

RECEIVED

Dec 09 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Cynthia C. Dooley, Chair
T. Scott Beck
Melody L. James

WCC No. 1923480

Appellate Case No.: 2023-001264

Takara L. Stewart,.....Appellant,

v.

South Carolina CVS Pharmacy, LLC, Employer, and
XL Insurance America, Inc., Carrier.....Respondents.

**RESPONDENTS' FOURTH MOTION TO DISMISS APPEAL OR, IN THE
ALTERNATIVE, MOTION TO STRIKE IMPROPER PORTIONS OF APPELLANT'S
RECORD ON APPEAL FOR NON-COMPLIANCE, TO COMPEL MISSING PORTIONS
OF RESPONDENTS' DESIGNATION OF MATTER TO BE ADDED TO RECORD ON
APPEAL, AND TO STAY TIMELINE TO SERVE RESPONDENTS' FINAL BRIEF DUE
TO IMPROPER RECORD ON APPEAL**

Michelle DeLuca Yarbrough
(S.C. Bar No. 15603)
Gallivan, White & Boyd, P.A.
P.O. Box 10589
Greenville, South Carolina 29603
Telephone: (864) 271-5349
Facsimile: (864) 271-7502

Attorneys for Respondents

Pursuant to Rules 240, 209, 210, and 267 of the South Carolina Appellate Court Rules, the undersigned, as attorneys for Respondents South Carolina CVS Pharmacy, LLC and XL Insurance America, Inc. (hereinafter “Respondents”), hereby move this Court for an order striking Appellant’s Record on Appeal and dismissing the appeal or, in the alternative, striking improper portions of Appellant’s Record on Appeal for non-compliance, compelling Appellant to add missing portions of Respondents’ Designation of Matter to the Record on Appeal, and staying the time for Respondents to serve their Final Brief. In support of this Motion and in accordance with Rule 240(c), SCACR, Respondents have incorporated a memorandum of authority hereto.

ARGUMENT

Appellant filed her **FIRST** Initial Brief and Designation of Matter (“DOM”) on December 8, 2023. On December 18, 2023, Respondents filed a Motion to Dismiss the Appeal or, in the alternative, a Motion to Strike for non-compliance. On March 28, 2024, this Court issued an Order denying Respondents’ Motion to Dismiss but granting Respondents’ Motion to Strike Appellant’s Initial Brief and DOM. This Court required Appellant to file a **new** Initial Brief and DOM that complied with Rules 208 and 209 of the South Carolina Appellate Court Rules (“SCACR”) within 20 days. Failure to comply with the Order, according to this Court’s Order, “**will result in dismissal** of the appeal.” (emphasis added). (Ct. App. Order, March 28, 2024).

On April 17, 2024, Appellant filed a **SECOND** Initial Brief and DOM and, on April 24, 2024, Appellant filed a “Motion New Evidence” which this Court construed as a Motion to Amend the DOM or a Motion to Remand the case to the South Carolina Workers’ Compensation Commission. On May 3, 2024, Respondents filed an Opposition to Plaintiff’s Motion [for] New Evidence and on May 10, 2024, Respondents filed a **SECOND** Motion to Dismiss the Appeal or, in the alternative, a Motion to Strike for non-compliance. On July 12, 2024, this Court issued an

Order *denying Appellant's request to amend the DOM* or to remand to the South Carolina Workers' Compensation Commission. This Court denied Respondents' motion to dismiss the appeal, granted Respondents' motion to strike Appellant's **SECOND** initial brief, and opted to give Appellant a third opportunity to correct her initial brief by filing a **THIRD** initial brief in compliance with the South Carolina Appellate Court Rules within twenty (20) days. This Court also granted Respondents' motion to strike items 2, 3, and 4 from Appellant's DOM.

On August 1, 2024, Appellant filed a **THIRD** Initial Brief. On August 7, 2024, this Court noted deficiencies in Appellant's filing in that she did not include a cover page as required by Rules 208 and 267, SCACR and she did not include a table of contents and cases and statement of the issues on appeal as required by Rule 208(b), SCACR. On August 11, 2024, Appellant filed a document entitled "Table of Contents;" however, the content of the document was consistent with a DOM and appeared to be an attempt by Appellant to circumvent this Court's prior ruling denying her request to amend her DOM. The Clerk of Court clocked in the document entitled "Table of Contents" as "Stewart v. SC CVS – DOM" although Appellant's DOM had previously been filed with the **THIRD** Initial Brief on August 1, 2024 without further leave to amend.

On August 29, 2024, Respondents filed a **THIRD** Motion to Dismiss the Appeal or, in the alternative, a Motion to Strike for non-compliance. On September 9, 2024, Appellant filed a return in opposition to the motion. On October 1, 2024, this Court issued an Order denying Respondents' Motion to Dismiss and Motion to Strike Appellant's **THIRD** Initial Brief (which was almost exactly the same as the **SECOND** Initial Brief which this Court had stricken) and DOM. Thereafter, Respondents filed their Initial Brief on October 30, 2024.

On November 20, 2024 Appellant sent an e-mail to Respondents and this Court stating that she was serving her Record on Appeal ("ROA") and Final Brief. However, attached to that e-

mail, Appellant only included a one page Table of Contents, a one page Final Brief cover page, a one page Proof of Service (for the final brief and DOM only), a 27 page Final Brief (with no record citations), and a **NEW** one-page DOM. On that same date, this Court e-mailed the parties clocked in versions of three documents which it considered to be Appellant's Final Brief, DOM, and Proof of Service.

On November 29, 2024, Appellant served the 265 page Record on Appeal via e-mail along with a Proof of Service claiming the Record on Appeal was previously served on November 20, 2024. (The Record on Appeal was not included in the 5 documents referenced above which were attached to Appellant's November 20, 2024 e-mail and Respondents never received Certified Mail with a postmark date of November 20, 2024 serving the ROA.). This ROA did not include any page numbers. On December 1, 2024, Appellant served a document entitled "Corrected Record on Appeal" via e-mail.

Appellant's ROA contains numerous failures and deficiencies which are violations of South Carolina's Appellate Court Rules and has hindered Respondents' ability to defend this appeal and comply with the Rules. At each level in this appeal, Respondents have had to file a motion to this Court to address the Appellant's failure to comply with the South Carolina Appellate Court Rules. After three separate motions filed by Respondents, this Court graciously granted Appellant additional opportunities to correct her errors and comply with the Rules. After Appellant's motion to submit new evidence, which was opposed by Respondents and denied by this Court as being inconsistent with the Rules, Appellant has once again attempted to circumvent this Court's prior court rulings by re-introducing the same new evidence in the ROA. Respondents are now, once again, and for the fourth time, relegated to filing another motion to prevent Appellant's circumvention and non-compliance with the SCACR. A dismissal of Appellant's

appeal, after being given four prior chances to comply with the Rules, is the only reasonable and appropriate option to avoid the continued waste of this Court's and Respondents' time and resources. Alternatively, this Court should strike improper portions of Appellant's Record on Appeal for non-compliance and compel Appellant to include the missing portions of Respondents' DOM to be added to the ROA.

I. Appellant's Record on Appeal Violates the Content Provisions of the Appellate Court Rules

Appellant's ROA contains content errors. Rule 210(c), SCACR, states that the ROA shall include all matter designated to be included by any party under Rule 209 (Designation of Matter) and shall comply with the requirements of Rule 267 (Forms of Papers). The Appellate Court Rules specifically limit what is allowed in the ROA by stating that the record shall not "include matter which was not presented to the lower court or tribunal." Rule 210(c), SCACR. Under Rule 209, the DOM must be filed, along with proof of service, at the same time a party serves his initial brief and must clearly identify what the party desires to have included in the ROA. Rule 209, SCACR

After this Court's July 12, 2024 Order striking several items from Appellant's prior DOM, Appellant filed a new "Designation of Matter to be Included in the Record on Appeal" along with her **THIRD** Initial Brief on August 1, 2024. This document identified three matters for this Court to consider:

- 1.) Single Commissioner Decision and Order of January 19, 2023;
- 2.) Statements of the Case / Arguments (I-VI); and
- 3.) Issues on Appeal

(Exhibit A). This Court never asked Appellant to re-file her DOM although they did ask her on August 7, 2024 to file a missing Table of Contents which she did on August 17, 2024. She filed this document via e-mail using the document title "Table of Contents" and .pdf title

“xxTOC_StewartvsCVS.pdf”. (Exhibit B). After Appellant filed this document which she titled “Table of Contents,” this Court did not ask her for another Table of Contents. Because (1) Appellant did not move to amend her August 1, 2024 DOM, (2) this Court did not request a new or revised DOM, and (3) this Court did not request a corrected Table of Contents after Exhibit B was filed as the Table of Contents, Respondents considered Exhibit A to be Appellant’s DOM and Exhibit B to be Appellant’s Table of Contents when determining the appropriate documents to include in the ROA.¹

On November 29, 2024 and December 1, 2024, Appellant filed initial and corrected Records on Appeal. For this motion, I will only address the corrected ROA filed on December 1, 2024 and marked by this Court as being received on December 2, 2024. In that ROA, Appellant identifies thirty-one (31) different matters to be included. Unfortunately, the 31 matters included in the ROA do not comply with Rule 210(c), SCACR, because they (1) include matters not identified in either Appellant’s or Respondents’ DOM and (2) do not include matters identified in Respondents’ DOM.

On October 30, 2024, Respondents filed their DOM. This document identified nine (9) matters for this Court to consider:

- (1) Appellant’s Form 50, dated April 8, 2020 and February 24, 2021;
- (2) Respondents’ Form 51, dated May 8, 2020 and March 26, 2021;
- (3) The following excerpts from Appellant’s and Respondents’ APA Submissions and Exhibits:
 - a. Respondents’ Brief Exhibit D p. 66, Exhibit E p. 83, and Exhibit G;

¹ Appellant has very recently attempted, once again, to circumvent the Rules by filing yet another Designation of Matter via e-mail correspondence dated November 20, 2024 wherein she claims, incorrectly, that she is filing the Record on Appeal. (Exhibit C).

- b. APA 2 pp. 3-4
 - c. APA 5, pp.12, 19-21, 23-24;
 - d. APA 12, pp. 37-38, 40; and
 - e. APA 13, pp. 46-47, 50-52;
- (4) Transcript of Deposition of Dr. Ashley Hicks: pp. 5:25-6:2, 16:22-25, 17:1-21, 27:24 – 28:2, 8-10, 30:2-5; 32:17-25; 33:8-10, 23-34:4, 22-25, 36:3-37:17, 38:9-20, 39:3-13, 39:24-40:22, 40:10-12, 19-22, 41:9-23, 42:25 – 44;
 - (5) Transcript of the hearing before Commission Aisha Taylor on June 3, 2021 pp. 28:16-25, 29:6-22, 35:23-36:6, 43:2-5, 43:23-46:19, 48:7-12, 49:10-51:15, 52:21-53:7, 54:14-22, 55:1-17, 56:18-20, 57:11-13, 17-24, 58:19-23, 61:22-62:8, 63:4-14, 23-24, 64:7-19, 66:20-22, 68:6-22, 76:17-77:6;
 - (6) Defendants/Appellants’ Brief to the Full Commission dated April 13, 2023;
 - (7) Defendants/Appellants’ Reply Brief to the Full Commission dated May 2, 2023;
 - (8) Transcript of the Full Commission Hearing dated May 8, 2023; and
 - (9) Appellate Panel’s Decision and Order dated July 10, 2023.

(Exhibit D).

In Appellant’s 265 page ROA, she correctly includes item 8, Exhibit D, Transcript of the May 8, 2023 Full Commission Hearing although she identifies the incorrect date and provides the incorrect page numbers in the ROA. (ROA pp. 199 – 218). Appellant also correctly includes item 9, Exhibit D, Appellate Panel’s Decision and Order dated July 10, 2023, although she provides the incorrect page numbers in the ROA. (ROA pp. 19-51).

Appellant improperly includes the entire June 3, 2021 Single Commissioner Hearing Transcript, listing the incorrect date and page numbers in the ROA, instead of the selected portions of the transcript as referenced in Item 5 of Exhibit D. (ROA pp. 88-198). Further, Appellant claims she includes the APA submissions and exhibits noted in Item 3 of Exhibit D; however, she merely

includes an Index Page listing those documents without including the actual documents themselves. (ROA pp. 12-13).

Further, Appellant makes no attempt to include items 1, 2, 4, 6, and 7 from Respondents' DOM (Exhibit D). Considering the above failures and deficiencies, if this appeal survives a Motion to Dismiss, this Court should compel Appellant to add the missing portions of Respondents' DOM to the ROA.

More significantly, this Court should strike improper portions of Appellant's ROA for non-compliance with the Appellate Court Rules. When Appellant tried to introduce new evidence in prior Designations of Matter, this Court considered this attempt as a Motion to Submit New Evidence and Respondents objected to the same. Through this Court's Order dated July 12, 2024 (Exhibit E), Appellant was already instructed that she could not include new evidence in the ROA which is exactly what Appellant is attempting to do again with multiple documents identified in the ROA which were not considered by the South Carolina Workers' Compensation Commission. "The Record shall not . . . include matter which was not presented to the lower court or tribunal." Rule 210(c), SCACR. *See also State v. White*, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007) (holding witness statement which was not presented to the lower court could not be properly included in the record on appeal); *see also Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (stating "[w]e previously noted, however, pursuant to Rule 209(c), SCACR, the matter would not be given substantive consideration if it was not presented to the trial court"). Every page of the 265 page ROA not included in the 3 items noted in Exhibit A (Appellant's DOM) and 9 items noted in Exhibit D (Respondent's DOM) should be stricken for non-compliance.

II. Appellant's Appeal Should be Dismissed, or in the Alternative, Portions of Appellant's Record On Appeal Should be Stricken for Non-Compliance, Missing Portions of Respondents' Designation of Matter Should be Added to Record On Appeal, and the Timeline to Serve Respondents' Final Brief Should be Stayed due to Appellant's Improper Record on Appeal

The aforementioned rule violations in Appellant's ROM and Appellant's multiple attempts to circumvent the prior court orders by filing multiple new Designations of Matter to introduce new evidence require that the appeal be dismissed. Alternatively, this Court must strike and exclude the improper portions of the ROA, require Appellant to add the missing portions of Respondents' DOM, and allow Respondents additional time to file their Final Brief once the ROA errors have been corrected.

Respondents anticipate that Appellant will attempt to excuse her numerous violations under the guise of being a pro se litigant. However, "[a] pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 589 S.E.2d 6, 9 n.5 (2003). As the Supreme Court advised the bar in *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992), the Appellate Court Rules "are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." The *Henning* court addressed numerous deficiencies in the appellate brief at issue, including that "the components of the brief [were] incorrectly organized and labeled, the issues [were] not distinctively headed, the table of authorities [was] not alphabetized or referenced to the body of the brief, the statement of the case contain[ed] contested matter and omit[ted] required information, and the arguments contain[ed] no citations to the record or to the cases listed in the table of authorities." *Id.* at *1-2, 415 S.E.2d at 795.

In *Henning*, the Supreme Court noted that an appellate court is justified in dismissing an appeal based upon numerous violations of appellate court rules. *Id.* at *2, 415 S.E.2d at 795. Furthermore, Rule 269, SCACR, states that “[w]here an appeal . . . is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days’ notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.”

Here, Appellant’s errors are far greater than those in *Henning*. In fact, Respondents have filed three (3) prior Motions to Dismiss carefully enumerating the significant problems encountered before even reaching the ROA phase. Despite this Court agreeing that significant problems existed and advising Appellant to fix the problems, this Court gave Appellant three times to correct the problems. When on the third attempt she had not corrected the problems that were identified by Respondents and confirmed by this Court after the first two attempts, this Court overlooked the same problems previously noted and let Appellant proceed with the appeal.

At this point, without a proper Record on Appeal, Respondents (1) are unable to make the proper citations in their Final Brief, (2) do not understand the evidence which this Court will consider upon review, and (3) have been greatly prejudiced in their ability to defend this appeal. The voluminous and permeating deficiencies, both form and substance, have greatly hindered Respondents’ and this Court’s ability to understand and intelligibly and responsibly respond to Appellant’s arguments.

As such, the only course which remedies Appellant’s violations and promotes fairness to Respondents is dismissing the appeal pursuant to Rule 269, SCACR. However, in the alternative, Respondents respectfully request that the Court strike Portions of the Record On Appeal for Non-Compliance, require Appellant to add all of the items from Respondents’ Designation of Matter to

the ROA, and stay the time for Respondents to serve their Final Brief.

CONCLUSION

In light of the foregoing, Respondents respectfully move for an Order of this Court striking the Record on Appeal for the above-cited deficiencies and dismissing the appeal. In the alternative, Respondents respectfully move for an Order of this Court striking improper portions of the Record on Appeal for Non-Compliance, requiring Appellant to add all of the items from Respondents' Designation of Matter to the Record on Appeal, and staying the time for Respondents to serve their Final Brief.

Respectfully submitted,

GALLIVAN WHITE & BOYD, P.A.



By:

Michelle DeLuca Yarbrough
(SC Bar No. 15603)
Gallivan, White & Boyd, P.A.
P.O. Box 10589
Greenville, SC 29603
Telephone: (864) 271-5349
Facsimile: (864) 271-7502

Attorneys for Respondents,
South Carolina CVS Pharmacy, LLC
and XL Insurance America Inc.

Greenville, South Carolina
December 9, 2024.

Exhibit A

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL
THE STATE OF SOUTH CAROLINA**

In The Court of Appeals
The Supreme Court

WORKERS COMPENSATION COMMISSION PANEL:

Cynthia C Dooley, Chair

T. Scott Beck

Melody L James

Appellate Case No. 2023-CP-001264

Takara L Stewart

Claimant/Appellant,

v.

South Carolina CVS Pharmacy, LLC Employer and

XL Insurance America Inc.,
Carrier

Defendants/Respondents

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

1. Single Commissioner Decision and Order of January 19, 2023;
2. Statements of the Case/Arguments (I-VI)
3. Issues on Appeal

I certify that this designation contains no matter which is irrelevant to this appeal.

August 01, 2024


Takara L Stewart
108 E York Street Suite 236
Savannah, Georgia 31401
(984) 215-1812
Pro Se

Exhibit B

RECEIVED

Aug 19 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

WORKERS COMPENSATION COMMISSION PANEL:

Cynthia C Dooley, Chair
T Scott Beck
Melody L James

Case No. 2023-001264

Takara Stewart,

Claimant/Appellant,

v.

South Carolina CVS Pharmacy, LLC, Employer Defendants/Respondents.
XL Insurance America Inc., Carrier

TABLE OF CONTENTS

Appellant proposes the following be included in the Record on Appeal:

1. Single Commissioned Order/Rulings of Law of January 19, 2023;
2. Appellant Panel Order of July 10, 2023;
3. Appellants Initial Brief/ Answer;
4. APA #11 Depo P. 17; APA #1, #2, #3 #9, #6, #7 #11; APA #5 Pgs. 19-24, APA #12 Pgs. 37-44
5. Transcript of Proceedings: S. C. Tr. P. 17-31; F.C Hearing Tr. Pg. 3:1-25, Pg.4:1-25; F.C. Hearing Pg. 4:17-25; F.C. Tr. Pg. 4:11-12; F. C. Hearing Tr. Pg. 11:10-25; F. C. Hearing Tr. Pg. 10:1-25; F.C Tr. Pg. 8:3-25; F.C. Tr. Pg. 12:12-18; F. C. Hearing Tr. Pg. 17:5; F. C. Hearing Tr. Pg. 6:1-25
6. CVS Employee Handbook, Sexual harassment/assault policy;
7. Defendants' APA #13 Pg. 45-55

I certify that this designation contains no matter which is irrelevant to this appeal.

August 11, 2024


/s/

Takara L Stewart
108 E York Street
Suite 236
Savannah, Georgia 31401
(984) 215-1812
Pro Se

Exhibit C

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

WORKERS COMPENSATION COMMISSON PANEL:

Cynthia C Dooley, Chair
T Scott Beck
Melody L James

Case No. 2023-001264

Takara Stewart,

Claimant/Appellant,

v.

South Carolina CVS Pharmacy, LLC, Employer Defendants/Respondents.
XL Insurance America Inc., Carrier

Designation of Matter

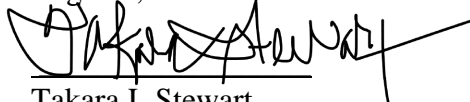
Appellant proposes the following be included in the Record on Appeal:

1. Single Commissioned Order/Rulings of Law of January 19, 2023;
2. Appellant Panel Order of July 10, 2023;
3. Appellants Initial/Reply Brief;
4. APA #11 Depo P. 17; APA #1, #2, #3 #9, #6, #7 #11; APA #5 Pgs. 19-24, APA #12 Pgs. 37-44
5. Transcript of Proceedings: S. C. Tr. P. 17-31; F.C Hearing Tr. Pg. 3:1-25, Pg.4:1-25; F.C. Hearing Pg. 4:17-25; F.C. Tr. Pg. 4:11-12; F. C. Hearing Tr. Pg. 11:10-25; F. C. Hearing Tr. Pg. 10:1-25; F.C Tr. Pg. 8:3-25; F.C. Tr. Pg. 12:12-18; F. C. Hearing Tr. Pg. 17:5; F. C. Hearing Tr. Pg. 6:1-25
6. CVS Employee Handbook, Sexual harassment/assault policy;
7. Defendants' APA #13 Pg. 45-55

I certify that this designation contains no matter which is irrelevant to this appeal.

November 20, 2024

Regards,



Takara L Stewart
108 E York Street
Suite 236
Savannah, Georgia 31401
(984) 215-1812
Pro Se

Exhibit D

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Cynthia C. Dooley, Chair
T. Scott Beck
Melody L. James

WCC No. 1923480

Appellate Case No.: 2023-001264

Takara L. Stewart,.....Appellant,

v.

South Carolina CVS Pharmacy, LLC, Employer, and
XL Insurance America, Inc., Carrier.....Respondents.

RESPONDENTS' DESIGNATION OF MATTER

Pursuant to Rule 209(a), SCACR, Respondents designate the following items for
inclusion in the Record on Appeal:

1. Appellant's Form 50, dated April 8, 2020 and February 24, 2021;
2. Respondents' Form 51, dated May 8, 2020 and March 26, 2021;
3. The following excerpts from Appellant's and Respondents' APA Submissions and Exhibits:

- a. Respondents' Brief Exhibit D p. 66, Exhibit E p. 83, and Exhibit G;
 - b. APA 2 pp. 3-4
 - c. APA 5, pp.12, 19-21, 23-24;
 - d. APA 12, pp. 37-38, 40;
 - e. APA 13, pp. 46-47, 50-52;
4. Transcript of Deposition of Dr. Ashley Hicks: pp. 5:25-6:2, 16:22-25, 17:1-21, 27:24 – 28:2, 8-10, 30:2-5; 32:17-25; 33:8-10, 23-34:4, 22-25, 36:3-37:17, 38:9-20, 39:3-13, 39:24-40:22, 40:10-12, 19-22, 41:9-23, 42:25 – 44.
 5. Transcript of the hearing before Commission Aisha Taylor on June 3, 2021 pp. 28:16-25, 29:6-22, 35:23-36:6, 43:2-5, 43:23-46:19, 48:7-12, 49:10-51:15, 52:21-53:7, 54:14-22, 55:1-17, 56:18-20, 57:11-13, 17-24, 58:19-23, 61:22-62:8, 63:4-14, 23-24, 64:7-19, 66:20-22, 68:6-22, 76:17-77:6.
 6. Defendants/Appellants' Brief to the Full Commission dated April 13, 2023
 7. Defendants/Appellants' Reply Brief to the Full Commission dated May 2, 2023;
 8. Transcript of the Full Commission Hearing dated May 8, 2023; and
 9. Appellate Panel's Decision and Order dated July 10, 2023.

Pursuant to 209(c), SCACR, Respondents' counsel certifies that none of these items are irrelevant to the appeal.

Greenville, SC
October 30, 2024

Respectfully submitted,
s/Michelle DeLuca Yarbrough
Michelle DeLuca Yarbrough
(S.C. Bar No. 15603)
Gallivan, White & Boyd, P.A.
P.O. Box 10589
Greenville, South Carolina 29603
Telephone: (864) 271-5349
myarbrough@gwblawfirm.com
Attorneys for Respondents

Exhibit E

The South Carolina Court of Appeals

Takara Stewart, Claimant, Appellant,

v.

South Carolina CVS Pharmacy, LLC, Employer, and XL
Insurance America, Inc., Carrier, Respondents.

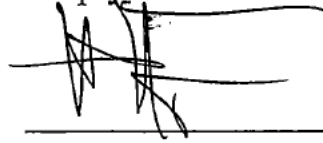
Appellate Case No. 2023-001264

ORDER

On April 17, 2024, Appellant filed her initial brief and designation of matter. On April 24, 2024, Appellant filed a motion titled "Motion New Evidence." In the motion, she requests "to present new evidence pertinent to the record on appeal to the Full Commission Appellate Panel." Specifically, she seeks to present (1) a psychology referral from Dr. Hicks-Beckum, (2) a psychology consultation and debrief, (3) a psychology estimate requested by Respondents, and (4) documentation of Respondents' settlement offers. Respondents filed a return, opposing Appellant's motion. We construe Appellant's motion as requesting either to amend the designation of matter or to remand to the South Carolina Workers' Compensation Commission. After careful consideration, we deny the motion. *See* Rule 210(c), SCACR (providing the record on appeal shall not include matter not presented to the lower court or tribunal).

Respondent filed a motion to dismiss the appeal or to strike improper portions of Appellant's initial brief and designation of matter. Appellant did not file a return. After careful consideration, we deny Respondent's motion to dismiss; however, we grant Respondent's motion to strike Appellant's initial brief and strike items 2, 3, and 4 from Appellant's designation of matter. *See* Rule 208(b)(1)(C), SCACR (explaining the statement of the case "shall not contain contested matters"); Rule 209(b), SCACR (stating a party may only designate matters that may properly be included in the record on appeal); Rule 210(c), SCACR (providing the record shall not include matter which was not presented to the lower court or tribunal).

Within twenty days of the date of this order, Appellant shall file and serve an amended initial brief. Failure to comply will result in dismissal of this appeal.

A handwritten signature in black ink, appearing to be 'W. F.', is written over a horizontal line.

FOR THE COURT

Columbia, South Carolina

cc:

Takara Stewart

Michelle Deluca Yarbrough, Esquire

RECEIVED

Jul 12 2024

SC Court of Appeals

RECEIVED

Dec 09 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Cynthia C. Dooley, Chair
T. Scott Beck
Melody L. James

APPELLATE FILE NO.: 2023-001264
SCWCC FILE NO. 1923480

Takara L. Stewart,.....Appellant,
v.
South Carolina CVS Pharmacy, LLC, Employer, and
XL Insurance America, Inc., Carrier.....Respondents.

PROOF OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), I certify that I have served a true copy of the **Respondents' Fourth Motion to Dismiss Appeal or, in the alternative, Motion to Strike Improper Portions of Appellant's Record On Appeal for Non-Compliance, to Compel Missing Portions of Respondents' Designation of Matter to be Added to Record On Appeal, and to Stay Timeline to Serve Respondents Final Brief due to Improper Record on Appeal** in the above-referenced case upon Takara L. Stewart, at her primary e-mail address listed as, Takara.L.Stewart@gmail.com, and by depositing a copy of it in the United States Mail, postage prepaid, on December 9, 2024, at, 108 E York Street, Suite 236, Savannah, GA 31401.

December 9, 2024
Greenville, S.C.



Tawnya Queen, Paralegal
Gallivan, White & Boyd
PO Box 10589
Greenville SC 29603
Telephone: (864) 271-5421
Facsimile: (864) 271-7502
tqueen@gwblawfirm.com

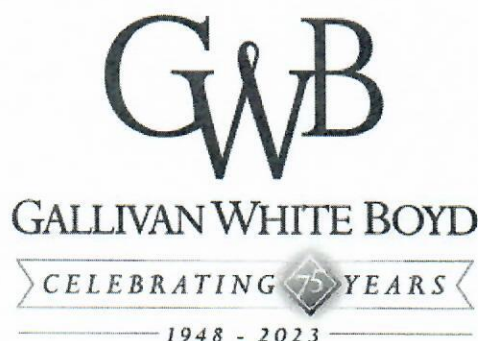
Tawnya Queen

From: Tawnya Queen
Sent: Monday, December 9, 2024 2:34 PM
To: takara.l.stewart@gmail.com
Cc: Michelle Yarbrough
Subject: 2023-001264-Takara L. Stewart v. CVS HEALTH [IMAN-IMANMAIN.FID791965]
Attachments: Motion to Dismiss or Strike_Compel _Stay Service of RFB w-Exhibits.pdf; Proof of Service for Motion to Strike_Compel ROA and Stay Service of RFB.pdf

Good Afternoon,

Please find attached **Respondents' Fourth Motion to Dismiss Appeal or, in the alternative, Motion to Strike Improper Portions of Appellant's Record On Appeal for Non-Compliance, to Compel Missing Portions of Respondents' Designation of Matter to be Added to Record On Appeal, and to Stay Timeline to Serve Respondents Final Brief due to Improper Record on Appeal** in the above referenced appellate case. A copy is also being mailed to you.

Thank you,
Tawnya Queen
Paralegal to Michelle Yarbrough



Tawnya Queen
Paralegal
tqueen@gwblawfirm.com

Gallivan, White & Boyd P.A.
55 Beattie Place | Suite 1200 | Greenville SC 29601
864 271 5421 Direct | 864 271 9580 Main | 864 271 7502 Fax
Mailing Post Office Box 10589 | Greenville SC 29603

[vCard](#) | [BioURL](#) | [Website](#)

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.