and an injury, the "expression of a cautious opinion" may support an award if there are facts outside the medical testimony that also support an award. Grice v. Dickerson, Inc., 241 S.C. 225, 127 S.E.2d 722 (1962)).

Appellant Claimant cites extensively her own testimony at the hearing on May 22, 2008 in her brief and ultimately argues as per Arnold v. Benjamin Booth Co., 257 S.C. 337, 341, 185 S.E.2d 830, 832 (1971) that because circumstantial evidence and lay testimony have previously been found to be sufficient to support a finding of causation, it should also be found in this case. Although she argues that she has proven a causal connection by the preponderance of the evidence (App. Brief, p. 19 l. 23), Respondent respectfully notes that the standard of review at this juncture is substantial evidence rather than a preponderance and further, the Claimant cannot reach the preponderance standard much less the proper one of substantial evidence. While Arnold will *allow* for the affirmation of an award based upon circumstantial evidence and lay testimony, this case does not *require* this Court to make a finding of compensability based upon same. Were that the case, every claim in dispute could be resolved in favor of the Claimant

with merely their own testimony. In this case, the Single Commissioner, the Appellate Panel and the Circuit Court all heard or read the Claimant's testimony and did not see fit (even at the preponderance standard) to find that this testimony supported causation. It is not within the province of this Court to reverse findings of the Commission which are supported by substantial evidence. Hunter v. Patrick Constr. Co., 289 S.C. 46, 344 S.E.2d 613(1986). Where there is a conflict in the evidence, either by different witnesses or in the testimony of the same witness, the findings of fact of the Commission are conclusive. Tiller v. National Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999); Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998. Indeed, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Id., Clade, supra.

For the foregoing reasons, the Circuit Court did not err in affirming that the Appellant failed to meet her burden in proving that she sustained a compensable injury by accident or by occupational disease.

2. WHETHER OR NOT THE CIRCUIT COURT ERRED IN FINDING THAT THE APPELLANT FAILED TO PROVE THE NECESSARY SIX ELEMENTS SET FORTH IN THE CASE OF MOHASCO CORP., DIXIANA MILL DIV. V. RISING, 289 S.C. 130, 345 S.E..2D 249 (CT. APP. 1986), ORDER REVERSED BY MOHASCO CORP. V. DIXIANA MILL DIV. V. RISING, 292 S.C. 489, 357 S.E. 2D 456 (1987).

As previously noted, the Single Commissioner's decision of July 15, 2008 found that the case "could be considered from an occupational disease standpoint or as a repetitive trauma injury or as an aggravation of an underlying condition." This was not appealed and therefore Respondent will not address the Appellant's argument as to whether the three categories of claim in question are mutually exclusive.

Mohasco Corp., Dixiana Mil Div. v. Rising, 289 S.C. 130, 345 S.E.2d 249 (Ct. App. 1986), Remand portion of Order reversed and Circuit Court Order Order adopted as final at 292 S.C. 489, 357 S.E.2d 456 (1987) requires that all six of the following elements be proven in order to receive benefits for an occupational disease under The Act:

1. A disease;
2. The disease must arise out of and in the course of the claimant's employment;
3. The disease must be due to hazards in excess of those hazards that are ordinarily incident to employment;
4. The disease must be peculiar to the occupation in which the claimant was engaged;
5. The hazard causing the disease must be one recognized as peculiar to a particular trade, process, occupation, or employment; and
6. The disease must directly result from the claimant's continuous exposure to the normal working conditions of the particular trade, process, occupation, or employment.

The Single Commissioner found that the Claimant had satisfied the first element and this finding was not appealed.

As to the remaining five elements and specifically, the second element, the Claimant cites several physician notes as evidence that her disease arose out of and in the course of her employment. However, these notes either merely recite the Claimant's belief as to the origin of her symptoms or caution against being exposed to "noxious fumes." None of these experts offer an opinion with any degree of reasonable medical certainty that her disease is caused by her employment. Dr. Atkison opines

that the best treatment *may* (emphasis added) be switching jobs. However the evidence in the record notes that even though the Claimant stopped working at the Federal Mogul Plant in August of 2000 (R. p. 755 lines 7-8) her symptoms did not abate. (R. p. 413 lines 6-9; p. 417 lines 1-4; p. 422 lines 14-19.) Dr. Simpson further opined that the chemicals listed on the MSDS sheets from Federal Mogul *might* have produced temporary voice alterations but that none of the chemicals had chronic respiratory effects. (R. p. 421 lines 18-23; p. 431 lines 7-13.) It is further instructive to note that all of the Claimant's providers returned her to work without restriction. Dr. Alleyne, while noting that some of the chemicals that the Claimant had mentioned to him "raised a red flag", did not offer an opinion, cautious or to any degree of medical certainty, that her illness and problems were caused by her work. Further, Dr. Alleyne was not a treating physician, had never been inside the plant and did not have any knowledge as to where any of the particular chemicals were used in which the Claimant provided data sheets. Finally, he only consulted with the Claimant almost four years after she no longer worked at Federal Mogul. (R. p. 357 lines 24-25; p. 358 lines 1-6, 15-17; p. 360 lines 10-12; p. 362 lines 4-6; p. 382 lines 24-25; p. 383 lines 1-25; p. 384 lines 1-16.) While opinions of the Workers Compensation Commission hold no precedential value, this Court recognizes that the Commission has consistently given greater weight to the opinions of treating physicians over those of one-time opinions of non-treating physicians. Campbell v. Flexible Technologies, WCC No. 9917425 (2001); Smith v. Budweiser of Greenville, Inc., WCC No. 9803622 (2000), Ashford v. Heartland Hospice, WCC No. 0310993 (2004), Weinberger v. Lamaisonette Inc., WCC No. 9929239 (2004).

Mr. Richard Bennett, who holds a Master of Science degree in Public Health (MSPH) and is a Certified Industrial Hygienist (CIH), conducted an air quality study of the Claimant's apartment on March, 12, 2004. Prior to conducting this test, he reviewed her medical reports to assess what, if any, allergens to which the Claimant would react. Based on this assessment, a sampling strategy was formulated for those particular allergens that were medically documented as causing a reaction upon exposure. (R. p. 765-66.) According to this air quality study, Mr. Bennett found mold levels in the Claimant's apartment at forty times the level of mold that would be found in the outdoor air and twice the normal level of cockroach allergens. (R. p. 766.) This report also revealed dust mites (to which the Claimant reacted positively) in the Claimant's home. Claimant has a documented allergy to cockroach allergen and, even though she has no allergy to mold, according to the opinion of Dr. Simpson, the Claimant could still be affected. (R. p. 425 lines 1-5.) At the conclusion of his report, Mr. Bennett stated that continued occupancy of this apartment should be undertaken only after consulting with a physician. (R. p. 767 lines 5-15.) Mr. Bennett attributed these high levels to a faulty roof and/or condensate from an air-handling unit, that was previously located in the attic above the Claimant's apartment which caused building materials to be wet. (R. p. 768 lines 3-24.) Mr. Bennett also found evidence of water damage in the apartment; however, he was unable to obtain maintenance records to determine at what point this water intrusion may have occurred. (R. p. 769 lines 9-14; p. 770 lines 4-9.)

There is no evidence establishing at what point the water intrusion and subsequent mold proliferation occurred that would have led to the increased levels of these potential allergens/irritants and it was also documented by Claimant's treating

physicians that these levels of molds and cockroach allergens could very well be the cause of her symptoms. (R. p. 421 lines 18-25; p. 422 lines 1-19; p. 424 lines 19-25; p. 425 lines 1-17.)

The Claimant reported to Dr. Gaines that she had been away from work since July, but told Dr. Atkison on September 1, 2000 that she went to work two nights ago. (R. p. 240; p. 232.) Finally, in medical records dating back to 1996, it is noted that the "patient appears to be histrionic in regards to the amount of discomfort she is having yet there is no physical evidence." (R. p. 749.) This same physician noted that it is difficult to discern whether or not the patient is telling the truth. (Id.)

The testimony of David Bland, Environmental Health and Safety Coordinator at Federal Mogul, was also offered at the 2004 hearing. Mr. Bland testified that the Claimant's exposure would be limited to handling of the residue and would not be inhalation exposure. (R. p. 762 lines 8-25.) (While Mr. Bland refers to Fix-on in his deposition testimony, this is due to a scrivener's error and this term is to be used synonymously with Thixon.). The residue is bonded to the steel, and in his expert safety opinion, would only lead to contact exposure, not inhalation exposure. (R. p. 762 lines 18-25.) All of Claimant's complaints consist of respiratory symptoms that would require inhalation exposure. Mr. Bland further testified that in order for the symptoms that are outlined on the MSDS sheets to occur, Claimant would have had to have been exposed to the chemicals in the proper set of conditions, and the process that is in place at Federal Mogul ensures that workers are not placed in these conditions. (R. p. 65 lines 13-23.) There is no evidence to the contrary.

There was also evidence and testimony that, to further prevent inhalation

exposure to chemicals, Federal Mogul had extensive ventilation systems that are beyond what OSHA requires to include exhaust fans, make-up fans, and air conditioning systems. (R. p. 758 lines 12-21; p. 760 lines 21-25; p. 761 lines 1-2.) Federal Mogul regularly tested this ventilation system to ensure it is working properly. (R. p. 758 lines 22-25.) Further, all of the air samples taken by both OSHA and a professional industrial hygienist at the plant in the departments where Claimant worked reveal readings below the mandated levels that have been determined to be safe for individuals to work. (R. p. 759 lines 10-16; p. 764 lines 2-7.) Respondent's expert, Richard Bennett, conducted personal air sampling for Formaldehyde at the plant where Claimant worked. This study was conducted in the departments where Claimant worked and revealed that the levels to which all individuals were exposed were substantially lower than the levels approved by OSHA. The OSHA approved level is 0.75 parts per million and that all the measured concentrations from this study were less than 0.01 parts per million. (R. p. 667-78.) Mr. Bland also testified that OSHA does not require, nor have they ever suggested, that the workers wear masks. (R. p. 757 lines 2-6.) Additionally, Federal Mogul has been compliant with all OSHA safety standards in that they require the workers to wear steel-toed boots, ear plugs, arm guards, gloves, and safety glasses. (R. p. 757 lines 15-21; p. 756 lines 2-6.)

All of the above evidence supports the circuit court's opinion affirming the Full Commission and Single Commissioner's denial of benefits for an occupational disease to the Claimant.

As to the third, fourth and fifth prong of Mohasco, as previously noted, extensive ventilation systems were installed at Federal Mogul beyond OSHA requirements, nor

were masks required by OSHA. There was no evidence presented that even had her scratchy throat and sinusitis been caused by something at work, that this hazard was in excess of any hazard normally incident to employment nor that it was a disease peculiar to the work that the Claimant did at Federal Mogul much less that it was recognized as peculiar.

Dr. Atkison, Claimant's allergist, treated her from June 13, 2000 until September 1, 2000. (R. p. 473 lines 18-25.) As part of his work-up and evaluation of the Claimant, Dr. Atkison performed a rhinoscope exam. This examination revealed a nodule on the Claimant's vocal cord, and, according to Dr. Atkison's deposition testimony, a vocal cord nodule is one source of hoarseness. (R. p. 479 lines 9-25; p. 480 lines 1-2.) He further testified that there were one or two visits where Claimant had not been at work and continued to have voice problems, and he attributed this problem to the vocal cord nodule. (R. p. 486 lines 8-14.) In his medical assessment of Claimant, he determined that her chronic hoarseness was secondary to her vocal cord nodule. (R. p. 226-27.) Dr. Atkison testified he doesn't even know if the kinds of irritants from her work could cause a vocal cord nodule. (R. p. 488 lines 18-25; p. 489 lines 1-12.)

The findings of Wynne English, CCC-SLP, Speech Language Pathologist who evaluated the Claimant in 2000, also support the findings and conclusions of Dr. Atkison with regard to the vocal cord nodule. Ms. English specifically noted in her clinical impressions that the MSDS for Thixon 7500 does not specifically mention any effect on an exposed individual's vocal cords. (R. p. 244.) She notes that if the voice problem is a functional one, her voice should respond to improved vocal hygiene and modification of vocal behaviors through voice therapy at McLeod. (Id.) Despite this

recommendation, Claimant failed to continue treatment as recommended.

There is substantial evidence in the record that the effects of the chemicals Claimant alleges she has been exposed to would cause, if any, short-term, episodic symptoms, not chronic symptoms. (R. p. 421 lines 18-23; p. 431 lines 7-13.) Therefore, the substantial, reliable and probative evidence in the record establishes that neither the Claimant's vocal cord nodule nor her throat irritation or hoarseness could have been caused by her employment with Federal Mogul.

Despite Claimant having ceased employment with Federal Mogul in 2000, she continued to experience hoarseness and throat irritation. The evidence that the Appellant Claimant continued to have symptoms years after her work had ceased at Federal Mogul confirms that her disease did not result from continuous exposure to the normal working conditions there. Thus, the Claimant fails in establishing the sixth and final element for an occupational disease. With due respect, there lacks substantial evidence in the record to support the Claimant's contention that even two elements of Mohasco are fulfilled, much less all six .

3. WHETHER OR NOT THE CIRCUIT COURT ERRED IN FINDING THAT THERE IS NO MEDICAL OPINION AS EVIDENCE THAT THE APPELLANT HAD AN UNDERLYING CONDITION OR WAS PARTICULARLY SUSCEPTIBLE TO ANY CONDITIONS THAT EXISTED IN HER WORK.

The Appellant relies on Dr. Alleyne's deposition testimony wherein his evaluation and diagnosis of the Claimant was in May of 2004, almost four years after she last worked at Federal Mogul. (R. p. 367 line 25; p. 368 lines 1-12.) In addition to this obvious pitfall in relying upon his opinion, nothing that the Claimant put forth in her brief pointed to an underlying condition. Dr. Alleyne noted two substances which "raised a red flag." However, he had no idea if the Claimant had even been exposed to those

chemicals. These were merely MSDS sheets provided to him by the Claimant. He had never been inside the plant nor did he know in which section of the plant any particular chemicals were used. (R. p. 358 lines 15-23; p. 360 lines 10-12; p. 362 lines 4-6; p. 383 lines 1-6, 15-18.)

As to Dr. Cassone's reports, even the presumably strongest reports listed in the Claimant's brief only serve to underscore that the Claimant is the one that "wonders if the problem is related to her press." There is no opinion from Dr. Cassone or any of her treating providers attributing her problems to the job.

Dr. Atkison relates that the Claimant has had spring and fall sinus headaches, congestion, etc. for six or seven years. (R. p. 220-21.) This would mean that she had the same problems, not increased, but the same problems in 1993 or 1994, where she did not begin working at the Federal Mogul Plant until at least two years later. He also noted that he could not prove asthma or occupational asthma and that allergy skin testing was to evaluate seasonal allergy problem. (Id.)

Presumably, the Appellant points to sinus and allergy problems as well as her nodule in an effort to establish some prior history and susceptibility although it is far from clear in her argument. As previously noted, there is no medical opinion that she had a unique sensitivity or even that her nodule was of a long standing nature. This is pure conjecture on the Claimant's part. It is equally possible that, totally independent of where the Claimant worked or might have worked, she would continue to have sinus and allergy problems and likewise, a nodule could manifest idiopathically. There is simply no medical evidence as to whether any underlying condition or susceptibility was present in this Claimant. Finally, the Claimant herself fatally undermined this particular

aspect of this claim when she testified that although she had been treated for sinuses, she had no previous problems with her respiratory system. (R. p. 324 lines 18-25; p. 325 lines 1-25.)

4. WHETHER OR NOT THE CIRCUIT COURT ERRED IN FINDING THAT THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT A FINDING OF A REPETITIVE TRAUMA.

The Claimant once again points to her own self serving testimony with regard to her claim of repetitive trauma. Respondent agrees that Hargrove v. Titan Textile Co., 360 S.C. 291, 599 S.E.2d 604 (2004), stands in part for the premise that there need be no precipitating event . Likewise, Respondents note that there are medical reports in the record indicating that the Claimant suffered from laryngitis, tonsillitis, etc. However, there simply is not enough evidence for the Single Commissioner or the prior reviewing bodies to find that her symptoms were caused by her work. Proof of causation is required, even in repetitive trauma claims prior to 2007. These courts did not find that the Claimant's testimony was enough. Where there is a conflict in the evidence, either by different witnesses or in the testimony of the same witness, the findings of fact of the Commission are conclusive. Tiller v. National Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999); Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998). Indeed, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Id., Clade, supra.

5. WHETHER OR NOT THE CIRCUIT COURT ERRED IN FINDING THAT THERE IS NO EVIDENCE THAT THE APPELLANT SUSTAINED AN AGGRAVATION OF AN UNDERLYING CONDITION.

On the one hand, the Claimant says that she only had "just little sinuses" prior to

working for Federal Mogul. Then, on the other hand, she goes to numerous doctors insisting that it is work related. The entire six pages of the Claimant's brief on this question do not point to any evidence that the Appellant sustained an aggravation of an underlying condition. Therefore, Respondent would point out that the Claimant's argument on this point has been effectively abandoned. R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct.App.2000) (holding that an issue is abandoned if the appellant's brief treats it in a conclusory manner); see also State v. Colf, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct.App.1998) (finding a conclusory, two-paragraph argument that cited no authority other than an evidentiary rule was abandoned). Notwithstanding, even if this Court finds evidence that the Claimant sustained an aggravation of an underlying condition, there is not substantial evidence of this nor has the Claimant proffered any argument or evidence in her Brief to that effect.

6. WHETHER OR NOT THE CIRCUIT COURT ERRED IN FINDING THAT THE APPELLANT HAS PROVIDED NO MEDICAL EVIDENCE TO SHOW THAT EXPOSURE IN THE WORK EITHER CAUSED, AGGRAVATED OR EXACERBATED THE APPELLANT'S CONDITION.

Respondents point out that this issue has been asked numerous times in Appellant's Brief and would ask this Court to crave reference to Respondents' prior arguments regarding same. The lines and pages of Dr. Alleyne's deposition that the Claimant notes in her Brief for this argument do not reflect the lines quoted. Notwithstanding any future more accurately reported quotations, a diagnosis of RADS or RUDS will not in and of itself confirm that the Claimant's workplace caused her symptoms. Each lower court rightly found in its capacity as a finder of fact and/or a reviewing body that there was not adequate evidence to attribute the Claimant's

symptoms to her workplace.

7. WHETHER OR NOT THE CIRCUIT COURT ERRED IN CONCLUDING, AS A MATTER OF LAW, THAT THE APPELLANT FAILED TO ESTABLISH THAT THE DECISION AND ORDER OF THE WORKERS' COMPENSATION COMMISSION DATED DECEMBER 17, 2008, IS UNSUPPORTED BY THE SUBSTANTIAL, RELABLE AND PROBATIVE EVIDENCE IN THE RECORD.

The Respondent respectfully submits that this question has been asked and answered in the negative numerous times throughout this Brief. The Circuit Court did not err in concluding that, as a matter of law, the Appellant has failed to establish an injury by accident and the Decision and Order of the Commission of December 17, 2008 is supported by the proper standard.

8. WHETHER OR NOT THE CIRCUIT COURT ERRED IN CONCLUDING, AS A MATTER OF LAW, THAT THE APPELLANT FAILED TO PROVE SHE SUSTAINED A COMPENSABLE CLAIM UNDER EITHER § 42-1-160 OR §42-11-10 ET SEQ.

In order to be entitled to workers' compensation benefits, the employee must show he or she sustained an injury by accident arising out of and in the course of employment. Owings v. Anderson County Sheriff's Dept., 315 S.C. 297, 433 S.E.2d 869 (1993) rehearing denied. The Respondent craves reference to prior argument(s) in this Brief.

9. WHETHER OR NOT THE CIRCUIT COURT ERRED IN CONCLUDING, AS A MATTER OF LAW, THAT THE APPELLANT FAILED TO ESTABLISH THAT SHE IS ENTITLED TO BENEFITS UNDER §§ 42-15-60, 42-9-10, 42-9-20 OR 42-9-30 FOR MEDICAL CARE/TREATMENT, TEMPORARY TOTAL/PARTIAL BENEFITS AND/OR PERMANENT PARTIAL DISABILITY BENEFITS.

It is elementary that a claim must be adjudged to be compensable prior to receiving benefits. Neither the Single Commissioner, the Full Commission nor the Circuit Court found evidence to support conferring benefits upon the Claimant.

Therefore she is not entitled to benefits under the above statutes.

CONCLUSION

The Respondents respectfully submit that there was no error in the Decisions and Orders of the three lower courts in this matter and that the latest Circuit Court's decision should be affirmed in its entirety. The original Order of the Single Commissioner dated March 24, 2005 and the Full Commission Order of July 20, 2005 has been rescinded and the Claimant waived her right to request reinstatement of these decisions.

Respectfully submitted,

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April 1, 2013
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

Trial Court Case No. 2007-CP-14-00150

Diane C. Dingle, Employee/Claimant.....Appellant,

v.

Federal Mogul Corporation, Employer, and
Travlers Property Casualty Company of America, Carrier.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Respondent's Final Brief complies with Rule 211 (b) of the SCACR.

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April 1, 2013

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CLAREDNON COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2007-CP-14-00150

Diane C. Dingle, Employee/Claimant ..... Appellant,

v.

Federal Mogul Corporation, Employer, and
Travelers Property Casualty Company of America, Carrier ..... Respondents.

PROOF OF SERVICE

I certify that I have served the Final Brief of Respondents on Diane Dingle by depositing a copy of the Final Brief of Respondents in the United State Mail, postage prepaid, on April 1, 2013, addressed to her attorney of record, Dwight C. Moore, Esquire, Moore Law Firm, L.L.C., 26 North Main Street, Post Office Box 1229, Sumter, South Carolina 29151-1229.

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April 1, 2013