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RECEIVED

DEC 19 1986

Corp., Risk Mgmt.

December 12, 1986

Mr. Tony Colangelo
Contract Transportation/
The Sherwin Williams Company
101 Prospect Avenue, N.W.
Cleveland, Ohio 44115-1075

RE: v. Contract Transportation/
Sherwin Williams and INA/Aetna Insurance Company
Claim No.
D/A: 12/06/85

REDACTED

Dear Tony:

Thank you for your recent phone call regarding an appeal in the above-styled matter. We have filed an appeal with the Superior Court of Clayton County.

REDACTED A review of the file indicates that the claimant maintains that he began to have "an aching sensation" all over his body while enroute from Texas to Chicago. While in Chicago, he testified that the aching sensation and weakness became progressively worse until he "thought he was dying." He continued to drive all the way back to Jonesboro and was admitted to Newnan Hospital early the following morning. A diagnosis of left hemispheric cerebral thrombosis with right hemiparesis was made upon admission.

Under O.C.G.A. §34-9-1(4), "injury" does not include thrombosis unless it is shown by a preponderance of competent and credible evidence that the condition was attributable to the performance of the usual work of the employee. It was our position at both the Administrative Law Judge and Full Board levels that the claimant did not produce evidence to demonstrate that the cerebral thrombosis was attributable to his employment.

The deposition of Dr. McNabb was taken to try to clear up some of the medical questions. Dr. McNabb testified that the claimant's stroke was a "stroke in evolution," which means that there had already been an impairment of his blood flow by the time he noticed an onset of the aching sensation and weakness.

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DREW, ECKL & FARNHAM

Mr. Tony Colangelo

RE:

December 12, 1986

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Dr. McNabb also attributes the problem to long history of arterial sclerosis, hypertension, the claimant's smoking history, and the fact that his mother had also had a stroke.

At the hearing, the claimant placed great emphasis on the fact that he had to move paint cans in Chicago in very cold weather. It was our position that the medical evidence demonstrated that the claimant had already begun having the "stroke" long before he ever reached Chicago. While Dr. McNabb did testify that the exertion in Chicago could have worsened the situation, he also testified that the exertion itself did not cause the stroke.

There are two Court of Appeals decisions which will help us in our appeal to the Superior Court. In Johnson v. Boston Old Colony Insurance Co., the Court of Appeals held that there must be evidence to show that the claimed exertion caused the disease. The Court went on to say that pain suffered by an employee because he engages in physical exertion is not an accidental injury. In Carter v. Kansas City Fire & Marine Insurance Co., the Court of Appeals held that pain experienced by a claimant during exertion was merely a symptom of coronary disease. In Carter, the claimant's physician testified that the exertion at work could have aggravated the condition. However, the Court of Appeals ruled that the exertion on the job must cause the disability.

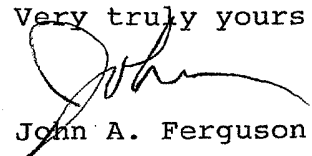
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In his Award, Administrative Law Judge Speed found that exertion on the job probably aggravated his pre-existing condition bringing about the actual thrombosis. This is not consistent with the testimony of Dr. McNabb. Dr. McNabb testified that the clotting had already begun before the alleged exertion.

It is traditionally very difficult to prevail in an appeal to the Superior Court. As David indicated in his letter to you of November 13, 1986, the Superior Courts in Georgia are bound by the "any evidence" rule. Under this long-standing, often quoted principle, if there is any evidence at all to support an Award of the State Board, the Superior Court must affirm it.

I will keep you apprised of all developments with our appeal to the Superior Court. If I can answer any questions, please do not hesitate to call me.

Very truly yours,


John A. Ferguson, Jr.

JAF:pmw

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