

Court of Appeals finds Employer/Carrier entitled to partial reimbursement from Second Injury Fund



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The South Carolina Court of Appeals recently reversed the decision of the circuit court and the appellate panel of the South Carolina Workers' Compensation Commission ("Appellate Panel") to find the employer/carrier was entitled to partial reimbursement from the Second Injury Fund. In *Carolinas Recycling Group v. South Carolina Second Injury Fund*, the claimant sustained three separate injuries to his lumbar spine in 2001, 2002 and 2004. He received impairment ratings to his back following each injury. However, an independent medical evaluation ("IME") conducted after the first injury determined claimant was at maximum medical improvement with no impairment.

The Appellate Panel determined, and the circuit court affirmed, the claimant's 2004 back injury was not aggravated by or combined with his pre-existing condition to create substantially greater medical costs or disability, and therefore, the Employer/Carrier was not entitled to partial reimbursement from the Second Injury Fund. The Appellate Panel's Order relied exclusively on the IME following the 2001 injury. The Court of Appeals determined the Appellate Panel's reliance on the IME was erroneous.

Under the South Carolina Administrative Procedures Act (APA), an appellate court cannot substitute its judgment for that of the Appellate Panel as to the weight of evidence on questions of fact, but an appellate court may reverse the Appellate Panel's decision when the decision is affected by an error of law or is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." See S.C. Code Ann. 1-23-380(5)(e) (Supp. 2010); *Stone v. Traylor Bros., Inc.*, 360 S.C. 271, 274 S.E.2d 551, 552 (Ct. App. 2004). "Substantial evidence" is evidence that, when viewing the record as a whole, would allow reasonable minds to reach the same conclusion the Appellate Panel reached. *Lark v. Bi-Lo*, 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981).

Using this standard, the Court of Appeals found the Second Injury Fund relied on an IME who only evaluated the claimant one time and failed to present any expert testimony from a physician who evaluated claimant after the 2002 and 2004 injuries. Therefore, the Court of Appeals determined the only reasonable inference to be drawn from the substantial evidence in the record is that the claimant's pre-existing back condition hindered his employment, he sustained a subsequent work-related injury that combined with or aggravated his prior condition, and the combination or aggravation of the injuries caused "substantially greater" disability and medical costs than would have been caused by the subsequent injury alone.

The takeaway: While IMEs are valuable tools in claim management resolution, an IME opinion, without more, is not enough to support a theory of permanency or causation especially when the treating physician maintains a contrary position.

About Kristian Cross

Kristian Cross is an associate with Collins & Lacy practicing in Workers' Compensation and Retail / Hospitality / Entertainment law. In addition to her position on the South Carolina Bar Workers' Compensation Committee, Kristian serves on the executive board of Sexual Trauma Services of the Midlands. Kristian received her Juris Doctor from the University of South Carolina, where she served as the Secretary of the Student Bar Association, as well as the Academic Assistance Program Property Tutor. During law school, she also served as a law clerk for Collins & Lacy and another local firm. Prior to joining Collins & Lacy in 2010, Kristian worked as an attorney for a Columbia-based firm practicing in the areas of business, commercial and insurance litigation.

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