

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 0914243

Michael McCain, Employee/Appellant,

v.

West Manning Auto, Employer,

and

South Carolina
Uninsured Employers'
Fund, Carrier,
Respondents.

PETITION

Michael McCain, Employee/Claimant/Appellant petitions the South Carolina Court of Appeals to remand the case to the South Carolina Workers' Compensation Commission for a proper review of the Order from the Single Commissioner in this case or to have an evidentiary hearing with regard to the issue of service.

STATEMENT OF THE CASE

All the parties to this action including William Shepherd and Tobie Parker appeared before the South Carolina Workers' Compensation Panel on March 19, 2013. Prior to the start of the hearing, the Panel held a pre-hearing conference with all parties. The Panel informed both Mr. Parker and Mr. Shepherd of the right to counsel and both gentlemen stated to the Panel that they wished to pursue without counsel. During the pre-hearing conference, only Mr. Shepherd indicated that no notice of the original

hearing before the Single Commissioner was ever mailed to him. Mr. Shepherd indicated that his address is 1052 Primrose Lane, Manning, South Carolina 29102. According to the Single Commissioner's order, Mr. William Shepherd was no longer a party to this action. Neither Mr. Parker or Mr. Shepherd appeared at the hearing before the Single Commissioner. After the pre-hearing conference, the Panel decided to vacate the Single Commissioner's order and remand the case to a Single Commissioner for de novo hearing.

EXCEPTIONS

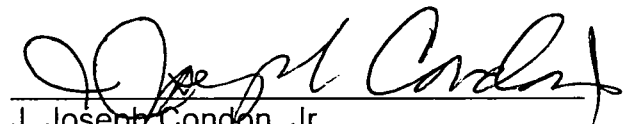
The Appellant asserts the following exceptions or errors of law:

- 1) That the Appellate Panel took unsworn testimony from Mr. William Shepherd that Mr. Shepherd did not receive notice of the Single Commissioner's hearing. Mr. William Shepherd works for Tobie Parker at West Manning Auto. There is no evidence that Mr. Shepherd did not receive notice of the Single Commissioner's hearing. S.C. Code § 42-17-50 states that for good grounds shown the Appellate Panel can ..."reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award." There is no evidence in the record of good cause shown to take unsworn testimony from a person who is no longer a party. Nor is there any showing of prejudice to Mr. William Shepherd. Service pursuant to Reg. 67-211 was made on the employer West Manning Auto and Tobie Parker at the proper address and there was no objection or problem with that service. Service by mail for Mr. Shepherd at his place of employment

may be where he actually receives mail. Service by mail is not required to be at a person's home address. There was no inquiry to whether Mr. Shepherd receives mail at his place of employment.

- 2) That there was no violation of any due process since Mr. Shepherd was no longer a party to this action and there was no prejudice to Mr. William Shepherd. There was no evidence of any returned mail for Mr. Shepherd nor was there any evidence that the address used for Mr. Shepherd was not proper. The new address may have been his home address but the address used by the Commission for the hearing was an address where he was actually receiving mail.
- 3) That the South Carolina Workers' Compensation Commission failed to properly determine whether the parties had actual notice of the hearing before the Single Commissioner and whether there was any prejudice to any of the parties involved.

IT IS RESPECTFULLY REQUESTED that this case be remanded to the South Carolina Workers' Compensation Commission for a hearing with regard to the Single Commissioner's order or a hearing to see whether Mr. William Shepherd received notice at his place of employment or to have a proper hearing with regard to the issue of service.



J. Joseph Condon, Jr.
3842-C Leeds Avenue
North Charleston, South Carolina 29405
ATTORNEY FOR THE EMPLOYEE/
APPELLANT/CLAIMANT

BEFORE THE SOUTH CAROLINA
COURT OF APPEALS
WCC FILE NO. 0914243

Michael McCain,)
Employee/Claimant)
vs.)
West Manning Auto,)
Employer,)
and)
SC Uninsured Employers' Fund,)
Carrier,)
Defendants.)

CERTIFICATE OF SERVICE

I certify that I have served the Notice of Appeal, Petition and Exceptions on the following individuals or agencies by depositing a copy of the Notice of Appeal and Petition and Exceptions in the United States Mail, postage prepaid, on May 16, 2013.

By First Class Mail: South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

By First Class Mail: West Manning Auto
1431 Georgia Pacific Highway
Alcolu, SC 29001

By First Class Mail: Mr. Tobie Parker
1431 Georgia Pacific Highway
Alcolu, SC 29001

By First Class Mail: Mr. Tobie Parker
1052 Primrose Lane
Manning, South Carolina 29102

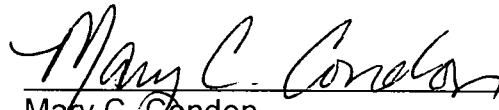
By First Class Mail: Mr. William Shepherd
1052 Primrose Lane
Manning, South Carolina 29102

By First Class Mail:

Timothy B. Killen, Esquire
Attorney for South Carolina Uninsured Employers' Fund
4500 Fort Jackson Boulevard
Columbia, South Carolina 29209
(803) 227-2894

By First Class Mail:

South Carolina Workers' Compensation Commission
Judicial Department
Post Office Box 1715
Columbia, South Carolina 29202

A handwritten signature in cursive script that reads "Mary C. Condon". The signature is written in black ink and is positioned above a horizontal line.

Mary C. Condon

Legal Assistant to J. Joseph Condon, Jr.